



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BUREAU OF WATERWAYS ENGINEERING

September 21, 2010

Marietta Borough Council  
ATTN: Jody Shaffner, Borough Secretary/Treasurer  
111 East Market Street  
Marietta, PA 17547

Re: DEP File No. C36:2 (DGS Project No. 182-21)  
Marietta Borough Flood Protection Project, Phase I  
Preliminary Right-of-Way Drawings and  
Sponsorship Agreement

Dear Ms. Shaffner:

The Department of Environmental Protection (DEP) has completed the preliminary design for Phase I of the Marietta Borough Flood Protection Project (DGS182-21), along the Susquehanna River and Evans Run in Marietta Borough, Lancaster County. Phase I is the first of three (3) phases of a flood control project. Upon completion of all three (3) phases, this project will provide flood protection to the residents and businesses in the Susquehanna River and Evans Run area against floods up to, and including, the 100-year flood.

**Phase I** of the project – which will not in and of itself provide a high degree of flood protection, but will help during the smaller flood events, will consist of:

- (1) Constructing two compacted earth Tie-Off Levees from the railroad embankment and tying into high ground at the upstream and downstream ends of the project.
  - a. The Upstream Tie-Off Levee will be constructed near the fence line of Armstrong World Industries and provide flood protection to Jagtrux, Inc, in East Donegal Township, and to the western end of Marietta Borough.
  - b. The Downstream Tie-Off Levee will be constructed around the East side of the wastewater treatment plant and cross Furnace Road. This levee will protect the downstream end of the Borough, the Vesta Iron Furnace, and the wastewater treatment plant from flooding. The access road to the river will be moved to the top of the levee and a ramp provided off the levee to the underpass. The boat launch will remain accessible after the project is completed.

Constructing a compacted Earth Berm around the Borough's side of the existing underpass near South Decatur Street. This will allow access to the river at the upstream end of the Borough, while preventing floodwater from backing through the underpass and flooding the Borough. Access to the underpass will be provided off South Porter Street and will require driving over the cutoff levee.

- (2) Protecting the Borough from river water backing up through the approximately 30 different stormwater culverts which outlet into the river. These stormwater drainage culverts are very old and extend from the Borough through the railroad embankment and outlet to the river. A new stormwater system will be installed along Front Street to combine stormwater flows and reduce the number of culverts that outlet to the river. Approximately 11 new culverts will be pushed through the railroad embankment. Backflow prevention measures, such as sluiceways and/or flapgates, will be installed on the new stormwater pipes. These measures allow stormwater to drain out of the culverts and seal to prevent floodwaters from flowing back through the culverts. The portions of existing stormwater pipes which will no longer be used will either be filled with grout and abandoned, or removed.

Future **Phase II** – required for flood protection – will include the following work:

- (3) Phase II: Constructing a 700-foot long concrete box culvert on Evans Run from Market Street downstream to the railroad embankment. The portion of Evans Run from North Waterford Street to Market Street will remain an earth channel, but will be widened to include an elevated floodplain. The East Prospect Alley arch bridge over Evans Run will have to be removed and the alley closed.

Future **Phase III** – required for flood protection – will include the following work:

- (4) Placing an impervious liner or berm on the riverside face of the railroad embankment for approximately 10,500 feet. The riverside face of the existing railroad embankment will be cleared and graded to have a smooth slope to hold the liner.
- (5) Constructing a Railroad Wall or Berm at the crest of the riverside face of the railroad embankment. This wall will be installed parallel with the railroad tracks, following the riverside edge of the railroad ballast. The top of this wall or berm will be at the same elevation as the Tie-Off Levees from Phase I, and will connect to them via Railroad Closure Structures.
- (6) Constructing Railroad Closure Structures to connect the Railroad Wall or Berm to each of the two compacted earth Tie-Off Levees. The top of the Railroad Closure Structures will be at the same elevation as the Railroad Wall or Berm and the Tie-Off Levees, and will connect to both.

Once constructed, all three (3) phases of this project will provide flood protection to the residents and businesses in the Susquehanna River and Evans Run area against floods up to, and including, the 100-year flood.

All Department of Environmental Protection (hereinafter called the "Department") flood protection projects must be sponsored by a political subdivision of the Commonwealth. Marietta Borough signed a project resolution on August 10, 1999, showing their interest in sponsoring the project. Marietta Borough signed another resolution on December 8, 2009 requesting the Department "to separate the project into multiple phases, and to prepare new Rights-of-Way Acquisition Drawings for each phase." In order for the project to proceed into final design, Marietta Borough must enter into Sponsorship Agreements with the DEPARTMENT. Four copies of the Sponsorship Agreement for Phase I are enclosed. This agreement describes the responsibilities of both Marietta Borough and the Commonwealth for design, construction, and maintenance for Phase I of the proposed flood protection project.

Also enclosed are Rights-of-Way Acquisition Drawings for Phase I. These drawings indicate the nature of the proposed work, the property interests that are needed to construct and maintain the project, and the conflicting utilities and structures that need to be removed or adjusted for project construction of Phase I of the Project.

The Project Progression Sequence, outlining various responsibilities and related components of work for the Borough and DEP and/or the Department of General Services (DGS):

**Project Progression Sequence:**

**1. Schedule a meeting**

The Borough may wish to schedule a meeting for DEP engineers to meet with Borough officials to discuss the proposed project and the responsibilities of the Borough in more detail.

**2. Estimate the Sponsorship Costs**

The Borough needs to determine the estimated cost for the various responsibilities related to the project. These responsibilities include land acquisitions and utility relocations. The Borough should work through their engineer, local water and sanitary authority, and utility companies to determine these estimated costs. DEP will offer assistance on items we are familiar with but when it comes to utility relocation costs the best source for information are authorities and utility companies since they are directly involved in this type of work.

**3. Adopt a Resolution and Sign the Sponsorship Agreement**

After the Borough has thoroughly reviewed the Sponsorship Agreement and understands its obligations as Sponsor, including the local costs related to the project, you need to

assure DEP of your willingness to continue with the project. To do this the Borough must adopt a resolution approving the Rights-of-Way Acquisition Drawings and authorizing the appropriate Borough officials to sign the Sponsorship Agreement. The authorized officials should then sign all four copies of the Agreement, indicating their respective titles. Do not fill in the date in the first paragraph on the first page of the Agreement. This date will be filled in once the Agreement is fully executed and all signatures are on the document.

After the Borough Officials sign the Sponsorship Agreement, they should send the four copies of the signed Sponsorship Agreement plus the Resolution to:

Patricia A. McSparran, Director  
Bureau of Waterways Engineering  
PA Department of Environmental Protection  
P.O. Box 8460, 400 Market Street  
Harrisburg, PA 17105-8460

After the remaining signatures are obtained and the Sponsorship Agreement is fully executed, a copy will be sent back to the Borough.

Signing the Sponsorship Agreement begins the final design phase of the project and also begins the land acquisition phase. These are two very important items that can proceed on parallel paths. The following items represent some of the major tasks for both DEP/DGS and the Project Sponsor:

#### **LOCAL RESPONSIBILITIES REQUIRED BY THE PROJECT SPONSOR:**

- **Acquire Project Lands**

Upon receiving the easement documents from DEP, the Borough should begin land acquisition. Land acquisition and conveyance requirements will be explained in a letter you will receive from the DGS Office of Chief Counsel after the Sponsorship Agreement is signed. You may also contact DGS Attorney Kathleen Bertolette at 717-783-3925 for clarifications on land acquisition and conveyance requirements.

**Be advised, the construction contract cannot be advertised until the Borough has acquired and conveyed all necessary property interests to DGS, and DGS and DEP have approved the acquisition documents.**

Periodically, DEP engineers will be contacting the Borough's solicitor to check on the progress of land acquisitions. We cannot stress enough the importance of continued progress on the part of the Borough. A lack of progress can be viewed as a lack of local support and commitment, and could result in long delays and possible withdrawal of project funding. DEP or DGS will assign a surveying firm to assist the Borough in

preparing easement documents to help with this process. See Article 5 of the enclosed Sponsorship Agreement.

- **Remove, Relocate, or Adjust Conflicting Utilities and Structures**

The Borough should also contact utility owners concerning the required adjustments. DEP engineers will be available to meet with the Borough and utility owners to help resolve any problems. The locations of utilities shown on the Rights-of-Way Acquisition drawings are approximate, based on field surveys and information obtained by the design engineers. Since the sponsor is responsible for relocating or altering all utilities that interfere with the proposed project, the Borough should verify that the drawings show all existing utilities in the project area. In general, utility relocations need not be done until a construction contract is awarded for the project. However, these relocations and adjustments must be completed prior to the time during which the DGS contractor has work scheduled in any affected areas. See Article 7 of the enclosed Sponsorship Agreement.

- **Financial Assistance for Local Costs**

If the Borough needs financial assistance to perform any of the work shown on the Sponsor Adjustment tables, it may be able to secure it from other sources. Some of the agencies that have previously provided assistance to other Project Sponsors are County Redevelopment Authorities, the Pennsylvania Department of Community and Economic Development, and the Federal Emergency Management Agency. DEP can give contacts for possible financial assistance organizations or contacts of some other communities who have experienced similar concerns and have found financial help.

As previously mentioned, the final design phase will begin once the Sponsorship Agreement is fully executed. The previous tasks addressed items the Project Sponsor had to proceed with and the following tasks are the responsibility of DEP and/or DGS.

### **DEP/DGS RESPONSIBILITIES:**

- **Investigate Subsurface Conditions**

As DEP advances the design, we will decide if a subsurface investigation is needed to determine the depth and character of the soil and bedrock within the proposed project area. If DEP decides that an investigation is needed, plans will be prepared showing the boring locations and the work areas needed to access and drill the holes. DEP would provide these plans to the Borough. The Borough would then be required to obtain permission (Temporary Easement) from the affected property owners to allow DEP's drilling contractor to conduct the investigation.

- **Meet with Property Owners**

DEP has already attended a number of public meetings to explain the project. Please feel free to contact the Project Coordinator if there are any questions.

- **Meet with Utility Companies**

DEP has made preliminary investigations to identify the utilities in the project area. These are shown on the right-of-way drawings as Sponsor Adjustments. Our engineers will continue to work with utility companies as necessary.

- **Prepare Construction Plans and Specifications**

As soon as the revised Sponsorship Agreement is signed, DEP will continue to finalize the project design, by preparing plans and technical specifications for the project and applying for all state and federal permits and approvals required for construction. This is a major undertaking and as previously mentioned will proceed on a parallel course with the lands, easements, rights-of-way, and utility adjustments.

- **Recommend Construction**

When final plans and specifications have been completed, permits obtained, land acquisitions and conveyances completed, and utility adjustments have been resolved, DEP will recommend to DGS that the project be advertised for construction. DGS will then ask the Office of the Budget to release the construction funds. Upon release of funds, DGS will advertise the construction contract for bids. If an acceptable bid is submitted, DGS will award the construction contract.

- **Provide Construction Inspection**

DEP will provide full-time construction inspectors throughout the construction period. These inspectors will be available to address any of the Borough's or residents' concerns or pass the questions and inquiries on to the DEP Project Professional. Job conferences will be held on a bi-weekly basis for the duration of construction. The Borough is welcome and encouraged to attend these job conferences to get project updates, pass on any problems or concerns, and to get the general feel of how the project is progressing.

- **Issue Operation and Maintenance Manual, and Conduct Maintenance Inspections**

When the construction phase is completed, DEP will provide the Borough with "AS BUILT" construction drawings and an Operation and Maintenance manual. DEP will also conduct annual or bi-annual maintenance inspections with the Borough to ensure the project is functioning as intended and being maintained properly, and to identify any areas that may require the Borough's attention. DEP will perform these inspections and will

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continue to be a partner with the Borough on operation and maintenance of the project. DEP also conducts an annual workshop for all flood protection project operators and provides grants for non-routine maintenance of the project.

The Sponsorship Agreement and this letter give a lot of information concerning the partnership between the Borough, DEP, and DGS regarding the various tasks necessary to construct the project. Representatives of the Bureau of Waterways Engineering are available to meet with Borough officials to answer any questions you may have or to further explain the proposed work and the local responsibilities.

If you have any questions or wish to arrange a meeting, please contact Steve Todd, Project Coordinator, by e-mail at [stetodd@state.pa.us](mailto:stetodd@state.pa.us) or by phone at 717.772.5893.

Sincerely,



Patricia A. McSparran  
Director  
Bureau of Waterways Engineering

Enclosed Documents:

- Two (2) sets of prints of the Rights-of-Way Acquisition Drawings, numbered RW-1 through RW-30.
- Four (4) copies of the unsigned Sponsorship Agreement.
- One (1) sample Resolution for plan approval and signature authorization.
- One (1) complete list of all of the presently identified Sponsor Adjustments.
- One (1) sample permanent easement form.
- One (1) sample temporary easement form.

cc: Senator Mike Folmer, letter only  
Honorable David S. Hickernell, letter only  
Kathy Bertollette, DGS Counsel, w /spons. agreement and R/W dwgs.  
Dave Folk, DGS, w /R/W dwgs.

Jody Shaffner, Borough Secretary/Treasurer 8  
Marietta Borough

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bcc: DEP Regional Community Relations Coordinator  
Water Management  
Capasso  
Maiden  
File

JGC:SWT/mgs

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Agree Letter.doc

**Senator Mike Folmer**

Harrisburg Office  
457 Main Capitol  
Harrisburg, PA 17120  
Phone: 717-787-5708  
Fax: 717-787-3455  
TTY: 800-364-1581

**Hon. David S. Hickernell**

222 S. Market Street Suite 103  
Elizabethtown, PA 17022  
(717) 367-5525  
Fax: (717) 367-6425

**SPONSORSHIP AGREEMENT**  
between the  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
and  
**MARIETTA BOROUGH**  
for  
**Phase I of the Marietta Flood Protection Project**  
**Project No. DGS 182-21**

**ARTICLES OF AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Department of Environmental Protection of the Commonwealth of Pennsylvania, hereinafter called the "DEPARTMENT", and Marietta Borough, located in Lancaster County, Commonwealth of Pennsylvania, hereinafter called the "SPONSOR".

**WHEREAS**, by virtue of Act No. 195 of the General Assembly, approved the 5th day of June, A.D. 1947, P.L. 422, as amended, the DEPARTMENT is authorized, with the approval of the Governor, to enter into contracts and/or agreements with any political subdivision for cooperation and assistance in planning, constructing, financing, maintaining, and operating State Flood Control Works or Improvements and Recreational Facilities; and

**WHEREAS**, Section 1905-A (a) of the Administrative Code of 1929 (71 P.S. 51 et seq.) authorizes DEPARTMENT to cooperate with SPONSOR for flood control purposes; and

**WHEREAS**, pursuant to the Storm Water Management Act of October 4, 1978, as amended, the SPONSOR has adopted, and is implementing and enforcing, a watershed storm water management plan if one has been developed by the county and approved by the DEPARTMENT; and

**WHEREAS**, the SPONSOR has petitioned the DEPARTMENT to provide flood protection along the Susquehanna River and Evans Run and tributaries, and

**WHEREAS**, the DEPARTMENT has completed the preliminary design of Phase I of the Marietta Borough Flood Protection Project and developed "Rights-Of-Way Acquisition" drawings RW-1 through RW-30 showing project features and work limits; and

**WHEREAS**, by virtue of Act No. 27 of the General Assembly, approved the 26 day of March, A.D. 2004, funds are currently available for a flood protection project along the Susquehanna River and Evans Run in Marietta Borough, Lancaster County, Pennsylvania; and

**WHEREAS**, the Deputy Secretary for Water Management of the DEPARTMENT approved the aforesaid PROJECT; and

**WHEREAS**, the SPONSOR, by Resolution of the Borough of Marietta adopted \_\_\_\_\_ day of \_\_\_\_\_, 2010 and attached hereto and made a part hereof, has approved the Rights-of-Way Acquisition Drawings for Project No. DGS 182-21 to construct the Marietta Borough Flood Protection Project along the Susquehanna River and Evans Run in Marietta Borough, Lancaster County, Pennsylvania.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter stipulated to be kept and performed and intending to be legally bound hereby, it is agreed by and between the parties hereto as follows:

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**for**  
**Phase I of the Marietta Flood Protection Project**  
**Project No. DGS 182-21**

**ARTICLE 1 – Project Defined**

“PROJECT,” as used in this AGREEMENT, shall mean the work shown on the Rights-of-Way Acquisition Drawings numbered RW-1 through RW-30 and titled: “Marietta Flood Protection Project” approved by the DEPARTMENT and the SPONSOR, which drawings and all conditions and specifications, both general and specific related thereto, are hereby made a part of this AGREEMENT by reference, although not attached hereto.

**ARTICLE 2 – Engineering Studies**

The DEPARTMENT will undertake the engineering studies necessary for the design of the PROJECT and the preparation of contract plans and specifications for the PROJECT. The DEPARTMENT will, upon completion of the necessary studies, present to the SPONSOR, plans for its review and comments.

**ARTICLE 3 – Revisions**

The DEPARTMENT reserves the right to add to and/or amend the plans described in ARTICLE 1 of this AGREEMENT. On minor changes when the revisions will not adversely affect the SPONSOR, the DEPARTMENT will make the changes without approval of the SPONSOR. On major revisions of the plans when the SPONSOR will be affected, the DEPARTMENT will keep the SPONSOR fully informed of the proposed changes and, where determined necessary by the DEPARTMENT, obtain approval for the revisions from the SPONSOR.

**ARTICLE 4 – Adopt a Watershed Stormwater Management Plan under Act 167  
Or Adopt a Stormwater Management Ordinance**

Under Act 167, Stormwater Management Act (32 P.S. 680.1 et seq.); if a watershed stormwater management plan applicable to Marietta Borough has been developed by Lancaster County and approved by the DEPARTMENT, the SPONSOR shall implement the plan by enacting and enforcing appropriate stormwater management ordinances, if it has not already done so. The ordinances must regulate development and activities in a manner consistent with approved and applicable stormwater management plans and the provisions of Act 167, and in a manner to minimize, or eliminate, accelerated runoff that could potentially contribute to erosion, sedimentation, and overtaxing the capacities of existing streams, storm sewers, and the proposed flood protection PROJECT. The ordinances also must address human activities that have the potential to aggravate or create stormwater drainage problems in downstream communities. If a plan has not yet been developed and approved, the SPONSOR must adopt it when it is approved. In the interim the SPONSOR must adopt its own stormwater management ordinance and encourage upstream municipalities to do the same. This will help control development and related activities within the watershed until a more detailed stormwater management plan is developed by the County. For more information on adopting local stormwater management ordinances, the SPONSOR may contact the DEPARTMENT’s Bureau of Watershed Management at 717-787-5267.

**ARTICLE 5 – Easements and Rights-of-Way**

The SPONSOR, utilizing the documents provided by the DEPARTMENT, shall obtain and provide to the Department of General Services and its agents and employees all easements and rights-of-way necessary for the construction, operation, and maintenance of the PROJECT. The SPONSOR shall undertake and complete all negotiations, transactions, and proceedings in acquiring the necessary rights,

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franchises, licenses, or easements, either by amicable agreement, eminent domain or other necessary actions as required in the execution of the said PROJECT involving direct damages and shall determine the method by which said negotiations, necessary transactions and proceedings are to be carried out. All easements and rights-of-way shall be acquired in the name of the SPONSOR. The SPONSOR shall convey and transfer to the COMMONWEALTH all interests in land acquired by the SPONSOR for this PROJECT. All lands shall be subject to the easement and right-of-way over and upon the same by the DEPARTMENT and the Department of General Services for the purpose of construction, operation, maintenance, inspection, investigation, and study of the PROJECT. All costs and damages involved herein shall be paid for by the SPONSOR.

All lands occupied by a permanent PROJECT structure or required for operation and/or maintenance of the PROJECT shown on the Rights-of-Way Acquisition drawings as permanent easement, shall be conveyed to the Department of General Services by permanent easements. Additional lands, which will be used only during PROJECT construction as working area by the Contractor shown on the Rights-of-Way Acquisition drawings as temporary easement, shall be conveyed to the Department of General Services by temporary licenses and rights-of-way and shall remain in effect only for the duration of PROJECT construction. The SPONSOR shall secure from all railroads or other transportation facilities, written consent for the use of any portion of the railroads' or other transportation facilities' rights-of-way when the same are to be used in the construction of the PROJECT or when the rights-of-way are to form a permanent portion of the proposed PROJECT. The DEPARTMENT will obtain written consent for the use of any portion of PennDOT rights-of-way when PennDOT rights-of-way are to be used in the construction of the PROJECT or when the PennDOT rights-of-way are to form a permanent portion of the proposed PROJECT.

The Sponsor must obtain all lands necessary for the construction and future maintenance of the project and convey those lands to the Department of General Services. The "Rights-of-Way Acquisition" drawings, described in Article 1, have been color coded to highlight the required property acquisitions. Lands needed for construction of permanent structures and improvements, and for future operation and maintenance, require a permanent easement (colored ORANGE). In addition, much of the project will be constructed within and along the Norfolk Southern Railroad property line, which will require the Sponsor to enter into a license agreement for additional contractor work area (colored PINK). Lands needed for the use of the contractor only during construction require a temporary easement (colored GREEN).

After execution of the Sponsorship Agreement, the Department of General Services', Office of Chief Counsel, will send a letter to the SPONSOR detailing the Commonwealth's acquisition requirements. The DEPARTMENT will direct its surveyor, or the Department of General Services will contract with a surveying firm, to perform property surveys, make title searches, prepare easement descriptions, and prepare an overall map of the affected properties at no cost to the SPONSOR. The DEPARTMENT will provide these documents to the SPONSOR as soon as they are available. Using these documents and the sample easement forms included in "Attachment A" of this Agreement, the SPONSOR must then obtain signatures from all property owners whose lands are impacted by the project. These signed easements must then be conveyed to the Department of General Services.

**The PROJECT will not be scheduled for construction until all acquisitions have been approved by the DEPARTMENT and the Department of General Services.**

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**for**  
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**ARTICLE 6 – Private Structure Modifications**

The SPONSOR shall obtain written permission from property owners prior to award of contract for the Department of General Services or its Contractor to do work on or in the vicinity of walls, structures, bridges, pipes, or other items of any nature or kind within the right-of-way limits, as indicated on the PROJECT plans, which are specifically labeled as being removed or altered by the Contractor.

**ARTICLE 7 – Alteration and Removal of Utilities and Other Structures**

The SPONSOR shall undertake and complete all negotiations, necessary transactions, and proceedings for the alterations and/or removals of buildings and structures; storm and sanitary sewer lines; water lines; gas lines; power lines; telephone lines and other utilities; or any other item of any type or nature which are located within the required rights-of-way limits as shown on the PROJECT plans. All costs and damages involved in such alterations and/or removals shall be paid by the SPONSOR and the removals and/or alterations shall be completed at least thirty (30) days prior to the time during which the Contractor has work scheduled in any affected areas.

The SPONSOR must relocate or adjust utilities and remove buildings which will interfere with the construction of the project. The "Rights-of-Way Acquisition" drawings, described in Article 1, include SPONSOR Adjustment tables (colored YELLOW) that outline the required removals, relocations, and adjustments. These same items are also identified on a separate SPONSOR Adjustment list included as "Attachment B" in this Agreement. The SPONSOR's engineer should make a preliminary estimate of the costs of these adjustments.

In the event the SPONSOR fails to complete such alterations and/or removals within the aforesaid time limit, then the Department of General Services will complete, by contract or otherwise as it may determine, all necessary alterations and/or removals or such part thereof as it may deem necessary. The SPONSOR shall pay for all expenses for said relocations or alterations including contract(s) for said work, labor, material, tools, and equipment and expenses incidental thereto, including delay damages incurred as a result of SPONSOR'S failure to perform, within thirty (30) days after receipt of the bill for such service from the Department of General Services.

Any removals or alterations to be accomplished by the Contractor will be clearly labeled on the PROJECT plans as work to be performed by the Contractor. Any features not so labeled, whether or not they are shown on PROJECT plans, will be the responsibility of the SPONSOR to remove and/or alter at the SPONSOR's sole cost and expense as required by the DEPARTMENT and the Department of General Services.

**ARTICLE 8 – Use of Municipal Roadways and Land**

The SPONSOR shall grant to the Department of General Services, the DEPARTMENT and its agents and employees, at no cost, by Grant of License the right to enter and work upon any municipal roadways and lands within or without the PROJECT Rights-of-Way. The SPONSOR shall secure all permits, other than those for private contractors, for use of municipal roadways in the completion of the PROJECT and all assurances that may be necessary in order to permit the SPONSOR, the DEPARTMENT, the Department of General Services or their agents or employees to construct, maintain and operate the PROJECT, at no cost to the DEPARTMENT or the Department of General Services.

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**ARTICLE 9 – Municipal Roadway and Bridge Modifications**

The SPONSOR shall be responsible for and shall bear the costs of repairs, maintenance, relocation and reconstruction of existing municipal roadways, sidewalks, curbs, and bridges within or without the SPONSOR's municipal limits, which are made necessary by interference with permanent and essential features of the PROJECT.

**ARTICLE 10 – PennDOT Roadway and Bridge Modifications**

The DEPARTMENT will be responsible for and will bear the costs of repairs, maintenance, relocation, and reconstruction of existing roadways, sidewalks, and curbs under the jurisdiction of the Pennsylvania Department of Transportation, which are made necessary by interference with permanent and essential features of the PROJECT.

**ARTICLE 11 – Release and Hold Harmless**

The SPONSOR shall, without cost to the DEPARTMENT or the Commonwealth of Pennsylvania, hereinafter called the "COMMONWEALTH":

- (a) Release, remise and forever quitclaim the COMMONWEALTH, its departments, agencies and employees of and from any and all damages, actions, or causes of action whatsoever, inuring or which could inure to its benefit by reason of the design, construction, operation or maintenance of the PROJECT.
- (b) Hold and save harmless and indemnify the COMMONWEALTH, its departments, agencies and employees from all damages, claims or claims of liability arising from the design, construction, operation or maintenance of the PROJECT.

The COMMONWEALTH and its departments, agencies, and employees assume no responsibility for any damage of any nature whatsoever arising from the design, construction, operation and maintenance of the PROJECT.

**ARTICLE 12 – Federal and State Permits**

The DEPARTMENT will obtain all state and federal permits, approvals, and assurances necessary for the COMMONWEALTH, the SPONSOR, their agents, and their employees to construct, operate, and maintain the PROJECT.

**ARTICLE 13 – Bidding and Award of Contract**

After all necessary state and federal permits have been obtained and all necessary easement and rights-of-way acquisitions have been received and approved by the Department of General Services, the DEPARTMENT will recommend that the PROJECT be advertised for construction. The Department of General Services will request the Office of the Budget to release construction funding for the PROJECT. Upon release of construction funds, the Department of General Services will establish the contract bid schedule and advertise the construction contract for bids. If a bid is received, that is mutually acceptable to the DEPARTMENT and the Department of General Services; a contract will be awarded by the Department of General Services for PROJECT construction. In the event the total bid price exceeds the available funds, the DEPARTMENT reserves the right to exercise one of the following options: (1) revise and/or modify the plans, with the approval of the SPONSOR, in such a manner as to limit the nature and scope of the PROJECT, thereby

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reducing the anticipated total construction costs to an amount which will not exceed the available funds, (2) obtain additional funds, if possible, or (3) cancel and terminate this AGREEMENT.

In addition, all matters pertaining to the construction contract will be under the jurisdiction of the Department of General Services.

**ARTICLE 14 – Construction Inspection**

The DEPARTMENT will provide full-time construction inspection and any quality assurance agents it deems necessary for the duration of the construction of the PROJECT.

**ARTICLE 15 – Superintendent for Operation and Maintenance**

The SPONSOR shall designate a position within its organization as Operation and Maintenance Superintendent. The duties of that position shall include responsibility for insuring that all PROJECT operation and maintenance is completed properly and in a timely manner.

**ARTICLE 16 – Operation, Maintenance and Escrow Fund**

The DEPARTMENT, upon completion of the construction of the PROJECT, will turn it over to the SPONSOR. The SPONSOR shall operate and maintain the completed PROJECT, at its own expense, in accordance with the operation and maintenance manual that will be provided by the DEPARTMENT after construction. **The SPONSOR shall do no act, nor permit any act to be done, that would destroy, damage, or change the PROJECT without written permission from the DEPARTMENT.**

The SPONSOR shall allocate a minimum amount in its annual budget or as much in addition as may be required to operate and maintain the PROJECT in a manner satisfactory to the DEPARTMENT. After each periodic maintenance inspection, the DEPARTMENT will review the SPONSOR's annual allocation to determine if the amount is sufficient to maintain the PROJECT. **THE SPONSOR SHALL ADJUST FUTURE ALLOCATIONS IN ACCORDANCE WITH THE DEPARTMENT'S RECOMMENDATIONS.**

The SPONSOR shall begin the annual allocation in the SPONSOR's budget within one year of the award of the PROJECT's construction contract and shall place **\$14,000.00** in a special escrow account established as the "Marietta Borough Phase I Flood Protection Project Operation and Maintenance Fund". Immediately upon establishment of the fund, the SPONSOR shall furnish the DEPARTMENT with proof of such a fund and a statement from the escrow agent that money so deposited shall be withdrawn only for PROJECT operation and maintenance purposes, unless the DEPARTMENT has authorized, in writing, withdrawals for other purposes. The SPONSOR shall furnish the DEPARTMENT with an annual statement of the fund's status. The required statement must be received by the DEPARTMENT no later than the 15th day of February of each year and shall include all deposits, withdrawals, purpose of withdrawal and the fund's balance.

**ARTICLE 17 – Performance Security**

The SPONSOR shall provide to the DEPARTMENT an Operation and Maintenance performance security in a form satisfactory to the DEPARTMENT, in the amount of **\$42,000.00**, conditioned on SPONSOR's satisfactory performance of its obligations as to operation and maintenance of the PROJECT upon completion of construction, in accordance with the terms and conditions of this AGREEMENT.

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The following descriptions are three acceptable options for the performance security:

- (a) BANK CHECK
- (b) LETTER OF CREDIT
- (c) PERFORMANCE BOND

For more information on these three options see the document entitled "Acceptable Options for Operation and Maintenance Security for State Flood Protection Projects" included in "Attachment C" of this Agreement.

The SPONSOR further agrees that should the performance security become reduced or depleted, the SPONSOR shall immediately provide a new performance security in a form satisfactory to the DEPARTMENT so that the amount of performance security referenced above is restored to its full amount, conditioned as stipulated above.

**ARTICLE 18 – Revise the Flood Insurance Maps**

Upon project completion of the entire flood protection project (all three phases), the SPONSOR should request the Federal Emergency Management Agency (FEMA) to revise the National Flood Insurance Program map for the area affected by the completed project. The revised flood boundaries will reduce flood insurance premium rates for the affected property owners and reduce the area subject to the flood plain management requirements. The DEPARTMENT will provide the SPONSOR with the technical information needed to make the revision request.

**ARTICLE 19 – Periodic Inspections**

The DEPARTMENT will conduct periodic (annual or biennial) inspections of the PROJECT with the SPONSOR to assess the PROJECT's operating condition and maintenance requirements and provide technical assistance to the SPONSOR in completing the required maintenance activities.

**ARTICLE 20 – Major Repairs, Modifications or Replacements**

The DEPARTMENT will investigate features of the completed PROJECT, which may at times require major repair, modification or replacement to ensure the service life of the PROJECT. Provided the repair, modification or replacement is not made necessary as a result of inadequate or improper maintenance by the SPONSOR, the DEPARTMENT will design such major repair, modification, or replacement and pursue funding for construction.

**ARTICLE 21 – ADA Provisions**

The SPONSOR shall comply with the following Americans with Disabilities Act provisions.

1. Pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. §35.101 *et seq.*, the SPONSOR understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the SPONSOR agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of the Americans With

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Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

2. The SPONSOR shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the SPONSOR's failure to comply with the provisions of Paragraph 1 above.

**ARTICLE 22 – Sponsor Funding Obligation**

In consideration of the commitments from the DEPARTMENT to the SPONSOR, and in further consideration of the promises herein, the SPONSOR shall appropriate and authorize the expenditure of sufficient monies to cover all obligations assumed by the SPONSOR under this AGREEMENT.

**ARTICLE 23 – Effective and Binding**

This AGREEMENT becomes effective and binding upon the parties hereto upon proper execution of the same and its approval by the Governor of the Commonwealth of Pennsylvania.

**ARTICLE 24 – Headings**

The article headings are provided for ease of locating topics in the Agreement and are not to be used for interpretation of the AGREEMENT.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound, hereby have hereunto set their hands and seals the day and year above written.

WITNESS:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
John T. Hines  
Deputy Secretary for Water Management

(BOROUGH SEAL)

BOROUGH OF MARIETTA

ATTEST: \_\_\_\_\_  
Borough Secretary

BY: \_\_\_\_\_  
President of Marietta Borough Council

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for  
**Phase I of the Marietta Flood Protection Project**  
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APPROVED AS TO LEGALITY AND FORM:

APPROVED:

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Chief/Assistant Counsel, DEP

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Secretary, Office of the Budget

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Office of Attorney General

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Governor

**SPONSORSHIP AGREEMENT**  
**between the**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**and**  
**MARIETTA BOROUGH**  
**for**  
**Phase I of the Marietta Flood Protection Project**  
**Project No. DGS 182-21.**

**ATTACHMENT A**

**SAMPLE EASEMENT DOCUMENTS**