

LEGAL PUBLIC NOTICE

INVITATION FOR REQUEST FOR PROPOSAL

The Borough of Kingston requires professional services and advice for the following project:

(Forty Fort & Kingston Trail Gap Feasibility Study)

The Borough of Kingston is pleased to invite your firm to submit a written "Request for Proposal" for this project. The Borough of Kingston shall negotiate a contract with the highest qualified firm, subject to the evaluation of information received from interested firms, for necessary services, for a fee which the Borough of Kingston determines to be fair and reasonable. Should the Borough of Kingston be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, the Borough of Kingston shall then undertake negotiations with the second most qualified firm.

Detailed information as to the specific services requested are set forth in the Request for Proposal, a copy of which may be obtained at the borough's website, <http://kingstonpa.org/>, or at the Borough of Kingston, 500 Wyoming Ave, Kingston, PA 18704, between the hours of 8:30am to 4:30pm.

Interested firms shall address and submit their "Request for Proposal" to: Borough of Kingston, 500 Wyoming Ave, Kingston, PA 18704, no later than 4:30pm on January 11, 2017.

The Borough of Kingston is an Affirmative Action Equal Employment Opportunity Employer.

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NOTE: In this document the term "proposer" shall mean the person or firm making a proposal based on this RFP. The term "proposer" and the term "firm" is used interchangeably. Also, the term "you" or "your" shall refer to the proposer.

SECTION 1. BACKGROUND

The Borough of Kingston on behalf of the Borough of Kingston and the Borough of Forty Fort has received funding to prepare a Trail Feasibility Plan for the proposed Forty Fort & Kingston Gap Trail. The Study Area will encompass Kingston and Forty Fort Boroughs in Luzerne County. The project location is a 1.25 mile gap in the Luzerne County Levee Trail in Forty Fort and Kingston Boroughs. The levee trail on the west side of the river travels south from Wyoming to Forty Fort. This section ends near the intersection of Fort Street and River Street. Coming from the south on the same side of the river, the levee trail terminates in Kingston at the Church Street trailhead and parking lot. Trail routes to connect these two sections will be identified for passive recreation uses (walking/hiking and biking).

The goal of this project will be to identify possible alignments to close the trail gap, estimate trail construction and maintenance costs, and lay the foundation for the entity(s) which will ultimately be responsible for the development and maintenance of the trail.

This project is partially funded by a grant from the Community Conservation Partnership Program Environmental Stewardship Fund under the administration of the Pennsylvania Department of Conservation and Natural Resources (DCNR), Bureau of Recreation and Conservation (Bureau) administered through the Pennsylvania Environmental Council's (PEC) Pocono Forests & Waters Conservation Landscape (PFWCL) Mini Grant Program. The Bureau has certain requirements and standards that must be met by the Borough of Kingston and its contracted consultant. This Request for Proposals (RFP) has been prepared to meet these requirements and standards. The PEC will monitor the project on behalf of the PFWCL. Certain documents and drafts of documents will be subject to review and approval by the PEC.

The PFWCL grant contract number is 16PFW583-004.

SECTION 2. GENERAL TERMS

Firms interested in providing work and services for this Agreement are invited to submit a RFP.

A. Due Date

Qualifications and proposals must be *received* at the address set forth below on or before 4:30pm, on January 11, 2017. Late qualifications and proposals will not be accepted.

B. Submit Qualifications and Proposal

Include a cover sheet with each qualifications and proposal as described below. Clearly mark one qualifications and proposal as "**ORIGINAL**".

Quantity: 5, including original

C. Packaging

Qualifications and proposals must be sealed in a package. The outer envelope of the package must include:

- Company name
- RFP Title
- Proposal Deadline (Date and Time)

D. Delivery Address

Borough of Kingston
Attn: Borough Administrator
500 Wyoming Ave
Kingston, PA 18704

E. Cover Sheet:

Include a Cover Sheet to accompany each proposal:

To: Borough of Kingston

Attention: Borough Administrator Paul Keating

Today's Date:

Description: Response to RFP – Forty Fort & Kingston Trail Gap Feasibility Study

From: Company Name, Address, Phone, Fax, e-mail Address

Signature: (signed by representative who is legally authorized to bind Respondent to the proposal)

Your Printed Name & Title:

Submit five (5) copies of the Proposal to the Borough of Kingston, 500 Wyoming Ave, Kingston, PA 18704, no later than 4:30pm on January 11, 2017.

The Borough of Kingston and the Borough of Forty Fort reserves the right to reject any or all proposals and to select the proposal that they judge to be in the best interest of the Boroughs.

The contract is subject to the approval of the Council of the Borough of Kingston and is effective only upon their approval.

All proposers are bound by the deadline and location requirements of this RFP as previously stated in the Announcement.

All proposals shall remain effective subject to the Borough of Kingston and the Borough of Forty Fort review and approval for a period of thirty (30) days from the deadline for submitting proposals.

If only one proposal is received, the Borough of Kingston may initiate negotiations with the firm submitting the proposal or seek additional proposals on an informal or formal basis during the thirty (30) day period that proposals must remain effective.

The proposer is encouraged to add to, modify or clarify any of the scope of work items it deems appropriate to obtain a high quality plan at the lowest possible cost. All changes should be listed and explained. However, the scope of work proposed, at minimum, must accomplish the goals and work outlined below.

SECTION 3. SCOPE OF WORK

A. Study Purpose

1. Describe why the study is being conducted.
2. Provide general mapping of the study area.
3. Identify any boundaries or limitations of the study.

B. Legal Feasibility

1. Determine the ownership status of the ROW.
 - a. Identify property owners and contact, if appropriate, to describe the project and determine level of interest in supporting the project.
 - b. Determine and recommend the level of title search activity required for the ROW for which clear title is not evident.
2. Identify property owners adjacent to the ROW and/or located on potential trail alternative routes and contact, if appropriate.
3. Based on results from above, evaluate acquisition and/or easement agreement options such as type of agreements required, preferred arrangement from property owners, etc.

C. Demand for and Potential Use of Trail

1. Provide general demographics of potential trail users.
 - a. Define reasonable project service area.
 - b. Describe the community character (rural, urban, suburbs, etc.).
 - c. Provide project area population information and demographics.
 - d. Develop profile of potential trail users (bike, walk, etc.).
2. Analyze potential demand and use of the trail.
 - a. Estimate initial usage levels.
 - b. Project future usage levels.
 - c. Estimate seasonal demand versus year-round demand.
3. Identify and evaluate potential trail linkages/connectors, including:
 - a. Possible connections to neighboring developments for both recreational and commuter use by residents and employees; and
 - b. Possible connections with other existing or proposed trails.
4. Compatibility of trail development with adjacent land uses.
 - a. Identify and address potential impacts on adjacent land uses (agricultural lands, industrial properties, school facilities, businesses, residences, etc.)

D. Physical Inventory and Assessment (field visits should be performed as necessary

1. Prepare detailed mapping of proposed trail alignment at an appropriate scale.
2. Physiographic analysis -- Identify and map:
 - a. Length, dimensions and ROW boundaries;
 - b. Steep slopes;
 - c. Topography (topographic information on USGS maps is acceptable);
 - d. Surrounding land use; and
 - e. Erosion and drainage problems along the trail.
3. Natural Features Inventory -- Identify and map:
 - a. Significant natural features (lakes, ponds, rock outcroppings, wetlands, floodplains, etc.); and
 - b. Existing vegetation and wildlife (identify species of concern or sensitive habitat areas and/or the existence of aggressive, weedy species/major invasive plants).
4. Structures within the Corridor.
 - a. Provide a general assessment of existing bridges, canals, culverts, and/or tunnels.
 - b. Identify potential and/or obvious trail encroachments.
6. Infrastructure and Utilities.
 - a. Identify and map the location of utilities in relationship to trail and alternative trail locations (water, sanitary sewers, electrical and gas lines, telephone, etc.).
 - b. Determine instances where the physical location of utilities may be an impediment to trail development.
7. Intersections and Access Points.
 - a. Identify and map existing road crossings, etc.
 - b. Inventory access points located within the corridor for possible vehicular and pedestrian access to and through the corridor.
8. Environmental Hazards.
 - a. Based on preliminary assessments, determine the need for environmental assessment studies relative to toxic waste disposal or other environmental hazards.

E. Prepare a Trail Concept Plan

1. Develop a trail concept plan incorporating all data obtained and conclusions reached in tasks B through D.
2. Plan map should identify the following:
 - a. Trail location and any alternative routes within municipalities;
 - b. Proposed location of trailheads and related facilities (parking, maintenance, etc.);
 - c. Areas for trail barriers and emergency access;

- d. Areas needing natural buffers and/or screening; and
- e. Proposed linkages to parks, schools, neighborhoods, etc.

- 3. Develop conceptual designs for mitigating potential conflicts between pedestrians and other proposed trail users (bicyclists, etc.).
- 4. Identify facilities required to restrict use of the path.

F. Trail Operation, Maintenance, and Security

- 1. Determine ownership/maintenance/management options for involved entities.
- 2. Identify potential roles of public and non-public agencies.
- 3. Identify areas for in-kind contributions from involved entities.
- 4. Propose the appropriate organizational structure to provide trail maintenance, operation and security.
- 5. Identify typical trail maintenance tasks, both routine and periodic.

G. Financial Feasibility

- 1. Prepare cost estimates for developing the trail and for proposed facilities.
- 2. Develop a phased implementation plan.

H. Public Participation

- 1. Develop a well-rounded and representative study committee that represents the study area limits.
- 2. Coordinate two public meetings. The first meeting will be held at the beginning of the project and the second meeting will be held at the end of the project. Consultant will attend and present project information at both public meetings.
- 3. Conduct study committee meetings. Consultant will attend all of the steering committee meetings and present project information.
- 4. Conduct approximately 5-10 key person interviews.
- 5. Conduct non-scientific survey of all municipalities in the study area.
- 6. Conduct non-scientific survey of residents in the study area.
- 7. Provide written summary of the public participation process results and provide to consultant for inclusion in the final report.

I. Summary

1. Provide an Executive Summary of study findings and recommendations.

J. Final Product(s)

1. Prepare a draft report that describes the study methodology, findings and recommendations and include required mapping. Consultant will provide an electronic version of the draft report to the Borough of Kingston and the Borough of Forty Fort. PEC on behalf of PFWCL must approve the draft and may request revisions to the draft before a final plan is prepared.
2. Upon approval by PEC on behalf of PFWCL, Borough of Kingston, and the Borough of Forty Fort, Consultant will submit the final report in five (5) bound copies and five (5) CD versions including all meta-data to Borough of Kingston for distribution.

SECTION 4. CONSULTANT QUALIFICATIONS

Consulting team must meet the following requirements:

1. Have documented experience developing and implementing public participation techniques, such as holding public and study committee meetings, conducting key person interviews, developing citizen surveys, etc.
2. At least one member of the consulting team must have documented, prior experience conducting studies of the project type being undertaken. This person should be the project leader and assume overall project coordination responsibilities between the grantee and the consulting team.
3. Have documented experience in developing and recommending to local government officials and non- profit organizations the policies and procedures related to providing public recreation and park services and/or facilities, as well as the management and operation of these facilities and amenities.
4. Have documented experience in setting goals, analyzing problems, generating alternative solutions, and providing recommendations and implementation strategies.

Additional consultant qualifications can be found in Appendix B.

SECTION 5. REQUIRED SUBMITTALS

A. Letter of Transmittal

This letter must include the following:

- A statement demonstrating your understanding of the work to be performed.
- A statement confirming that the firm meets the Consultant Qualifications (see Section 4 above).
- The firm's contact person and telephone number.

B. Profile of Firm

This consists of the following:

- A statement of the firm's experience in conducting work of the nature sought by this RFP; advertising brochures may be included in support of this statement.
- The location of the firm's office that will perform the work.
- Resumes of individuals (consultants, employees) proposed to conduct the work and the specific duties of each individual in relation to the work. Resumes must not exceed three pages per individual and must include the Number and expiration date of all license, certificates and registrations included on the resume. NOTE: DCNR requires that the project consulting team have the qualifications listed in the DCNR document entitled "Consultant Qualifications" (see Section 4 above).
- A reference list of other municipal clients of the firm with contact information.
- Any other information relating to the capabilities and expertise of the firm in doing comparable work.

C. Methods and Procedures

The proposal must include a detailed description of the methods and procedures the firm will use to perform the work. Inclusion of examples of similar work is encouraged.

D. Work Schedule

The schedule must include time frames for each major work element, target dates for public meetings, and dates for completion of draft and final documents.

E. Cost

For each major work element, the costs must be itemized showing:

- For each person assigned to the work, the title/rank (organizational level) of the person in the organization, the hourly rate, and the number of hours to be worked
- The reimbursable expenses to be claimed

The itemized costs must be totaled to produce a contract price. If awarded a contract, a proposer is bound by this price in performing the work. The contract price may not be exceeded unless the contract is amended to allow for additional costs.

If awarded a contract, the firm may not change the staffing assigned to the project without approval by the Borough of Kingston. However, approval will not be denied if the staff replacement is determined by the Borough of Kingston to be of equal ability or experience to the predecessor.

Payment will be made within 30 days after receipt and approval of final report and work required under the RFP. A 10% retainage will be withheld until the final product is approved by the Pennsylvania Environmental Council.

F. Contract

See Section 7 below for the contract form and the document entitled, “Nondiscrimination/Sexual Harassment Clause” that DCNR requires to be attached to and incorporated in the contract as an appendix (labeled Appendix A in this RFP).

SECTION 6. EVALUATION CRITERIA

A. Technical Expertise and Experience

The following factors will be considered:

- The firm’s experience in performing similar work
- The expertise and professional level of the individuals assigned to conduct the work
- The clarity and completeness of the proposal and the firm’s demonstrated understanding of the work to be performed
- Familiarity with current ADA standards and accessibility guidelines

B. Procedures and Methods

The following factors will be considered:

- The techniques for collecting and analyzing data
- The sequence and relationships of major steps
- The methods for managing the work to ensure timely and orderly completion

C. Cost

The following factors will be considered:

- The number of hours of work to be performed
- The level of expertise of the individuals proposed to do the work.

D. Oral presentation

Any or all firms submitting proposals may be invited to give an oral presentation of their proposal.

SECTION 7. FORM OF CONTRACT

A proposed agreement is included (Appendix C) for your review. If you believe that this agreement is adequate, it should be completed in all material respects, including execution, and returned with the proposal. If you feel that an alternative agreement is more suitable, you may submit such as a part of your proposal. However, Borough of Kingston reserves the right to enter into the enclosed agreement with the successful firm or to negotiate the exact terms of a professional (consulting) services contract.

APPENDIX A
To Request for Proposals
Forty Fort & Kingston Trail Gap Feasibility Study

NONDISCRIMINATION

Nondiscrimination and equal opportunity are the policy of the Commonwealth/[City, et al] in all its decisions program, and activities. The purpose is to achieve the aims of the United States and Pennsylvania Constitutions. Executive Order 1972-1, the Pennsylvania Human Relations Act, Act of October 27, 1955, (P.L. 744), as amended, (43 P.S. § 951, et. seq.), and (43 P.S. § 153), by assuring that all persons are accorded equal employment opportunity without regard to race, color, religious creed, handicap, ancestry, national origin, age, or sex.

During the term of this contract, the Contractor agrees as follows:

- (a) Contractor shall not discriminated against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age, sex or handicap. Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, sex or handicap. Such affirmative action shall include, but is not limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provision of this nondiscrimination certification.
- (b) Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age, or sex.
- (c) Contractor shall send each labor union or workers' representative with whom it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or worker's representative of its commitment to this nondiscrimination certification. Similar notice shall be sent to every other source of recruitment regularly utilized by bidder.
- (d) It shall be no defense to a finding of noncompliance with this nondiscrimination certification that contractor has delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
- (e) Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that contractor will be unable to meet its obligations under this nondiscrimination certification, contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

(f) Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of contractor's noncompliance with the non-discrimination certification or with any such laws, this contract may be terminated or suspended, in whole or part, and contractor may be declared temporarily ineligible for further Borough of Kingston contracts, and other sanctions may be imposed and remedies invoked.

(g) Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by the Borough of Kingston, Director NE Regional Office, for purposes of investigation to ascertain compliance with the provisions of this certification. If contractor does not possess documents or records reflection the necessary information requested, it shall furnish such information on reporting forms supplied by Borough of Kingston.

(h) Contractor shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees.

(i) Contractor shall include the provisions of this nondiscrimination certification in every subcontract, so that such provisions will be binding upon each subcontractor.

(j) Contractor's obligations under this clause are limited to the contractor's facilities within Pennsylvania, or where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

DATE: _____

(NAME OF CONTRACTOR)

BY _____

TITLE _____

APPENDIX B

To Request for Proposals Forty Fort & Kingston Trail Gap Feasibility Study

Consultant Qualifications

GENERAL CONSULTANT QUALIFICATIONS FOR ALL PROJECT TYPES

Regardless of the planning project type, the consultant or consulting team **must** meet the following experience requirements:

1. Experience developing and implementing public participation techniques such as holding public and study committee meetings, conducting key person interviews, developing citizen surveys, etc.
2. At least one member of the consulting team with prior experience conducting studies of the project type (greenway, rails-to-trails feasibility, etc.). This member should be the project leader and assume overall project coordination responsibilities between the grantee and the consulting team.
3. Experience with the planning, design and general operation of greenways, open space and natural areas, motorized and non-motorized trails, and basic recreational support facilities.
4. For recreational greenways and trails, experience developing and recommending to local government officials policies and procedures related to managing and operating these amenities.
5. Experience setting goals, analyzing problems, generating alternative solutions, and providing recommendations and implementation strategies.

PROJECT SPECIFIC CONSULTANT QUALIFICATIONS

Greenways Network, Greenway Plan, and Trails Feasibility Studies

A good greenway planning team often involves professionals from various disciplines including planning, landscape architecture, engineering, and recreation and parks. The Bureau has no requirements on team composition.

If the project *requires* any conceptual trail design work, the Bureau requires that the final report be sealed by a licensed landscape architect, architect or engineer licensed to practice in the Commonwealth of Pennsylvania. A consultant or consulting team with documented expertise in greenway and trails planning is required.

We recommend including a practitioner with greenway and/or recreational trail development and management experience on the project team.

Master Plans

The Bureau requires *all* rail-trail master site plans and reports to be sealed by a registered landscape architect licensed to practice in Pennsylvania. This requirement in no way precludes

an architectural or engineering firm from being the prime consultant on such projects. A consultant or consulting team with documented expertise in rails-to-trails planning is required.

If a boundary survey is required as part of the master site plan, the seal of a registered land surveyor licensed to practice in Pennsylvania must also be affixed to the plan.

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APPENDIX C

Sample Agreement for Independent Contract Services

Date: **Date**

Contract Number: **#**

Term: **Date to Date**

Total Amount: **\$X**

Contractor: **Name of Entity**
Address 1
Address 2

Federal ID: **#**

This Agreement for Independent Contract Services (“Agreement”) by and between the Borough of Kingston, a registered Pennsylvania non-profit corporation and **NAME OF ENTITY** (“Contractor”) (collectively, the “Parties”) consists of this contract form plus the following document:

- 1) Exhibit A: Standard Terms and Conditions

Exhibit A, attached hereto and hereby incorporated by reference, shall be part of this contract form just as if it physically appeared within same. Together, the terms and conditions of this contract form and Exhibit A constitute the entire agreement by and between the parties with respect to the subject matter hereof, and shall inure to the benefit of, and shall be binding upon, the parties, their respective successors and permitted assigns.

In consideration of the mutual covenants, terms and conditions as hereinafter set forth, Borough of Kingston and **NAME OF ENTITY agree to the following terms and conditions.**

1. Purpose

The purpose of this Agreement is to set forth the terms and conditions under which Borough of Kingston will receive from Contractor, and by which Contractor will provide to Borough of Kingston, certain described services and/or deliverables, as set forth more fully in Paragraph 3,(collectively, the “Services”).

2. Term

Provision of Services by Contractor shall begin on **START DATE** and shall be completed on or before **END DATE**, unless this Agreement is terminated earlier in accordance with the terms of this Agreement.

3. Services/Scope of Work

Contractor shall provide the following Services to Borough of Kingston:

INCLUDE DETAILED DESCRIPTION OF SERVICES OR ATTACH A PROPOSAL AND REFERENCE AS EXHIBIT B.

4. Compensation

The total compensation payable to Contractor for satisfactory performance of Services under this Agreement shall not exceed \$XXX; said total amount is inclusive of all costs related to performance of Services, including expenses. Contractor represents and warrants that it can provide satisfactory performance of Services, in their entirety, for \$XXX.

5. Payment; Reimbursement Basis

5.1 Payment. The Borough of Kingston will pay Contractor **on a reimbursement basis** upon acceptance and approval of Services provided in accordance with this Agreement, and upon receipt of a properly completed written invoice to be submitted to Borough of Kingston on **TIMING BASIS**.

5.2 Reimbursement Basis. Funding for payment of Services is provided by a grant from the **NAME OF AGENCY OR DEPARTMENT** ("Agency"). Contractor agrees that the Borough of Kingston's liability for payment shall be contingent on the following additional terms and conditions:

- A. Within ten (10) business days of receipt of Contractor's invoice, Borough of Kingston shall prepare and submit a corresponding invoice to Agency for grant disbursement. Contractor's delay in invoicing Borough of Kingston shall not cause Borough of Kingston to incur liability to Contractor for Agency's corresponding delay and/or refusal of payment of Services; nor shall Borough of Kingston be responsible for the resolution of any invoice disputes between Contractor and Agency.
- B. The Borough of Kingston shall not be liable for payment of Contractor's invoice until The Borough of Kingston has received corresponding grant disbursement from the Agency; nor shall the Borough of Kingston be liable for any deferment in payment to Contractor resulting from delay or postponement of grant disbursement from the Agency. The Borough of Kingston will make best efforts to have payments made within twenty (20) business days of receipt of grant disbursement.
- C. Contractor understands that payment is contingent upon funding availability via the Grant. Accordingly, should the Agency reduce and/or terminate the Grant, the Borough of Kingston will immediately notify Contractor in writing of such reduction and/or termination and this Agreement shall be amended in kind without the necessity of obtaining further consent from Contractor. The Borough of Kingston's liability for payment to Contractor for Services shall be limited by Grant funding actually received by the Borough of Kingston from the Agency.

6. Notice

All notices required or permitted under this Agreement shall be in writing and deemed to have been sufficiently given for all purposes in the Agreement when mailed by registered or certified mail, postage prepaid, return receipt requested, to the following:

For Contractor:

Name, Title

Address 1

Address 2

For Pennsylvania Environmental Council:

Name, Title

Address 1

Address 2

7. Acknowledgement of the Standard Provisions

Contractor specifically acknowledges that it has read and understands the terms and conditions contained in Exhibit A (Standard Terms and Conditions), and acknowledges that by executing this Agreement, Contractor shall be legally bound by all of the terms of the Agreement, including, but not limited to, those set forth in Exhibit A.

8. Other Additional Terms and Conditions

DELETE IF NOT NEEDED

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the later of the dates as set forth herein below.

Acceptance:

For **NAME OF ENTITY:**

For Pennsylvania Environmental Council:

Name

Title

Name

Title

Date

Date

EXHIBIT A: Standard Terms and Conditions

1. Performance of Services; Contractor Responsibilities

1.1 Best Efforts and Performance. Contractor shall provide the Services as more fully described in Paragraph 3 of the Agreement (“Services/Scope of Work”) in a professional manner in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described. All payments to Contractor are contingent upon Contractor’s satisfactory performance pursuant to the terms and conditions set forth in the Agreement, and are subject to the Borough of Kingston’s approval and acceptance thereof. Said approval and acceptance shall not be unreasonably withheld.

1.2 Time of the Essence. Both the Borough of Kingston and Contractor agree to satisfy their obligations under the Agreement on a prompt basis, time being of the essence of the Agreement.

1.3 Contractors Responsibilities. Unless otherwise provided in the Agreement, Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of Services.

1.4 Independent Capacity of Contractor. The parties intend that an independent contractor relationship is created by the Agreement. Contractor is not an employee, partner or agent of the Borough of Kingston. Contractor shall not hold itself out as or claim to be an officer, agent, or employee of the Borough of Kingston by reason hereof, nor shall Contractor make any claim of right, privilege or benefit that would accrue to such employee or agent of the Borough of Kingston or under law. Performance of Services will be solely with Contractor, in accordance with the terms and conditions of the Agreement. Contractor shall be solely responsible for, and the Borough of Kingston shall have no obligation with respect to, the withholding and payment of federal, state, and local taxes, fees, and assessments of every kind and nature with respect to the Services performed and the consideration payable under this Agreement.

1.5 Subcontracting. Contractor shall not subcontract with any person or entity, other than those specified in the Agreement, to perform any or all of the Services without the prior written consent of the Borough of Kingston. Contractor shall be responsible to Borough of Kingston for the acts and omissions of all subcontractors, agents, and employees of Contractor; in no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to the Borough of Kingston for any breach in performance of Contractor’s duties under the Agreement. No contractual relationships exist between the Borough of Kingston and any subcontractor, agent, or employee of Contractor.

1.6 Reporting. Contractor is required to report to the Borough of Kingston, or to its designated representative, on a regular basis throughout the term of the Agreement, to resolve any concerns or problems that may occur during the Term of the Agreement, and/or to discuss the progress made by Contractor in the performance of its obligations.

2. Payment Procedures and Requirements

2.1 Invoices shall be submitted in writing to the Borough of Kingston. All invoices shall describe and document, to the Borough of Kingston’s satisfaction, Services performed and expenses incurred by Contractor.

2.2 The total compensation amount identified in the Agreement shall be paid only to the extent that costs are incurred by the Contractor in performance of the Services in accordance with the provisions of the Agreement. The Borough of Kingston shall not be liable for any costs or expenses incurred by Contractor in excess of the total compensation amount identified in the Agreement.

2.3 The Borough of Kingston retains the right to request additional or supplementary information from Contractor prior to payment, including but not limited to any relevant and appropriate expense receipts or statements. These records and documentation shall be provided to the Borough of Kingston in a prompt manner and at no additional cost.

2.4 The Borough of Kingston reserves the right to withhold payments if, in the Borough of Kingston's sole opinion, Contractor has not satisfactorily performed Services or complied with the terms and conditions of the Agreement. Contractor is solely responsible for any audit exceptions or disallowed costs, including those incurred by its subcontractors.

2.5 Release by Contractor. The acceptance by Contractor of final payment shall release the Borough of Kingston from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to the Agreement. Contractor shall notify the Borough of Kingston immediately of any dispute in regards to payment.

3. Indemnification

To the fullest extent permitted by law, Contractor agrees that it shall defend, indemnify, and hold harmless the Borough of Kingston, and the Borough of Kingston's officers, directors, agents, and employees, from any and all claims, liabilities, causes of action, or damages arising out of or related to acts, omissions, or negligence of Contractor, its officers, employees, agents, or subcontractors. The obligations of Contractor under this provision shall survive any expiration or termination of the Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

4. Confidentiality; Nondisclosure

Contractor shall not use or disclose any information concerning the Borough of Kingston, or information that may be classified as confidential, for any purpose not directly connected with performance of Services, except with prior written consent of the Borough of Kingston, or as may be required by law.

5. Intellectual Property

5.1 Unless otherwise provided and/or agreed upon in writing by the Borough of Kingston, all work product, materials, documents, and data (collectively, Agreement Work Product) created or produced pursuant to the Agreement shall be considered "works for hire" and shall be owned by the Borough of Kingston. Contractor hereby irrevocably assigns all right, title, and interest, including all intellectual property rights, to the Borough of Kingston effective from the moment of creation or production of such Agreement Work Product. Contractor shall undertake all necessary actions to protect the Borough of Kingston's ownership of Agreement Work Product.

5.2 For materials, documents, and data that are delivered pursuant to the Agreement, but that incorporate pre-existing intellectual property not produced under the Agreement, Contractor hereby grants to the Borough of Kingston a royalty-free, irrevocable license in such pre-existing intellectual property to translate, reproduce, distribute, prepare derivative works, and publicly perform or display.

- A. Contractor warrants that it has all rights and permissions, including intellectual property rights and rights of publicity, necessary to grant such a license to the Borough of Kingston. Contractor shall indemnify the Borough of Kingston against all costs, damages, and attorney's fees that accrue as a result of any claim by a third party against the Borough of Kingston that the materials, documents, and data delivered by Contractor pursuant to the Agreement infringe upon or violate any patent, service mark, or copyright.

6. Suspension; Termination

6.1 The Borough of Kingston reserves the absolute right to suspend or terminate the Agreement, in whole or in part, for any reason or at any time, upon written notice to Contractor.

6.2 In the event of suspension or termination of the Agreement:

- A. Contractor shall immediately cease performance of Services under the Agreement on the date, and to the extent specified, in the suspension or termination notice. Contractor shall not incur any additional expenses after the date of suspension or termination, excepting those costs reasonably required to provide an accounting of Services and expenses incurred prior to the suspension or termination date.
- B. The Borough of Kingston shall only be liable for payment for Services satisfactorily performed, or authorized expenses reasonably incurred prior to the date of suspension or termination. The Borough of Kingston may withhold from any amounts due Contractor such reasonable sum as the Borough of Kingston determines necessary to protect the Borough of Kingston against potential loss or liability.
- C. Upon termination of this Agreement by the Borough of Kingston, all work product, materials, and confidential information held by Contractor shall promptly be returned to the Borough of Kingston.

6.3 If the Borough of Kingston terminates the Agreement for cause due to a material breach by Contractor, including but not limited to Contractor's failure to perform Services in accordance with the Agreement, Contractor shall be liable for damages as authorized by law. In the event of a breach by Contractor, the Borough of Kingston may pursue any and all remedies available in law and in equity, and may recover attorneys' fees and court costs associated with the Borough of Kingston's said pursuit should the Borough of Kingston prevail.

6.4 The rights and remedies of the Borough of Kingston provided in this section shall not be exclusive and are in addition to any other rights and remedies provided under law or the Agreement.

7. Assignment

Neither the Agreement, nor any claim arising under the Agreement, shall be transferred or assigned by Contractor without prior written consent of the Borough of Kingston, which the Borough of Kingston may withhold for any reason.

8. Insurance

8.1 Maintenance of Insurance; Policy Provisions. Contractor shall maintain, for the Term of the Agreement, and at its own cost and expense, insurance of the types and in the amounts specified in Section 8.2 hereof (entitled Types of Insurance). All such insurance shall be evidenced by insurance policies, each of which shall:

- A. name or be endorsed to cover the Borough of Kingston as additional insured;
- B. provide that such policy may not be cancelled or modified until at least 30 days after receipt by the Borough of Kingston of written notice thereof; and
- C. be reasonably satisfactory to the Borough of Kingston in all other respects.

8.2 Types of Insurance

- A. Commercial General Liability: At least \$1,000,000 Combined Single Limit coverage on an occurrence basis covering all premises and operations and including Independent Contractor, Contractual Liability, and Products and Completed Operations.

- B. Professional Liability (Errors & Omissions): Professional Errors & Omissions Liability with a limit of no less than \$1,000,000 per claim.
- C. Commercial Automobile Liability: At least \$500,000 Combined Single Limit to include owner, non-owned and hired.
- D. Workers' Compensation: Statutory benefits as required by the Commonwealth of Pennsylvania or federal law.

8.3 Upon request, Contractor shall promptly provide to the Borough of Kingston certificates of insurance issued by the respective insurers, evidencing the insurance required by the Agreement and bearing notations evidencing the payment of the premiums thereon or accompanied by other evidence of such payment satisfactory to the Borough of Kingston.

9. AMENDMENT

The Agreement may be amended by mutual consent of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

10. ASSURANCES

The Borough of Kingston and Contractor warrant that all activity pursuant to the Agreement, including but not limited to performance of Services by Contractor, will be in accordance with all applicable current federal, state, and local laws, rules, and regulations.

11. RECORDS MAINTENANCE

The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Services, full and detailed books, accounts, and records pertaining to the performance of the Agreement, including without limitation, all bills, invoices, payrolls, subcontracting efforts, and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by Contractor in the course of such performance. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

12. SEVERABILITY

If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision the Agreement would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

13. WAIVER

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms and conditions of the Agreement unless stated to be such in writing and signed by an authorized representative of the Borough of Kingston.

14. FORCE MAJEURE

Neither party shall be responsible for nonperformance, or delay in performance, of obligations set forth in the Agreement due to causes beyond its reasonable control.

15. CHOICE OF LAW

The Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

16. SECTION HEADINGS

Section headings used herein are inserted for convenience only and are not part of the Agreement.

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