

WESTTOWN TOWNSHIP

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AGENDA

Westtown Township Board of Supervisors Virtual Workshop Agenda

**Westtown Township Municipal Building
1039 Wilmington Pike, Westtown**

Monday, December 7, 2020

Start time 6:30 pm

- 1. Executive Session (5:30pm)**
- 2. Presentation from Westtown-Goshen Rotary Club**
- 3. Consider Public Meeting Livestreaming Proposal and Allowing Public Participation by Video**
- 4. Review of Amended Westtown-East Goshen Inter-municipal Police Agreement**
- 5. Review of Sewer Rate Ordinance for Non-residential Properties**
- 6. Review Cedarville Engineering Proposals for MS4 Permit Support Services and Sage Road Basin Rehabilitation**

MEMO

Date: December 3, 2020

To: Board of Supervisors

From: Jon Altshul, Township Manager

Re: Livestreaming BOS meetings & allowing public participation by video

I have been asked to explore the feasibility of livestreaming Board of Supervisors meetings and allowing public participation by video.

Livestreaming

So long as the Township continues to hold virtual meetings via Zoom, staff should be able to livestream meetings by the January reorg meeting at the latest. Staff has already created a YouTube page, which is where residents could watch meetings either in real-time or after the meeting has concluded. We still need to do some testing, but we don't expect many bugs.

Note that there is typically about a 15 second lag between the meeting and the livestream feed; therefore it is not advisable for residents to both livestream and participate in the meeting in real time, as doing so could a) be distracting for them and b) create an unpleasant feedback loop sound for all meeting participants.

When the Township resumes in-person meetings, very minor modifications to the Board room (e.g. a shelf on which to position a camera) and small IT purchases (e.g. a webcam and microphone) may be needed to ensure that the audio and video streams are reasonably crisp. Note that even with these investments, the live stream will not be of a professional grade. However, the livestream should still be of a sufficient quality to allow residents to stay engaged about what's going in their community without having to attend meetings in person.

In addition, the livestreams can be maintained on the Township's YouTube channel so that residents can go back and watch them at a later time. Typically, municipalities add a disclaimer to each livestreamed meeting that "video recordings shall not supersede or replace the minutes as the official record of the meeting."

Allowing Public Participation by Video

The Township currently allows public participation by telephone only to limit the risk of "Zoombombing". While the risk of a bad actor being grossly inappropriate during a public meeting still exists, staff believes that we can allow public participation by video and still appropriately manage this risk. Both the Planning Commission and Historical Commission have been managing meetings with public participation by video successfully.

Specifically, if we permit public participation by video, public participants—as opposed to BOS members, Township staff and those with matters on the agenda—would be:

- Not given any “cohosting” authority
- Placed in the waiting room and only admitted by the host
- Not able to unmute themselves without host’s permission and prompting
- Have the ability to “raise hand” to alert host they have a question/comment
- Not able to share their screen

Therefore, to the extent that participant attempts to “Zoombomb” a meeting, they can be quickly removed from the meeting by the host and their actions may not even be noticed by the majority of the other participants.

Note that we have already advertised the December BOS meetings for audio participation only. Of course, we can re-advertise the December 21st meeting, if the Board would like.

The questions for the Board are therefore: 1) should the Township livestream BOS meetings on YouTube and 2) should the Township allow public participation by video?

WESTTOWN EAST GOSHEN POLICE AGREEMENT

THIS AGREEMENT is made this _____ day of _____ 2020 by and between East Goshen Township ("East Goshen") and Westtown Township ("Westtown"), both of which are Townships of the Second Class organized in the Commonwealth of Pennsylvania, situated in the County of Chester (collectively called "the Townships").

WHEREAS, the Townships are currently served by a regional police department known as the Westtown-East Goshen Regional Police Department (the "Department") which was created pursuant to an agreement dated September 15, 1981; as amended; and,

WHEREAS, the Townships amended the aforesaid agreement on September 17, 2002; and,

WHEREAS, the Townships amended and restated the aforesaid agreement in Articles of Agreement dated October 29, 2002; and,

WHEREAS, the Townships amended and restated the Articles of Agreement in an Addendum to Articles of Agreement dated February 17, 2004 (the "First Addendum"); and,

WHEREAS, the Townships adopted a "Memorandum of Understanding" concerning vehicles in August 2007; and,

WHEREAS, the Townships amended the Articles of Agreement in an Addendum to Articles of Agreement dated April 14, 2009 (the "Second Addendum"); and,

WHEREAS, the Boards of Supervisors of the Townships ("the Boards") combined the aforesaid agreements, addenda and Memorandum of Understanding referenced above and to restate them into a single agreement dated October 19, 2013 (the "Westtown East Goshen Police Agreement" ; and,

WHEREAS, On July 20, 2018, East Goshen Township transferred the balance of its OPEB Trust into the Police Commission's OPEB Trust. On August 1, 2018, Westtown Township transferred sufficient funds to the Police Commission's OPEB Trust, such that the amount contributed is proportionate to East Goshen Township's contribution, based on the total of each Charter Municipality's contributions for the preceding five (5) years and dividing that amount by the total of both Charter Municipalities' contributions for the preceding five (5) years; and,

WHEREAS, the Boards revised and restated the Westtown East Goshen Police Agreement on December 4, 2018; and,

WHEREAS, the Boards desire to revise and restate the Westtown East Goshen Police Agreement; and,

WHEREAS, the Boards have, by appropriate resolution, authorized their respective Chairmen and Secretaries to execute this Agreement; and

WHEREAS, cooperation among these adjoining and adjacent Townships is a proper exercise and discharge of their governmental powers, duties, and functions, and is authorized by the Constitution of the Commonwealth of Pennsylvania in Article IX, Section 5, and the Act of December 19, 1996, P.L. 1158, as amended, (53 P.S. § 2303, et. seq.); and

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I - PURPOSE

The purpose of this Agreement is to re-establish the Westtown-East Goshen Regional Police Department as an unincorporated association, distinct from the Participating Municipalities (as defined herein), the goal of which shall be to provide comprehensive, quality police protection (as defined herein) for the Participating Municipalities.

ARTICLE II – AUTHORITY

The Commission, is an independent legal entity created pursuant to Article IX, Section 5 of the Constitution of the Commonwealth of Pennsylvania, and 53 Pa. C.S.A. § 2301 et seq.

ARTICLE III - DEFINITIONS

“Budget Year” shall be the calendar year from January 1 to December 31 for which a budget is prepared.

“Capital Reserve Fund” shall be the fund created by the Second Addendum and this Agreement to fund the replacement of specific systems in the Police Building.

“Charter Municipalities” shall be defined as East Goshen Township and Westtown Township.

“Collective Bargaining Agreement” shall be defined as the labor contract which expires on December 31, 2018 between the Townships, the Commission and Westtown-East Goshen Police Association.

“Commission” shall be defined as the Westtown-East Goshen Regional Police Commission, which is a legally independent, unincorporated and nonprofit association.

“Commissioner” shall be defined as the representative of each of the Participating Municipalities on the Commission.

“Comprehensive, Quality Police Protection” shall be defined as police service performed by full time and part time police officers based upon the operational needs and management rights of the Department. Based upon these operational needs and available funding the goal is excellent police protection services twenty-four (24) hours per day, seven (7) days per week. The police officers shall be overseen by a Chief of Police and one or more Lieutenants. The police services based upon the operational needs and the direction of the Township Supervisors of the Charter Municipalities and the Chief of Police may be provided by a Patrol Unit, a Traffic Safety Unit, a Criminal Investigation Unit, and a Community Services Officer that perform the following functions: responding to all calls for service received from the public; investigation of vehicle crashes, criminal offenses, and ordinance violations; conducting traffic enforcement and analyses; engaging in proactive patrol activities (including but not limited to park & walk, business checks, and directed patrol); attendance at court proceedings; completion of accident reconstruction and commercial vehicle enforcement (by the Traffic Safety Unit); and report writing. In addition, based upon the direction the Chief of Police officers may perform administrative functions such as attending meetings and training, performing maintenance on agency equipment, providing assistance as needed to other law enforcement agencies, and providing educational, security, safety, and community outreach services to schools and businesses within the Townships.

“Contracting Municipalities” shall be defined as any other municipality, which may contract for police services from the Westtown-East Goshen Regional Police Commission.

“Department” shall be defined as the Westtown-East Goshen Regional Police Department.

“Equity Interest” shall be each Township’s respective contribution toward the Project Costs.

“Participating Municipalities” shall be defined as all Charter and Contracting Municipalities.

“Police Department Substation” shall be defined as the office space owned and operated by East Goshen Township at 1570 Paoli Pike, West Chester, Pennsylvania for the exclusive use of the Department, in which Westtown Township will not have any security interest.

“Police Building” shall be defined as the building constructed pursuant to the First Addendum located at 1041 Wilmington Pike, West Chester, Pennsylvania for the exclusive use of the Department, in which East Goshen Township shall have an Equity Interest as provided for herein.

“Project Costs” shall include all actual construction and site development costs required for the construction of the Police Building (including but not necessarily limited to buildings and structures, labor and materials, grading, site preparation, utilities, parking lot and access drives and all other costs associated therewith of any kind), cost overruns, additional costs (or savings), if any, resulting from written and approved change orders, and all soft costs as identified in David Lynch & Associates’ Project Estimate Sheet, dated June 26, 2003, attached hereto as Exhibit “A” and made a part hereof. The costs of moving the Department from its former facility to the new Police Building and all costs related to the purchase and installation of a telephone system in the new Police Building shall not, however, be included as part of the Project Costs, and shall be shared equally between Westtown and East Goshen. The Police Building was constructed on land owned and contributed by Westtown and, therefore, land costs shall not constitute a part of the Project Costs.

“Prorated Share” shall be each Township’s financial interest in and contribution toward the cost of the Police Building, expressed herein as an Equity Interest being a percentage of Project Costs, stated as follows: (a) East Goshen: \$1,850,000 divided by Project Costs; and (b) Westtown: Project Costs minus \$1,850,000 divided by Project Costs.

“PPU” or “Police Protection Unit” shall be defined as one (1) hour of police service by a uniformed police officer.

“Relative” shall be defined as father, stepfather, mother, stepmother, grandparents, child, adopted child, grandchild, nephew, niece, aunt, uncle, spouse, and in-laws of the same category of relationship.

ARTICLE IV - REGIONAL POLICE COMMISSION

Section A. The Commission shall be the governing body of the Department. It shall have the functions, powers and duties prescribed by this Agreement.

Section B. The Commission shall consist of three voting members:

1. One Supervisor from Westtown Township
2. One Supervisor from East Goshen Township
3. One citizen-at-large

The Commission may also include one non-voting elected official from each Contracting Municipality(ies), at the discretion of each Contracting Municipality(ies).

Section C. The citizen-at-large member shall be selected by the Charter Municipalities by February 1 of each year. The citizen-at-large member shall not be a resident of either Westtown Township or East Goshen Township. In the event the Charter Municipalities cannot agree on the citizen-at-large member, East Goshen shall have the right to select the citizen-at large member for any odd-year term and Westtown shall have the right to select the citizen-at-large member for any even-year term. The Charter Municipalities may at their sole discretion agree to appoint a representative from a Contracting Municipality as the citizen-at-large member.

Section D. In the event a Supervisor resigns, ceases to be eligible, or is incapacitated and unable to serve as a member of the Commission, the Participating Municipality, at its next regularly scheduled meeting shall appoint a successor Supervisor for the remainder of the term.

Section E. No current or former member or employee of the Department or a Relative of a current or former employee of the Department shall be eligible for appointment to the Commission.

Section F. The terms of office of the members of the Commission shall be for a time period of one year and shall commence on the date of appointment. Each governing body of the Charter Municipalities shall appoint one such member from its ranks by February 1 of each year.

Section G. The officers of the Commission who shall be representatives of the Charter Municipalities shall be Chairman and Vice Chairman/Secretary. The latest edition of Robert's Rules of Order shall govern the duties of the Chairman and Vice Chairman/Secretary; provided that nothing herein shall preclude the Commission from adopting its own rules of procedure or modifying the Robert's Rules of Order.

Section H. The representatives of the Charter Municipalities of the Commission may be removed from the Commission upon a majority vote of their respective Board for misfeasance, nonfeasance, or malfeasance.

ARTICLE V - JURISDICTION

Section A. The Commission is responsible for providing direction and setting policy for the Department, including without limitation responsibility for and jurisdiction over all actions customary and appropriate to provide comprehensive, quality police services to the Participating Municipalities including investigation of all crimes and complaints requiring police attention within the Participating Municipalities, and all other services normally provided by a municipal police agency, as permitted by applicable law, and implied and incidental to effectuating the goal specified in the statement of Purpose in Article I.

Section B. The Department's police officers and civilian personnel shall be under the direct supervision of a Chief of Police, who shall report to the Commission.

Section C. In order to fulfill its responsibilities, the Commission shall have the following expressed authority to:

1. Lease real estate, with the approval of both Boards of the Charter Municipalities;
2. Serve as the hearing board for employee grievances if required by the Collective Bargaining Agreement;
3. Enter into collective bargaining agreements, with the approval of both Boards of the Charter Municipalities;
4. Contract for police services with any municipality, with the approval of both Boards of the Charter Municipalities;
5. Exercise such other authority as is specifically delegated to the Commission by both Boards of the Charter Municipalities;
6. Lease, sell and purchase personal property;
7. Enter into contracts for the purchase of goods and services;

8. Authorize the Chief of Police to hire, fire, suspend, promote, demote, discipline, set salaries, and otherwise deal with employees of the Department;
9. Establish and maintain bank accounts and other financial accounts for the Department;
10. Invest monies in instruments authorized for municipalities of the Commonwealth of Pennsylvania;
12. Purchase liability insurance;
13. Establish and fund employee benefit programs, including but not limited to a pension fund, group health insurance, life insurance, liability insurance, police professional insurance, and social security;
14. Obtain legal, accounting, and other professional services necessary to conduct police business. The firm or person providing these professional services shall not be affiliated with any Participating Municipality; and
15. Adopt policies and procedures consistent with this Agreement and its purpose.

Section D. The duties of the Commission are to:

1. File any and all reports that are required to be filed by any county, state or federal agency;
2. Provide an annual audit in accordance with generally accepted auditing standards (“GAAS”);
3. Review and revise, if necessary, an annual budget and a five-year budget for the Department prepared by the Chief of Police and submit same to the Charter Municipalities no later than October 1st of each year;
4. Report back to their respective Boards on matters affecting each Charter Municipality;
5. Approve all invoices prior to payment;

6. Provide each Participating Municipality with a written report of the Department's activities monthly;
7. Communicate all requests for services, information, etc. from their respective Board of Supervisors to the Chief of Police;
8. Review the police budget monthly and provide a written explanation to the Boards of the Charter Municipalities for any variations in excess of 5%;
9. Review the absenteeism, sick leave, personal day, and overtime report monthly;
10. Establish annual goals, duties, and standards for the Chief of Police, and conduct at a minimum, an annual performance review of the Chief of Police, a summary of which shall be provided to the Boards of each Charter Municipality. When a new Chief of Police is hired additional performance reviews shall be conducted as necessary;
11. Develop and maintain an employee policy manual;
12. Request legal counsel to review all contracts prior to execution;
13. Conduct other duties as agreed to by both Boards of the Charter Municipalities.

ARTICLE VI – COMMISSION MEETINGS

Section A. The Commission shall meet at a publicly advertised public meeting for the purpose of conducting official business. All meetings shall be in accordance with The Sunshine Act, 65 P.S. §271, as amended. The first meeting of each year shall be the reorganization meeting for the purpose of electing officers for a one-year term and otherwise conducting reorganization business and other appropriate business to come before the Commission.

Section B. Special meetings of the Commission may be scheduled by appropriate resolution fixing the date, time, and place of such meeting. Special or rescheduled meetings may be called by each representative of the Charter Municipalities. The call, if any, shall state the purpose of the meeting. If possible, notice of each such special meeting shall be given at least three days prior to the day named for the meeting to each member of the Commission and to each Contracting Municipality. The notice shall state the purpose of the special meeting.

Section C. Both representatives of the Charter Municipalities must be present to constitute a quorum. Voting, including making and seconding motions, shall be taken by a voice vote, provided, however, that the Chairman may, at the request of any Commissioner, cause a vote to be taken by roll call. The latest edition of Robert's Rules of Order shall govern the parliamentary procedure of the meetings of the Commission; provided that nothing herein shall preclude the Commission from adopting its own rules of procedure or modifying the Robert's Rules of Order.

Section D. The Commission shall maintain an accurate record of the minutes of meetings, regular or special, and such other records, as it deems necessary and appropriate. Such minutes and records shall be open for public inspection in accordance with the provisions of the Right to Know Law 65 P.S. § 67.101 et seq., as amended. A copy of the draft minutes of all meetings will be forwarded to each of the Participating Municipalities prior to the next scheduled Commission meeting. A copy of the approved minutes shall be provided to each Participating Municipality.

Section E. The Chief of Police of the Department, or his/her designee, shall attend all Commission meetings and attend the meetings of the Participating Municipalities, as directed.

Section F. The Chief of Police shall give a report of the Department's activities at each Commission meeting.

Section G. A representative from each Contracting Municipality, who has not been appointed as citizen-at-large, shall be permitted to attend the meetings of the Commission and participate in the discussions. This representative shall be considered a Commissioner and shall have all of the rights and perform all of the duties listed in Article V Section D except the right to make or second motions or to vote on any motion before the Commission. This Commissioner is expressly permitted to attend executive sessions of the Commission.

ARTICLE VII – BUDGET

Section A. The Commission shall submit an annual budget and a five-year budget for the Department to the Charter Municipalities no later than October 1st of each year for their review and approval. If both Charter Municipalities have not approved an annual budget for the Department by December 31st, the budget for the upcoming year shall be the prior year's budget plus inflation (CPI –U) for the twelve (12) month period ending September 30th for all line items, excepting insurance which shall be the lowest qualified quote, plus any contractual obligations (the "Default Budget").

Section B. Each Charter Municipality's proportionate share of the annual budget shall be determined as follows: the total expenses for all items less all revenues shall be split between the Charter Municipalities as follows:

1. For the 2019 Budget, the Westtown split shall be 44.61% and the East Goshen split shall be 55.39%.
2. For the 2020, 2021, 2022 and 2023 Budgets, the split shall be Westtown 44.5% and East Goshen 55.5%.
3. Reconciliation for the 2020, 2021 and 2023 Budgets - If as of September 30 the actual PPU split between Westtown and East Goshen varies by more than 0.5% from the target split of 44.5% -55.5%, then the budgeted police costs above this 0.5% shall be paid by the Charter Municipality receiving more PPUs than this agreement envisioned to the Charter Municipality receiving less than this agreement envisioned. This payment shall be made prior to December 31st of that year. No payment is required if the actual PPU split is equal to or less than 0.5% of the target split.

By way of example:

Assume the shared police costs between East Goshen and Westtown are \$7,000,000 in a budget year, and East Goshen's actual PPUs for the previous 12 months were 56.3%.

East Goshen's actual PPUs = 56.3%

East Goshen's target = 55.5%

0.5% greater than East Goshen's target = 56%

East Goshen has received 0.3% more PPUs than it should have.

$0.3\% * \$7,000,000 = \$21,000$

East Goshen would need to make payment to Westtown of \$21,000 by December 31st.

The Department shall monitor the PPUs for all Charter and Contracting Municipalities. All contracts with a Contracting Municipality may contain a provision establishing the number of PPUs the Contracting Municipality is entitled to. The contract may also contain a provision that requires the Contracting Municipality to either: pay for any PPUs in excess of that amount in any given month, or reduce the PPUs it receives in the following month(s). In the event a Contracting Municipality exceeds the number of PPUs that it has contracted for in the year ending on September 30th, the excess hours shall be evenly split between the Charter Municipalities. The purpose of this provision is to prevent the

Contracting Municipality's PPU exceedance from adversely affecting the PPU percentage between the Charter Municipalities.

Monthly, each Charter Municipality shall pay to the Department its proportionate share of its annual budget allocation. Payments shall be made promptly in order to avoid creating a cash flow problem for the Department.

Section C. All costs for police services shall be apportioned in accordance with this Article.

Section D. The annual budget of the Department shall include a charge for the operation of the Police Department Substation located in East Goshen Township. This charge shall be allocated on a per gross square foot basis, and shall include East Goshen's debt service on the East Goshen municipal building, plus operating and maintenance expenses. The Department shall pay East Goshen monthly the amount of this charge as a lease expense, with the monthly amount identified as a line item in the annual Department budget.

Section E. Any agreement with Contracting Municipalities shall be based on negotiations with such municipalities, and shall be subject to the approvals of the Boards of the Charter Municipalities.

Section F. The revenue received from Contracting Municipalities shall be considered a revenue source for the Department, and shall be used to offset the Department's normal operating expenses.

Section G. The costs of operation and maintenance of the Police Building and associated exterior grounds thereof, including, but not limited to, building maintenance, repair, cleaning, redecorating, interior modifications, landscaping, snow plowing, utilities, insurance (including insurance on the Police Building and grounds maintained by Westtown as title owner) and all similar costs, shall be borne by the Department and shall be included in the annual budget of the Department as normal operating expenses. Such costs shall be apportioned and paid in accordance with this Article. Neither Westtown's debt service of its Bond Issue, nor East Goshen's monthly payments provided for in Article IX, Section B, shall be considered to be or constitute a cost of operation and maintenance of the Police Building hereunder.

Section H. The Chief of Police or his/her designee shall also present to the Commission monthly a financial report showing the actual year to date vs. budgeted receipts and expenditures. The monthly reports for July through November shall include the year-end projection.

Section I. The annual budget shall include line items for the Police Pension Plan and the Post-Employment Medical Benefits Plan.

1. Police Pension Plan. The assumed rate of return for the Police Pension Plan shall be lowered from 8% to 7.5% effective for the 2018 Minimum Municipal Obligation (MMO). Both Charter Municipalities agree to revisit the assumed rate of return on a bi-annual basis over the term of this contract to ensure that the Police Pension Plan's unfunded liability does not continue to increase. The annual budget line item for the Police Pension will reflect the greater of the Market Rate MMO or the Actuarial Rate MMO. In addition, a separate line item will be added to the budget called "Additional Pension Plan Contribution," which shall be equal to 10% of the MMO.
2. Post-Employment Medical Benefits Plan. Beginning in 2019, the retired officers health insurance benefits shall be paid from the Post-Employment Medical Benefits Trust. The budget shall include contribution to the Post-Employment Medical Benefits Plan Trust in the amount sufficient to cover the cost of the retired officer's health insurance benefits.

Section J. Vehicles

1. The number of vehicles in the Department's vehicle fleet shall be agreed to by both Boards of the Charter Municipalities.
2. Unless specifically agreed to by both Boards of the Charter Municipalities to the contrary, the Commission shall purchase a minimum of four (4) vehicles each year, even in the event of a default budget.
3. The Chief of Police shall submit a recommendation to the Commission as to the assignment of the new vehicles and disposition of the used vehicles.
4. Unless specifically agreed to by both Boards of the Charter Municipalities to the contrary, the Commission will dispose of four (4) vehicles every year, even in the event of a default budget.
5. The criteria for selecting the vehicles slated for disposal shall be mileage, maintenance costs, and a mechanic's recommendation. The Chief of Police shall submit a recommendation for the Police Commission's approval.

Section K. The Department shall transfer any budget surplus realized at the end of each calendar year (after all invoices have been paid) to the Charter Municipalities no later than February 28th of the following calendar year.

ARTICLE VIII – INSURANCE

Section A. The Department shall furnish to each Participating Municipality the names of all police officers of the Department.

Section B. The police services performed and the expenditures incurred under this Agreement shall be deemed for public and governmental purposes, and all immunities from liabilities enjoyed by the individual Participating Municipalities within their boundaries shall extend to their participation and rendition of police services outside of their municipal boundaries.

Section C. The Department shall maintain adequate liability insurance coverage against claims arising from police activities in each of the Participating Municipalities. Each Participating Municipality agrees to cause any insurance policy providing coverage against claims arising out of police activities to contain a waiver of subrogation clause under which the insurance company waives its right of subrogation against all other Participating Municipalities as to any and all causes of action or claims against all other Participating Municipalities which may arise out of police activities provided by the Department.

Section D. For the purposes of liability in any action arising out of police services provided by the Department, to the extent any such claims are not covered by the Department's liability insurance, all Charter Municipalities shall be proportionally liable in the same proportion as they are for the expenses of the Department during the period of police services in question.

ARTICLE IX – POLICE BUILDING

Section A. The Westtown Contribution. Westtown, which acted as the project manager of the Project, was responsible for both financing the Project Costs, and, as project manager, for the approval and payment of all invoices related to the construction of the new Police Building. Any changes or revisions of any kind to the plans for the Police Building prepared by David Lynch Associates with a project date of August 27, 2003; the Land Development Plans prepared by Chester Valley Engineers, dated July 11, 2003, last revised August 27, 2003; or the specifications for the Police Building prepared by David Lynch Associates, dated September 1, 2003 that affect either square footage or

any other aspect of the Police Building agreed to by the Police Building Committee were approved by the Commission and the Boards of the Charter Municipalities.

Section B. The East Goshen Contribution. During the term of this Agreement, East Goshen shall pay monthly to Westtown, directly from annual appropriations made from East Goshen's general fund, 1/12 of that amount which is equal to fifty (50%) percent of the Westtown's annual debt service under its General Obligation Bonds, both principal and interest, of that portion of the Westtown Borrowing which does not exceed \$3,700,000.00, amortized over a loan term of twenty (20) years, at the interest rate secured by Westtown under its General Obligation Bonds, Series 2011, or a subsequent borrowing. Westtown shall be solely responsible for paying all Project Costs, subject to East Goshen's payments to Westtown from East Goshen's Annual Appropriations, which East Goshen agrees that it will pay monthly during the term of this Agreement (the "Periodic Payments"). East Goshen's monthly payments to Westtown as provided for in this paragraph shall be due and payable on a schedule consistent with Westtown's debt service schedule under the Westtown Borrowing. The East Goshen contribution as provided for in this paragraph is not and shall not be construed as a debt of East Goshen as that term is defined in the Local Government Unit Debt Act, Act of December 19, 1996, P.L. 1158, No. 177. Nor, shall the East Goshen Contribution be or be construed to be a guarantee of Westtown's General Obligation Bonds, Series 2011 or subsequent borrowing. In the event East Goshen fails at any time to make its Periodic Payments as and when due, and such failure is determined to constitute a default of its obligation under this Agreement (unless East Goshen cures such default within sixty (60) days of such determination), Westtown shall have a lien on East Goshen's Equity Interest in the Police Building equal to the unpaid Periodic Payments then due and owing. Upon and in the event of dissolution of the Department as provided for in this Agreement, the amount of East Goshen's unpaid Periodic Payments may be off-set by Westtown against its repayment to East Goshen's of its Equity Interest, calculated to the effective date of such dissolution.

Section C. The East Goshen Security. In consideration of East Goshen's Periodic Payments, Westtown hereby grants to East Goshen a security interest in the Police Building and any extensions, additions or renovations thereto, and the real property on which it is located, including all building materials, fixtures, building machinery and building equipment constituting a part of the Police Building at any time during the term of this Agreement, together with all insurance thereon, and its proportionate share of any insurance proceeds in the event of any damage to or destruction of the Police Building, whether in whole or in part, but only to the extent of East Goshen's total Periodic Payments made over the life of this Agreement, up to the full amount thereof. For such purpose, this Agreement shall constitute a security agreement, fully enforceable as such in the event of a default, as herein defined. East Goshen's security interest shall be secured by and shall take the form of an original of this Agreement, which shall be filed of record

in the Office of the Recorder of Deeds of Chester County, Pennsylvania. East Goshen's Equity Interest and its security interest in the Police Building shall not be extinguished or compromised, except as provided for in Section "D" of this Article.

Section D. No Conveyance. Westtown agrees that it shall not sell and/or convey the Police Building or Westtown's real estate on which the Police Building is located to any third person or entity whatsoever, nor shall it encumber same without the prior written consent of East Goshen, unless East Goshen's Equity Interest in the Police Building is first repaid in full by Westtown.

Section E. Dissolution, Damage/Destruction and Condemnation.

1. In the event that the Department is dissolved for any reason whatsoever, Westtown shall reimburse East Goshen its Prorated Share of the value of the Police Building, net of the value of the land, within one hundred eighty (180) days of the date the Department is officially dissolved. For such purpose, the value of the Police Building shall be based on the average of three independent appraisals. One appraiser shall be selected by each Township, and the two appraisers thus selected shall select a third independent appraiser. The appraisals shall be completed and the value established within ninety (90) days of the date the Department is officially dissolved. Each Township shall pay the fee of the appraiser it selects. The fee for the third appraiser shall be split equally between the Townships.
2. In the event the Police Building is damaged or destroyed by fire or other cause, Westtown shall reimburse East Goshen its Prorated Share of East Goshen's Equity Interest in the Police Building, as represented by the proceeds of Westtown's insurance policy on the Police Building, unless East Goshen and Westtown mutually agree in writing, within one hundred eighty (180) days after such damage or destruction, to invest such insurance proceeds in the repair and/or reconstruction of the Police Building, subject to such additional terms and conditions as they shall then agree upon. For such purpose, Westtown agrees that East Goshen shall have an insurable interest in the Police Building and shall be named as an additional insured on Westtown's insurance policy insuring the Police Building. Westtown shall be responsible for the periodic payment of the total insurance premiums on the Police Building and shall provide East Goshen with proof of insurance on a continuing basis.

Westtown shall invoice the Department for the premium on a regular basis.

3. In the event the Police Building or a portion thereof is taken by governmental authority having jurisdiction, Westtown shall reimburse East Goshen its Prorated Share of East Goshen's Equity Interest in the Police Building, for which the proceeds of the condemnation shall be security. This provision shall not preclude Westtown and/or East Goshen from contesting any such condemnation.

Section F. Capital Reserve Fund (Police Building)

1. In order to fund the replacement of the following facility systems a Capital Reserve Fund for the Police Building shall be created:

- Roof
- Parking Lot
- Boiler
- Air Exchanger
- Cooling Tower
- Heat Pumps
- Flooring
- Windows
- Fuel System
- Security System

2. Each of the Charter Municipalities shall make a payment to the Capital Reserve Fund for the Police Building equal to one half of the amount indicated in the "Total" column of the Capital Reserve Fund Budget dated June 19, 2020 attached hereto as Exhibit "B".
3. The Charter Municipalities shall make their respective payments annually on or before May 1st of each year.
4. The Capital Reserve Fund for the Police Building monies shall be held in one or more separate bank accounts by the Department, and all interest earned shall accrue to the Capital Reserve Fund.
5. The Department may invest all or part of the monies in the Capital Reserve Fund for the Police Building in certificates of deposit in order to maximum the amount of interest earned.

6. The Capital Reserve Fund for the Police Building account(s) signatories shall be the Chief of Police and Business Manager.
7. The monies in the Capital Reserve Fund for the Police Building shall only be spent for the replacement of the items specifically identified in Article IX, Section F.1, unless specifically approved by both Boards of the Charter Municipalities.
8. The Police Commission shall approve all expenditures from the Capital Reserve Fund for the Police Building.
9. The Police Commission shall provide the Charter Municipalities with an annual report on the Capital Reserve Fund for the Police Building.

ARTICLE X – GOVERNING LAW

Section A. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

ARTICLE XI – NOTICES & MISCELLANEOUS

Section A. Notices. Notices under this Agreement shall be given either by personal service, or by First Class, Certified United States Mail, Return Receipt Requested, or by over-night delivery with positive tracking, such as Federal Express, to the respective municipal address of the Township receiving such notice, addressed to the attention of both the Township Manager and the Chairperson of the Board of Supervisors of the Charter Municipalities.

Section B. Mutual Decisions. Notwithstanding anything contained in this Agreement to the contrary, the Boards of the Charter Municipalities shall share equally in any and all decisions regarding or affecting the operation of the Department. In the event the Boards of the Charter Municipalities cannot reach an agreement on any issue or matter concerning the operation of the Department, the Boards, shall appoint a neutral third party who has experience in municipal police issues. If the Boards cannot agree on the person to appoint as the neutral third party, they shall request the Court of Common Pleas of Chester County to appoint such a person. The neutral third party's decision shall be binding on both Charter Municipalities.

Section C. Enforcement. This Agreement shall be enforceable in an action at law or in equity by either party hereto in the event of a breach by the other party, as by law provided.

Section D. Entire Agreement. This Agreement shall constitute the entire agreement of the parties with respect to the subject matter hereof, and no amendment shall be valid or binding unless in writing signed by the Boards of both Townships. This Agreement shall supersede and replace in its entirety the agreements, addenda and memorandum of understanding referenced in the Recital.

Section E. No Assignment. This Agreement is exclusive to the parties hereto, and neither the rights nor the responsibilities of either party are assignable.

Section F. Counterparts. This Agreement may be executed by the members of each Board of Supervisors and their respective Township Secretaries in duplicate counterparts, which together shall constitute but one agreement.

ARTICLE XII - TERM OF CONTRACT, AMENDMENT, REVIEW, AND TERMINATION

Section A. Term. This Agreement shall have an Initial Term of five (5) years that expires on December 31, 2023 or upon completion of the Collective Bargaining Agreement or the period of arbitration award applicable to such Agreement in effect on December 31, 2023 (“the Initial Term”). This Agreement shall automatically renew itself for an Additional Term of one (1) year subject to the Charter Municipalities’ right to terminate this Agreement pursuant to Article XII Section B or Section C.

Section B. Termination.

1. Upon completion of the Initial Term or any Additional Term or expiration of any Collective Bargaining Agreement, this Agreement may be terminated by the mutual written consent and agreement of Westtown Township and East Goshen Township at any time upon adoption of formal resolutions to that effect by the Boards of both Townships as Charter Municipalities duly passed and adopted at respective public meetings of the Boards.
2. This Agreement may also be terminated by either Township upon the completion of the Initial Term or any Additional Term or expiration of any Collective Bargaining Agreement provided that the Township acting in its capacity of a Charter Municipality initiating the termination has notified the other Charter Municipality in writing

of its intention to terminate at least eighteen (18) months prior to the expiration of the Initial Term or any Additional Term or expiration of any Collective Bargaining Agreement.

3. In the event this Agreement is terminated, each Charter Municipality shall be proportionally responsible for all contractual obligations of the Department, exclusive of the Police Building, as determined by the Charter Municipality's proportionate share of the annual Department budget over the preceding five (5) years. Each Charter Municipality's proportionate share shall be calculated by totaling each Charter Municipality's contributions for the preceding five (5) years and dividing that amount by the total of both Charter Municipality's contributions for the preceding five (5) years.
4. In the event this Agreement is terminated, the fair market value of all assets of the Department, including but not limited to vehicles, equipment, supplies, and materials, shall be determined by appraisers. One appraiser shall be selected by each Township, and the two appraisers thus selected shall select a third independent appraiser. The appraisals shall be completed and the value of the assets of the Department shall be established within one-hundred eighty (180) days of the date of termination of this Agreement. Each Township shall pay the fee of the appraiser they select. The cost for the third appraiser shall be split equally between the Townships. The assets or proceeds from the sale of such assets shall be distributed to the Charter Municipalities as determined by the proportionate share of their actual contributions over the preceding five (5) years. Nothing herein shall preclude either Charter Municipality from acquiring some or all of the assets at fair market value.

Section C. Bi-Annual Review. This Agreement shall be reviewed bi-annually by the Charter Municipalities at a joint meeting which shall occur between March 1st and September 30th of even numbered years. Each Charter Municipality shall provide the other Charter Municipality of written notice of the issues to be reviewed at least thirty (30) days prior to the date of the joint meeting. In the event the Charter Municipalities cannot reach an agreement on any issue, the Boards, shall appoint a neutral third party who has experience in municipal police issues. If the Boards cannot agree on the person to appoint as the neutral third party, they shall request the Court of Common Pleas of Chester County to appoint such a person. The neutral third party's decision shall be binding on both Charter Municipalities until the completion of the Collective Bargaining Agreement or the period of any arbitration award applicable to such Agreement in effect at that time. Irrespective of the provisions set forth in Article XII Section B, upon providing the other

Charter Municipality written notice of their intention to do so within thirty (30) days of the neutral third party's decision, either Charter Municipality may terminate this agreement at the completion of the Collective Bargaining Agreement or the period of any arbitration award applicable to such Agreement in effect at that time.-

Section D. Amendment. This Agreement may be amended by the mutual written consent of the Charter Municipalities. All amendments must be approved by resolution of the Boards of Supervisors of the Charter Municipalities.

ARTICLE XIII – EFFECTIVE DATE

Section A. Effective Date. The effective date of this Agreement shall be December 23, 2020

EAST GOSHEN TOWNSHIP

Louis F. Smith, Jr.
Secretary

E. Martin Shane
Chair

Date

WESTTOWN TOWNSHIP

Jon Altshul
Secretary

Richard Pomerantz
Chair

Date

Attachments:

- Exhibit A – Project Estimate Sheet
- Exhibit B – Capital Reserve Fund Budget

ORDINANCE 2020-07

AN ORDINANCE OF WESTTOWN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA, AMENDING CHAPTER 132 OF THE CODE OF THE TOWNSHIP OF WESTTOWN (SEWER SYSTEM COLLECTION AND CONVEYANCE REGULATIONS) SECTION 2 §132.4, SUBSECTION A, METER RATE FOR NONRESIDENTIAL ESTABLISHMENTS.

IT IS HEREBY ENACTED AND ORDAINED by the Board of Supervisors of Westtown Township, Chester County, Pennsylvania, as follows:

SECTION 2. Section 132.4 A, **Meter Rate for Non-Residential Establishments**, is amended to read as follows:

A. Sanitary Sewage:

1. In all sewer districts, the quarterly sewer rates or charges shall be based on the quantity of water used as evidenced by meter readings of water meters installed by the water supplier for the purpose of measuring water purchased from said water supplier and/or such other meters or measuring devices as may be installed pursuant to any provisions of this article and shall be subject to the minimum charge hereinafter provided, as follows:

Quarterly Metered Flat Rate: \$16.93 per 1,000 gallons

2. Regardless of water consumption, the minimum quarterly charge for sanitary sewage for any use shall be the equivalent rate of a single family dwelling (EDU):

Minimum Metered Flat Rate: \$205.00 per quarter

3. Multiple Use: In the case of a combination of one or more private dwelling or living units or with one or more commercial establishments in one building and each thereof having the use of the sewer system through one sewer connection, then each such private dwelling or living unit and each such commercial establishment shall be charged the applicable minimum metered flat rate set forth above as though each thereof were in a separate structure and as though each thereof had a direct and separate connection to the sewer system.

The amended sewer rates set forth herein shall be effective January 1, 2021.

ENACTED AND ORDAINED this 21st of December, 2020.

WESTTOWN TOWNSHIP
BOARD OF SUPERVISORS

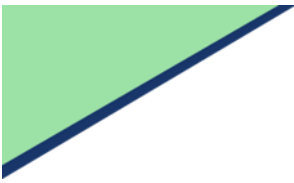
Dick Pomerantz, Chair

ATTEST:

Carol De Wolf

Jon Altshul, Secretary

Scott Yaw



PROPOSAL FOR PROFESSIONAL SERVICES

Date: November 12, 2020

Proposal Name: Westtown Township 2021 NPDES MS4 Permit Support Services – REVISION 2

Client Name: Westtown Township, Attn: JoAnn Grube, Director of Finance

Client Address: 1039 Wilmington Pike
West Chester, PA 19382

Project Number: WTT-21-005-P

CEDARVILLE Engineering Group, LLC (CEG) is pleased to submit our proposal to provide support services for Westtown Township’s National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) 2021 permit activities.

PROJECT UNDERSTANDING AND BACKGROUND

The Township has a NPDES Individual Permit (PAI130528) for Stormwater Discharges from Small MS4s that requires the Township maintain, implement, and enforce a comprehensive Stormwater Management Program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and Pennsylvania Clean Streams Law. To accomplish this, Best Management Practices (BMPs) under the following six (6) Minimum Control Measures (MCMs) must be implemented:

- 1) Public Education and Outreach
- 2) Public Involvement and Participation
- 3) Illicit Discharge Detection and Elimination
- 4) Construction Site Runoff Control
- 5) Post-Construction Stormwater Management in New Development and Redevelopment
- 6) Pollution Prevention/Good Housekeeping

In addition to the requirements of the MCMs, Westtown Township is also required to implement a Total Maximum Daily Load (TMDL)/Pollutant Reduction Plan (PRP) for stormwater discharges to surface waters impaired for sediment and the Goose Creek TMDL for phosphorous and Pollutant Control Measures (PCMs) for stormwater discharges to surface waters impaired for pathogens (i.e., fecal coliform) (discharges to Chester Creek only). Compliance with these state and federal requirements must be demonstrated through the submission of an Annual MS4 Status Report due by September 30 each year.

This proposal provides a detailed scope of services for 2021 NPDES MS4 permit activities to be completed by CEG. The tasks outlined in this proposal are proposed based on our history and understanding of what requirements the



Township prefers to complete internally. If the Township would like CEG to complete any of these tasks, please let us know and we can update our scope accordingly.

SCOPE OF SERVICES

CEG's experienced water resources professionals will assist the Township in maintaining compliance with state and federal requirements of the MS4 Permit through completing activities relating to the Minimum Control Measures (MCMs), the TMDL/Pollutant Reduction Plan (PRP), and the Pollutant Control Measures (PCMs) for waters impaired by pathogens. Ultimately, the work completed through these requirements will raise awareness of stormwater as a source of pollution throughout the Township; and clearly describe actions that are being taken to improve surface water quality within the Township.

CEG's scope of work associated with the MCMs and the PCMs for 2021 is described in the sections below.

1.0 MAPPING

CEG will update and maintain Township's existing Stormwater Infrastructure Web Map Application online for the Township's use, to be available publicly. This web map application will give the Township the continued ability to access data interactively through tools such as zoom, search, identify, etc. CEG will also provide an updated pdf of the Township's MS4 Map for submission with the Annual MS4 Status Report.

Deliverables:

- Township MS4 Infrastructure Web App Map
- MS4 Infrastructure Map pdf

2.0 POST CONSTRUCTION STORMWATER MANAGEMENT (PCSM) BMP INSPECTIONS

The Township is required to ensure adequate O&M of all PCSM BMPs listed on the BMP inventory. This task assumes inspection of seventy-nine (79) BMPs that were listed on the inventory as of this proposal. To monitor O&M by responsible parties, CEG will conduct inspections of these PCSM BMPs. Inspections will be conducted by a two-man inspection team and overseen by the Township Engineer. PCSM Plans and O&M Agreements will be reviewed as applicable and each element of the BMP inspected for consistency with the Plans and O&M provisions.

Each inspection will be documented with photographs and individual reports. A final comprehensive report will also be provided to summarize the results of the inspections. The 79 individual inspection reports will be attached as an appendix to the final comprehensive report. Recommendations for corrective actions will be included for each inspection if deficiencies are noted.

It is assumed that the Township will be responsible for providing notification of the inspections to private property owners and drafting and sending out notices of violation or other follow-up correspondence.

CEG will conduct one round of follow-up inspections for those BMPs where violations are observed, assist with the Township on language for follow-up correspondence as needed, field follow-up questions via email or phone from BMP owners/responsible parties as requested, and coordinate with the Township in tracking compliance (Permit Reference: MCM #5, BMP 3).

Deliverables:

- PCSM BMP Inspection Report

3.0 TMDL/PRP IMPLEMENTATION SCHEDULE AND ESTIMATE UPDATE



CEG will update the TMDL/PRP implementation schedule based on progress made and future plans. CEG will also update the preliminary cost estimates so that they stay relevant and accurate based on current market conditions to aid in the Township's budget planning.

Deliverable:

- Implementation Schedule and Estimate Update Memorandum

4.0 GRANT APPLICATION

CEG will complete a PA DEP Growing Greener Grant Application or a Pennsylvania Department of Community and Economic Development (PA DCED) Watershed Restoration Protection Program (WRPP) Grant Application on behalf of Westtown Township for proposed TMDL/PRP project(s) when the application periods open, and as requested by the Township. The application will include: Project narrative, budget summary and task and deliverable budget worksheets (for both design and construction as applicable), project maps, land use planning, and coordination with local and county agencies. CEG will coordinate with the agency for a Pre-Application Meeting/Teleconference as required to review the parameters of the project. If the project selected is entirely or partially located on private property, it is assumed that the Township is responsible for obtaining landowner consent (if applicable).

The task excludes the preparation of a concept plan, construction cost estimate preparation, and grant administration.

Deliverable:

- PA DCED WRPP or Growing Greener Grant Application

5.0 ANNUAL MS4 STATUS REPORT

CEG will prepare the Annual MS4 Status Report and supporting information for submittal to PA DEP on behalf of the Township with the 2021 Annual MS4 Report. All updated/ revised information and supporting documents relating to the Stormwater Management Program will be included with the Annual Report as required by the MS4 Permit. This includes written programs, outfall field screening reports and photographs, PCSM BMP inspection reports and photographs, public meeting documentation, employee training documentation, TMDL/PRP status, etc. A summary of activities will be included in the Annual MS4 Status Reporting form.

The Township will provide documentation to CEG for any activities related to compliance with the Permit for inclusion in the Annual Report.

Deliverable:

- Annual MS4 Status Report

6.0 MEETINGS AND COORDINATION

CEG will allot to meet, coordinate, and correspond with the Township and/or partnership associations to discuss the project. This task includes quarterly project status meetings with Township staff and will be billed on a time and materials basis, not to exceed the cost specified without prior approval from the Township.

Additionally, this task will be used to distribute reminder emails to the Township to keep on track with Permit requirements and other miscellaneous tasks.

ASSUMPTIONS

Our scope of services described above reflects the following assumptions:



- a) All tasks relating to the new 2018 NPDES MS4 Permit will be completed according to the Special Conditions of the 2018 NPDES MS4 General Permit (3800-PM-BCW0100d) dated 5/2016 (referred to as Permit).
- b) Outfall field screening and public meeting presentation is excluded from this scope.
- c) This proposal represents CEG’s responsibilities relating to NPDES MS4 Permit compliance. It does not represent the entire Township’s effort required for compliance with the NPDES MS4 Permit. Additional tasks include, but are not limited to:
 - Reviewing the municipal stormwater webpage as required by PA DEP and update as necessary (including checking to ensure all links are functioning and that there is a phone # listed to report illicit discharges).
 - Distributing and publishing stormwater educational material as required by MCM #1 (Public Education and Outreach) and MCM #3 (Illicit Discharge Detection and Elimination).
 - Notifying the County Conservation District within 5 days of receiving a permit application involving greater than 1 acre of earth disturbance (MCM #4 Construction Site Runoff).
 - Ensuring proper O&M of PCSM BMPs.
 - Documenting and tracking illicit discharge reports and other stormwater-related complaints.
 - Documenting municipal facility and operations O&M self-inspection and record-keeping.
 - Administering and enforcing the Township stormwater ordinance.
- d) The Township will provide CEG with documentation for any MS4 related activities for annual reporting purposes.
- e) Electronic only deliverables will be provided to the Township as part of this scope. If hard copies are requested, this will be billed separately as time and materials.

APPLICATION AND REVIEW FEES

Any agency application and review fees will be the responsibility of the client. The client will be notified of such fee amounts prior to submittal of applications.

PROPOSAL COSTS

CEG is prepared to offer the aforementioned services as described above for the following professional fees. As there are certain economies of scale associated with completing multiple services, the costs as broken down below are in consideration of completing the entire effort. If, in the event that certain scope items are eliminated, CEG reserves the right to adjust its pricing for the individual scope items which are to remain, prior to approval.

1.0	Mapping	\$4,610.00
2.0	PCSM BMP Inspections	\$21,500.00
3.0	TMDL/PRP Implementation Schedule and Estimate Update	\$3,500.00
4.0	Grant Application	\$3,860.00
5.0	Annual MS4 Status Report	\$4,500.00
6.0	Meetings and Coordination*	\$6,890.00
Total Contract Price		\$44,860.00

*This task will be billed on a time and materials basis, not to exceed the cost specified without prior approval.



CHANGES IN REGULATIONS

This proposal has been assembled based on current NPDES MS4 regulations and PA DEP guidance as of the date of the contract date indicated above. As the regulatory process is ever changing, we reserve the right to alter our contract pricing should such occur after the date of the contract which would impact the project scope or level of effort. We make it a priority to stay abreast of industry regulations and will notify you as soon as we become aware of pending or actual changes which could impact the scope of work and the associated contract price. We will not proceed with any work under contract for which costs could deviate from the original contract amount due to changes in industry regulations without prior notice and your authorization to proceed under the new regulations.

PROPOSAL ACCEPTANCE PERIOD

This contract shall become null and void if not accepted within sixty (60) days from the date of issuance by CEG.

TERMS AND CONDITIONS

This contract shall be governed by the standard terms and conditions attached hereto and made a part of this contract by reference.

PROJECT BILLING

Team billing will be provided by CEG on a monthly basis. Bill will reflect the effort shown by our professionals within a given task. Payment on invoices is due upon receipt.

PROPOSAL ACCEPTANCE

I hereby certify by signing and returning the Authorization to Proceed that I have read the foregoing Proposal for Professional Services, inclusive of all referenced attachments, and that the Terms and Conditions of said Proposal, including fees, are satisfactory.

Should you have any questions regarding this proposal, please contact myself or April Barkasi, CEG's President & CEO directly at 610-705-4500.

Best Regards,
CEDARVILLE Engineering Group, LLC

A handwritten signature in cursive script that reads "Beth Uhler".

Beth Uhler
Project Manager

A handwritten signature in cursive script that reads "April M. Barkasi".

April M. Barkasi, P.E.
President & CEO

Attached: General Conditions



AUTHORIZATION TO PROCEED

I have read the **November 12, 2020** proposal by CEDARVILLE Engineering Group, LLC (CEG) and the Standard Terms and Conditions for Professional Services in the matter of the **Westtown Township 2021 NPDES MS4 Permit Support Services – REVISION 2**, and hereby authorize CEG to proceed with the work. I fully understand and agree that this authorization hereby commits Owner to retaining CEG for the scope of work, fee, and general conditions as described in CEG’s proposal and cited herein. It is my understanding that CEG will proceed with the work upon receipt of this authorization to proceed.

NAME: _____

TITLE: _____

COMPANY: _____

DATE: _____

As used herein, the terms "we", "our" or "CEG" refer to Cedarville Engineering Group, LLC; the terms "you", "your" or "Client" refer to the Client identified in the CEG Proposal; and the term "Agreement" refers to the contract between CEG and the Client consisting of: the CEG Proposal accepted by the Client with any attachments referred to therein and these Standard Terms and Conditions for Professional Services.

1. **PROJECT AND SCOPE OF SERVICES.** The project which is the subject of the Agreement between us and the Scope of Services we agree to provide is set forth in the CEG Proposal accepted by you. The Scope of Services may not be enlarged or relaxed except as modified in writing and agreed to by us.

2. **STANDARD OF CARE.** We will exercise that degree of care and skill ordinarily exercised under similar circumstances by members of our profession performing similar services and practicing in the same or similar locality at the time that the services are performed. We will comply with applicable Federal, State and local laws, rules and regulations. No warranty, either expressed or implied, is made or intended.

Environmental site assessments, unless otherwise agreed, will be performed according to the standards set forth in the Standard Practice for Environmental Site Assessments, (ASTM Designation E-1527-00 and 1528-00) as applicable. In particular, but without limitation, the principles, explanations and limitations set forth in Section 4.5 of the Standard Practice, are applicable to the services to be provided.

3. **RIGHT OF ENTRY.** You will provide access and the right of entry to the site of the work for our employees and subconsultants in order to perform the required services.

You or your agents or others with whom you have a business relationship are now and will remain in control of the site. We do not assume any responsibilities or liabilities with respect to the site.

While performing our services, we and our subconsultants will take reasonable precautions to minimize damage or disturbance. However, it is understood by you that in the normal course of providing the services under the Agreement, some damage may occur, the repair of which is not part of our services.

If, because of your failure to provide access to the site of the work, we encounter lost time or unanticipated expenses, you shall reimburse CEG for those expenses and compensate CEG for the lost time as Additional Services pursuant to Paragraph Eleven hereof.

4. **UNANTICIPATED CONDITIONS.** Hazardous substances or conditions may exist at a site where there is no reason to believe they could or should be present. If during the performance of our services, any unforeseen hazardous or potentially hazardous substances or conditions, or other unforeseen conditions or occurrences are encountered, which in our sole judgment significantly affect or may affect the services, the risk involved in providing the services, or the recommended Scope of Services, we will promptly notify you.

You and we agree that the discovery of such unanticipated conditions constitutes a significant change in the Scope of Services.

Based on our evaluation of unanticipated conditions, we may: a.) If applicable, in our sole judgment, complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; b.) Stop work pending agreement with you to modify the Scope of Services and Schedule of Fees as required by the previously unforeseen conditions and occurrences; and c.) Terminate the services effective on the date specified by CEG in writing.

You waive any claim against CEG and agree to indemnify and defend and hold CLIENT REPRESENTATIVE harmless from any claim of liability for injury or loss arising from the encountering of unanticipated hazardous materials or suspected hazardous materials.

5. **CONFIDENTIALITY.** We will not intentionally divulge information regarding the Proposal, services or reports, which you designate as confidential, except to you or parties designated by you or in response to subpoena or other similar governmental demands. If, in our sole opinion, site conditions represent a threat to the public health or an environmental hazard, we will so advise you in order that you may diligently notify appropriate authorities. If you fail to act in a responsible manner, we, as professionals licensed by the State to protect public safety and health, must notify the appropriate authorities. You waive any claim against CEG and agree to defend, indemnify and save CEG harmless from any claim or liability arising from conditions or notifications of conditions at the site. Information which is in the public domain or which is provided to CEG by third parties is not considered confidential. You authorize CEG to identify you as a Client and use photographs or illustrations of the project and non-confidential information in any sales or marketing literature.

6. **OWNERSHIP AND USE OF DOCUMENTS.** The documents prepared by CEG as instruments of service shall remain the property of CEG.

You agree that any documents or services provided are for your exclusive use in connection with the current Project and are not intended for any other

use or for the benefit of any other parties or persons. You will hold CEG harmless from any costs we entail due to the reliance of other parties upon the documents provided or due to the use of the documents other than on the current project.

You agree that all documents furnished to you or your agents will be returned upon demand and will not be used by you for any purpose whatsoever if payment is not current. Provided payment is current, you are authorized and licensed to use, reproduce and publish any such documents in connection with the current project.

Except for the use described in this section, we assert our exclusive copyright with regard to the plans, designs and reports provided.

We will retain all pertinent records relating to the services performed for a period of five (5) years following completion of our services.

7. **DELIVERABLES.** Unless the Project Scope of Services specifically provides that deliverables be prepared in a computer generated format or other specific format, we reserve the right to prepare any required documents in a fashion chosen by CEG.

If the Project Scope of Services provides for deliverables in a non-specific computer generated format, we will prepare them using the system and software most readily available in our firm at the time the services are rendered. Our then current standards for preparation of deliverables in a computer format will be utilized.

We may be able to prepare documents using your system and standards if specifically provided for in the Project Scope of Services. These requirements must be provided in advance so that allowances can be made in the project fee to accommodate these special requirements.

Normally, computer files are not considered deliverables. If specifically requested, computer files can be provided subject to the following conditions: a.) You must execute our Standard Electronic Media Release Form in advance of receiving any files; b.) Depending on the technology available at the time, we reserve the right to encrypt the supplied files in such a fashion that a record will be made of alterations to the file after delivery and/or of the number of copies made of said files; c.) It is understood that the files requested are for record purposes only. Any unlicensed use or reuse of the documents without our knowledge and written consent will constitute a violation of our copyright (see Paragraph Six); d.) Since we have no control over the storage of the computer files and since the files deteriorate over time and can be damaged in many ways, we accept no responsibility for the continued accuracy and integrity of the files after delivery; and e.) Only original plans and reports of the most recent date bearing the signature and embossed seal of the signing professional will be considered documents of record in any legal proceedings.

8. **INSURANCE.** CEG represents that it and its agents, staff and subconsultants are protected by Workers Compensation insurance and that CEG has coverage under Comprehensive General Liability, Excess Liability, Automobile Liability and Professional Liability insurance policies which it deems to be adequate. Certificates for all policies of insurance will be provided to the Client upon request.

9. **INDEMNIFICATION.** CEG shall indemnify, defend and hold harmless you, your employees, officers and agents from all liability, claims, suits, losses, damages, costs and demands, including cost of defense, on account of bodily injury, including death, or property damage, sustained by any person or entity not a party to the Agreement, arising out of or connected with the performance of the services under this Agreement, to the extent such injury, death or damage is caused by the negligence of CEG; provided, however, that CLIENT REPRESENTATIVE's liability under this indemnity shall be limited to and not exceed the limits of liability set forth in Paragraph Ten hereof, when the limitations of paragraph Ten are applicable to and are referenced in a particular Proposal.

You shall indemnify, defend and save harmless CEG, its officers, agents, employees and subconsultants from and against all claims, liability, suits, losses, damages, costs and demands, including cost of defense, on account of bodily injury, including death, or property damage, sustained by any person not a party to the Agreement, arising out of or connected with the performance of the services under the Agreement, to the extent such claims:

1) exceed the proportion which proximately results from the negligent acts, errors or omissions of CEG, or 2) do not result from the sole negligence of CLIENT REPRESENTATIVE and are made by a contractor or subcontractor employed by you, or by their employees or agents, or arise because of errors, omissions or inaccuracies in documents or information provided by you or, in consideration of the unforeseeable nature of the tasks involved in pollution-related services, the unavailability of insurance to comprehensively cover the risks involved at reasonable cost and the limited involvement of CEG, arise from pollution-related services (as defined herein) provided under this agreement.

Claims arising from pollution-related services are claims which arise out of, or are alleged to arise out of, an actual, alleged or threatened discharge, dispersal, release or escape of pollutants, and/or any directive to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize pollutants and/or any failure to conform to regulatory requirements related to siting, operation, maintenance or remediation or any property, operation or facility in which you, or others with whom you have a business relationship, have an interest and/or any services related to environmental assessment or remediation. "Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids or alkalis, chemicals and waste.

It is understood and agreed that a portion of the obligation you assume above is a broad form indemnification requiring indemnification and assumption of defenses based upon the relatedness or alleged relatedness of claims, demands, liability, suits, losses, cost or expenses to the project or our scope of services. Neither the indemnification nor the assumption of defense obligation is dependent on your fault. We are entitled to this indemnification and the assumption of defense by you regardless of whether we are partially responsible for the claim, demand, liability, suit, loss, cost and expense. Only if we are solely responsible for the claim, demand, liability, suit, loss, cost and expense would we not be entitled to indemnification and/or to the assumption of our defense by you.

10. LIMITATION OF LIABILITY. When the limitations of this paragraph are referenced in a particular Proposal, and notwithstanding any provisions to the contrary, our total liability to you, except to the extent the liability is covered by the proceeds of any insurance provided pursuant to Paragraph Eight hereof, arising out of or related to the performance of services under the Agreement, whether based in contract, tort, strict liability or otherwise, shall not exceed, in the aggregate, the greater of: a) \$50,000 or b) the sum of fees for professional services paid under this Agreement.

The provisions of this paragraph, providing for limitations of our liability, shall survive the expiration, cancellation or termination of the Agreement.

11. CONSEQUENTIAL DAMAGES. In no event shall CEG be liable in contract or tort or otherwise to you or your insurers for any loss of delayed or diminished profits or revenues or opportunities, losses by reasons of shutdown or inability to utilize or complete any project or any other incidental, special, indirect or consequential damages of any kind or nature resulting from our performance or failure to perform under the Agreement.

12. COMPENSATION. You shall compensate CEG, at the rates and in accordance with the payment terms identified in the Schedule of Fees in the Proposal. Unless otherwise provided in the Proposal, compensation for services shall be based on the Schedules of Hourly Billing Rates and Miscellaneous Charges current at the time services are performed.

Any lump sum and per unit fees shall be annually adjusted beginning 365 days from the date of the Proposal on the basis of the Engineering News Record Skilled Labor Index based upon the U.S. Twenty Cities Average, with the index value on the date of the Proposal as a base.

Construction survey services or stakeout assignments associated with the Project will be provided subject to the following conditions: a.) On demand services cannot normally be provided. All construction stakeout services will normally be scheduled a minimum of 72 hours in advance; and b.) Construction stakeout services not assigned a specific billing method in the Scope of Services and Schedule of Fees will be billed on a per diem or hourly basis with a daily charge to be set at the time the services are initially requested. The minimum charge will be one full day. Normally, final and complete payment is due prior to the delivery of the final work product resulting from the services to be performed under the Agreement. Unless otherwise provided in the Proposal, we may bill you periodically for services performed. Bills will be rendered not more often than monthly and will be due when rendered. Bills become overdue thirty (30) days after being rendered and will accumulate interest at 1% per month from the date of billing. Current payment according to this paragraph is a condition precedent to our obligation to provide services under this Agreement. We retain the right to suspend services if any payments are overdue or if you otherwise fail to pay CLIENT REPRESENTATIVE in accordance with these terms.

13. WITNESS FEE. In the event we are served with a subpoena or otherwise required by issuance of any other rule or decision to attend a

deposition, arbitration, mediation or other judicial or administrative proceeding, and give testimony regarding any matter related to our services on the Project, you shall pay CEG a fee for the actual hours expended at such proceeding and in preparation therefor and in travel to and from the site of such proceeding as Additional Services pursuant to Paragraph Twelve hereof.

If your account is not current, we shall not be obligated to appear and testify on behalf of you in any proceeding and you hereby waive all rights to compel any employee or officer of CEG to appear and testify at any such proceeding through the issuance of a subpoena or otherwise. This provision shall survive the expiration, cancellation or termination of the Agreement.

14. RESPONSIBILITY DURING CONSTRUCTION. If our Scope of Services includes construction administration or observation services, we will endeavor, when performing the services required, to observe the progress and quality of the executed work of contractor(s) and determine in general if such work is proceeding in accordance with the requirements of any approval or of the contract documents. We shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work. We shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by contractors or the safety precautions and programs incident to the work of contractors. Our efforts will be directed toward providing a greater degree of confidence for you that completed work of contractors will conform to the contract documents, however, we shall not be responsible for the failure of the contractors to perform the work in accordance with the contract documents. During site visits and on the basis of on-site observations, we shall keep you informed of the progress of the work and shall endeavor to guard you against defects and deficiencies in such work.

15. WAIVER OF SUBROGATION. You and we mutually waive our rights of subrogation against each other for damages covered by liability insurance. This mutual waiver extends to our contractors, subcontractors, consultants and subconsultants.

16. FORCE MAJEURE. We shall not be responsible or liable for any delays in the performance of services due to natural disasters, civil or political disturbances, supplier or vendor labor disputes or other causes beyond our control.

17. INDEPENDENT CONTRACTOR. Unless otherwise provided in our proposal, CEG is and shall be an independent contractor in the performance of services covered by the Agreement, maintaining complete control of its employees and operations and neither CEG nor anyone employed by CEG shall be the agent, representative, employee or servant of the Client in the performance of the services covered by this Agreement.

18. ASSIGNMENT. Neither CEG nor the Client shall assign or transfer their interest in the Agreement without the written consent of the other. However, nothing contained in this paragraph shall prevent CEG from employing such consultants, associates or subconsultants as CEG may deem appropriate.

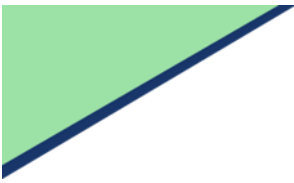
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20. SEVERABILITY. If any provision contained herein is held to be unenforceable by a court of law or equity, the Agreement shall be construed as if such provision did not exist and the unenforceability of such a provision shall not be held to render any other provision of the Agreement unenforceable.

21. SUCCESSORS AND ASSIGNS. The covenants and agreements contained herein shall apply to and inure to the benefit of and be binding upon the parties hereto and upon their respective assigns and successors.

22. ENTIRE AGREEMENT. The Agreement constitutes the entire Agreement between CEG and you. All previous representations relative thereto, either written or oral, are hereby annulled and superseded. No modification of these Terms and Conditions shall be binding on either party unless it is in writing and is signed by authorized officers of the parties.

23. TERMINATION. The Agreement may be terminated by completion of our services, by mutual consent of both parties at any time or by either party upon ten (10) days written notice. If the Agreement is terminated, you agree to pay CEG for the services performed to the date of termination of service plus reasonable cost of services and direct expenses necessary to document, archive and/or transfer to others, project information or if you so authorize, to complete work-in-progress.



PROPOSAL FOR PROFESSIONAL SERVICES

Date: November 2, 2020

Proposal Name: Sage Road Basin Retrofit Design

Client Name: Westtown Township, Attn: JoAnn Grube, Director of Finance

Client Address: 1039 Wilmington Pike
West Chester, PA 19382

Project Number: WTT-20-376-P

CEDARVILLE Engineering Group, LLC (CEG) is pleased to submit our proposal to provide design services for the Sage Road Basin Retrofit project in Westtown Township, Chester County, Pennsylvania.

PROJECT UNDERSTANDING AND BACKGROUND

A retrofit of this basin is proposed as part of the Township's Pennsylvania Department of Environmental Protection (PA DEP)-approved NPDES MS4 Total Maximum Daily Load (TMDL)/Pollutant Reduction Plan (PRP) last updated June 2019. This basin is located on a 1.6-acre parcel owned by Westtown Township south of a cul-de-sac off of Sage Road, south of Oakbourne Road, within the Goose Creek Watershed.

The basin has a drainage area of 20.59 acres. It is overgrown, has accumulated mounds of sediment in some areas, and has reduced volume capacity. The existing outlet structure consists of a corrugated metal pipe (CMP) riser that should be replaced.

The scope of the proposed retrofit by converting it from a traditional detention basin to a dry extended detention basin or equivalent percent sediment reduction per the PA DEP BMP Effectiveness Values (rev. 6/2018). Design details will include removing the vegetation and sediment accumulation, replacing the existing outlet structure to one with a low-flow orifice to provide infiltration and extended detention, creating water quality features such as forebays, and installing native plantings. Existing inflow and outlet pipe conditions will also be assessed for potential repair and/or replacement.

Per the TMDL/PRP, this project will provide an estimated removal of 4,466.88 lbs/yr of sediment (0.43 percent) within the Chester Creek/East Branch Chester Creek/Ridley Creek PRP Planning Area and an estimated removal of 1.17 lbs/yr of total phosphorous (0.38 percent) within the Goose Creek TMDL Planning Area.

SCOPE OF SERVICES

The following more specifically describes our scope of services included with this proposal:



1.0 SURVEY

A topographic survey will be performed for the parcel where the existing basin is located. Included in the survey will be the location of the existing features including basin structures, pipe sizes and types, invert elevations, and other physical features. We will locate all underground and overhead utilities that can be determined by visual observation and/or surface marked by the Pennsylvania One Call System. The survey will be used to assist in the engineering calculations and as a base for the design plan.

2.0 SOIL INFILTRATION TESTING

CEG will conduct double-ring infiltration testing at the project site within the existing stormwater basin. Tests will be conducted within test pits at various depths below the existing basin bottom elevation. A track mounted mini excavator will be used to dig the test pits. A total of three (3) test pits will be excavated with two (2) double-ring infiltration tests being completed within each test pit. Upon completion of tests, the test pits will be excavated an additional two (2) feet to verify if limiting layers are present. Soil strata within the test pit will be identified and logged. All testing will be conducted in accordance with the requirements of the Pennsylvania Stormwater Best Management Practices (BMP) Manual. Once testing and logging is complete, the test pits will be backfilled and the surface will be stabilized with seed and straw.

Upon completion of testing, CEG will calculate final infiltration rates and provide a summary report. The report will include the results of the infiltration tests, typed test pit logs showing soil strata within the testing area, and a testing location plan.

3.0 DESIGN ENGINEERING

CEG will first conduct a site visit to assess the current conditions, including conditions of pipes and structures visible from the surface/exterior. CEG will perform engineering calculations and produce design plans to convert the existing detention basin to a dry extended detention basin or constructed wetland/wet pond design based on on-site soil characteristics from soil testing results. Erosion and Sediment (E&S) Control Plans and long-term operations and maintenance provisions will be included in the design plan set.

It is anticipated that design details will include removing the trees, vegetation, and sediment accumulation, regrading installing a new outlet structure that has a low-flow orifice to provide infiltration and extended detention, creating water quality features such as forebays, and native plantings. Design elements will be determined based on their ability to efficiently maximize water volume storage, downstream water quality, or both. Design guidance will come from the latest version of the Pennsylvania Stormwater BMP Manual.

It is assumed that this project will involve less than one (1) acre of earth disturbance and will not require a NPDES Permit for Stormwater Discharges Associated with Construction Activities or submission to the Chester County Conservation District (CCCD).

CEG will also prepare construction specifications and a construction cost estimate for the project. CEG will provide a Concept Plan to the Township early in design to seek feedback on designed features of the retrofitted basin prior to proceeding with the final construction plans.

Deliverables (pdf and one hard copy of each):

- **Concept Plan**
- **Construction Plans**



- **Construction Specifications**
- **Construction Cost Estimate**

PROPOSAL COSTS

CEG is prepared to offer the aforementioned services as described above for the following professional fees.

1.0	Survey	\$3,100.00
2.0	Soil Infiltration Testing	\$3,600.00
3.0	Design Engineering and NPDES Permit	\$30,550.00
Total Contract Price		\$37,250.00

SCOPE CHANGES AND EXCLUSIONS

The following list of exclusions shall not be considered conclusive or finite, but are provided simply as a summary of the explicit exclusions noted above:

- Pipe televising
- Boundary survey
- Bid document preparation and bid administration
- Analysis or design of stormwater conveyance piping and system tributary to the basin
- Construction Administration and Inspection
- Grant Application and Administration
- Chapter 105/Section 404 Permitting
- NPDES Permit for Stormwater Discharges Associated with Construction Activities
- Threatened and Endangered Species-Specific Surveys and Habitat Assessments
- Cultural Resources Assessments
- Alternatives Analysis
- Risk Assessment
- Stormwater Management Analysis and Consistency Letter
- Floodplain Management Analysis and Consistency Letter
- Wetland and Stream Mitigation
- Geotechnical Investigations
- Permits and approvals other than stated in above scope
- Stakeholder outreach coordination

CHANGES IN REGULATIONS

This proposal has been assembled based on current regulations and PA DEP guidance as of the date of the contract date indicated above. As the regulatory process is ever changing, we reserve the right to alter our contract pricing should such occur after the date of the contract which would impact the project scope or level of effort. We make it a priority to stay abreast of industry regulations and will notify you as soon as we become aware of pending or actual changes which could impact the scope of work and the associated contract price. We will not proceed with any work under contract for which costs could deviate from the original contract amount due to changes in industry regulations without prior notice and your authorization to proceed under the new regulations.

PROPOSAL ACCEPTANCE PERIOD

This contract shall become null and void if not accepted within sixty (60) days from the date of issuance by CEG.



TERMS AND CONDITIONS

This contract shall be governed by the standard terms and conditions attached hereto and made a part of this contract by reference.

PROJECT BILLING

Team billing will be provided by CEG monthly. Bill will reflect the effort shown by our professionals within a given task. Payment on invoices is due in thirty (30) days.

PROPOSAL ACCEPTANCE

I hereby certify by signing and returning the Authorization to Proceed that I have read the foregoing Proposal for Professional Services, inclusive of all referenced attachments, and that the Terms and Conditions of said Proposal, including fees, are satisfactory.

Should you have any questions regarding this proposal, please contact myself or April Barkasi, CEG's President directly at 610-705-4500.

Best Regards,
CEDARVILLE Engineering Group, LLC

A handwritten signature in black ink that reads "Beth Uhler".

Beth Uhler
Project Manager

A handwritten signature in black ink that reads "April M Barkasi".

April M Barkasi, P.E.
President

Attached: General Conditions



AUTHORIZATION TO PROCEED

I have read the **November 2, 2020** proposal by CEDARVILLE Engineering Group, LLC (CEG) and the Standard Terms and Conditions for Professional Services in the matter of the **Sage Road Basin Retrofit Design**, and hereby authorize CEG to proceed with the work. I fully understand and agree that this authorization hereby commits Owner to retaining CEG for the scope of work, fee, and general conditions as described in CEG's proposal and cited herein. It is my understanding that CEG will proceed with the work upon receipt of this authorization to proceed.

NAME: _____

TITLE: _____

COMPANY: _____

DATE: _____

As used herein, the terms "we", "our" or "CEG" refer to Cedarville Engineering Group, LLC; the terms "you", "your" or "Client" refer to the Client identified in the CEG Proposal; and the term "Agreement" refers to the contract between CEG and the Client consisting of: the CEG Proposal accepted by the Client with any attachments referred to therein and these Standard Terms and Conditions for Professional Services.

1. **PROJECT AND SCOPE OF SERVICES.** The project which is the subject of the Agreement between us and the Scope of Services we agree to provide is set forth in the CEG Proposal accepted by you. The Scope of Services may not be enlarged or relaxed except as modified in writing and agreed to by us.

2. **STANDARD OF CARE.** We will exercise that degree of care and skill ordinarily exercised under similar circumstances by members of our profession performing similar services and practicing in the same or similar locality at the time that the services are performed. We will comply with applicable Federal, State and local laws, rules and regulations. No warranty, either expressed or implied, is made or intended.

Environmental site assessments, unless otherwise agreed, will be performed according to the standards set forth in the Standard Practice for Environmental Site Assessments, (ASTM Designation E-1527-00 and 1528-00) as applicable. In particular, but without limitation, the principles, explanations and limitations set forth in Section 4.5 of the Standard Practice, are applicable to the services to be provided.

3. **RIGHT OF ENTRY.** You will provide access and the right of entry to the site of the work for our employees and subconsultants in order to perform the required services.

You or your agents or others with whom you have a business relationship are now and will remain in control of the site. We do not assume any responsibilities or liabilities with respect to the site.

While performing our services, we and our subconsultants will take reasonable precautions to minimize damage or disturbance. However, it is understood by you that in the normal course of providing the services under the Agreement, some damage may occur, the repair of which is not part of our services.

If, because of your failure to provide access to the site of the work, we encounter lost time or unanticipated expenses, you shall reimburse CEG for those expenses and compensate CEG for the lost time as Additional Services pursuant to Paragraph Eleven hereof.

4. **UNANTICIPATED CONDITIONS.** Hazardous substances or conditions may exist at a site where there is no reason to believe they could or should be present. If during the performance of our services, any unforeseen hazardous or potentially hazardous substances or conditions, or other unforeseen conditions or occurrences are encountered, which in our sole judgment significantly affect or may affect the services, the risk involved in providing the services, or the recommended Scope of Services, we will promptly notify you.

You and we agree that the discovery of such unanticipated conditions constitutes a significant change in the Scope of Services.

Based on our evaluation of unanticipated conditions, we may: a.) If applicable, in our sole judgment, complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; b.) Stop work pending agreement with you to modify the Scope of Services and Schedule of Fees as required by the previously unforeseen conditions and occurrences; and c.) Terminate the services effective on the date specified by CEG in writing.

You waive any claim against CEG and agree to indemnify and defend and hold CLIENT REPRESENTATIVE harmless from any claim of liability for injury or loss arising from the encountering of unanticipated hazardous materials or suspected hazardous materials.

5. **CONFIDENTIALITY.** We will not intentionally divulge information regarding the Proposal, services or reports, which you designate as confidential, except to you or parties designated by you or in response to subpoena or other similar governmental demands. If, in our sole opinion, site conditions represent a threat to the public health or an environmental hazard, we will so advise you in order that you may diligently notify appropriate authorities. If you fail to act in a responsible manner, we, as professionals licensed by the State to protect public safety and health, must notify the appropriate authorities. You waive any claim against CEG and agree to defend, indemnify and save CEG harmless from any claim or liability arising from conditions or notifications of conditions at the site. Information which is in the public domain or which is provided to CEG by third parties is not considered confidential. You authorize CEG to identify you as a Client and use photographs or illustrations of the project and non-confidential information in any sales or marketing literature.

6. **OWNERSHIP AND USE OF DOCUMENTS.** The documents prepared by CEG as instruments of service shall remain the property of CEG.

You agree that any documents or services provided are for your exclusive use in connection with the current Project and are not intended for any other

use or for the benefit of any other parties or persons. You will hold CEG harmless from any costs we entail due to the reliance of other parties upon the documents provided or due to the use of the documents other than on the current project.

You agree that all documents furnished to you or your agents will be returned upon demand and will not be used by you for any purpose whatsoever if payment is not current. Provided payment is current, you are authorized and licensed to use, reproduce and publish any such documents in connection with the current project.

Except for the use described in this section, we assert our exclusive copyright with regard to the plans, designs and reports provided.

We will retain all pertinent records relating to the services performed for a period of five (5) years following completion of our services.

7. **DELIVERABLES.** Unless the Project Scope of Services specifically provides that deliverables be prepared in a computer generated format or other specific format, we reserve the right to prepare any required documents in a fashion chosen by CEG.

If the Project Scope of Services provides for deliverables in a non-specific computer generated format, we will prepare them using the system and software most readily available in our firm at the time the services are rendered. Our then current standards for preparation of deliverables in a computer format will be utilized.

We may be able to prepare documents using your system and standards if specifically provided for in the Project Scope of Services. These requirements must be provided in advance so that allowances can be made in the project fee to accommodate these special requirements.

Normally, computer files are not considered deliverables. If specifically requested, computer files can be provided subject to the following conditions: a.) You must execute our Standard Electronic Media Release Form in advance of receiving any files; b.) Depending on the technology available at the time, we reserve the right to encrypt the supplied files in such a fashion that a record will be made of alterations to the file after delivery and/or of the number of copies made of said files; c.) It is understood that the files requested are for record purposes only. Any unlicensed use or reuse of the documents without our knowledge and written consent will constitute a violation of our copyright (see Paragraph Six); d.) Since we have no control over the storage of the computer files and since the files deteriorate over time and can be damaged in many ways, we accept no responsibility for the continued accuracy and integrity of the files after delivery; and e.) Only original plans and reports of the most recent date bearing the signature and embossed seal of the signing professional will be considered documents of record in any legal proceedings.

8. **INSURANCE.** CEG represents that it and its agents, staff and subconsultants are protected by Workers Compensation insurance and that CEG has coverage under Comprehensive General Liability, Excess Liability, Automobile Liability and Professional Liability insurance policies which it deems to be adequate. Certificates for all policies of insurance will be provided to the Client upon request.

9. **INDEMNIFICATION.** CEG shall indemnify, defend and hold harmless you, your employees, officers and agents from all liability, claims, suits, losses, damages, costs and demands, including cost of defense, on account of bodily injury, including death, or property damage, sustained by any person or entity not a party to the Agreement, arising out of or connected with the performance of the services under this Agreement, to the extent such injury, death or damage is caused by the negligence of CEG; provided, however, that CLIENT REPRESENTATIVE's liability under this indemnity shall be limited to and not exceed the limits of liability set forth in Paragraph Ten hereof, when the limitations of paragraph Ten are applicable to and are referenced in a particular Proposal.

You shall indemnify, defend and save harmless CEG, its officers, agents, employees and subconsultants from and against all claims, liability, suits, losses, damages, costs and demands, including cost of defense, on account of bodily injury, including death, or property damage, sustained by any person not a party to the Agreement, arising out of or connected with the performance of the services under the Agreement, to the extent such claims:

1) exceed the proportion which proximately results from the negligent acts, errors or omissions of CEG, or 2) do not result from the sole negligence of CLIENT REPRESENTATIVE and are made by a contractor or subcontractor employed by you, or by their employees or agents, or arise because of errors, omissions or inaccuracies in documents or information provided by you or, in consideration of the unforeseeable nature of the tasks involved in pollution-related services, the unavailability of insurance to comprehensively cover the risks involved at reasonable cost and the limited involvement of CEG, arise from pollution-related services (as defined herein) provided under this agreement.

Claims arising from pollution-related services are claims which arise out of, or are alleged to arise out of, an actual, alleged or threatened discharge, dispersal, release or escape of pollutants, and/or any directive to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize pollutants and/or any failure to conform to regulatory requirements related to siting, operation, maintenance or remediation or any property, operation or facility in which you, or others with whom you have a business relationship, have an interest and/or any services related to environmental assessment or remediation. "Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids or alkalis, chemicals and waste.

It is understood and agreed that a portion of the obligation you assume above is a broad form indemnification requiring indemnification and assumption of defenses based upon the relatedness or alleged relatedness of claims, demands, liability, suits, losses, cost or expenses to the project or our scope of services. Neither the indemnification nor the assumption of defense obligation is dependent on your fault. We are entitled to this indemnification and the assumption of defense by you regardless of whether we are partially responsible for the claim, demand, liability, suit, loss, cost and expense. Only if we are solely responsible for the claim, demand, liability, suit, loss, cost and expense would we not be entitled to indemnification and/or to the assumption of our defense by you.

10. LIMITATION OF LIABILITY. When the limitations of this paragraph are referenced in a particular Proposal, and notwithstanding any provisions to the contrary, our total liability to you, except to the extent the liability is covered by the proceeds of any insurance provided pursuant to Paragraph Eight hereof, arising out of or related to the performance of services under the Agreement, whether based in contract, tort, strict liability or otherwise, shall not exceed, in the aggregate, the greater of: a) \$50,000 or b) the sum of fees for professional services paid under this Agreement.

The provisions of this paragraph, providing for limitations of our liability, shall survive the expiration, cancellation or termination of the Agreement.

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deposition, arbitration, mediation or other judicial or administrative proceeding, and give testimony regarding any matter related to our services on the Project, you shall pay CEG a fee for the actual hours expended at such proceeding and in preparation therefor and in travel to and from the site of such proceeding as Additional Services pursuant to Paragraph Twelve hereof.

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21. SUCCESSORS AND ASSIGNS. The covenants and agreements contained herein shall apply to and inure to the benefit of and be binding upon the parties hereto and upon their respective assigns and successors.

22. ENTIRE AGREEMENT. The Agreement constitutes the entire Agreement between CEG and you. All previous representations relative thereto, either written or oral, are hereby annulled and superseded. No modification of these Terms and Conditions shall be binding on either party unless it is in writing and is signed by authorized officers of the parties.

23. TERMINATION. The Agreement may be terminated by completion of our services, by mutual consent of both parties at any time or by either party upon ten (10) days written notice. If the Agreement is terminated, you agree to pay CEG for the services performed to the date of termination of service plus reasonable cost of services and direct expenses necessary to document, archive and/or transfer to others, project information or if you so authorize, to complete work-in-progress.