

**SCHWENKSVILLE BOROUGH
MONTGOMERY COUNTY, PENNSYLVANIA**

RESOLUTION 2021-15

**A RESOLUTION REGARDING NECESSARY EMERGENCY
CONTRACTS PURSUANT TO SECTION 1402 OF THE BOROUGH
CODE (8 Pa. C.S.A. Section 1402, et. seq.)**

WHEREAS, on September 1, 2021, pursuant to the provisions of Section 7501 of the Pennsylvania Emergency Management Services Code (35 Pa. C.S. Section 7501), as amended, the Mayor of the Borough of Schwenksville declared the existence of a disaster emergency in Schwenksville Borough resulting from remnants of Hurricane Ida moving into the mid-Atlantic region; and

WHEREAS, the Borough of Schwenksville and the Schwenksville Borough Hall building situate at 300 Main Street sustained substantial damage as a result of flooding due to the aforesaid disaster emergency; and

WHEREAS, pursuant to Section 1402(d)(1.1) of the Borough Code (8 Pa. C.S.A. Section 1402 et. seq.), contracts for emergency maintenance, repairs or replacements of water, electricity, or public works of the Borough shall not require advertising, bidding, or price quotations as provided pursuant to Section 1402 of the Borough Code; and

WHEREAS, in the event such emergency contracts or purchases are necessary, a resolution stating the actual emergency and nature of the procurement shall be adopted by Council at its next public meeting.

NOW, THEREFORE, be it hereby resolved pursuant to Section 1402(d)(1.1) of the Borough Code, it was necessary for the Borough Manager to execute the attached Contract Proposal received from Eastern Diversified Services, Inc., for the performance of flood damage remediation and related work and services in an amount not to exceed \$42,000.00, as a result of the aforesaid disaster emergency;

FURTHER, we authorize officials of Schwenksville Borough to act as necessary to meet the current exigencies of this emergency, namely: by the employment of temporary workers, by the rental of equipment, by the purchase of supplies and materials, and by entering into such contracts and agreements

for the performance of public work as may be required to meet the emergency, all without regard to those time-consuming procedures and formalities normally prescribed by law, mandatory constitutional requirements excepted.

RESOLVED and **ENACTED** this 9th day of September, 2021.

SCHWENKSVILLE BOROUGH COUNCIL

Lee Ann Miller

Lee Ann Miller, Vice-President

Attest:

Gail L. Phillips

Gail L. Phillips
Borough Secretary

Joseph Giunta

Joseph Giunta, Mayor

CONTRACT PROPOSAL

EASTERN DIVERSIFIED SERVICES, INC.
89 Allentown Road
Souderton, PA 18964
215-723-1920

We herewith submit proposal for materials and labor to be supplied at the sole request and order of:

Name Schwenksville Borough	Job Address 300 Main Street Schwenksville, PA 19473	
Phone 610-287-7442	Job Name 46-Schwenksville Borough	Job Phone 267-446-5702

hereinafter referred to as the Owner, for work to be performed on the premises set forth above, for work described as follows:

The estimate accompanying this Contract is for restoring the building and/or contents to the prior condition with regard to quality and materials used. Substitutions with materials of equal quality may be made where the exact original materials are no longer available. Due to the nature and condition of a home after fire or water damage, this estimate merely reflects an approximate evaluation of the damage. Items may have to be added to the scope of work and some items may not have to be done. The guarantee to you, the Owner, is that the dwelling will be restored to its prior condition or better. Eastern Diversified Services, Inc. will supply all materials and labor referenced in the estimate unless otherwise specifically stated.

This Contract is between the Owner and Eastern Diversified Services, Inc.. While the company may offer estimates and other assistance to the Owner in filing the claim with an insurer, it is the responsibility of the Owner to negotiate all coverage and payments directly with the insurer. Specifically, the Owner is responsible for obtaining and disbursing to Eastern Diversified Services, Inc all cash payments in accordance with the terms indicated below.

- Remove 4' insulation
- Remove 4' drywall
- Remove base trim/cove base
- Remove glue down carpet and vinyl plank flooring
- Remove base cabinetry and countertops
- Disconnect plumbing as required to remove cabinetry
- Content manipulation to facilitate demolition
- Apply antimicrobial product to all affected surfaces
- Pack files/office materials from cabinets to facilitate demolition
- Placement of drying equipment as required
- Dispose of all debris from demolition

NOTE: Doors will remain in place

TOTAL PRICE \$42,000.00

ALL PAST DUE AMOUNTS WILL BE SUBJECT TO AN INTEREST CHARGE OF 1½% PER MONTH

Please refer to conditions on reverse side. These conditions are an integral part of this contract. My signature below indicates that I have read the reverse side of this contract.

Contractor's Acceptance**Owner's Acceptance**

Company Representative _____

The terms, specifications and conditions (see reverse) are satisfactory and are hereby agreed to. You are authorized to do the work as specified and payment will be made as outlined above. The owner, upon signing this agreement, represents and warrants that he is the owner of the aforesaid premises and that he has read this agreement.

Accepted by Contractor _____

Owner: Schwentkville Borough _____ Date _____

This proposal may be withdrawn if not accepted within _____ days.

Owner: Aime W. Mander 9/7/21 _____ Date _____
Borough Manager

CONDITIONS**1. LIMITED WARRANTY.**

- a) The Contractor warrants that the Work shall be free from any defects in workmanship for a period of one (1) year from the Completion Date. Materials furnished by Contractor shall be warranted **ONLY** as provided by the manufacturer's warranty. If the Owner fails to make payment when due under this Contract, then the warranty set forth in this paragraph will terminate and become null and void.
- b) THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL AGREEMENT, GUARANTY, PROMISE, REPRESENTATION OR WARRANTY SHALL BE BINDING. IN NO EVENT WILL THE CONTRACTOR BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES EVEN IF THE CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE CONTRACTOR HAS KNOWLEDGE THAT FAILURE TO PERFORM COULD CAUSE CONSEQUENTIAL ECONOMIC LOSSES. IN ANY EVENT, CUMULATIVE DAMAGES FOR BREACH OF THIS CONTRACT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO SERVICES PROVIDED HEREUNDER. WHETHER BASED ON NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORIES. OWNER ACKNOWLEDGES THAT THIS PARAGRAPH ALLOCATES THE RISK OF PRODUCT FAILURE BETWEEN THE CONTRACTOR AND OWNER AND THAT THIS ALLOCATION IS REFLECTED IN THE PRICE PAID. NO ACTION ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY OWNER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

2. **OWNER'S RESPONSIBILITIES.** The Owner shall secure and pay for all necessary approvals, easements, assessments and charges required for the Work. The Owner will furnish all information required regarding the physical characteristics, legal limitations and utility locations for the site of the Work. The Owner is responsible for the security and protection of all completed Work and all equipment and materials which have been delivered to the site. The Owner is responsible to assure that all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work are secured. The Owner will submit all material and color selections, as requested to avoid delays. All selections will be standard materials, purchased by the Contractor.

3. **INSURANCE.** The Contractor shall purchase and maintain (a) Worker's compensation, (b) insurance for claims for damages, other than to the Work itself, because of bodily injury or destruction of tangible property resulting from Contractor's negligence. The Owner shall be responsible for purchasing and maintaining the Owner's own liability insurance and at the Owner's option, may purchase and maintain such insurance as will protect the Owner against claims which may arise from operations under this Contract. The Owner shall purchase and maintain property insurance upon the entire Work at the site at the full insurable value thereof.

4. **CONCEALED CONDITIONS.** Should concealed conditions, due to the condition of the property after the loss, or should concealed or unknown conditions in the structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Price shall be adjusted by Change Order and/or in the final billing if the additions and related charges have been approved by the insurance representative. The Owner shall indemnify the Contractor from any costs or liabilities arising out of damage to concealed utilities if the Owner has failed to inform the Contractor of the concealed utilities.

5. **ADDITIONAL CHARGES.** Changes to the Contract outside the scope of insurance work will be handled with a Change Order stating the changes, the price, and the method of payment (normally 50% at start and 50% at completion of the *Change Order*). Owner changes to scope after signing of the Contract are discouraged, and normally involve a surcharge or at least \$50.00 in addition to the normal charges. Changes to the Contract involving the insurance claim, often due to concealed conditions, will be approved by the insurance representative before proceeding, and may either be handled with a Change Order or recapped in the final billing at the end of the job.

6. **DEFAULT.** Upon the occurrence of a breach of this Contract, the non-defaulting party may: (a) declare all sums due and to become due, if any, by the defaulting party immediately due and payable and/or (b) proceed by appropriate legal action or actions or other proceedings either at law or equity to enforce performance by the defaulting party of any and all covenants of this Contract and to recover damages for the default under this Contract. The parties agree to submit to the jurisdiction of the Court of Common Pleas in and for Montgomery County, Pennsylvania. The parties agree that the location for the hearing or trial of any dispute relating to this Contract shall be Montgomery County, Pennsylvania.

7. **COMMENCEMENT OF THE WORK AND DELAYS IN EXTENSIONS OF TIME.** The Contractor shall carry the Work forward expeditiously with adequate forces. If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or any employee or separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the Owner, then the Contractor shall not be responsible for any substantial delay in completion of the Work. Estimates, if any, of Completion Dates set forth in this Contract are estimates only, it being understood that time is not of the essence.

8. **FINAL COMPLETION AND FINAL PAYMENT.** Upon notice by the Contractor, the Owner will promptly make an inspection of the Work and prepare a list of items, if any, to be completed or corrected. The Contractor shall diligently proceed to complete or correct such items as are required under this Contract. Upon substantial completion, the Owner will pay the Contractor the final payment of the Contract less a deduction of 150% of cost of any uncompleted item(s), like back ordered items, until completed. Upon final completion, the Owner will pay the Contractor the final payment of the Contract. The making of a final payment shall constitute a waiver of all claims by the Owner except those arising from: (a) unsettled liens; or (b) faulty or defective work which is subject to the warranty contained in this Contract. Unless otherwise expressly specified in this Contract, the terms of payment shall be net thirty (30) days from date of invoice. If the Owner fails to make payment when due, interest at the rate of one and one-half percent (1½%) per month shall be added to all invoices. In the event that the Owner fails to make payment when due, then the Owner agrees to indemnify Contractor and pay Contractor's attorney fees and costs of collection in the amount of fifteen percent (15%) of the amount due but in no event less than Three Hundred Fifty Dollars (\$350.00). Returned checks will result in a Thirty-five Dollar (\$35.00) service fee.

9. **PAYMENT BY OWNER AND ASSIGNMENT OF INSURANCE PROCEEDS.** Owner agrees to pay the Contractor the amounts set forth on the front page of this Contract at the time and date indicated. Owner irrevocably assigns to Eastern Diversified Services, Inc. any and all proceeds from any insurance check or draft issued in conjunction with the specific services rendered by Eastern Diversified Services, Inc. Any deductibles, depreciation or other charges, if applicable, taken by the Owner's insurance carrier will be the responsibility of the Owner. To the extent that any component included in an invoice (progress or completed project) is considered incomplete or unsatisfactory by the property owner, property owner may withhold 150% of the value of any particular item. The remaining undisputed items included in the request for payment must be paid in full under the terms of the invoice presented.
10. **ACCESS TO THE SITE OF THE WORK.** The Owner shall provide the Contractor with access to the Work area including ingress and egress. If access to premises is not provided to work crew at the scheduled time, a service fee of fifty (\$50.00) dollars per lost man-hour will be charged. It will be the responsibility of the Owner to provide Contractor with adequate access for heavy trucks and construction materials. The Contractor is hereby released from all claims and damages which may occur to driveways, sidewalks, curbs, etc., due to the weight of any equipment moving onto the site. The Contractor will exercise reasonable care to avoid damage to shrubs, trees, lawns, foliage, flowers, etc.
11. **MISCELLANEOUS.** All of the terms of this Agreement shall be binding upon, and inure to the benefit of, and be enforceable by, the parties hereto and their successors and assigns. This Agreement is being delivered at Souderton, Pennsylvania, and shall be construed and enforced in accordance with Pennsylvania law. This Agreement represents the entire understanding of the parties hereto, supersedes all other and prior discussions and agreements between the parties hereto and may not be modified or amended, except by a written document designating specifically the terms and provisions so modified and amended and signed by the parties here.
12. **PROPERTY, REAL AND PERSONAL.** The real and personal property being serviced by Eastern Diversified Services, Inc. under this agreement is damaged by fire, water, smoke and/or other potential adverse circumstances. Eastern Diversified Services, Inc. will be only liable for the condition of any property to the extent of the charges incurred in the servicing of said property.
13. **THIRD PARTY.** Eastern Diversified Services, Inc. does not represent any client as an agent or intermediary between the client and any third party. Eastern Diversified Services, Inc. will, as a component of customer service, communicate with a third party in order to facilitate, expedite, provide clarity regarding work scope and pricing or any other facts pertinent to the project. This generally applies to insurance carriers, municipal and code officials and investigating officials. As contained in the preceding statement, Eastern Diversified Services, Inc. will engage discussion with insurance representative. Eastern Diversified Services, Inc. will not consider or accept any third party adjustments to work scope or subsequent billing for services rendered after 30 days of invoice presentation. Eastern Diversified Services, Inc. must be notified if a third party lien holder is to be listed as a payee on any checks within 5 days of project commencement. To the extent that a third party lien holder is ultimately named as a payee on any checks or drafts presented for payment, customer agrees to authorize Eastern Diversified Services, Inc. personnel to communicate with third party to facilitate prompt administration of the payment. If the property owner chooses not to provide authorization under the aforementioned conditions, all payments will be due upon presentation of invoice unless otherwise agreed upon.