

KENNETT FIRE AND EMS REGION

INTER-MUNICIPAL COOPERATION AGREEMENT

This Inter-Municipal Cooperation Agreement (the "Agreement") is made as of the 20 day of September, 2017, by and among the Borough of Kennett Square and the Townships of East Marlborough, Kennett, Newlin, Pennsbury and Pocopson in Chester County, Pennsylvania (hereinafter collectively referred to as the "Municipalities").

BACKGROUND

A. This Agreement is authorized by, and conforms to, the Pennsylvania Intergovernmental Cooperation Act, Act of December 19, 1996, P.L. 1158, No 177, as reenacted and amended, 53 Pa. C.S.A. §2301 et seq. (the "Act"), which provides that two or more municipalities may jointly cooperate in the exercise or performance of their respective governmental functions, powers or responsibilities. Each Municipality has passed an Ordinance in accordance with the Act in order to give full force and legal effect to this Agreement (the "Enabling Ordinance").

B. The Municipalities desire to enter into this Agreement to provide for inter-municipal collaboration and the pooling of municipal resources and funds for the provision of fire, rescue and emergency services within an area including all or a portion of each Municipality, as more particularly shown on the regional map attached hereto as Exhibit A and made a part hereof, to be known as the Kennett Fire and EMS Region (the "Region"). Presently, within the Region, fire and rescue services are provided by the Longwood, Kennett and Po-Mar-Lin Fire Companies and EMS services are provided by the Longwood and Kennett Fire Companies (collectively, and together with any successor provider of such services within the Region, the "Service Providers").

C. The Municipalities desire to establish a quasi-governmental entity composed of representatives of each Municipality to carry out the powers, responsibilities and functions of the individual municipalities for the provision of fire, rescue and emergency services within the Region.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound hereby, the Municipalities hereby agree as follows:

1. Establishment of the Commission.

1.1 The Municipalities hereby agree to the formation and establishment of a quasi-governmental entity for public and governmental purposes, to be known as the Kennett Fire and EMS Regional Commission (the "Commission") as authorized by the Act, and hereby assign and delegate to the Commission the powers, responsibilities and functions of each individual Municipality for the provision of fire, rescue and emergency services within the Region as provided in the Enabling Ordinances and this Agreement, consistent with the authority of the Act and other applicable laws.

1.2 The Commission shall be incorporated as a nonprofit corporation under the Pennsylvania Nonprofit Corporation Law of 1988 (the "PaNPCL"), 15 Pa. C.S. §5911 et seq. upon the filing of the Articles of Incorporation attached hereto as Attachment I and made a part hereof (the "Articles"). The Commission shall operate in accordance with the provisions of this Agreement, the Articles, and the Bylaws of the Commission attached hereto as Attachment II and made a part hereof (the "Bylaws"). In the event of any inconsistency between this Agreement and Bylaws, the provisions of this Agreement shall control.

1.3 The size, composition and appointment of members and alternate members of the Commission (collectively, the "Commissioners") shall be as provided in the Bylaws. Each Municipality agrees that, in the event the appointment of any member of the Commission duly made in accordance with the Bylaws requires a vote of the Municipalities, such Municipality shall cast its vote in favor of each and every individual duly designated in accordance with the Bylaws by any other Municipality for appointment to the Commission.

2. Relationship of the Commission and the Service Providers; Territories; Reporting.

2.1 Notwithstanding anything in this Agreement, each Service Provider shall continue to be a separate, independent legal entity and to establish its own governance structure, including with respect to the selection of its president, fire chief, directors, trustees, and other officers. The Commission shall have no authority to control the day-to-day operations of each independent Service Provider, and the Service Providers shall not be deemed to be agents of the Commission or the Municipalities. The Commission shall not have the authority to reassign territory covered by one of the Service Providers to another provider without the approval of the governing body of the Municipality in which the respective territory is located.

2.2 The Commission shall obtain such information from the Service Providers as it deems necessary or appropriate to carry out its responsibilities under this Agreement, including at a minimum (a) annual audited financial statements (no later than 90 days following the end of a Fiscal Year), (b) annual draft budgets for the coming Fiscal Year no later than September 1, (c) an annually-updated schedule for the replacement of fire, rescue and emergency services vehicles and equipment over the succeeding twenty (20) years showing the projected costs (including an appropriate inflation factor) and timing for the acquisition of such equipment, to be submitted with the annual draft budget, and (d) monthly reporting on response calls and other activities identified by the Commission.

3. Three Year Commitment; Transition Period.

3.1 Each Municipality agrees to participate, and not withdraw from participation, in the Commission as a member of the Region and abide by this Agreement from the date of adoption of its respective Enabling Ordinance and for a period of no less than three (3) years, beginning on January 1, 2018 and continuing through and including December 31, 2020 (such three (3) year period, the "Commitment Period"). Within no more than thirty (30)

days following the adoption of the Enabling Ordinance and the execution of this Agreement, each Municipality shall appoint its respective representatives to the Commission.

3.2 During the period between such appointments and the beginning of the Commitment Period (the "Transition Period"), the Commission shall meet monthly so that the Commission is prepared to become fully operational as of January 1, 2018. During the Transition Period, the Municipalities shall retain the powers, responsibilities and functions of the individual Municipalities for the provision of fire, rescue and emergency services within the Region, including all matters relating to the funding of the Service Providers. The activities of the Commission during the Transition Period shall include the preparation and submission to the Municipalities of the Commission Budget (as defined in Section 5.1) for 2018. The activities also may include working with the Service Providers on (a) service agreements setting forth the obligations of the Commission and the respective Service Providers during the Commitment Period, (b) the establishment of uniform standards, policies and procedures for the Region and (c) recruiting candidates for the position of Regional Administrator (as defined in Section 4); provided that any such matters shall not go into effect prior to the beginning of the Commitment Period.

4. Regional Administrator. The Commission shall hire a full or part-time employee, to be known as the "Regional Administrator," to assist the Commission in the performance of its duties and responsibilities under this Agreement. The qualifications of the Regional Administrator shall be established by the Commission in consultation with the Service Providers.

5. Regional Budget; Annual Audit.

5.1 The Commission shall approve and submit to the Municipalities an annual budget for the coming calendar year (each a "Fiscal Year") no later than October 1 (the "Commission Budget"). The Commission Budget shall be prepared in collaboration with the Service Providers and shall include sufficient revenue to fund the operations of the Service Providers and the Commission for the coming Fiscal Year, as well as the applicable amount for the coming year shown on the Equipment Replacement Schedule (as described in Section 7). The portion of the Commission Budget funded by the Municipalities shall take into account all sources of funding or income earned by or payable to the Service Providers, including contributions, grants, payments, and reimbursements for fire, rescue, emergency and other services from any source, including other municipalities or governmental entities, charitable donors or grant-makers, third-party payers, individuals, developer impact fees, and the Firemen's Relief Fund. Each Municipality agrees to include funding in its annual budget for the coming Fiscal Year and distribute to the Commission an amount equal to its allocable share of the Commission Budget based on the Funding Formula (as described in Section 6).

5.2 Notwithstanding anything set forth in this Agreement, except as unanimously approved by the Municipalities, the maximum amount of the annual Commission Budget during the Commitment Period shall not exceed (a) \$1,608,937 (the amount equal to the aggregate amount allocated to fund the Service Providers by all six (6) Municipalities in their

respective 2017 budgets), plus, (b) \$100,000 to be allocated to the operating and administrative expenses of the Commission (for a total of \$1,708,937) and, to the extent deemed appropriate by the Commission, an increase of up to three percent (3%) per year.

5.3 The Commission shall obtain and submit to the Municipalities audited financial statements prepared by a certified public accounting firm selected by the Commission.

6. Municipal Funding.

6.1 The respective portion of the annual funding each Municipality is obligated to provide to the Commission shall be based on an allocation percentage (the "Allocation Percentage") determined on the basis of such Municipality's equally-weighted share of the Region's total population, assessed value, fire/rescue responses, and EMS responses, as shown on Exhibit B attached hereto and made a part hereof (the "Funding Formula"). The Allocation Percentage of each Municipality shall be fixed at the amounts shown on Exhibit B throughout the Commitment Period.

6.2 Beginning with the 2020 Fiscal Year, the Allocation Percentage determined by the Funding Formula shall be recalculated annually based on the most current updated data on the Region's total population, assessed value, fire/rescue responses, and EMS responses, and an updated version of the table shown on Exhibit B shall be included in the Commission Budget submitted to the Municipalities. In the event the Commission determines that the Funding Formula should be revised to include other factors or change the weighting of the factors, the Commission shall recommend a revised funding formula to the Municipalities who are then-current members of the Region. The revised funding formula shall become effective upon the execution of an amendment to this Agreement in accordance with Section 12 of this Agreement, and the revised Funding Formula shall be incorporated into an updated version of the table shown on Exhibit B.

6.3 Each Municipality agrees to provide funding to the Commission on an annual basis in an amount equal to a portion of the Commission Budget for the applicable Fiscal Year equal to the Allocation Percentage of such Municipality as set forth on Exhibit B or as updated or revised in accordance with Section 6.2. In addition, each Municipality shall distribute to the Service Providers all funds it receives for the Firemen's Relief Fund.

7. Equipment Replacement Fund. The Commission shall work with the Service Providers to determine the Region's needs for the replacement of fire, rescue and emergency services vehicles and equipment over the succeeding twenty (20) years and shall establish a schedule of the projected costs (including an appropriate inflation factor) and timing for the acquisition of such equipment (the "Equipment Replacement Schedule"). The Equipment Replacement Schedule shall be updated annually. Each Commission Budget shall include an amount equal to 1/20 of the estimated costs shown on the Equipment Replacement Schedule so that the costs to the taxpayers are spread roughly evenly over the succeeding twenty (20) year period; provided that, in the event the inclusion of such amount in the Commission Budget in

any year during the Commitment Period would result in the total Commission Budget exceeding the maximum amount agreed to pursuant to Section 5.2, the amount budgeted for equipment replacement for such year shall be reduced accordingly. The Commission is authorized to establish and maintain a fund to hold annual payments from the Municipalities designated for such vehicle and equipment replacement (the "Equipment Replacement Fund") and to utilize the funds in the Equipment Replacement Fund for the acquisition of such vehicles and equipment in the years shown on the updated Equipment Replacement Schedule.¹

8. Withdrawal. Following the Commitment Period, any Municipality may withdraw from the Region and its obligations under this Agreement at the end of a Fiscal Year by (a) adopting a resolution of its governing body authorizing the withdrawal and (b) providing no less than six (6) months prior written notice to each other Municipality and the Commission of its intention to withdraw effective as of either (i) the end of the Commitment Period or (ii) thereafter, the last day of the then-current Fiscal Year. Each Municipality that has not provided notice of its intention to withdraw in accordance with the immediately preceding sentence shall remain a member of the Region and be bound by its obligations under this Agreement for each succeeding Fiscal Year unless and until such Municipality withdraws from the Region and its obligations under this Agreement in accordance with the provisions of this Section 8. Any withdrawing Municipality shall be responsible for all financial obligations allocated to it under this Agreement through the effective date of its withdrawal and, upon its withdrawal, shall not be entitled to withdraw or receive any funds or other assets of the Commission, including from the Equipment Replacement Fund or otherwise a part of any funds or assets contributed to the Commission prior to the effective date of its withdrawal.

9. Termination. This Agreement may be terminated at the end of a Fiscal Year by (i) a majority of the Municipalities who are then-current members of the Region and (ii) the Municipalities representing a majority of the then-current Allocation Percentage, by the adoption of a resolution to such effect by the governing bodies of each such number of Municipalities. The termination shall become effective no sooner than twelve (12) months after the adoption of such resolutions by the requisite number of Municipalities. As of the effective date of the termination of this Agreement, the Commission shall be disbanded and all property, equipment and assets of any kind belonging to the Commission, after making payment or the provision for payment of all liabilities of the Commission, shall become the property of, and be distributed to, the then-current Municipalities in proportion to their respective Allocation

¹ The obligation to pay-off the balance of the debt owed by Kennett Borough for the recent acquisition of the ladder truck for Kennett Fire Company will be satisfied from funds otherwise allocated to the Equipment Replacement Fund. In each year that Kennett Borough makes a payment due on such debt, such payment shall be treated as a payment by the Borough for regional fire equipment and shall be credited towards the Borough's funding obligation pursuant to Section 6.3. The outstanding payments due for the ladder truck equals \$81,599.08 in years 2018-2022 and \$61,199.31 in 2023.

Percentages for the final Fiscal Year in which this Agreement remains in effect or such other proportion as is mutually agreed among the then-current Municipalities.²

10. Insurance, Waiver and Indemnity.

10.1 The Commission shall obtain and maintain appropriate policies of insurance providing appropriate coverage for the activities of the Commission, the Commissioners, and Commission employees under this Agreement. Such policies shall contain a waiver of subrogation clause or endorsement under which the insurance carrier waives its right of subrogation against each Municipality as to any and all causes of action or claims that may arise out of or in connection with or be related to the activities of the Commission, the Commissioners, or Commission employees under this Agreement, provided that coverage containing such waiver of subrogation shall remain available. Each Municipality hereby waives any and all claims against all other Municipalities and against the Commission, the Commissioners, and Commission employees, which may arise out of or in connection with or be related to the activities of the Commission while rendering services under this Agreement (except to the extent caused by criminal or intentionally wrongful acts on the part of the implicated Municipality).

10.2 For purposes of liability not covered by insurance protection involving actions arising out of, in connection with, or related to this Agreement, each Municipality shall be proportionally liable for judgments rendered against any Municipality arising out of or in connection with or related to services rendered or actions taken pursuant to this Agreement. The proportion of liability shall be divided among all Municipalities in proportion to their respective Allocation Percentage under the Funding Formula at the time the services in question were rendered. Each Municipality hereby agrees to indemnify and hold harmless every other Municipality, in proportion to their respective Allocation Percentage, from any and all third party claims, suits, damages and losses, including costs and expenses and attorneys' fees incident to or rendered from any injury to any person or damage to any property which may arise out of or in connection with or be related to the rendering of services pursuant to this Agreement by the implicated Municipality or Municipalities (except to the extent caused by criminal or intentionally wrongful acts on the part of the implicated Municipality).

10.3 The obligations of the Municipalities under this Section 10 shall survive the termination of this Agreement and, with respect to any Municipality, shall survive its respective withdrawal, and with respect to any Commissioner or Commission employee, shall survive the expiration or termination of her, his, their or its service to the Commission.

11. Immunity. The services rendered, the actions taken, and the obligations and expenditures made by the Commissioners and employees and agents of the Commission

² Such distribution honors the cy pres doctrine by, as nearly as possible, enabling the respective Municipalities to perform their responsibilities for the provision of fire, rescue and emergency services within their borders, which is the intended purpose of their contribution of taxpayer funds to the Commission.

shall be deemed to be for public and governmental purposes, and all immunities from liabilities enjoyed by the Municipalities and their officials and employees within their respective boundaries shall extend to every Municipality and the Commission and their respective officials and employees in connection with their participation in the services and activities contemplated by, related to, arising out of, or in connection with this Agreement within the then-current geographic area served by the Commission.

12. Amendment. This Agreement may only be amended or modified by a written document approved by ordinance and executed by all the Municipalities who are then-current members of the Region.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof.

15. Assignment. None of the rights and obligations of any party to this Agreement may be assigned without the prior written consent of all of the other parties to this Agreement, and any purported assignment made without such consent shall be void.

16. Remedies. In case any one or more of the covenants and/or agreements set forth in this Agreement shall have been breached by a Municipality, either the Commission or any other Municipality (as the case may be) may proceed to protect and enforce its rights either by suit in equity and/or by action at law, including, but not limited to, an action for damages as a result of any such breach and/or an action for specific performance or injunctive relief with respect to any such covenant or agreement contained in this Agreement.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

18. Severability. The provisions of this Agreement are severable, and if any section, sentence, clause, part or provision hereof shall be held to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Agreement. It is hereby declared to be the intent of the Municipalities that this Agreement would have been entered into if such illegal, invalid or unconstitutional section, clause, part or provision had not been included herein.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Attest:
Karen L. Scherer
Secretary

BOROUGH OF KENNETT SQUARE

By: [Signature]

Name:

Title:

Date:

Attest:
Gaunie C. Anzork
Secretary

EAST MARLBOROUGH TOWNSHIP

By: [Signature]

Name: Richard AS Hannum, Jr.

Title: Chairman, Board of Supervisors

Date: 7/10/17

Attest:
Jose M. Moya
Secretary

KENNETT TOWNSHIP

By: [Signature]

Name:

Title: Chair, Board of Supervisors

Date: 7/22/17

Attest:
Jeta Alief
Secretary

NEWLIN TOWNSHIP

By: [Signature]

Name:

Title: Chair, Board of Supervisors

Date: 8/29/17

PENNSBURY TOWNSHIP

Attest:

Kathleen Howley
Secretary

By: Wendell Fenton
Name: Wendell Fenton
Title: Chair
Date: 9-20-17

POCOPSON TOWNSHIP

Attest:

Susanne Simone
Secretary

By: Ricki Stumpo
Name: RICKI STUMPO
Title: CHAIR
Date: 8/23/2017

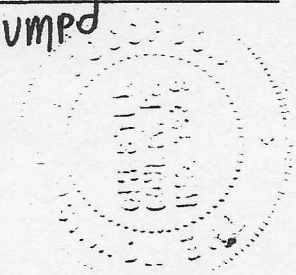


EXHIBIT A

MAP OF REGION

All of the territory within the boundaries of the Borough of Kennett Square and the Townships of East Marlborough, Kennett, Pennsbury and Pocopson, and, (i) with respect to fire and rescue services, those portions of Newlin Township shown on the attached map showing Fire Response Zones assigned to Po-Mar-Lin Fire Company, and (ii) with respect to EMS services, that portion of Newlin Township shown on the attached map showing EMS Coverage Zones assigned to Longwood Fire Company.

Modena Amb

Good Fellowship Amb

Longwood Amb

**Newlin Twp
BLS EMS Coverage Areas**

Map Features

- Phone Booth
- Traffic Signal
- Highway
- Police Response Zone
- Fire Response Zone
- Municipal Boundary
- Interstate
- US State
- State Route
- Local Road
- Interlocal Road
- Trail

Scale: 0 500 1,000 2,000 Feet

© 2015

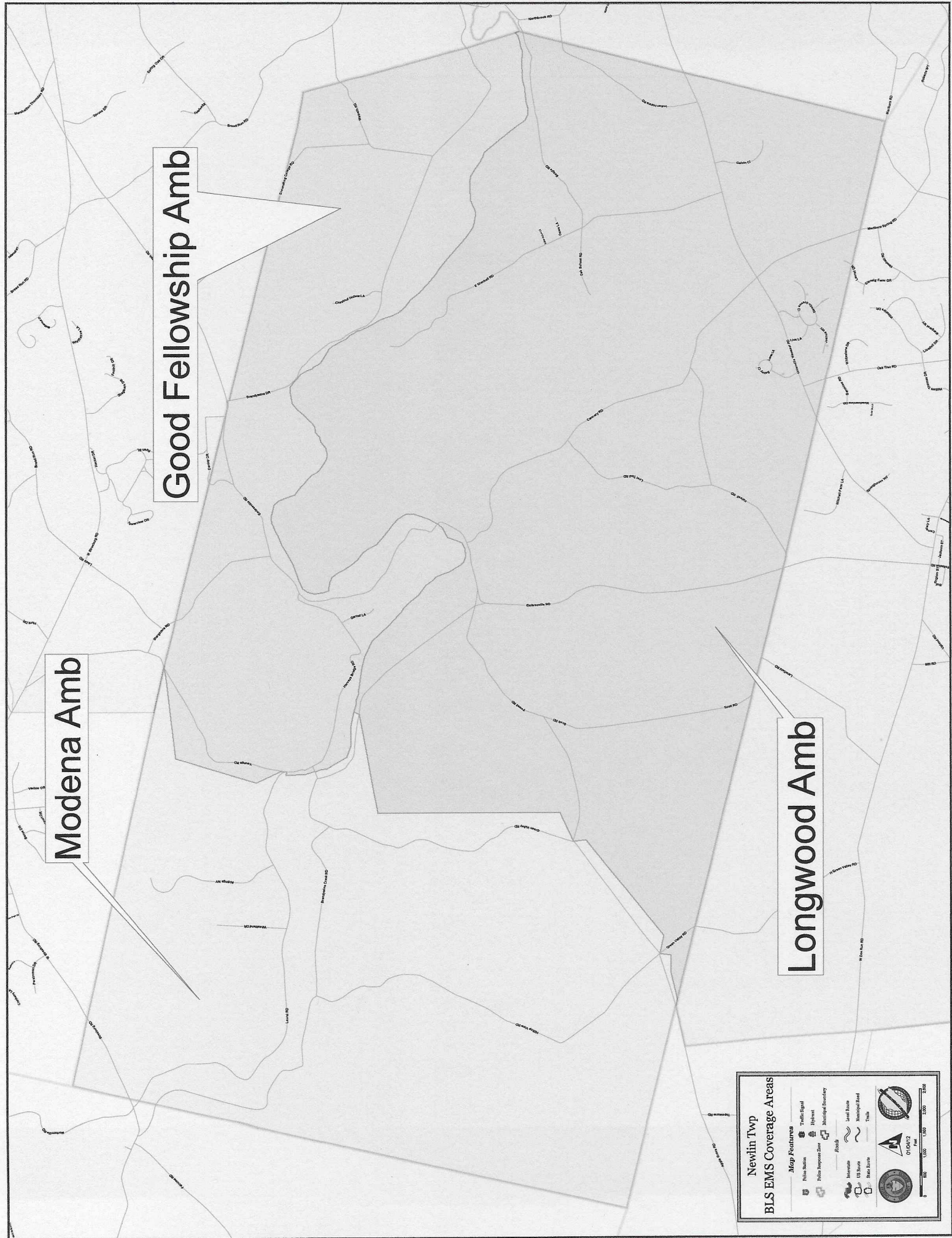


EXHIBIT B

FUNDING FORMULA

<u>Municipality</u>	Population (2010) (%)	Assessed Value (%)	Fire/Rescue Responses (%)	EMS Responses (%)	<u>Allocation Percentage</u>
Kennett Township	25.5	31.0	27.6	26.0	27.5
E. Marlborough Township	23.7	27.6	29.4	28.0	27.2
Kennett Borough	20.5	9.1	13.8	16.2	14.9
Pocopson Township	15.5	13.6	10.4	16.1	14.0
Pennsbury Township	12.2	15.7	14.8	12.6	13.8
Newlin Township	2.6	3.1	4.1	1.2	2.8
	100	100	100	100	100