

ORDINANCE NO. 2008- 01

**AN ORDINANCE ADOPTING, RE-ADOPTING, RATIFYING AND AFFIRMING
A JOINT MUNICIPAL AGREEMENT AND AMENDMENTS THERETO
BETWEEN THE TOWNSHIP OF PAINT AND BOROUGH OF CENTRAL CITY
FOR THE TOWNSHIP TO PROVIDE POLICE PATROL, INVESTIGATIVE
AND ADMINISTRATIVE SERVICES IN AND FOR THE BOROUGH**

I. Background

1. The Borough of Central City ("Borough") desires to provide adequate police protection and law enforcement for the citizens of the Borough and has determined it is advisable to contract with Paint Township ("Township") to obtain such services.
2. Pursuant to the Borough Code, 53 P.S. § 46202(35), the Borough is permitted to contract with Paint Township for the Township to provide such police services and pursuant to the Second Class Township Code, 53 P.S. § 66904, Paint Township is permitted to provide such services to the Borough.
3. The parties have heretofore entered into an agreement for such services dated December 29, 2004, as amended January 1, 2005, and the parties have agreed to changes in the annual compensation to be paid through 2008, and the parties desire to further amend said agreement.
4. The Borough and Township are permitted to enter into joint agreements for municipal services pursuant to the Intergovernmental Cooperation Act, 53 P.S. § 2301, *et seq.*, and specifically for police services pursuant to the Borough Code, 53 P.S. §46202(35), and the Township Code, 53 P.S. § 66507.
5. The Borough and Township desire to comply with a court decision requiring that a police services agreement be approved by ordinance, rather than by resolution, which the Borough and Township had believed to be adequate.

II. Now, therefore, be it ordained by this municipality, and it is hereby ordained, as follows:

1. The background set forth above is incorporated by referenced.
2. The above-mentioned agreement of December 29, 2004, the amendment of January 1, 2005, the compensation changes accepted by the parties for 2006, 2007 and 2008, and the "Amendment to and Ratification and Affirmance of Joint Municipal Agreement for Law Enforcement Services Dated December 29, 2004, as Heretofore Amended" as presented for action to this municipality (collectively "Police Services Contract"), are hereby adopted, re-adopted, ratified and affirmed, and this municipality shall be bound by same.

3. The conditions, duration, purposes, scope of authority, and financing arrangements of the agreement are:
 - (1) Paint Township will provide police patrol, investigative, and administrative services to Central City Borough of the same nature that the Township provides within the Township limits, as more particularly set forth in the Police Services Contract;
 - (2) services will be provided 24 hours a day, 7 days a week, on an on-call basis, subject to changes as agreed from time to time;
 - (3) the police will be employees of the Township, controlled by the Township, and the Township will be responsible for all wages and benefits and for all supplies, insurance, supervision, equipment and communications necessary, but the Borough will appoint and accept the Township police individually as required by law to give them full authority to act in the Borough the same as if they were Borough policemen;
 - (4) excluding State Police-generated fines, all fine money will be divided fifty percent (50%) to the Borough and fifty percent (50%) to the Township;
 - (5) the Borough will pay the Township a fee determined annually (fixed at \$32,382.80 for 2005, \$33,842.88 for 2006 and 2007, and \$31,344.00 for 2008), which fee will be fixed by the Township after consultation with the Borough; and,
 - (6) the Agreement is automatically renewed for each calendar year unless terminated by either party by September 30 of the prior year, or unless terminated by the Borough if the annual fee fixed by the Township is not acceptable.
4. The prior execution of any portion of the Police Services Contract by any Supervisor of the Township or officer of the Borough or Mayor is hereby ratified and confirmed, and Supervisors of the Township and the Borough officers and Mayor, as appropriate, are authorized to execute such agreements, resolutions, authorizations or other documents and take such actions and make such advertisements as may be necessary to adopt, re-adopt, ratify and affirm all or any portion of the Police Services Contract or to implement any of its provisions, and the signatures of such Township or Borough officials shall conclusively establish that the documents they signed are the documents referred to in or authorized by this Ordinance.
5. This Ordinance shall be deemed a resolution for purposes of appointing and accepting as policemen of the Borough (so long as they are police employees of the Township) those individuals listed on Attachment A to the current Amendment, which is incorporated herein by reference, and Council is further authorized to adopt such resolution or resolutions as may be required from time to time to appoint and accept additional persons.
6. The Police Services Contract documents as referred to herein shall be available for review by citizens of the Borough and Township prior to action being taken on this Ordinance.
7. All ordinances or parts of ordinances and/or resolutions or parts of resolutions inconsistent herewith are hereby repealed.

DULY ORDAINED AND ENACTED by this municipality this 10 day of March, 2008.

TOWNSHIP OF PAINT
SOMERSET COUNTY, PENNSYLVANIA

[two (2) signatures required]

By *Doird Blough* Chairman

By *Robert [unclear]* Vice Chairman

By *Kenneth A. Klesoff* Secretary

[TOWNSHIP SEAL]

**AMENDMENT TO
AND RATIFICATION AND AFFIRMANCE OF
JOINT MUNICIPAL AGREEMENT FOR LAW ENFORCEMENT SERVICES
DATED DECEMBER 29, 2004, AS HERETOFORE AMENDED**

I. Parties

- A. The TOWNSHIP OF PAINT, SOMERSET COUNTY, PENNSYLVANIA ("Township").
- B. The BOROUGH OF CENTRAL CITY, SOMERSET COUNTY, PENNSYLVANIA ("Borough").

II. Background

- A. Township and Borough are parties to an agreement dated December 29, 2004 ("Agreement"), whereby the Township provides police services to the Borough according to the terms of the Agreement.
- B. The Agreement provides on page 1 that it is entered into under the Intergovernmental Cooperation Act ("Act") and would be validated by adoption of an ordinance under the Act.
- C. Prior to execution of the Agreement, in the last paragraph, the word "Ordinance" was changed to "Resolution," apparently because after the Agreement was drafted but before execution the parties believed that an ordinance was not required as a condition for them to enter into the Agreement.
- D. The parties also executed an amending resolution January 1, 2005, concerning the handling of fine money.
- E. The Agreement by its terms continued in effect from year to year unless terminated.
- F. Although the parties did not execute formal written amendments to so provide, the parties have modified the compensation payable under paragraph 9.A. from \$32,382.80 for 2005 to \$33,842.88 for 2006 and 2007, and \$31,344.00 for 2008.
- G. The parties have proceeded without adopting ordinances apparently on the assumption that authority for the contract, notwithstanding the language on the initial page, was actually to be found in explicit language of the Second Class Township Code ("Township Code") and the Borough Code, which does not impose an ordinance requirement, rather than under the Act.
- H. With respect to boroughs, the Borough Code provides, 53 P.S. § 46202(35), that a borough may:

(35) [E]nter into contracts with the proper authorities of near or adjacent cities, boroughs, or townships, either for mutual aid or assistance in police and fire protection, or for the furnishing to, or receiving from, such cities, boroughs, or townships, aid and assistance in police and fire protection, and to make appropriations therefor: Provided, That in connection with such contracts, it shall not be necessary to advertise for bids or receive bonds as

required for other contracts under existing law. When any such contract has been entered into the police, firemen or fire police of the employing city, borough or township shall have all the powers and authority conferred by law on city, borough or township police, firemen, or fire police in the territory of the city, borough or township which has contracted to secure such service.

- I. Immediately preceding subsection (35) quoted above, the Borough Code provides, 53 P.S. § 46202(34), as follows:

(34) Joint municipal agreements. To enter into agreements with other political subdivisions, in accordance with existing laws, in making joint purchases of materials, supplies or equipment and in performing governmental powers, duties and functions and in carrying into effect provisions of law relating to said subjects which are common to such political subdivisions.

- J. Since clause (34) directly involves the general joint agreements covered by the Act, and specifically makes that power "in accordance with existing laws," and since clause (35) dealing with police services grants specific authority to enter into contracts for police services and does not refer to the Act or provide that such contracts should be entered into "in accordance with existing law," it would appear that the legislature, since the two provisions are right next to each other, intended to require compliance with the Act (approval by ordinance) only for general joint municipal agreements and not with respect to police contracts since the legislature could have, but did not, impose the requirement that police contracts be entered into "in accordance with existing laws." The Borough is not here establishing a joint or regional police department, which is not covered by clause (35) and would have to be done by ordinance under clause (34).

- K. Likewise, with respect to townships, the Township Code provides, 53 P.S. §§ 66903 and 66904, as follows:

§ 66903. Contracts to secure police service

Any township may contract with any municipal corporation to secure the services within the township of the police of the municipal corporation. When any contract is made, the police officers of the employing municipal corporation have all the powers and authority conferred by law on police officers in the township which has contracted to secure police service.

§ 66904. Contract to provide police service

Any township may contract with any municipal corporation to provide police services within the other municipal corporation. When a contract is made, the township police have all the powers and authority conferred by law on police in the municipal corporation which has contracted to secure police service.

- L. With respect to general cooperative agreements with other municipal entities, the Township Code provides, 53 P.S. § 66507, as follows:

§ 66507. Intergovernmental cooperation

The board of supervisors may by ordinance make agreements with other municipal corporations in performing governmental powers, duties and functions and in carrying into effect provisions of the act of July 12, 1972 (P.L. 762, No. 180), referred to as the Intergovernmental Cooperation Law.

In this section, the legislature specifically provided for action by ordinance under the Act, but, again, in the separate sections specifically on police contracts, the legislature, fully cognizant of the existence of the Act, did not require that police contracts be adopted by ordinance under the Act.

- M. As noted above with respect to the Borough, the Township also did not seek to establish a regional police force, which is not authorized by the specific police provisions of the Township Code referenced above and would require an ordinance under the Act.
- N. Accordingly, the Agreement was changed at the time of execution to approval by resolution rather than ordinance.
- O. In a court decision in early February 2008, in a case not involving either of the parties hereto, the Court of Common Pleas of Somerset County, in a decision of first impression, concluded that a municipality entering into a police services contract had to adopt an ordinance under the Act.
- P. Although the Court did not directly address the distinction drawn above between general municipal agreements and specifically-authorized police contracts and the argument that the legislature intended the Act to apply only for general agreements not specifically addressed in the Township and Borough Codes, it is clear that the Court's decision requires action by ordinance.
- Q. The parties desire to eliminate any issues regarding their police services contract by adopting an ordinance approving their agreement, and, in that connection, to reduce to writing the modifications noted above.

III. Agreement

The parties, intending to be legally bound, agree as follows:

- 1. Their Agreement of December 29, 2004, as amended January 1, 2005, to modify paragraph 9.B., and as amended by changing the amounts in paragraph 9.A. to \$33,842.88 for 2006 and 2007, and \$31,344.00 for 2008, and as hereby amended (collectively the "Police Services Contract"), is hereby re-adopted, ratified and affirmed, and the parties agree that Township will continue to provide services to Borough as heretofore pursuant to the Police Services Contract, and Borough will continue to pay for said services.
- 2. The Police Services Contract shall continue to be binding upon the parties.
- 3. The annual fee to be paid by Borough to Township under paragraph 9.A. of the Police Services Contract shall be adjusted annually for years after 2008 by Township after

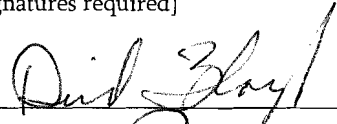
discussions with Borough and, once Township fixes the fee, Borough shall have thirty (30) days within which it may terminate the Agreement if not satisfied with the figure. This right of termination is in addition to any rights of termination already contained in the Police Services Contract.

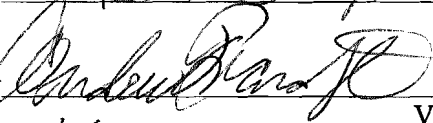
4. The individual members of the Police Department of Paint Township currently serving, as listed on ATTACHMENT A, and those who have served since January 1, 2005, as listed on Attachment A, and those who hereafter serve during the term of the Police Services Contract, are hereby individually appointed and accepted as police of Central City Borough (so long as they are police employees of the Township) to provide for police protection within the Borough as if said policemen were police of the Borough of Central City. The adoption of this amendment by ordinance shall constitute a resolution of the Borough appointing and accepting those individuals pursuant to 53 P.S. § 46122.
5. Pursuant to the provisions of the Borough Code, 53 P.S. § 46122, the Borough of Central City agrees that it will hereafter, as often as the same may be necessary, adopt a resolution or resolutions individually appointing and accepting as policemen of the Borough those persons who are, from time to time, members or officers of the Police Department of Paint Township.
6. The Agreement and all prior amendments are hereby ratified and re-affirmed, except as herein modified.


WITNESS the due execution hereof by the parties hereto, pursuant to ordinance properly adopted, by the undersigned duly authorized officials.

TOWNSHIP OF PAINT
SOMERSET COUNTY, PENNSYLVANIA

[two (2) signatures required]

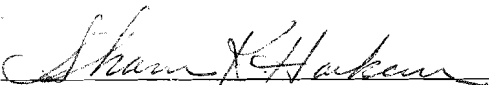
By  Chairman

By  Vice Chairman

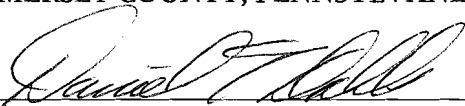
By  Secretary

[TOWNSHIP SEAL]

Attest:

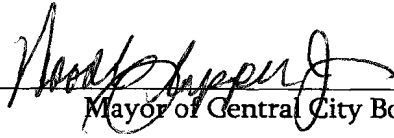

Secretary

BOROUGH OF CENTRAL CITY
SOMERSET COUNTY, PENNSYLVANIA

By  President

[BOROUGH SEAL]

Examined and approved this 10TH day of MARCH, 2008.



Mayor of Central City Borough

ATTACHMENT A

Names of current police employees and all police employees employed since January 1, 2005:

Richard Skiles
John Rice
William Gephart
Amanda Tessari
Daniel Croyle
Theodore Salem
Wilbert Bailey
Edward Porado
Christopher Swartz
Stanton Walls
Stacey Croyle
John Heming
Daniel Schrader