

**AGREEMENT**

THIS AGREEMENT is entered into this 15<sup>th</sup> day of October, A.D., 2001, by and between the WEST PIKELAND LAND TRUST and WEST PIKELAND TOWNSHIP.

WHEREAS, West Pikeland Township, Chester County, Pennsylvania (the "Township") is seeking to permanently protect important conservation lands throughout the Township; and

WHEREAS, the Township has allocated funds for the preservation of open space by, among other things, purchases of conservation interests in lands within the Township including, without limitation to, fee simple interests, conservation easements, agricultural easements, and development rights (the "Open Space Program"); and

WHEREAS, the West Pikeland Land Trust ("WPLT"), a Pennsylvania non-profit corporation, has been organized in order to further the goals of the Township's Open Space Program and, pursuant to Ordinance 2000-1 enacted January 4, 2000, the Township is authorized to provide such financial and other assistance to West Pikeland Land Trust as the Township Board of Supervisors shall deem to be in the Township's best interests.

WHEREAS, the Township Board of Supervisors has determined that providing funding and other assistance to WPLT as set forth in this Agreement is in the Township's best interests and in furtherance of the Open Space Program.

NOW, THEREFORE, the parties agree as follows:

**I. SERVICES**

In furtherance of the above referenced objectives, WPLT will provide the following services to the Township:

- (a) Negotiate easements with prospective donors or grantors, either by donation, purchase or mixed basis, attempting to obtain the maximum donation from the owner.
- (b) Consult with the Township concerning the negotiation of easements, to obtain the best mix of economic and preservation benefits.
- (c) Recommend to the Township the expenditure of Township funds, or obtaining grants, to acquire easements.

(d) Retain professional assistants as consultants as deemed necessary by the WPLT to assist in the foregoing.

(e) Hold, monitor, and enforce, with the assistance of the Township, easements which are donated to or purchased by the WPLT.

(f) Maintain permanent files for each easement in a safe and secure location.

(g) Provide quarterly reporting to the Township as to potential easement purchases/donations, in a form setting forth all material information.

(h) Provide an audited financial report, as required by the bylaws of the WPLT, to the Township on an annual basis.

## **2. EASEMENT ACQUISITION/PREPARATION**

The Township and the WPLT agree that all acquired easements shall be held by the WPLT, as Grantee.

The WPLT will be responsible for initiating easement acquisitions. The WPLT will make a preliminary determination whether or not a landowner's goals are consistent with the Open Space Program. If deemed consistent, the WPLT will advise the Township that the landowner's goals are consistent with the Open Space Program and submit to the Township an easement checklist for the subject property, setting forth material information about the property including, without limitation, property size and location, all existing improvements on the property, natural features such as woodlands, streams, wetlands, and farm land, the conditions of such natural resources, significant property restrictions recommended by the WPLT and significant reserved rights desired by the landowner. If approved by the Township, WPLT will inform the landowner of its interest in the property, requesting written confirmation from the landowner of their interest in donating or selling a conservation interest to the WPLT. Upon receipt of the landowner's confirmation, such landowner will be considered a "Qualified Landowner." The WPLT will then inform the Qualified Landowner of the general terms which typically accompany such easements and of the anticipated process for finalization of the Easement Agreement. Negotiations of the actual easement terms shall continue between the WPLT and the Qualified Landowner, with assistance and consultation from the Township and Professional Consultants as necessary, until an agreement is reached or until one of the parties chooses to end the negotiations.

A model easement will be used as the standard and initial easement draft document. The model shall be approved by both the WPLT and the Township. The model will thereafter be tailored to the Qualified Landowner's property, producing a draft easement.

A draft easement will be prepared by WPLT and presented to the Qualified Landowner. Any material proposed revisions to the draft easement requested by the Qualified Landowner will be subject to the approval of the Township Solicitor. Once the terms of the draft easement are approved by all parties, the final approved Easement Agreement and associated documents will be provided to the Township's appraiser. WPLT acknowledges and agrees that no Easement Agreement shall be final unless and until approved by the Township's Board of Supervisors.

The WPLT, with assistance from the Township as necessary, will be responsible for communicating all purchase offers, negotiating price and contingencies, and the preparation of all documents. Once the agreement of sale is accepted and signed by WPLT and the Qualified Landowner, the WPLT and the Township will coordinate closing with the Township Solicitor. At closing, at least three (3) execution copies of the final Easement Agreement and associated documents shall be signed by WPLT and the Qualified Landowner. Once signed and notarized by WPLT and the Qualified Landowner, the Easement Agreement will be recorded by WPLT, and WPLT will distribute copies to the appropriate parties. The recorded Easement Agreement will be retained by WPLT in a safe and secure location. Payment to the WPLT of any requested easement endowment shall be made at the signing of the easement, unless otherwise agreed in writing.

### **3. EASEMENT MONITORING AND ADMINISTRATION**

The Township and the WPLT shall retain on file copies of the recorded Easement Agreements and associated exhibits, the baseline documentation reports, the easement appraisals, the agreements of sale, maps, inspection reports and any other documents deemed essential to administering, defending and valuing the easements. The Township shall notify the WPLT, within thirty (30) days upon receipt, of any building permit, zoning permit, land development or subdivision application submitted for any property under an easement to which the WPLT is a party.

### **4. PAYMENT/REIMBURSEMENT**

The Township shall reimburse the WPLT for the foregoing services as follows:

(a) A one-time payment of One Hundred Eleven Thousand Two Hundred Fifty-Two Dollars (\$111,252.00), to be used in accordance with the attached initial budget outline and letter of intent. This sum includes Twenty Thousand One Hundred Fifty-Two Dollars (\$20,152.00) for operating expenses, Twenty-Six Thousand Dollars (\$26,000.00) for existing projects (to be assumed by the WPLT), and Sixty-Five Thousand One Hundred Dollars (\$65,100.00) for project development, negotiations, easement monitoring, and enforcement.

(b) Upon completion of the acquisition phase of any easement project, replenish the funds expended by the WPLT in relation to that effort, following a sufficient accounting of expenditure by WPLT, such that the amount provided by the Township and retained by the WPLT for these purposes shall be maintained at a minimum of Sixty-Five Thousand Dollars (\$65,000.00), if and as long as the WPLT is fully performing its obligations hereunder.

(c) Provide an endowment to be determined by agreement according to customary standards for such endowments, for monitoring easements placed on Township lands. The endowment must be large enough to generate sufficient income to finance the WPLT's annual cost for holding, and administering the easement. Such costs include, without limitation, personnel time spent conducting an annual inspection of the eased property, administration and upkeep of easement records, responding to periodic landowner inquiries, and reviewing construction plans. Such costs will vary according to, among other things, the terms of the easement and the size and location of the property.

(d) Provide annual operating expenses pursuant to a budget request submitted by the WPLT on or before August 30 of the preceding budget year. The request for funding shall be in the form of a budgetary forecast for the following year and include estimates regarding operating expenses, acquisition costs and other anticipated outlays, substantially in the form as provided herein as Exhibit "A."

(e) Reimburse actual out of pocket expenses reasonably incurred by the WPLT in enforcing the easements including, without limitation, attorney's fees. The WPLT shall consult with the Township and, if requested by the Township, the Township's Solicitor, prior to incurring any material expenses or commencing formal legal proceedings.

(f) If the WPLT dissolves or should this Agreement terminate pursuant to Section 8 due to the WPLT's uncorrected breach, or should this Agreement terminate pursuant to the terms of Section 7, then any unspent funding from the Township maintained by the WPLT shall be returned to and revert to the Township's general fund, except for (i) any endowment funds which will remain with the easement and transfer to the successor easement holder/grantee and (ii) funds necessary to satisfy the then-remaining WPLT expenses and obligations.

## **5. TOWNSHIP OBLIGATIONS**

The Township shall also:

(a) Agree to act as ultimate substitute grantee for easements, which are negotiated and/or acquired by the WPLT and perform the grantee's obligations.

(b) Consult with the WPLT regarding potential easements.

(c) Provide access to the Township offices and consultants, except to the extent that such access places any burden on the Township in terms of its utilization of those services and facilities.

(d) Immediately inform the WPLT after observing, learning of or receiving notice of a violation of any easement to which the WPLT is a party, and to document any and all such violations when observed or discovered.

(e) Assist the WPLT in the pursuit of enforcement actions and related activities regarding easement violations and have the right to join, at its own expense, in all enforcement actions and related activities with respect to any violation (actual, alleged or otherwise) of any easement funded under this Agreement, being herein expressly recognized that the Township has a third-party right of enforcement pursuant to the Conservation and Preservation Easements Act, 32 P.S. §5051 et seq. Each party agrees to make its personnel available to the other for reasonable amounts of time in connection with such actions and related activities and will provide its legal counsel to consult with and assist the other party's legal counsel in undertaking and pursuing the enforcement actions and related activities. No litigation with respect to a project funded under this Agreement shall be settled without the consent of both the Township and the WPLT regardless of whether the litigation is undertaken or defended by the Township or the WPLT.

## **6. INTEGRATION/MODIFICATION**

Nothing shall obligate either party to the other except as expressly provided herein and this Agreement may only be modified by a writing signed by both parties. Nothing in this Agreement shall be construed to apply to, or place limitations on, West Pikeland Land Trust projects to the extent not funded by Township-provided monies.

## **7. TERM**

The term of this Agreement shall be five (5) years from the date hereof, and the term shall renew automatically for successive five (5) year terms unless either party provides to the other party written notice of termination no less than sixty (60) days prior to the expiration date of the then-current term. Notice of termination shall be given by either party in writing addressed to the other party at its current address, certified mail. Except as provided in this Section 7 or Section 8 below, this Agreement shall not be terminated.

## **8. TERMINATION**

This Agreement may be terminated without cause upon no less than sixty (60) days prior written notice and only in accordance with Section 7, above. This Agreement may be terminated for cause as follows: If either party is of the belief that the other

party has not performed, the party concerned shall give written notice to the other party by certified mail of the nature of the alleged non-conformity or breach. The other party shall then have thirty (30) days to correct any breach, and if it does so, the notice of termination shall be considered null and void. If the concerned party still believes that there is a breach, it must give written notice to the other party by certified mail of the continuing breach, and then it may take legal action to terminate the contract. Pending the outcome of such action, this Agreement shall remain in full force and effect.

If termination is for breach, and if the breaching party shall provide to the non-breaching party whatever is reasonably necessary to restore the non-breaching party to its position prior to the breach, within the notice period, then this Agreement shall be continued.

**9. SEVERABILITY/CHOICE OF LAW/ETC.**

(a) In the event any provision of this Agreement is found to be unenforceable, the remainder of this Agreement shall not be affected, and any provision found to be invalid shall be enforceable to the extent permitted by law.

(b) This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, without regard to conflicts of laws.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have set their hands to seal this 15<sup>th</sup> day of October, 2001.

**WEST PIKELAND TOWNSHIP  
BOARD OF SUPERVISORS**

  
Andrew N. McCreight, Chairman

  
Christopher Petry

  
Michael Craven

**WEST PIKELAND LAND TRUST**

By: 

Attest:

  
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WPLTAgreement10-2-01(5yr)

May 17, 2001

**West Pikeland Land Trust**  
Initial budget request (present - 12/31/2001)

<u>Item</u>	<u>Cost</u>	<u>Notes</u>
<b><u>Section 1. Operating expenses</u></b>		
Recording Secretary	\$ 360.00	6 meetings @ 2 hr recording, 1 hr transcribing @ \$20/hr
Annual certified Audit	\$ 5,000.00	Required for maintenance of 501(c)3
Treasurer's bond	\$ 300.00	
Accounting	\$ 1,000.00	
PO Box	\$ 60.00	Currently relying on township office for mailing & photocopy
Photo/archiving	\$ 1,200.00	8 projects @ \$150
Consultants/legal	\$ 3,000.00	unrelated to specific projects/easements
Bank fees	\$ 100.00	
Conference registrations	\$ 300.00	10 directors, 1 conference/yr @ \$30
Public relations	\$ 2,500.00	Color printing/brochure
Miscellaneous/unforeseen	\$ 1,382.00	10% of above
	\$ 15,202.00	subtotal
<b><u>Section 2. Existing project expenses</u></b>		
Logan Endowment	\$ 7,500.00	Not included in agreement between Supervisors and landowner
Kring NLT consultants	\$ 14,000.00	PPP grant application, baseline report, draft easement, settlement, recording
2nd appraisal	\$ 2,000.00	WPLT to commission
Legal	\$ 500.00	non-NLT
Survey	\$ 2,000.00	
	\$ 26,000.00	subtotal
<b><u>Section 3. Future easement projects</u></b>		
Legal	\$ 3,000.00	No easement purchase costs - will be budgeted/requested on a case basis
Appraisal	\$ 2,000.00	Draft easement, etc.
Mapping	\$ 200.00	
Botany	\$ 500.00	
Recording	\$ 150.00	
Endowment	\$ 5,000.00	assumes landowner unable to provide
Single project total	\$ 10,850.00	\$ 65,100.00 subtotal - 6 projects
	\$ 108,302.00	Total

"A"