

April 18, 2012  
Curtis Hall

The regular meeting of the **BOARD OF COMMISSIONERS** was held this evening, President Art Haywood presiding. Members present were Commissioners Hampton, McKeown, Norris, and Simon. Staff present were Joseph Bagley, Esq., Wisler, Pearlstine, LLP; Charlyn Battle, Human Resources Coordinator; Patrick Duffy, Director of Engineering, Zoning & Inspections; Michael Fleming, Public Works Coordinator; Joseph Galdo, Fiscal Affairs Director; Bryan T. Havir, Assistant Township Manager; Mark McDonnell, Public Works Superintendent; John J. Norris, Chief of Police; Joseph O'Neill, Fire Marshal; and David G. Kraynik, Township Manager. A Public Attendance List is attached.

1. President Haywood opened the meeting with the Pledge of Allegiance being led by Commissioner McKeown.
2. Each member having received a copy of the Commissioners' Regular Meeting Minutes dated March 21, 2012, upon of Mr. McKeown, the Minutes were unanimously approved by the Board of Commissioners.
3. Each member having received a copy of the Executive Summary Financial Report of the Manager/Secretary for the month of March, 2012, upon motion of Mr. McKeown, the Report was unanimously approved by the Board of Commissioners and ordered spread in full upon the Minute Book.
4. Each member having received a copy of the Accounts Paid Report for the month of March, 2012, upon motion of Mr. McKeown, the Report was unanimously approved by the Board of Commissioners and ordered spread in full upon the Minute Book.

5. Ms. Hampton presented Certificates and Pins to the following members of the Cheltenham Police Department for 20-years of service:

Detective Harry Hall  
Officer John Thompson

6. Ms. Hampton presented awards to the following members of the Cheltenham Police Department and Montgomery County Detectives:

Detective Andrew Snyder	Merit Award
Detective Daniel Schaefer	Merit Award
Officer Thomas Fahy	Certificate of Commendation
Officer Michael Barone	Certificate of Commendation
Officer Jeffrey Murphy	Certificate of Commendation
Officer John Barr	Certificate of Commendation
Detective Mark Bates	Unit Citation
Detective James McClelland	Unit Citation
County Detective Lieutenant Richard Peffal	Unit Citation
County Detective Lieutenant Stanley Kadelski	Unit Citation
County Detective Michael Santarelli	Unit Citation
County Detective James Carbo	Unit Citation
County Detective Chris Kuklantz	Unit Citation
County Detective Mark Minzola	Unit Citation
County Detective Albert Dinnell	Unit Citation
County Detective John M. Finor	Unit Citation
County Detective Robert Turner	Unit Citation

7. Representatives of the Pennsylvania Library Association, Glenn R. Miller, Executive Director; Debbie Malone; and Karla Trout presented a Certificate of Merit to Library President Carrie Turner.

8. Upon motion of Mr. Haywood, the Board of Commissioners unanimously awarded a contract for Furnishing Bituminous Materials, F.O.B. Plant to Glasgow, Inc., Glenside, PA 19038 for:

Item No. 1 – Approx. 125 Tons Base Course	\$50.00/TN	\$ 6,250.00
Item No. 2 – Approx. 250 Tons Wearing Course	\$62.00/TN	\$ 15,500.00
Item No. 3 – Approx. 25 Tons FJ-1	\$75.00/TN	\$ 1,875.00
Item No. 4 – Approx. 25 Tons Cold Patch	\$95.00/TN	\$ 2,375.00

being the lowest responsible bidder meeting Township specifications and being within budgetary limitations.

9. Upon motion of Mr. Haywood, the Board of Commissioners unanimously

awarded Contracts for Furnishing Equipment at an Hourly Rental Rate to the following

contractors:

**Reilly Sweeping, Inc., Fairless Hills, PA 19030 (10% Bid Bond)**

<u>GENERAL EQUIPMENT</u>		<u>TIME/HR.</u>	<u>O.T./HR.</u>	<u>HOL./HR.</u>
HIGHWAY STREET SWEEPER	@	\$ 129.00	\$ 144.00	\$ 159.00
(EXCLUDES ALL FEDERAL EXCISE AND STATE SALES TAXES)				

**Leary Trucking & Paving, Inc., Ardsley, PA 19038 (\$2000 Bank Check)**

<u>GENERAL EQUIPMENT</u>		<u>TIME/HR.</u>	<u>O.T./HR.</u>	<u>HOL./HR.</u>
TRI-AXLE TRUCK	@	\$ 78.00	\$ 78.00	\$ 83.00
BOBCAT LOADER	@	\$ 80.00	\$ 80.00	\$ 85.00
BACKHOE WITH STANDARD BOOM	@	\$ 80.00	\$ 80.00	\$ 85.00

SNOW REMOVAL EQUIPMENT

TRI-AXLE TRUCK WITH SNOW PLOW	@	\$ 140.00	\$ 140.00	\$ 145.00
BACKHOE – STANDARD	@	\$ 80.00	\$ 80.00	\$ 85.00
(EXCLUDES ALL FEDERAL EXCISE AND STATE SALES TAXES)				

**Glasgow, Inc., Glenside, PA 19038 (\$2000 Bid Bond)**

<u>GENERAL EQUIPMENT</u>		<u>TIME/HR.</u>	<u>O.T./HR.</u>	<u>HOL./HR.</u>
20 TON TRUCK CRANE	@	\$ 283.00	\$ 370.00	\$ 458.00
10 TON, 3 C.Y. CRAWLER CRANE	@	\$ 280.00	\$ 367.00	\$ 455.00
20 TON CRAWLER CRANE	@	\$ 280.00	\$ 367.00	\$ 455.00
GRADALL	@	\$ 210.00	\$ 261.00	\$ 312.00
ROAD GRADER (MOTOR PATROL)	@	\$ 157.00	\$ 205.00	\$ 252.00
CAT-977	@	\$ 196.00	\$ 243.00	\$ 290.00
CAT-926, RUBBER TIRE, 1 ½ C.Y. BUCKET		\$ 156.00	\$ 204.00	\$ 251.00
BOBCAT LOADER W/MILLING ATTACHMENT		\$ 166.00	\$ 213.00	\$ 261.00
D7 TRACK DOZER	@	\$ 210.00	\$ 257.00	\$ 205.00
ROADWAY MILLING MACHINE, MAX 18" MILLING WIDTH	@	\$ 166.00	\$ 213.00	\$ 261.00
BACKHOE W/EXTENDA BOOM	@	\$ 142.00	\$ 189.00	\$ 237.00

SNOW REMOVAL EQUIPMENT

ROAD GRADER, MODEL 12	@	\$ 221.00	\$ 269.00	\$ 316.00
ROAD GRADER, MODEL 14	@	\$ 260.00	\$ 308.00	\$ 355.00
RUBBER TIRE LOADER, #966, 2 ½ TO 3 BUCKET	@	\$ 207.00	\$ 254.00	\$ 302.00
(EXCLUDES ALL FEDERAL EXCISE AND STATE SALES TAXES)				

being the lowest responsible bidders meeting Township specifications and being within budgetary

limitations.

10. Upon motion of Mr. Haywood, the Board of Commissioners unanimously approved the revised 2012 Liquid Fuels Budget, as submitted by Staff (see attached).

11. Upon motion of Mr. Haywood, the Board of Commissioners unanimously agreed that a Certificate of Appropriateness (“COA”) for Application L914 submitted by Quida Murray, owner of 1811 Willow Avenue, La Mott, be denied, as recommended by the La Mott Board of Historical and Architectural Review.

12. Upon motion of Mr. Haywood, the Board of Commissioners unanimously approved a Certificate of Appropriateness (“COA”) for Application No. L922 to Yolanda Gaston, owner of 7319 Sycamore Avenue, La Mott, relating to plans to rehabilitate the property as per Campbell Thomas & Company Architects scope of work dated February 9, 2012, as recommended by the La Mott Board of Historical and Architectural Review.

13. Upon motion of Mr. Haywood, the Board of Commissioners unanimously approved a Certificate of Appropriateness (“COA”) for Application No. L923 to Rose Streets, owner of 1831 Erlen Road, La Mott, relating to plans to rehabilitate the property as per the Campbell Thomas & Company Architects scope of work dated March 9, 2012, as recommended by the La Mott Board of Historical and Architectural Review.

14. Upon motion of Mr. Haywood, the Board of Commissioners unanimously approved a Certificate of Appropriateness (“COA”) for Application No. L924 to Shirley Johnson, owner of 1714 Chelsea Road, La Mott, relating to plans to rehabilitate the property as per the Campbell Thomas & Company Architects scope of work dated March 5, 2012, as recommended by the La Mott Board of Historical and Architectural Review.

15. Upon motion of Mr. Haywood, the Board of Commissioners unanimously approved a Certificate of Appropriateness (“COA”) for Application No. L925 to Barbara Tyler, owner of 1815 Willow Avenue, La Mott, relating to plans to rehabilitate the property as per the

Campbell Thomas & Company Architects scope of work dated March 9, 2012, as recommended by the La Mott Board of Historical and Architectural Review.

16. The Board of Commissioners considered approval of Cheltenham Township's Development Application No. 12-0560 Record Plan Silverman Land Development. Leon Silverman was present and addressed the Board. He stated that a new landscaping plan is being presented to the Shade Tree Advisory Committee ("STAC") at its meeting on April 26, 2012. He believes this new plan will meet STAC's recommendations. Regarding parking requirements on Keswick Avenue, Mr. Silverman stated that two (2) hour parking signs will be posted. He did not believe police enforcement of said restriction was necessary. Mr. Haywood disagreed and advised that there will be enforcement.

Upon motion of Mr. Haywood, the Board of Commissioners unanimously approved Cheltenham Township's Development Application No. 12-0560 Record Plan Silverman Land Development – 51-57 S. Keswick Avenue, subject to the following Conditions and Waivers, and contingent upon the Shade Tree Advisory Commission's approval of a revised landscaping plan:

A. CONDITIONS

1. The Cheltenham Township Development Application Number 12-0560 shall be added to the lower right corner of all plan sheets.
2. The 65 foot clear sight triangle shall be shown at the intersection of S. Keswick and Paxson Avenues. (CCS 260-9.D)
3. Plan sheet 1 shall include the property owner/parcel information across S. Keswick and Paxson Avenues. (CSS 260-32.D.(2))
4. Plan sheets 1 and 2 shall show the topographic features within the right-of-way of S. Keswick and Paxson Avenues along the site frontage as follows: (CSS 260-32.D.(2) & (4))
  - a) Contours at 2 foot interval
  - b) All storm and sanitary rims and invert elevations, water, gas, overhead wires, etc.
  - c) Cartway and lane widths
  - d) Existing curb radius

e) Signs, utility poles

5. A concrete monument shall be set at the most southerly property corner along the Paxson Avenue right-of-way and noted on the plan. (CSS 260-24)
6. The existing garage must be labeled on plan sheets 1 and 3 with "to be restored" noted.
7. The existing storage buildings and garage must be dimensioned on the plans.
8. The proposed stone drive aisle widths, concrete walk & entrance areas and three onsite parking spaces must be dimensioned on the plans.
9. A note must be added to the concrete curb detail that the compressive strength must be 3000 psi at 28 days.
10. Plan sheet 4 shows a curb end treatment detail. The plans must show the locations of the proposed end treatments.
11. A sidewalk detail must be added to the plan.
12. The proposed downspout seepage bed must be shown on the Record Plan.
13. A construction detail and elevation view for the downspout seepage bed must be shown on the plan and must include a cleanout/observation port. Notes addressing the operation and maintenance of the seepage bed must also be shown with the detail.
14. Proposed spot elevations must be added around the building.
15. Silt fence should be added to protect S. Keswick Avenue during the rough grading of the building and sidewalk areas.
16. Inlet protection during construction must be added to the erosion control plan and schedule with applicable detail.
17. The impervious coverage tabulation on plan sheet #3 must be added to plan sheet #1.
18. Per the condition for Zoning relief, the landscape plan must be approved by the Shade Tree Advisory Commission.
19. The parking spaces along Paxson Avenue are subject to approval by the Police Department.
20. A parking tabulation per Zoning Section 295-221.H for the required on-site spaces shall be shown on the Record plan sheet. The (8) eight on-site spaces along Keswick Avenue shall be delineated by signage showing which spaces

are dedicated to on-site parking and those spaces available to the general public. A two hour maximum time limit should apply to all general public parking spaces to avoid all day parking by train users. Parking sign location and details shall be shown on the plan.

21. Parking sign location and details shall be shown on the plan for the proposed handicap space.

B. WAIVERS TO BE GRANTED BY THE BOARD OF COMMISSIONERS

1. A waiver is required from CSS 260-32.D.(2) & (4) to not show all the existing features information within 400 feet of the site.

17. The Board of Commissioners considered a Tookany Creek Feasibility Flood with the Department of the Army (U.S. Corps of Engineers).

Mr. Simon questioned what areas were to be studied and proposed solutions. It was his opinion that reviews should be given to areas that are outside of the Township that could be potential solutions to the Township's problems. He stated that there is a lot of concern about flood control and stormwater management and that the Army Corps of Engineers cannot work on constructing stormwater management. There is no reference to providing material regarding stormwater management and flood control, and the Board should be provided this information. Mr. Kraynik advised that the information Mr. Simon was requesting was provided late in the day, and he would disseminate it to the Commissioners.

Upon motion of Mr. Haywood, the Board of Commissioners unanimously approved a Tookany Creek Feasibility Flood Study Agreement and Project Management Plan with the Department of the Army (U.S. Army Corps of Engineers) (See attached).

18. Upon motion of Mr. Haywood, and unanimously approved by the Board of Commissioners, the Public Works Committee Regular Meeting Minutes dated April 11, 2012, were received.

19. Upon motion of Ms. Hampton, the Board of Commissioners unanimously adopted **Resolution No. 14-12** approving the disposition of certain municipal records in accordance with state law.

**TOWNSHIP OF CHELTENHAM**

**RESOLUTION NO. 14-12**

**A RESOLUTION DECLARING ITS INTENT TO FOLLOW  
THE SCHEDULES AND PROCEDURES FOR  
DISPOSITION OF RECORDS AS SET FORTH IN THE  
PENNSYLVANIA MUNICIPAL RECORDS ACT AND THE  
MUNICIPAL RECORDS MANUAL OF 1968, REVISED  
JULY 16, 1993, AS AMENDED FROM TIME TO TIME**

**WHEREAS**, the Board of Commissioners of Cheltenham Township, Montgomery County, Pennsylvania, hereby acknowledges that a Local Government Records Committee of the Pennsylvania Historical and Museum Commission, Division of Archival and Records Management Services was created by the Pennsylvania State Legislature, Act 428 "Municipal Records Act" of 1968, as amended from time to time, and empowered thereby to make rules and regulations for the disposition and management of municipal records; and

**WHEREAS**, the Township of Cheltenham desires to dispose of municipal records according to Pennsylvania statutory requirements in accordance with the schedule of the Municipal Records Manual (MRM) issued by the Local Government Records Committee, which a list of said Cheltenham Township records are outlined in the attached Exhibit "A".

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the Township of Cheltenham, Montgomery County, Pennsylvania, that it intends to follow the schedules and procedures for disposition of records as set forth in the Municipal Records Manual revised on July 16, 1993, as amended from time to time.

**DONE IN ELKINS PARK, PENNSYLVANIA**, under my hand and the Seal of the Township of Cheltenham this 18<sup>th</sup> day of April, A.D., 2012.

ATTEST:



David G. Kraynik  
Township Manager/Secretary

TOWNSHIP OF CHELTENHAM



BY:

Art Haywood, President  
Board of Commissioners

**EXHIBIT "A"**

<b>ACCOUNTING</b>				
<b>Box #</b>	<b>Year(s) of Record</b>	<b>Record Type</b>	<b>Year End to Destroy</b>	<b>MRM REF.</b>
906	2004	Payroll Time Sheets	2011	Chapter 6
907	2004	Payroll Time Sheets	2011	Chapter 6
908	2004	Payroll Time Sheets	2011	Chapter 6
909	2004	Check Reg, Journal Act, Payroll Act, Chk Ledger	2011	Chapter 6
910	2003	Payroll Journals	2011	Chapter 6
934	2004	Secretary Reports	2011	Chapter 6
935	2004	Payroll Timesheets	2011	Chapter 6
939	2004	Daily Cash, Receivables, Details, Fines	2011	Chapter 6
949	2004	Daily Cash Envelopes	2011	Chapter 6
950	2004	Daily Cash Envelopes	2011	Chapter 6
951	2004	Daily Cash Envelopes	2011	Chapter 6
960	2003&2004	Quarterly Payroll Reports	2011	Chapter 6
			2011	Chapter 6
<b>TAX OFFICE</b>				
<b>Box 1</b>	<b>Years Prior to 2005</b>	<b>Letters and correspondence</b>	<b>2011</b>	<b>Ch. 7</b>
<b>Box 2,3,4</b>	<b>Years Prior to 2005</b>	<b>Business Privilege Tax Files for Filers who went out of business</b>	<b>2011</b>	<b>Ch. 7</b>
<b>Box 5</b>	<b>Years Prior to 2005</b>	<b>Deed Transfers, A/P and Closeouts</b>	<b>2011</b>	<b>Ch. 7</b>
<b>Box 6</b>	<b>Years Prior to 2005</b>	<b>Earned Income Tax and Transmittal Records</b>	<b>2011</b>	<b>Ch. 7</b>
<b>Box 7</b>	<b>Years Prior to 2005</b>	<b>Tax Duplicates</b>	<b>2011</b>	<b>Ch. 7</b>
<b>Box 8</b>	<b>Years Prior to 2005</b>	<b>Real Estate Tax payment records</b>	<b>2011</b>	<b>Ch. 7</b>
<b>Box 9</b>	<b>Years Prior to 2005</b>	<b>Proof Book Computer Printouts</b>	<b>2011</b>	<b>Ch. 7</b>

20. Upon motion of Ms. Hampton, the Board of Commissioners unanimously adopted **Resolution No. 15-12** honoring Elizabeth Cataldi for 16-years of service to the Cheltenham School Board. Said Resolution to be presented at a future meeting of the Board of Commissioners.

21. Upon motion of Ms. Hampton, the Board of Commissioners unanimously adopted **Resolution No. 15-12** honoring Robert Schaefer upon his retirement as Cheltenham High School Girls Basketball coach. Said Resolution to be presented at a future meeting of the Board of Commissioners.

22. Upon motion of Ms. Hampton, and unanimously approved by the Board of Commissioners, the Public Affairs Committee Regular Meeting Minutes dated April 4, 2012, were received.

23. Upon motion of Ms. Hampton, the Board of Commissioners unanimously awarded a contract for a new roof at the Police Administration Building to Westpol Construction, Bristol, PA, in the amount of \$109,550, being the lowest responsible bidder meeting Township specifications and being within budgetary limitations.

24. Upon motion of Ms. Hampton, and unanimously approved by the Board of Commissioners, the Public Safety Committee Regular Meeting Minutes dated April 4, 2012, were received.

25. Upon motion of Mr. Simon, and unanimously approved by the Board of Commissioners, the Building and Zoning Committee Regular Meeting Minutes dated April 4, 2012, were received.

26. Upon motion of Mr. McKeown, and unanimously approved by the Board of Commissioners, the Parks and Recreation Committee Regular Meeting Minutes dated April 11, 2012, were received.

27. Under New Business:

The Board of Commissioners reviewed an Agreement for Government Affairs Consulting Services with Duane Morris (“DMGS”) Government Strategies. Mr. Kraynik reviewed various aspects of the Agreement, which retains DMGS as a consultant to assist the Township with various issues associated with the Pennsylvania Department of Environmental Protection (“DEP”). The Agreement includes but is not limited to, addressing enforcement actions, obtaining grant funding, obtaining EDUs, economic development projects, and addressing flooding issues. It is a 12-month agreement with the ability to cancel within certain period of written notice.

The Board of Commissioners discussed certain linguistic changes to the Agreement as suggested by Mr. Simon. The Township Manager and Township Solicitor were directed to revise the agreement to include the following:

Paragraph #1: The following sentences to be amended: “This Agreement shall continue on a month-to-month basis at the end of the Term (each such month being an “Extension Term”), with notice to terminate *effective at the end of the month in which the terminating party gives such notice*. This Agreement shall terminate: at Client’s option, upon sixty (60) days written notice *during the Term*; at DMGS’ option, upon sixty (60) days written notice *during the Term*; or upon the mutual written consent of all parties hereto, at such time designated by such parties.

Paragraph #3: The following sentence to be added: Under no circumstances shall Client be responsible or be held responsible for DMGS’s compliance with campaign finance, pay-to-play or other applicable law governing the conduct of Client.

Item #4: The following sentence to be added: DMGS shall submit each anticipated expense over \$300.00 for preapproval of the Township Manager.

Item #9: Mr. Simon felt that said Agreement is a personal services contract between two (2) entities and therefore, there should be specificity that the two (2) entities and their services not be assignable to other parties, representatives, successors, assigns and heirs. Therefore, the following sentence to be added: This Agreement may also not be assigned by DMGS without the written permission of Client.

Item #11: That there be specificity as to legal recourse, i.e. in what courts the Township can file suit and in what courts DMGS can file suit, if there is a legal dispute. Therefore, the first sentence is amended as follows: Any legal action relating to this

Agreement against Client shall be brought in state court in Montgomery County or in federal court in Pennsylvania. Any legal action relating to this Agreement against DMGS shall be brought in state or federal courts of Pennsylvania. The parties agree that such courts shall have sole and exclusive jurisdiction over such legal actions.

Upon motion of Mr. Haywood, the Board of Commissioners unanimously approved a Government Affairs Consulting Agreement with Duane Morris Government Strategies LLC for a term of twelve (12) months as amended (see attached).

28. Under Citizens' Forum:

a. William Chambres, 1831 Chelsea Road, La Mott. He stated that he is Historian Laureate for La Mott as appointed by members of the Board of Commissioners and stated his vision for the future use of the Elkins Estate for education, training and performances for all of the arts, i.e. music, opera, modern dance, ballet, theater and the visual arts. There would be no costs outside of the individual group and the benefits would be multiple. Regardless of who assumes the ultimate ownership of the estate, this concept would stay in place and at no cost to the Township.

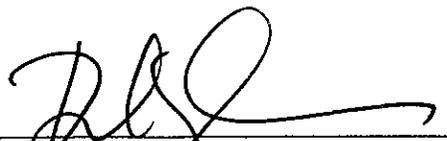
According to Mr. Chambres, another potential concept would be the return of the Pennsylvania Governor's School for the Arts (PGSA) which was a group of five-week summer academies for gifted high school students in the state funded by private and corporate foundations. Mr. Chambres asked that the Commissioners give consideration to his concept of a World Class Arts Center at the Elkins Estate should they become involved in its ownership.

In response to a question from Ms. Hampton, Mr. Chambres stated that the survival of his concept for an arts center is contingent upon the ownership of the Elkins Estate.

Mr. McKeown responded that he sympathized with Mr. Chambres but the Commissioners cannot control ownership of private property.

b. Alicia Ham of Elkins Park stated that she hoped the legacy of the Elkins Estate could be kept alive.

There being no further business, upon motion of Mr. Haywood, and unanimously approved by the Board of Commissioners, the meeting was adjourned.

  
\_\_\_\_\_  
David G. Kraynik  
Township Manager

as per Anna Marie Felix



APPROPRIATION BY YEAR

DEPARTMENT NAME: LIQUID FUELS  
 COST CENTER: 13

DESCRIPTION	LINE ITEM #	ACTUAL 2010	BUDGETED 2011	BUDGETED 2012
Signs & Markings	200	60,187	75,000	50,000
Maintenance of Streets	201	130,763	227,472	177,472
Snow Removal	202	283,933	287,500	186,000
Construction & Reconstruction of Streets	203	344,785	255,137	275,962
Surface Water Drains	204	0	0	0
Equipment Purchases	206	5,128	4,100	0
Unappropriated	208	0	0	0
<b>Total Expense</b>		<b>824,796</b>	<b>849,209</b>	<b>688,434</b>

State Liquid Fuels  
Cost Center: 13

Expense Number	Project Number	Description	BALANCE 12-31-11 Liquid Fuels Grant Total	BUDGETED 2012
1344	433	Signs and Markings	\$0.00 <u>\$689,434.00</u> \$689,434.00	<u>50,000</u> 50,000
1320	438	Maintenance of Streets		
1321	438	Salaries - Highway Schedule		14,135
1322	438	Wages - Maint. of Streets		142,337
1327	438	Wages - Streets Over-time		0
1341	438	Longevity		0
	438	Maint. Materials-Bituminous, etc.		<u>21,000</u> 177,472
1321	432	Snow Removal		
1322	432	Wages - Full-time		50,000
1341	432	Wages - Over-time		56,000
1351	432	Materials: Salt, Cinders, Mag. Chloride		50,000
	432	Equipment Rental		<u>30,000</u> 186,000
1341	439	Construction and Recon. of Streets		
1341	436	Surface Water Drains		<u>275,962</u> 275,962
1365	430	Equipment Purchases		0
	430	Asphalt Saw Trailer		0
	430	Misc. Sign Shop Tools		<u>0</u> 0
		Unappropriated		<u>0</u> 0
<b>DEPARTMENT TOTAL</b>				<u>689,434</u>

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
CHELTENHAM TOWNSHIP  
FOR THE  
TOOKANY CREEK PROJECT  
CHELTENHAM TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA

DRAFT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Philadelphia District and Cheltenham Township (hereinafter the "Non-Federal Sponsor"), represented by the Township Manager.

WITNESSETH, THAT:

WHEREAS, the Government received a letter, dated July 17, 2003, from the Township of Cheltenham in which it stated its desire to participate in a feasibility study for flood damage reduction in Cheltenham Township, and in which it acknowledged its financial responsibilities for the study and a project, if one is recommended;

WHEREAS, the Secretary of the Army is authorized by Section 205 of the Flood Control Act of 1948, Public Law 80-858, as amended (33 U.S.C. 701s; hereinafter "Section 205") to allot from certain appropriations an amount not to exceed \$50,000,000 per *fiscal year* for the implementation of small structural and nonstructural projects for flood control and related purposes; provided that no more than \$7,000,000 shall be allotted for a project at any single locality;

WHEREAS, the Government initiated a feasibility study, to be initially Federally funded up to \$100,000, and during this Federally funded portion the Government determined that the costs of the feasibility study would exceed \$100,000;

WHEREAS, the Government and Cheltenham Township desire to enter into an agreement (hereinafter the "Agreement") to complete the feasibility study (hereinafter the "Study" as defined in Article I.A. of this Agreement) and to share equally the costs of the Study that exceed \$100,000;

WHEREAS, Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements applicable to the Study;

WHEREAS, the Non-Federal Sponsor desires to provide in-kind contributions (hereinafter the "*non-Federal in-kind contributions*" as defined in Article I.I. of this Agreement) that are necessary to prepare the feasibility report and to receive credit for such contributions

toward the amount of its required contribution for the *Study*;

WHEREAS, the Non-Federal Sponsor may provide up to 100 percent of its required contribution for the *Study* as *non-Federal in-kind contributions*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Study* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful *Study*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

#### ARTICLE I – DEFINITIONS

A. The term "*Study*" shall mean the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, when appropriate, recommends a coordinated and implementable solution for flood damage reduction in Cheltenham Township, Pennsylvania. The term includes the *non-Federal in-kind contributions* described in paragraph I. of this Article.

B. The term "*total study costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to performance of the *Study* plus the costs of the *Study* incurred by the Government prior to the effective date of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's costs of plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; the Government's costs of preparation of the decision document for the *Study*; the costs of the *non-Federal in-kind contributions* determined in accordance with Article II.B.3. of this Agreement; the Government's costs of independent technical review and other review processes required by the Government; the Non-Federal Sponsor's and the Government's costs of participation in the Study Coordination Team in accordance with Article III of this Agreement; the Government's costs of contract dispute settlements or awards; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article VI.B. and Article VI.C. of this Agreement. The term does not include the first \$100,000 incurred by the Government for the *Study*; any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies or feasibility studies under any other agreement or program; the Non-Federal Sponsor's costs of negotiating this Agreement; or any costs of negotiating a project

cooperation agreement for design and construction of a project or separable element thereof.

C. The term "*period of study*" shall mean the time from the effective date of this Agreement to the date that the decision document for the study is duly approved by the Government or the date that this Agreement is terminated in accordance with Article IX of this Agreement.

D. The term "*financial obligations for the study*" shall mean the financial obligations of the Government and the costs for the *non-Federal in-kind contributions*, as determined by the Government, that result or would result in costs that are or would be included in *total study costs*.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the sum of the costs included in *total study costs* for the *non-Federal in-kind contributions*, as determined by the Government, and the Non-Federal Sponsor's contribution of funds required by Article II.B.1.b. of this Agreement to *financial obligations for the study*, as projected by the Government.

F. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

G. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

H. The term "*PMP*" shall mean the project management plan, and any modifications thereto, developed by the Government, and agreed to by the Non-Federal Sponsor, that specifies the scope, cost, and schedule for *Study* activities and guides the performance of the *Study* through the *period of study*.

I. The term "*non-Federal in-kind contributions*" shall mean planning, supervision and administration, services, materials, supplies, and other in-kind services that are performed or provided by the Non-Federal Sponsor after the effective date of this Agreement in accordance with the *PMP* and that are necessary for performance of the *Study*.

J. The term "*Section 205 Annual Program Limit*" shall mean the statutory limitation on the Government's annual allotment for planning, design, and construction of all projects implemented pursuant to Section 205 of the Flood Control Act of 1948, Public Law 80-858, as amended (33 U.S.C. 701s). As of the effective date of this Agreement, such limitation is \$50,000,000.

K. The term "*fiscal year of the Non-Federal Sponsor*" shall mean one year beginning on January 1 and ending on December 31.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND  
THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall conduct the *Study*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall perform or provide the *non-Federal in-kind contributions* in accordance with applicable Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for the *Study* or commence the *Study* using the Government's own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Study*.

2. To the extent possible, the Government and the Non-Federal Sponsor shall conduct the *Study* in accordance with the *PMP*.

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all products that are developed by contract or by Government personnel during the *period of study*. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the final approval of all *Study* products shall be exclusively within the control of the Government.

4. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all Government contracts, including relevant scopes of work, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of work on the *Study* using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Study*, except for the *non-Federal in-kind contributions*, shall be exclusively within the control of the Government.

5. At the time the U.S. Army Engineer, Philadelphia District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Study*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

6. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *non-Federal in-kind contributions*, including relevant scopes of work, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government but the contents of solicitations, award of contracts or commencement of work on the *Study* using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *non-Federal in-kind contributions* shall be exclusively within the control of the Non-Federal Sponsor.

7. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract awarded by the Non-Federal Sponsor for the *non-Federal in-kind contributions*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

B. The Non-Federal Sponsor shall contribute 50 percent of *total study costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide a contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions listed in the next sentence will be less than the Non-Federal Sponsor's required share of 50 percent of *total study costs*, the Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share without considering the credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph B.4. of this Article. The Government shall determine the amount of funds that would be necessary by subtracting from the Non-Federal Sponsor's required share of 50 percent of *total study costs* the collective value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement.

b. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article IV.B. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide, the Government shall reduce the amount determined in accordance with paragraph B.1.a. of this Article by the amount of credit the Government projects will be afforded for the *non-Federal in-kind contributions* pursuant to paragraph B.4. of this Article.

2. The Government, subject to the availability of funds and as limited by paragraph B.5. of this Article and the *Section 205 Annual Program Limit*, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 50 percent of *total study costs* if the Government determines at any time that the collective value of the following has exceeded 50 percent of *total study costs*: (a) the Non-Federal Sponsor's contribution of funds required by paragraph B.1.b. of this Article; (b) the amount of credit to be afforded for the *non-Federal in-kind contributions* pursuant to paragraph B.4. of this Article; and (c) the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement.

3. The Government shall determine and include in *total study costs* any costs incurred by the Non-Federal Sponsor for *non-Federal in-kind contributions*, subject to the conditions and limitations of this paragraph. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total study costs* for *non-Federal in-kind contributions*.

a. Acceptance by the Government of *non-Federal in-kind contributions* shall be subject to a review by the Government to verify that all economic, engineering, real estate, and environmental analyses or other items performed or provided as *non-Federal in-kind contributions* are accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies, and to verify that all analyses, services, materials, supplies, and other in-kind services provided as *non-Federal in-kind contributions* are necessary for the *Study*.

b. ~~The Non-Federal Sponsor's costs for *non-Federal in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement shall be subject to an audit in accordance with Article VI.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.~~

c. The Non-Federal Sponsor's costs for *non-Federal in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *non-Federal in-kind contributions* are provided and the time the costs are included in *total study costs*.

d. The Government shall not include in *total study costs* any costs for *non-Federal in-kind contributions* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

e. The Government shall not include in *total study costs* any costs for *non-Federal in-kind contributions* in excess of the Government's estimate of the costs of the *non-Federal in-kind contributions* if the services, materials, supplies, and other in-kind services had

been provided by the Government.

4. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph B.1.a. of this Article for the costs of the *non-Federal in-kind contributions* determined in accordance with paragraph B.3. of this Article. However, the maximum amount of credit that can be afforded for the *non-Federal in-kind contributions* shall not exceed the least of the following amounts as determined by the Government: the amount of funds determined in accordance with paragraph B.1.a. of this Article; the costs of the *non-Federal in-kind contributions* determined in accordance with paragraph B.3. of this Article; or 50 percent of *total study costs*.

5. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs of *non-Federal in-kind contributions* determined in accordance with paragraph B.3. of this Article and included in *total study costs* that exceed the amount of credit afforded for the *non-Federal in-kind contributions* determined in accordance with paragraph B.4. of this Article and the Non-Federal Sponsor shall be responsible for 100 percent of all costs of *non-Federal in-kind contributions* included in *total study costs* that exceed the amount of credit afforded.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Study* is limited by the following provisions of this paragraph.

1. In the event the Government projects that the amount of Federal funds the Government will make available to the *Study* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Study* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total study costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Study*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article IX.C. of this Agreement.

2. If the Government determines that the total amount of Federal funds provided by Congress for all studies and projects implemented pursuant to Section 205 has reached the *Section 205 Annual Program Limit*, and the Government projects that the Federal funds the Government will make available to the *Study* within the *Section 205 Annual Program Limit* will not be sufficient to meet the Federal share of *total study costs*, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Study* within the *Section 205 Annual Program Limit*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article IX.C. of this Agreement.

3. As of the effective date of this Agreement, ~~XXXX XXXX(TTD)~~ of Federal funds is currently projected to be available for the *Study*. The Government makes no commitment to request Congress to provide additional Federal funds for the *Study*. Further, the Government's financial participation in the *Study* is limited to the Federal funds that the Government makes available to the *Study*.

D. Upon conclusion of the *period of study*, the Government shall conduct an accounting, in accordance with Article IV.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

E. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Study* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

F. This Agreement shall not be construed as obligating either party to implement a project. Whether the Government proceeds with implementation of the project depends upon, among other things, the outcome of the *Study* and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration.

### ARTICLE III - STUDY COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Study Coordination Team. Thereafter, the Study Coordination Team shall meet regularly until the end of the *period of study*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Study Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Study Coordination Team informed of the progress of the *Study* and of significant pending issues and actions, and shall seek the views of the Study Coordination Team on matters that the Study Coordination Team generally oversees.

C. Until the end of the *period of study*, the Study Coordination Team shall generally oversee the *Study*, including matters related to: plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; scheduling of reports and work products; independent technical review and other review processes required by the Government; completion of all necessary environmental coordination and documentation; contract awards and modifications; contract costs; the Government's cost projections; the performance of and scheduling for the *non-Federal in-kind contributions*; determination of anticipated future

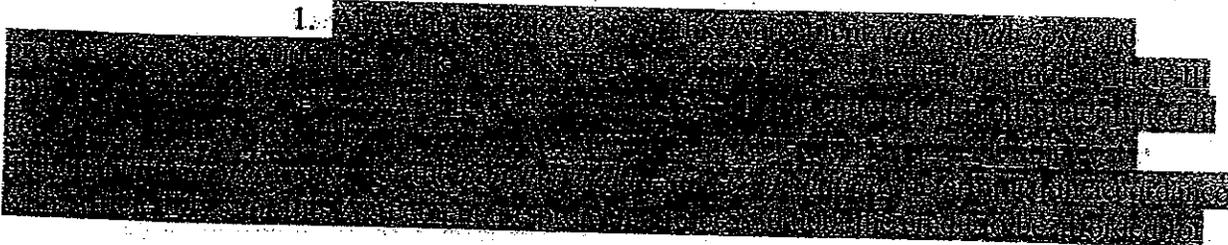
requirements for real property and relocation requirements and performance of operation, maintenance, repair, rehabilitation, and replacement of the proposed project including anticipated requirements for permits; and other matters related to the *Study*. This oversight of the *Study* shall be consistent with the *PMP*.

D. The Study Coordination Team may make recommendations to the District Engineer on matters related to the *Study* that the Study Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Study Coordination Team. The Government, having the legal authority and responsibility for performance of the *Study* except for the *non-Federal in-kind contributions*, has the discretion to accept or reject, in whole or in part, the Study Coordination Team's recommendations. On matters related to the *non-Federal in-kind contributions*, that the Study Coordination Team generally oversees, the Study Coordination Team may make recommendations to the Non-Federal Sponsor including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Study Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for the *non-Federal in-kind contributions*, has the discretion to accept or reject, in whole or in part, the Study Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.

E. The Non-Federal Sponsor's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article VI.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

#### ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, the contributions provided by the parties, the costs included in *total study costs* for the *non-Federal in-kind contributions* determined in accordance with Article II.B.3. of this Agreement, and the credit to be afforded for the *non-Federal in-kind contributions* pursuant to Article II.B.4. of this Agreement.

1. 



additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total study costs*, each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required share of *total study costs* exceeds the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, PHILADELPHIA DISTRICT, E5" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *total study costs* exceed the Non-Federal Sponsor's total required share thereof, the Government, subject to the availability of funds and as limited by Article II.B.5. of this Agreement and the *Section 205 Annual Program Limit*, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with the provisions of this paragraph.

1. Not later than 60 calendar days after the effective date of this Agreement, the Government shall determine that portion of *financial obligations for the study* incurred prior to the commencement of the *period of study* and furnish the Non-Federal Sponsor with written notice of the results of such determination. If outstanding relevant claims and appeals prevent a final determination of that portion of *financial obligations for the study* incurred prior to the commencement of the *period of study* from being conducted in a timely manner, the Government

shall prepare an interim determination of that portion of *financial obligations for the study* incurred prior to the commencement of the *period of study* and furnish the Non-Federal Sponsor with written notice of the results of such interim determination. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim determination to complete the final determination and furnish the Non-Federal Sponsor with written notice of the results of such final determination of that portion of *financial obligations for the study* incurred prior to the commencement of the *period of study*. The interim or final determination, as applicable, shall determine that portion of *financial obligations for the study* incurred prior to the commencement of the *period of study* and each party's required share thereof.

2. The Government shall calculate four equal installments for payment of the Non-Federal Sponsor's required 50 percent share of that portion of *financial obligations for the study* incurred prior to the commencement of the *period of study*. The Government shall notify the Non-Federal Sponsor in writing of the Non-Federal Sponsor's required share of that portion of *financial obligations for the study* incurred prior to the commencement of the *period of study* and the amount of each installment.

3. The Non-Federal Sponsor shall pay the installments calculated pursuant to paragraph D.2. of this Article upon each six month anniversary of the date the Government notifies the Non-Federal Sponsor of the Non-Federal Sponsor's required share of that portion of *financial obligations for the study* incurred prior to the commencement of the *period of study* and the amount of the installments by delivering a check payable to "FAO, USAED, PHILADELPHIA DISTRICT, E5" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

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## ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

## ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial

management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by OMB Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Study* shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

## ARTICLE VII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto and Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

## ARTICLE VIII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

#### ARTICLE IX - TERMINATION OR SUSPENSION

A. Prior to conclusion of the *period of study*, upon 30 calendar days written notice to the other party, either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

B. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of performance of the *Study* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Study*.

C. In the event future performance under this Agreement is suspended pursuant to Article II.C. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total study costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article, the parties shall conclude their activities relating to the *Study* and conduct an accounting in accordance with Article IV.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Study* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.1.b. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications. Upon termination of this Agreement, all data and information generated as part of the *Study* shall be made available to the parties to the Agreement.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date

on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

#### ARTICLE X - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:  
Cheltenham Township  
Administration Building  
8230 Old York Road  
Elkins Park, PA 19027-1589

If to the Government:  
District Engineer  
U.S. Army Engineer District, Philadelphia  
Wanamaker Building  
100 Penn Square East  
Philadelphia, PA 19107-3390

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

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C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

#### ARTICLE XI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

TOWN OF CHELTENHAM

BY: \_\_\_\_\_  
Philip M. Secrist, III  
Lieutenant Colonel, Corps of Engineers  
District Commander

BY: \_\_\_\_\_  
David G. Kraynik  
Township Manager

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer of Cheltenham Township, that Cheltenham Township is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Cheltenham Township in connection with the feasibility study for Tookany Creek, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of Cheltenham Township have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
\_\_\_\_\_ day of \_\_\_\_\_ 2012.

\_\_\_\_\_  
Joseph M. Spole  
Township Solicitor

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
David G. Kraynik  
Township Manager

DATE: \_\_\_\_\_



**US Army Corps  
of Engineers.**  
Philadelphia District

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**TOOKANY CREEK  
CHELTENHAM TOWNSHIP, MONTGOMERY COUNTY,  
PENNSYLVANIA**

**SECTION 205, FLOOD DAMAGE REDUCTION**

**DRAFT**

**PROJECT MANAGEMENT PLAN**

**Philadelphia District  
North Atlantic Division  
March 2012**

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## 1.0 INTRODUCTION

Guidance contained in ER 5-1-11, dated 27 February 1998, states that each project shall be managed in accordance with a plan. The Project Manager develops this management plan with the customer and the other team members. The plan will be developed and maintained at a level of detail commensurate with the size and complexity of the project. It is a living, working level document that records the history, documents, commitments by USACE and the customer, and depicts the future direction of the project. It is a binding agreement among all elements supporting the project that details how the work will be executed and how resources will be expended. It defines the baseline scope, schedule, resources, including contingencies, and provides a configuration (change) management plan for the project.

The schedule and funding levels shall be realistic and reflect overall program and budget constraints and realities. It will consider all project requirements including real estate, planning, design, engineering, construction, environmental, operations, and other types of work whether performed by USACE, customer, or by contract.

## 2.0 BACKGROUND

### Study Authority

The authority for this project is Section 205 of the Flood Control Act of 1948 (Public Law 80-858), as amended. Under this authority, the USACE is authorized to plan, design, and construct small flood control projects. Each project is limited to a Federal cost of not more than \$7 million, including all project-related costs for feasibility studies, planning, engineering, design, and construction.

### Funding

Federal funds for \$100K were provided in past fiscal years to initiate an investigation and negotiate a Feasibility Cost Share Agreement (FCSA) with a non-Federal sponsor. Cheltenham Township has expressed interest in acting as the non-Federal sponsor for this Feasibility Study.

### Study Area

Cheltenham Township is located just north of Philadelphia within the Philadelphia Consolidated Metropolitan Statistical Area, on the southeastern edge of Montgomery County in southeastern Pennsylvania. The county is bordered by the City of Philadelphia to the southeast, Chester County to the southwest, Berks County to the northwest, Lehigh County to the North and Bucks County to the northeast. The study area will comprise the Tookany Creek watershed.

### Purpose of Study

The feasibility study is the first phase of the two-phased Corps of Engineers' planning process. The purpose of the feasibility study is to evaluate all reasonable solutions to the water resource problems identified in Cheltenham Township as part of the study area. The feasibility report provides the basis for a decision on project construction.

Comment (E1): After the meeting, thought is might be best simply state Tookany Creek watershed as an all encompassing term and then add a further below about addressing problems in Cheltenham Township.

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The Study will consider the following structural and non-structural measures:

**Structural Measures**

- Raise Levees
- Levees/Floodwalls
- Bridge modification
- Bio-swales
- Bio-retention basins

**Non-structural measures**

- No Action
- Flood warning system
- Floodproofing
- Permanent evacuation of the floodplain (buyout)
- Floodplain land use controls

**Study Sponsor**

The study sponsor is Cheltenham Township, Montgomery County, Pennsylvania.

**Format of the Project Management Plan**

This PMP covers project tasks and products for the Feasibility Phase. The Feasibility Phase includes all studies and investigations, plan formulation, preliminary design, and environmental assessments required to identify the most cost effective solution to address the frequent flooding that occurs along Tookany Creek and its tributaries within the study area.

**Plan Formulation and Development**

In the feasibility phase, the planning process identifies alternative plans that should be evaluated. The culmination of the planning process is selection of a recommended plan or the decision to recommend no action. The selection will be based on a comparison of the effects of alternative plans. The alternative plan, which maximizes the net National Economic Development (NED) benefits, will be selected. The alternative of recommending no action, i.e., selecting none of the alternative plans, will also be fully considered. The recommended plan may involve a project outside the limits of Cheltenham Township, but will ultimately provide benefits to the Community.

**Scope of Studies**

This section of the PMP provides the objectives and a description of the products to be accomplished during development of the feasibility report. Section 3 lists the specific descriptions of each study task. Section 4 lists the organizational elements responsible for each task. The study schedule is addressed in Section 5.

The objectives of the Feasibility Phase of the project are to:

- Prepare the Feasibility Report for the project
- Prepare an Environmental Assessment and NEPA documentation for the project,
- Prepare a Project Management Plan (PMP) for the Design and Implementation Phase,
- Develop other supporting plans as needed for completion of the Feasibility Report.

#### **Views of the Sponsor**

Cheltenham Township supports the study and will serve as the non-Federal sponsor.

#### **Views of Federal, State, Regional and Interested Organizations**

Study efforts will be coordinated with other Federal, state and local agencies as well as interested stakeholders, including the Pennsylvania Department of Environmental Protection. The Feasibility Report and Environmental Assessment will be developed and coordinated with appropriate agencies and interested organizations.

### **3.0 SCOPES OF WORK**

For each task that is included in the work breakdown structure (WBS), a scope of work will be developed that describes the work that is to be performed, including specific activities to be accomplished in narrative form. The scopes of work will be developed by the project delivery team (PDT) which includes the non-Federal sponsor. A brief synopsis of tasks grouped by phase of the study follows:

#### **Development of PMP for Feasibility Study**

Completed draft Feasibility Cost Share Agreement and Project Management Plan for Feasibility Study.

#### **Phase 1 – Preliminary Screening of Alternative Plans**

Given that the hydrology and hydraulics (H&H) modeling is likely to be the most critical portion of the study for the determination of existing conditions and potential solutions, this modeling will be performed in the first phase of the feasibility effort. When the H&H modeling is completed in the first phase and the potential solutions have been formulated and analyzed, USACE and the non-Federal sponsor will meet to discuss the findings and the path forward. Should the preliminary H&H modeling suggest that a cost effective solution to the flooding problems is not feasible, USACE and the non-Federal sponsor can consider termination of the study in accordance with the FCSA. If the potential solutions are considered feasible and cost effective by USACE and the non-Federal sponsor, the study can move forward in more detail as discussed under Phase 2.

#### **Hydrologic and Hydraulic Models**

Develop a hydrologic and hydraulic model for use in determining with and without project conditions. Visit site for determination of hydraulic parameters. Calibrate to USGS gages and available high water marks within the study limits. Multiple frequency water surface (or depth)

profiles will be calculated and data such as elevation frequency will be provided to the economic models along with recommendations for reach index station and reference flood selections.

#### **Public Workshop**

After completion of the without project conditions (hydrologic and hydraulic models), the project team will hold a public workshop, at a time convenient to maximize public participation, to present the results of the modeling and begin the coordinating the development of alternative plans through problem identification and opportunity development. More than one workshop may be necessary as determined by the project team.

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#### **Problem Identification**

Upon review of the without project condition and the results of the public workshop(s), develop a matrix of problems within the study area.

#### **Formulate Alternative Plans**

These alternatives may include a combination of non-structural and structural solutions for flood damage reduction. It is anticipated that approximately three preliminary alternative plans will be examined. A conceptual design will be prepared for each alternative and preliminary costs will be calculated.

#### **Perform Initial Screening of Alternative Plans**

The alternative plans will be screened to compare their relative effectiveness in reducing flooding impacts versus their preliminary cost estimates. The plans or combination of plans that appear to have the best potential for solving the identified problems will be selected for further analyses in Phase 2.

#### **Phase 2 – Detailed Screening of Alternative Plans**

##### Environmental Tasks

##### **Scope Environmental Tasks**

Scoping efforts will include coordination with Federal and State resource agencies and appropriate local groups and interested individuals to identify environmental issues and concerns to be addressed during the NEPA process. Scoping efforts will include letters requesting information, telephone contacts, meetings and field visits, as appropriate.

##### **Perform General Environmental Studies**

Environmental data gathered during the scoping process will be compiled to address environmental issues and concerns. The information will be used to document both “with-” and “without-project” environmental conditions, and to provide environmental technical support during plan formulation. Additional information will be collected, as necessary, throughout the course of the Study to ensure that all environmental issues are adequately addressed. Data collection may include field visits.

### **Cultural Literature Search (Phase IA)**

The preliminary cultural resource investigations to be conducted are required to comply with the National Historic Preservation Act of 1966, as amended, and its implementing regulations, 36 Code of Federal Regulations Part 800, Protection of Historic Properties. The National Historic Preservation Act requires that all Federal undertakings be subjected to a review process to determine whether the undertaking may affect historic properties, and if historic properties are found, that the Federal agency take actions to avoid or minimize the effects of the undertaking on the historic property. The results of the cultural resource investigations will be used in project planning to minimize the potential effects of this project on significant cultural resources. For Phase IA, a records search, historical land use documentation, and State Historic Preservation Office (SHPO) consultation will be conducted to identify known and expected cultural resources in the study area. This cultural assessment will identify high, medium, and low culturally sensitive areas, in addition to identifying the existing condition, landscape, and disturbed areas. The assessment report will identify a Phase IB field strategy, if necessary.

### **Review of Without Project Environmental Studies**

Environmental data will be compiled and documented to provide a "without-project" description of the study area. This information will be included in the Decision Document and NEPA document, and will serve as the basis for making decisions regarding development of alternative plans.

### **Economic Tasks**

#### **Survey Property Owners**

Over the last decade or more, the community experienced multiple flooding events, some included in Presidential Disaster Declarations and other not. During the feasibility study, a survey (or series of interviews) will be conducted with a sampling of property owners and will be focused on areas identified by Cheltenham Township as the most severely impacted neighborhoods. This effort will attempt to compile a more comprehensive accounting of all historic flood damages and potential future damages. Structural data will be collected for determination of potential flood-related improvements that may be required in the future, such as first floor elevations.

#### **Interview Town Employees**

Interviews will be conducted with township employees to establish historic costs that the township has incurred due to flood events. These costs could include things such as additional staff labor and materials for road closures, detours, debris clean up, and rescues.

#### **Economic Analysis**

The economic analysis that will be conducted in the feasibility study will determine the most appropriate method for quantifying all of the costs that occur because of the flooding events. In conjunction with the hydrologic and hydraulic analysis, the economic analysis will also consider

the annual frequency of the flood events, the duration of the events, the number of properties and individuals impacted, and the type of property (primary residence, vacation residence, commercial business, etc.). The demographics of the individuals utilizing the properties (ie. adult, child, employed, retired, etc.) will be determined to help in measuring the opportunity cost of time impacted by flooding.

#### **Perform Preliminary Economic Evaluation**

Prepare Plan Alternatives and selected plan for the Economics appendix. Include tables comparing damage reduction of alternatives. Provide support for the main report.

#### **Survey Tasks**

##### **Topographic Surveys**

If survey information is not currently available for the determination of existing conditions on land or within the adjacent water bodies, land surveys may be required.

#### **Geotechnical Tasks**

##### **Geotechnical Site Reconnaissance**

Geotechnical research will be conducted to gather information to develop a subsurface investigation plan and obtain information to be utilized in the design analysis and report preparation.

#### **Real Estate Tasks**

##### **Prepare Real Estate Requirements for Planning Estimates**

Prepare a preliminary determination of requirements and costs for lands, easements, rights-of-way, relocations and disposal areas (LERRD) for proposed alternative plans. Prepare a Real Estate Plan for selected alternative.

#### **Plan Formulation Tasks**

##### **Plan Formulation**

Those alternatives that indicated viability during the initial analysis to determine their effectiveness in satisfying the objectives of the study and potential for meeting other needs will be considered. It is anticipated that approximately three viable plans will be considered. Coordination will determine the acceptability and implementation of technically and economically feasible alternatives. Impact assessment and evaluation, as well as public desires, will guide the development of alternative plans. During this phase, further refinement of the alternatives will concentrate on:

- location of component parts of plans, and resources needed for their implementation
- technical aspects of plans' effectiveness, performance, and reliability
- costs, to include capital (with real estate), operation, maintenance, and replacement, on a

- total and annual basis, and the feasibility of investment
- managerial and institutional policies and programs that would affect plan development or their implementation

The final step of plan formulation will be to evaluate the results of the analysis to determine the selected plan for satisfying the needs and objectives of the study. The selected plan will then be refined in order to determine the orientation and dimensions of project features, operations and maintenance requirements, project impacts (presented in the NEPA coordination document), and final estimated feasibility costs and benefits.

#### **Finalize Without Project Conditions**

Compile and review all the without project information. Prepare write-up for existing and without project condition, which will be part of the Draft Feasibility Report and NEPA document. Write-up includes text and tables. Conduct meetings with the PDT, sponsor management, independent technical review team and other interested parties to discuss the information and verify that the information is accurate and sufficient to accomplish plan formulation and optimization.

#### **Prepare Preliminary Design and Costs**

Prepare preliminary designs and cost estimates for alternative plans developed by the project delivery team including the non-federal sponsor.

#### **Coordinate Sponsor Management Review**

Prepare and conduct a management level meeting to discuss preliminary alternatives with the non-federal sponsor's management. Incorporate sponsor management comments in the formulation process as a member of the Project Delivery Team.

#### **Perform Plan Optimization**

Annualize initial costs and future maintenance costs associated with the plan alternatives. Included will be monitoring costs associated with any hydraulic or environmental concerns. Interest during construction will be applied to the selected plan.

#### **Evaluate Alternative Plans**

Model with project conditions for alternative plans to determine the National Economic Development (NED) plan.

#### **Draft Report Tasks**

##### **Report Preparation**

This task includes writing, editing, typing, drafting, reviewing, reproducing, and assembling study reports, environmental assessments and other related documentation required for transmittal by the Philadelphia District to Corps higher authority.

### **Prepare Draft EA**

Compliance requirements are outlined within the provisions of NEPA, the Council on Environmental Quality regulations 40 Code of Federal Regulations 1500-1508, and the Corps ER 200-2-2, Procedures for Implementing NEPA, 1988. A NEPA document will be prepared, including an alternatives analysis, in order to evaluate the project alternative that is proposed for implementation. The analysis will investigate engineering and environmentally feasible alternatives and evaluate the beneficial and adverse impacts the proposed solution will have on the environment. Tasks include documenting and assessing the effects of the proposed Federal action and alternatives on significant natural resources and completing the EA. The focus of NEPA compliance will be to provide information to other agencies, the public, and decision-makers on the study and to ensure that the report adequately addresses environmental requirements. Coordination, compliance, and documentation of other laws and regulations that require environmental compliance actions will be completed. This includes Sections 401 and 404 of the Clean Water Act, Section 7 of the Endangered Species Act, Clean Air Act, U.S. Fish and Wildlife Coordination Act, Section 106 of the National Historic Preservation Act, Prime and Unique Farmlands, and National Pollutant Discharge Elimination System Act. All appropriate environmental documentation (e.g., water quality certificate) must be obtained and included as part of the final Feasibility Report and EA.

### **Prepare Project Alternatives**

Prepare detailed design, including preliminary drawings, for the selected project alternative(s).

### **Prepare Alternative Projects Costs**

Prepare cost estimates for project alternatives.

### **Finalize Selected Plan Preliminary Design**

Finalize the preliminary designs for the selected plan.

### **Finalize Cost Estimates**

Cost estimates will be developed in accordance with the guidance contained in ER 1110-2-1302, Civil Works Cost Engineering using the MII (MCACES Second Generation) cost estimating system. Cost estimates will be prepared for all items that are required for project construction for both Federal and non-Federal costs, including mitigation, operation and maintenance. Calculate maintenance costs and schedules for the selected project alternative (and any associated costs). Provide text sections on cost estimates, including tables of cost estimates in Civil Works Breakdown Structure (CWBS). Include in the cost estimates real estate requirements.

### **Prepare Draft Feasibility Report and NEPA Document**

A draft Feasibility Report and National Environmental Policy Act (NEPA) environmental assessment will be prepared. The Decision Document will document technical data, tools, strategies, and methodologies used for the development and recommendation of plans and projects. Completion of the report will entail all work conducted during the study to include: problem identification, formulation and evaluation of alternative solutions, assessment of

potential impacts, and determination of study conclusions and recommendations. The NEPA document will assess the environmental impacts related to the proposed plans.

**Conduct District Quality Control and Agency Technical Review**

District Quality Control (DQC) is the review of basic science and engineering work products focused on fulfilling the project quality requirements defined in this PMP. Agency Technical Review (ATR) is conducted by a qualified team outside of the home district and is to ensure the proper application of clearly established criteria, regulations, laws, codes, principles and professional practice.

**Finalize Draft Feasibility Report and NEPA Document**

Following the District Quality Control and Agency Technical reviews, comments received on the draft Feasibility Report and Environmental Assessment will be addressed, and appropriate changes will be incorporated into the documents.

**Review by NAD**

NAD will review the Draft Feasibility Report and Environmental Assessment. Based on their review, comments will be provided to the district for consideration. Subsequent to this review, NAD will allow release of the draft report for public review.

**Public and Agency Review of Draft Feasibility Report and EA**

The draft Feasibility Report and EA will be coordinated with federal and State resource agencies, appropriate local groups, and interested individuals. A Public Notice announcing the availability of the draft document will be prepared and distributed. Letters of comment will be solicited during coordination of the draft report. These letters will be included in a comment/response appendix to the final report.

**Final Report Tasks**

**Solicit Appropriate State Approvals**

The draft EA will be used as technical documentation to solicit preliminary State approvals including Section 401 Water Quality Certification from the Pennsylvania Department of Environmental Protection.

**Respond to Public Comments on Draft Report & EA**

Address all comments received on the Draft Feasibility Report and Environmental Assessment. All comment letters will be included in an appendix to the final report, and all comments and recommendations will be addressed in a comment/response format.

**Prepare Final Report & EA**

Following review of the draft report and receipt of public coordination comments, the final Feasibility Report and NEPA document will be prepared. The final Feasibility Report and NEPA document will be reviewed and processed by Corps higher authority. It will serve as the decision

document for plan implementation.

#### **Final Feasibility Report & EA Reproduction**

Incorporate all appropriate revisions into the Final Feasibility Report and Environmental Assessment. Reproduce or publish the Final Feasibility Report and Environmental Assessment on the internet. Digital and hard copy reports to be provided to Cheltenham Township.

#### **Brief DE and Obtain Signature**

Brief the District Engineer regarding the project conclusions and recommendations. Obtain the District Engineer's signature on the Final Feasibility Report and Finding of No Significant Impact.

#### **Approval of Feasibility Report by NAD**

NAD approves Final Feasibility Report and EA.

#### Ongoing Tasks

##### **Project Management**

This effort includes frequent coordination with technical elements, responses to congressional or other study related inquiries, maintaining open dialogue with the sponsor and others, allocating funds, coordinate schedules, advising the sponsor of funding required. Considerable effort will be placed on coordinating team efforts; meeting with the sponsor and potential partner agencies and organizations. This task includes coordinating, arranging, and facilitating regular team meetings and briefing Corps of Engineers staff and the non-federal sponsor on study progress. The project manager will also ensure that all data collection activities are proceeding as scheduled and that the information collected is properly disseminated. In addition, a fully coordinated work plan including schedules, scopes of tasks, and management and financial reports for the Corps network analysis (P2) and financial management systems (CEFMS) will be developed and maintained.

##### **Study Management/ Sponsor Coordination**

Study management entails coordinating all aspects of the project with the Project Delivery Team including documentation, upper level management and sponsor management reviews from the point of initiation through the review process to completion of the Decision Document. Much of the task in the first part of the study will be ensuring that the work plans developed by the technical elements meet the expectations of management. This task includes preparation and monitoring progress of tasks, and associated reporting requirements. It includes daily coordination with technical elements, response to inquiries and coordination with sponsor management and North Atlantic Division (NAD). The task also includes monitoring, updating, and reporting on financial progress.

##### **District Quality Control/ATR**

The District will conduct an internal review at decision points in the development of the

Feasibility Report. NAD will coordinate the establishment of an Agency Technical Review (ATR) team for the review process. This review will be conducted to satisfy quality assurance and quality control guidance and regulations.

#### 4.0 RESPONSIBILITY ASSIGNMENT

##### Team Member Identification and Responsibilities

Following receipt of funding for the study, an inter-disciplinary study team will be formed to evaluate the problems and needs in the study area and to coordinate the scope of the Feasibility Report. The team initially consisted of planning and environmental representatives, but has been expanded to include personnel from all technical and other disciplines necessary to conduct and complete the Feasibility Report. Team members will meet on a periodic basis to discuss specific work tasks, schedules, progress, and overall project status, as required. The Project Delivery Team (PDT), which includes the sponsor, will also participate in field trips and meetings with stakeholders, the public and other agencies, as required. Specifically, the team will conduct a series of public meetings (minimum 4) to provide study progress reports and receive public input. These meetings will occur around critical milestones outlined below in Section 5.0 Study Schedule (not all milestones will require a public meeting),

In addition, an Agency Technical Review (ATR) Team will be formed. ATR team members will be selected based on their experience and technical expertise relevant to the needed Feasibility Report components. All ATR Team members will have extensive experience and be considered senior specialists. The ATR Team will be provided with complete project development documentation, and conduct their reviews with complete independence. It is anticipated that the ATR Team will have five members.

PROJECT DELIVERY TEAM		
Discipline	Name	Office/Agency
Hydrology & Hydraulics	TBD	CENAP-EC-EH
Environmental	TBD	CENAP-PL-E
Economics	TBD	CENAP-PL-D
Civil Engineering	TBD	CENAP-EC-EC
Cost Engineering	TBD	CENAP-EC-EE
Geotechnical	TBD	CENAP-EC-DG
Geo-Environmental	TBD	CENAP-EC-EV
Real Estate	TBD	CENAB-RE-C
Project Manager	TBD	CENAP-PL-PS
Non Federal Sponsor	TBD	Cheltenham Township
Local Project Advisor	TBD	Environmental Advisory Council (EAC)

PROJECT DELIVERY TEAM		
Local Project Advisor	TBD	Tookany/Tacony-Frankford Watershed Partnership (TTF)

## 5.0 STUDY SCHEDULE

### Schedule Development

A preliminary schedule will be developed and entered into the Corps' P2 Network Analysis System. This schedule will be revised and updated as needed based on execution of the Feasibility Cost Share Agreement and receipt of necessary study funds.

### Funding Constraints

Federal funds in the amount of \$100,000 have been allocated to date to begin preliminary work on the feasibility study. No additional work beyond this amount can be undertaken without the execution of the Feasibility Cost Share Agreement and receipt of non-federal funds or work in kind from the cost-sharing partner.

### Study Milestone Schedule

<u>Major Project Milestones</u>	<u>Estimated Start Date</u>
Submit FCSA and PMP to NAD	April 2012
FCSA Execution	May 2012
Existing Conditions Modeling (I&H)	December 2012
Preliminary Screening of Alternative Plans*	January 2013
Detailed Screening of Alternative Plans*	July 2013
Submit Draft Feasibility Report to Division*	December 2013
Public Notice/ Public Review	February 2014
District Engineer Signs Feasibility Report	May 2014
Division Engineer Approves Feasibility Report	June 2014

\*Recommended points for public meetings

A detailed study schedule which incorporates the above milestones will be developed for the Feasibility Report. The project network analysis and baseline schedule will be utilized by the Project Manager and technical study team members in assessing the study progress and to prepare required management reports.

## 6.0 STUDY COST ESTIMATE

**Budget**

Initial budgetary information estimates are shown below. The feasibility phase is cost-shared equally between the Federal government and non-Federal sponsor after an initial allotment of \$100,000 in Federal funds. The 100% fully federally funded share of the feasibility phase (\$100,000) was used to preliminary evaluate project alternatives along Brookdale Avenue and Church/Shoemaker Road, and coordinate this project management plan and feasibility cost share agreement. The Non-Federal sponsor plans to contribute \$15,000 for project management.

Activity	Federal	Non-Federal		Totals
	Cash	Cash	In Kind	
Preliminary Investigation, PMP Preparation, Cost Share Agreement Coordination	\$100,000	\$0	\$0	\$100,000
<b>Phase 1</b>				
Hydrology & Hydraulics Modeling	\$80,000	\$80,000	\$0	\$160,000
Civil Engineering	\$12,500	\$12,500	\$0	\$25,000
Cost Engineering	\$12,500	\$12,500	\$0	\$25,000
Economics	\$10,000	\$10,000	\$0	\$20,000
GIS Technical Support	\$10,000	\$10,000	\$0	\$20,000
Public Workshop Delivery	\$10,000		\$10,000	\$20,000
Project Management	\$20,000	\$15,000	\$5,000	\$40,000
<b>Phase 2</b>				
Project Management	\$50,000	\$30,000	\$20,000	\$100,000
Environmental & Cultural	\$25,000	\$25,000	\$0	\$50,000
Hydrology & Hydraulics	\$15,000	\$15,000	\$0	\$30,000
Economics	\$15,000	\$15,000	\$0	\$30,000
Cost Engineering	\$20,000	\$15,000	\$5,000	\$40,000
Civil Engineering	\$30,000	\$30,000	\$0	\$60,000
Land Surveys	\$15,000	\$15,000	\$0	\$30,000
Geotechnical Engineering	\$12,500	\$12,500	\$0	\$25,000
Real Estate	\$10,000	\$10,000	\$0	\$20,000
Administrative & ADR	\$20,000	\$20,000	\$0	\$40,000
<b>Public Meetings and Coordination</b>				
Project Delivery Team	\$5,000	\$2,500	\$2,500	\$10,000
<b>Total</b>	<b>\$472,500</b>	<b>\$330,000</b>	<b>\$42,500</b>	<b>\$845,000</b>

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**7.0 - PROJECT COMMITMENTS**

Cheltenham Township has indicated their interest in pursuing a cost-shared Feasibility Study and has indicated their willingness to commit 50 percent of the estimated total feasibility phase costs totaling \$845,000, with the first \$100,000 being a 100% Federal responsibility. The cost-sharing agreement will show that the total cost to be shared is \$745,000. Therefore, the total

commitment required by Cheltenham Township is \$372,500 with an estimated \$42,500 in the form of in-kind services.

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### **8.0 – PROJECT ACQUISITION PLAN**

An acquisition plan will be prepared by the Philadelphia District in accordance with Federal Acquisition Regulations (FAR) and EFAR once in the Plan and Specifications phase to assure that services and construction required as part of the project are accomplished in a timely manner and at a reasonable cost using full and open competition. It is anticipated that a construction contract will be a fixed price, competitive procurement. Plans and Specifications will be prepared by in-house hired labor. If additional contract work is anticipated following the feasibility phase the acquisition plan will be revised and updated.

### **9.0 - PROJECT QUALITY CONTROL PLAN**

The project manager and the PDT develop and implement the BMP. All feasibility reports require review and the subject report will be approved at the Division level with Agency Technical Review (ATR) performed by Corps' personnel external to the Philadelphia District and the Project Delivery Team. The Agency Technical Review confirms the proper selection and application of clearly established criteria, regulations, laws, codes, principles, and professional procedures. The ATR also confirms the utilization of clearly justified and valid assumptions. Policy compliance review examines the development and application of decision factors and assumptions used to determine the extent and nature of Federal interest, project cost sharing and cooperation requirements, and related issues. It also ensures the uniform application of clearly established policy and procedures nationwide, and that the proposed action is consistent with the overall goals and objectives of the Corps' Civil Works program.

#### **Responsibilities of the Project Manager**

- Develop the BMP and the Peer Review Plan with the PDT and the ATR Team Leader
- Keep the PDT and the ATR Team Leader informed concerning study progress and the availability of items and findings to be reviewed
- Ensure that ATR review team comments are addressed in a timely manner by the appropriate PDT member
- Elevate unresolved comments up the chain of command for resolution
- Maintain a documented record of comment resolution

#### **Responsibilities of the Project Delivery Team**

- Develop and evaluate alternative plans
- Address ATR review comments in a timely manner
- Assist the Project Manager and Agency Technical Review Team Leader

#### **Responsibilities of the ATR Team Leader**

- Develop the Peer Review Plan with the Project Manager
- Facilitate requests for review team members through the functional chiefs

- Verify the expertise and experience of the review team nominees and assure their independence
- Evaluate review team comments before forwarding to the project manager to ensure that they are: clearly stated; based on guidance, regulation, or scientific/engineering principles; significant; and contain specific action to resolve the concern
- Ensure that reviews are promptly completed and forwarded to the project manager in a timely manner

**Responsibilities of the District Branch/Section Chiefs**

- Select technical review team members
- Assist in the resolution of review comments elevated by the project manager

**Responsibilities of the Chief of Planning**

- Approve selection of technical review team members
- Final arbiter of unresolved issues between the study and review teams
- Certifies the District Engineer's Statement of Technical Review

**Responsibility of District Counsel – Legal review/certification**

**Responsibility of the District Commander - Certifies Statement of Technical Review.**

**10.0 - PERFORMANCE MEASUREMENT**

Government performance will be measured monthly and at the conclusion of the FY with respect to identified milestones, Command Management Review indicators are used for Civil Works studies, and CEFMS/P2 schedules for fiscal execution with a goal of attaining a green rating in all indicators.

**11.0 - RISK ASSESSMENT**

There is some risk that the parties will be unable to agree to an acceptable scope for the feasibility study within the timeframe specified. However, it is expected that Federal and non-Federal funds will be available in Federal fiscal year 2012 to proceed with the study.

**12.0 - CHANGE CONTROL PLAN**

If, at any time, during the execution of this project, it becomes apparent that a commitment by either the Corps or the sponsor will not be met, or that the completion of a task will be delayed, or there is a change in the estimated cost which exceeds the contingencies available, the PDT will assess whether the delay can be recovered, or the costs recouped. The recovery plan will be documented in a revision to the PMP. If the completion schedule or cost estimate cannot be maintained, a revised schedule and/or cost estimate will be documented in the PMP.

### **13.0 - COMMUNICATIONS PLAN**

Throughout the feasibility phase, the District will be in contact with the non-Federal sponsor, and other entities with potential interest in the study to apprise them of study status and receive input on problems and needs of interest for Federal consideration. Further coordination will be held during refinement of the scope and costs of the feasibility phase effort and the responsible entities for accomplishment of tasks. During the conduct of the feasibility efforts, regular meetings and coordination will occur to review the progress of study efforts, conduct public involvement activities as outlined in this PMP, and set direction for further studies. This negotiated PMP, which is part of the Feasibility Cost Sharing Agreement, will also outline a schedule for non-Federal funding and in-kind services during the accomplishment of the study.

### **14.0 - REPORTING REQUIREMENTS**

Informal reporting of field trips, telephone conversations, meeting minutes, etc. will be recorded by the project manager, and coordinated and distributed as necessary. Formal communication will be documented in Memorandums or letters as appropriate. Monitoring results and project status will be reported to the District Project Review Board monthly. All upward reporting will be in accordance with ER 5-7-1.

### **15.0 - PROJECT DELIVERY TEAM COMMITMENT**

This PMP has been prepared in accordance with the guidance: ER 5-1-1, subject: Program and Project Management. PDT members are committed to accomplishing the goals of the Study.

District Engineer  
U.S. Army Corps of Engineers, Philadelphia District  
100 Penn Square East  
Wanamaker Building  
Philadelphia, PA 19107-3390

DRAFT

Dear LTC Secrist:

This letter reaffirms our interests in pursuing a flood damage reduction feasibility study for Cheltenham Township under the Section 205 of the Flood Control Act of 1948, as amended. We expressed our original interest in this effort in a letter addressed LTC Thomas Chapman, dated July 17, 2003.

In accordance with the provisions of **Section 205 of the Flood Control Act of 1948**, as amended, which authorizes the Federal government to initiate investigations and studies in the interest of flood control, Cheltenham Township hereby makes formal application for a study of Tookany Creek (Montgomery County, Pennsylvania).

Based on the effects of the Hurricane Floyd and Tropical Storm Allison in 1999 and 2001 respectively, the Township experienced significant flooding throughout the Community, particularly along Tookany Creek in Glenside, Wyncote, and Elkins Park neighborhoods of the Township. Most recently, the Township experienced severe flooding during the summer/fall of 2011 following the tropical events of Lee and Irene. Damage regularly occurs to public and private property through the community.

Cheltenham Township understands that the problem will be assessed through the conduct of a Feasibility Study. The Federal government will pay 100 percent of the costs for the Feasibility Study up to the Federal-funding limit of \$100,000. If the cost exceeds \$100,000, Cheltenham Township can provide 50 percent of this amount in excess of \$100,000 to complete the Feasibility Study. If Federal interest is determined during the Feasibility Study and the project proceeds into the Design and Implementation Phase, then Cheltenham Township will be required to share 35% of the Design and Implementation cost.

In addition, Cheltenham Township will provide the following local cooperation and participation:

1. Provide without cost to the Government, during the period of construction, all lands, easements, rights of way, and utility and facility alterations and relocations necessary for the construction and maintenance of the project, regardless of their value.
2. Makes a cash payment of not less than 5% of the total project cost during the period of construction, regardless of the value of the items in (1) above. If the value of the items in (1) above is less than 30% of the total project cost, the local sponsor, shall, during the period of construction, make such additional cash payments as are necessary to bring its total contribution in cash and value of lands, easements, rights of way, and utility and facility alterations and relocations, to an amount equal to 35% of the total project cost.
3. If the sum of items (1) and (2) above exceeds 50% of the total project cost, local contributions in excess of 50% will be reimbursed by the Federal government.
4. Hold and save the Government free from damages that may result from construction and subsequent maintenance of the project except damages due to the fault or negligence of the Government or its contractors.
5. Operate, maintain, and rehabilitate the project upon completion without cost to the Government, in accordance with regulations and directives prescribed by the Secretary of the Army.
6. Prevent future encroachment that might interfere with proper functioning of the project of flood control.
7. Assume responsibility for all cost in excess of the Federal cost limitations of \$7,000,000.

8. Provide guidance and leadership in preventing unwise future development of the flood plain by use of appropriate flood plain management techniques to reduce flood losses.

Sincerely,

David G. Kraynik  
Township Manager

DRAFT

**NON-FEDERAL SPONSOR'S  
SELF-CERTIFICATION OF FINANCIAL CAPABILITY  
FOR AGREEMENTS**

I, \_\_\_\_\_, do hereby certify that I am the Chief Financial Officer [OR TITLE OF EQUIVALENT OFFICIAL] of the Township of Cheltenham, Montgomery County, Pennsylvania (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Tookany Creek Study; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Tookany Creek Study.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_





## GOVERNMENT AFFAIRS CONSULTING AGREEMENT

*THIS GOVERNMENT AFFAIRS CONSULTING AGREEMENT* ("Agreement") is effective as of this 1<sup>st</sup> day of May, 2012, by and between Cheltenham Township ("the Client"), having offices at 8230 Old York Road, Elkins Park, Pennsylvania 19027-1589, and Duane Morris Government Strategies LLC ("DMGS"), a consulting and legislative services firm, upon the terms and conditions set forth below.

### RECITALS

The Client desires periodic consultation with DMGS in connection with the ongoing business and professional operations of the Client;

DMGS is willing to provide such consulting services to the Client; and

DMGS and the Client enter into this Agreement upon the terms and conditions herein set forth.

### TERMS

*NOW, THEREFORE*, for the consideration set forth in this Agreement and intending to be legally bound hereby, DMGS and the Client agree as follows:

1. Retention as a Consultant, Term. The Client hereby retains DMGS as a consultant to Client and as an independent contractor, and DMGS agrees to provide consulting services to the Client for a period of twelve (12) months beginning May 1, 2012 (the "Term"). This Agreement shall continue on a month-to-month basis at the end of the Term (each such month being an "Extension Term"), with notice to terminate effective at the end of the month in which the terminating party gives such notice. This Agreement shall terminate: at Client's option, upon sixty (60) days written notice during the Term; at DMGS' option, upon sixty (60) days written notice during the Term; or upon the mutual written consent of all parties hereto, at such time designated by such parties.

2. Scope of Services. DMGS shall provide government affairs consulting services to Client in accordance with the scope of services set forth in Exhibit A (the "Services"). In order for DMGS to

provide the Services, and as a condition precedent thereto, Client shall provide the materials or perform the obligations set forth in Exhibit A.

3. DMGS' Performance, Limitations, Services Not Legal Services. DMGS shall devote reasonable efforts and time necessary and appropriate to perform the Services. The parties acknowledge that there are no representations, either expressly or implicitly given, as to results to be obtained or methods to be employed by DMGS, and DMGS disclaims any implied warranties merchantability or fitness for a particular purpose. Additionally, in no case does DMGS hold itself out to be a law firm nor does DMGS provide legal advice, thus Client's relationship with DMGS is not an attorney-client relationship. The Services provided by DMGS are not legal services; therefore, such services, and communications relating thereto, are not subject to the protections applicable to relationships between lawyers and clients, such as the attorney-client privilege and the attorney work-product doctrine or the attorneys' rules of professional conduct. In all respects, however, each party represents to the other that it shall comply with all requirements of applicable law, rules or regulations relating to the undertakings contemplated by this Agreement. Under no circumstances shall DMGS be responsible or be held responsible for Client's compliance with campaign finance, pay-to-play or other applicable law governing the conduct of Client. Under no circumstances shall Client be responsible or be held responsible for DMGS's compliance with campaign finance, pay-to-play or other applicable law governing the conduct of Client. *DMGS (DGP) 5/7/12*

4. Compensation. In consideration of the commitments set forth herein, Client shall pay DMGS a consulting fee of Seven Thousand Five Hundred Dollars (\$7,500.00) per month beginning on May 1, 2012. All travel expenses and other reasonable expenses incurred by DMGS on behalf of the Client shall be reimbursed to DMGS upon presentation of appropriate receipts or other reliable evidence of such expenses. DMGS shall submit each anticipated expense over \$300.00 for pre-approval by the Township Manager.

5. Lobbying Disclosure. DMGS is registered with the proper authorities, including but not limited to the United States Congress and any state legislatures, offices, or agencies that require lobbyists to register their services and activities, and will amend its Commonwealth of Pennsylvania lobbying firm and lobbyist registrations to add Client upon execution of this Agreement. DMGS will comply with all reporting requirements to the United States Congress and any state legislatures, offices, or agencies for as long as such reporting is required. If DMGS becomes a registered lobbyist for Client, Client acknowledges that its activities and DMGS' may become a matter of public record. DMGS does not assume liability for Client's lobbying disclosure registrations, reports, or terminations. Client

acknowledges that by hiring a lobbyist, it is accepting responsibility for proper and timely reporting of lobbying activities and expenses as required by the United States Congress and any state legislatures, offices, or agencies. Further, for any and all lobbying work conducted on behalf of Client before the Commonwealth of Pennsylvania, its legislature, and administration, Client acknowledges DMGS' notification herein that certain other DMGS clients' interests may conflict with Client's; that DMGS will provide notice of any confirmed conflict should one arise; and provide details of the conflict. In the event of such conflict, Client may terminate this Agreement without further liability.

6. Non-Disclosure. During the Term and any Extension Terms, DMGS shall not disclose to any person or entity any information identified by Client as confidential information relating to the business or professional endeavors of the Client. If DMGS receives a subpoena or other compulsory legal process requiring the disclosure of information that is subject to this paragraph, DMGS shall, as soon as reasonably practicable, give written notice thereof to the Client, so as to provide the Client with a reasonable opportunity to seek a protective order or other relief prior to disclosure of the Client's confidential information.

7. Entire Agreement. This Agreement, including exhibits, contains the entire agreement of the parties with respect to the subject matter hereof and shall not be modified nor changed in any respect except in writing duly executed by both the parties.

8. Governing Law; Interpretation of Provisions. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but, if any provision of this Agreement shall be prohibited or is invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. This Agreement is made and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to its principles of conflicts of laws.

9. Successors and Assigns. All terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of each of the parties, their heirs, personal representatives, transferees, successors and assigns. This Agreement may not, however, be assigned by Client without the written permission of DMGS. This Agreement may also not be assigned by DMGS without the written permission of Client.

10. Damages Limitations. In the event of a claim by Client relating to this Agreement or any performance relating to this Agreement, Client shall not be entitled to recover any damages in excess of

the amount of fees Client paid to DMGS in the twelve (12) month period prior to the occurrence giving rise to such claim. In no event shall DMGS be liable for incidental or consequential damages of any kind, whether or not such damages are deemed foreseeable.

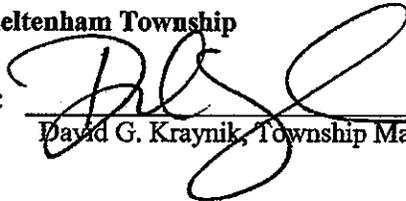
11. Disputes. Any legal action relating to this Agreement against Client shall be brought in state court in Montgomery County or in federal court in Pennsylvania. Any legal action relating to this Agreement against DMGS shall be brought in state or federal courts of Pennsylvania. The parties agree that such courts shall have sole and exclusive jurisdiction over such legal actions. Any legal action against DMGS with regard to this Agreement shall be brought within twelve (12) months of the conduct alleged to give rise to such claim.

*IN WITNESS WHEREOF*, the parties have executed and delivered this Agreement on the date first above written.

**Duane Morris Government Strategies LLC**

**Cheltenham Township**

By:   
Amy L. Kaminski, Managing Director

By:   
David G. Kraynik, Township Manager

## **EXHIBIT A**

### **Scope of Services**

#### **DMGS Services**

DMGS shall provide the following services to Client in accordance with this Agreement:

1. Develop a strategic plan to address the Department of Environmental Protection's (DEP) enforcement action against the Township, urging the DEP to reconsider.
2. Facilitate meetings with key policy makers, officials and staff at the Commonwealth of Pennsylvania, specifically the DEP and incoming DEP Regional Director, as well as DEP Secretary Michael Krancer.
3. Work with Client to create an effective message and develop or assemble the appurtenant materials such as white papers, PowerPoint presentations, or existing Township information items.
4. Strategically disseminate the message to appropriate stakeholders to advance the Township's position.
5. Assist the Township to secure additional EDUs from DEP.
6. Assist Township in obtaining grants for, but not limited to, sanitary sewer rehabilitation and economic development.

#### **Client Materials and Obligations**

In order for DMGS to perform the Services, DMGS requires the following to be provided or performed by Client on a timely basis:

1. Existing information on the enforcement action against the Township.
2. Participation in meetings scheduled by DMGS.
3. Secure written endorsements of both the Township's ongoing extensive remediation efforts as well as the Township's request to substantially reduce the enforcement action against the Township. Such endorsements should come from the leading environmental and watershed associations in the Township.