

**AGREEMENT**

**THIS AGREEMENT**, made this 20<sup>th</sup> day of June, 2005, by and between the **TEXAS TOWNSHIP**, a Pennsylvania political subdivision, with offices at Willow Avenue, Honesdale, Pennsylvania, 18431 (hereinafter referred to as "TEXAS");

**AND**

**WAYNE EARLEY**, an adult individual residing at \_\_\_\_\_ Honesdale, Pennsylvania, 18431 (hereinafter referred to as "EARLEY");

**WHEREAS**, Texas Township has adopted ordinances incorporating and implementing the Uniform Construction Code and all incorporated codes by reference providing standards for the construction, alteration, repair and occupancy of buildings within its jurisdiction; and,

**WHEREAS**, the said ordinances provide for the appointment of a Construction Code Official to implement the provisions of said Uniform Construction Code; and,

**WHEREAS**, previous ordinances, enactments and resolutions adopted by Texas Township has provided for the enforcement of various other ordinances regulating zoning and property maintenance matters; and,

**WHEREAS**, by resolution duly adopted, Texas Township has appointed Wayne Earley as Zoning Officer, Building Code Official, Building Inspector, Code Enforcement Officer and Storm Water Management Officer in its jurisdiction; and,

**WHEREAS**, the parties hereto desire to enter a written agreement setting forth the terms and conditions of Earley's contract with Texas Township.

**NOW, FOR AND IN CONSIDERATION** of the mutual promises contained herein the parties hereto agree as follows:

1. **Acceptance of Contract; Agreement:** Earley does hereby agree to perform the duties as set forth in Exhibit "A" which is attached hereto and incorporated herein by reference. Texas agrees to compensate Earley in said capacity in accordance with the terms herein set forth.

2. **Term of Agreement:** The term of this agreement shall be for a period of one (1) year.

3. **Compensation:** Wayne Earley shall be considered an independent contractor pursuant to this agreement and shall not be considered an employee of the Township. He shall be compensated as follows:

- a. Residential fees and Commercial Construction fees from \$500.00 to \$1,000,000.00 in construction costs shall be allocated 55% of said fees to Earley and 45% to Texas Township as a per project basis.

- b. Commercial fees and all other projects of \$1,000,000.00 but not exceeding \$5,000,000.00 in construction costs shall be allocated 45% of said fees to Earley and 55% to Texas Township.
- c. All Commercial fees over \$5,000,000.00 in construction costs shall be allocated 35% of said fees to Earley and 65% to Texas Township.

Earley agrees to document the services provided pursuant to the above projects and invoice Texas Township in accordance with the rate schedule set forth above.

Texas Township has entered into a separate agreement with Honesdale Borough providing for certain reimbursement to Honesdale Borough for overhead costs, insurances and expenses which agreement is incorporated herein by reference and is applicable to this agreement only as it affects the compensation of Wayne Earley.

**4. Non-Wavier:** The failure of any party to insist upon the strict compliance with the terms of any provisions of this Agreement by any other party shall not be deemed to constitute a waiver of any provision of this Agreement nor shall it be a bar to any party's later demand for strict performance under this Agreement.

**5. Integrated Agreement:** This Agreement represents the entire and integrated agreement between Texas Township and Earley and as such it supersedes all prior negotiations, representations or agreement written or oral. Consequently, any other agreement, representation or understanding, verbal or otherwise, is hereby deemed to be null and void and of no force and effect whatsoever.

6. **Jurisdiction and Venue:** This agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania. The venue of any action brought hereunder shall be in the Court of Common Pleas of Wayne County, Pennsylvania.

7. **Changes, Modifications and Amendments:** This agreement may be waived, changed, modified or amended only by written agreement executed by all of the parties hereto.

8. **Severability:** If a provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision and to this end and the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the parties hereto, individually, or by their duly authorized agents and officials have hereunto set their hands and seals, the date and year above written.

*[Signature]*  
WITNESS

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WITNESS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

TEXAS TOWNSHIP  
BY: *Paul D Sprague*

BY: *[Signature]*

BY: *[Signature]*

*[Signature]*  
WAYNE EARLEY

**JOB DESCRIPTION**  
**EXHIBIT A**

It is the duty of the Building Construction, Zoning and General Code Enforcement Official to:

1. The Building Construction, Zoning and General Code Enforcement Official shall respond to all referrals which he is made aware that concern the said *Uniform Construction Code* within the said Municipality and shall investigate the same and take such action as shall be appropriate.
2. The Building Construction, Zoning and General Code Enforcement Official shall consult with the solicitor or other designated official of the Municipality prior to the institution of suit or the filing of charges pursuant to the provisions of the said ordinance(s). The said solicitor or official shall have the authority to initiate a suit or the filing of charges and shall assist the Construction Code Official in the prosecution of the same. The costs of suit or prosecution shall be borne by the Municipality.
3. The Building Construction, Zoning and General Code Enforcement Official shall submit monthly reports to the respective Municipalities summarizing hours expended, services performed, charges filed, suits instituted, fees collected, and such other matters as may from time to time be requested by the Municipality.
4. All fees imposed by the respective Ordinances will be collected in a timely manner as agreed upon. All forms and procedures necessary for the implementation of the Ordinances shall be prepared and established by the Building Construction, Zoning and General Code Enforcement Official in conjunction with the Municipality. Consideration shall be given to other permits and procedures required by law or regulations.
5. The Building Construction, Zoning and General Code Enforcement Official shall recommend the establishment of charges and fees to compensate the municipalities for the costs of the provided services. Such charges or fees will be presented to the Municipality on an annual basis or when revised and approved by the Municipality. In the event the Building Construction, Zoning and General Code Enforcement Official shall determine that a charge is not sufficient to adequately compensate for the cost of the services performed pursuant to this agreement, he shall so notify the Municipality.
6. Receive appeals and applications for conditional uses, special exceptions and variances, and forward them to the governing body or the zoning hearing board, as appropriate. Schedule, advertise and post notices on property subject to a ZHB hearing at least one week prior to the hearing. In addition, post a notice on the affected tract or area involved with a zoning map amendment as described in MPC Section 609 (b) at least one week prior to the hearing. Provide applicant and other

parties with copies of items sent to the zoning hearing board. Provide testimony at hearings of the zoning board.

7. Issue permits only where there is compliance with the provisions of the building zoning ordinance, with other municipal ordinances, and with the laws of the Commonwealth. Permits for construction or uses requiring a special exception or variance shall be issued only upon order of the zoning hearing board. Permits requiring a conditional use shall be issued only upon order of the governing body.
8. When required by the zoning ordinance, identify and register nonconforming uses and structures and record the reasons.
9. Conduct inspections and surveys as prescribed by the governing body, by ordinance, or by the laws of the Commonwealth to determine compliance or non-compliance with the terms of all municipal ordinances and with the laws of the Commonwealth.
10. Issue enforcement notices and orders in writing by certified or registered mail or served personally as described below upon persons, firms, or corporations deemed by the Building Construction, Zoning and General Code Enforcement Official to be violating the terms of the Borough's ordinances directing them to correct all conditions found in violation. If any such person or persons does not comply with the written notice of violation within a prescribed period of time, the Building Construction, Zoning and General Code Enforcement Official shall notify the governing body for their action, or, if authorized in advance, file an appropriate civil or criminal complaint with the district justice.
11. Act on behalf of the municipality in any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, demolition, maintenance or use of any building or structure, to restrain correct, or abate such violation, so as to prevent the occupancy or use in or about such premises.
12. Revoke by order a building, zoning or other permit or certificate issued under a mistake of fact or contrary to the law or the provisions of the municipalities' ordinances.
13. Record and file all applications and plans for permits and the action taken thereon. All applications, plans, and documents shall be a public record.
14. Maintain a map or maps showing the current zoning districts and overlay areas for all the land within the municipality. Upon request, the Building Construction, Zoning and General Code Enforcement Official shall make determinations of any

zoning map district boundary questions. Such determination may be appealed to the zoning hearing board or other appropriate hearing board.

15. Upon the request of the governing body or planning commission, present facts, records or information to assist the zoning hearing board in making decisions.
16. The Building Construction, Zoning and General Code Enforcement Official shall not issue a building, zoning or other permit or certificate, for the erection, construction, reconstruction or alteration of a building in a subdivision or land development prior to the final approval of the subdivision and land development plan in full compliance with the Subdivision and Land Development Ordinance, and the recording of the plan with the recorder of deeds.
17. The Building Construction, Zoning and General Code Enforcement Official shall otherwise be responsible for and take appropriate action to enforce municipal ordinances related to building and land use as provided by their terms and as directed in other municipal ordinances or laws of the Commonwealth as may currently exist or hereafter be amended or passed.
18. In addition, he shall be the Storm Water Manager and shall review and inspect all phases of site development with the Township Engineer, as needed.