

## **INTERMUNICIPAL FIRE SERVICES AGREEMENT**

This **INTERMUNICIPAL FIRE SERVICES AGREEMENT** (this "Agreement") is made and entered into this \_\_\_\_ day of September, 2018, by and between the **BOROUGH OF WEST CHESTER**, a political subdivision of the Commonwealth of Pennsylvania with an address at 829 Paoli Pike, West Chester, Pennsylvania 19380 (but which, during the Term (as hereinafter defined) shall have an address at 401 East Gay Street, West Chester, Pennsylvania 19380) (the "Borough"), the **TOWNSHIP OF BIRMINGHAM**, a political subdivision of the Commonwealth of Pennsylvania with an address at 1040 West Street Road, West Chester, Pennsylvania 19382 ("Birmingham"), the **TOWNSHIP OF EAST BRADFORD**, a political subdivision of the Commonwealth of Pennsylvania with an address at 666 Copeland School Road, West Chester, Pennsylvania 19380 ("East Bradford"), the **TOWNSHIP OF THORNBURY (CHESTER COUNTY)**, a political subdivision of the Commonwealth of Pennsylvania with an address at 8 Township Drive, Cheyney, Pennsylvania 19319 ("Thornbury"), the **TOWNSHIP OF WEST GOSHEN**, a political subdivision of the Commonwealth of Pennsylvania with an address at 1025 Paoli Pike, West Chester, Pennsylvania 19380 ("West Goshen"), and the **TOWNSHIP OF WESTTOWN**, a political subdivision of the Commonwealth of Pennsylvania with an address at 1039 Wilmington Pike, West Chester, Pennsylvania 19380 ("Westtown" and, sometimes together with Birmingham, East Bradford, Thornbury, and West Goshen, the "Townships" and sometimes, each, a "Township").

### **BACKGROUND**

**WHEREAS**, pursuant to Chapter 7 of the Code of the Borough (the "Borough Code"), the West Chester Fire Department (the "Fire Department") is comprised of those certain fire companies operating within the jurisdictional limits of the Borough as of the date of this Agreement; *to wit*, Fame Fire Company, First West Chester Fire Company, and Good Will Fire Company (collectively, the "Constituent Fire Companies"); and

**WHEREAS**, pursuant to Chapter 7 of the Borough Code, the Borough Council of the Borough, as the governing body of the Borough, established rules and regulations applicable to operation of the Fire Department; and

**WHEREAS**, pursuant to Section 7-9 of the Borough Code "[t]he Fire Department . . . will respond to any alarm of fire from any township where fire protection contracts are in existence[;]" and

**WHEREAS**, the Borough has the legal authority to enter into contracts with the Townships for mutual aid or assistance in fire protection, or for the furnishing to, or receiving from, the Townships, aid and assistance in fire protection, and to make appropriations therefor; and

**WHEREAS**, pursuant to the Pennsylvania Second Class Township Code, 53 P.S. §66803(c), each of the Townships is authorized to "contract with or make grants to near or adjacent municipal corporations or volunteer fire companies therein for fire protection in the township;

**WHEREAS**, pursuant to separate respective agreements by and between each of the Townships and the Borough, each of which will expire on December 31, 2018 (collectively, the "Prior Fire Services Agreement"), the Fire Department heretofore provided fire protection services to certain portions of each of the Townships; and

**WHEREAS**, each of the Townships deems that the continuation of such fire protection service is necessary for the protection of the health, safety and welfare of its residents; and

**WHEREAS**, under and pursuant to the terms, conditions, and provisions set forth in this Agreement, the Borough is desirous of continuing to provide fire protection service to each of the Townships.

**NOW, THEREFORE**, for and in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Borough and the Townships agree as follows:

1. Incorporation of Recitals; Incorporation of Exhibits. The Recitals set forth in the Background Section of this Agreement are incorporated herein as if here set forth in their entirety. All Exhibits attached to this Agreement are incorporated herein by reference.

2. Payment; Apportionment; Authority to Terminate.

A. Semi-Annual Payments. Each of the Townships acknowledges as follows:

- i. that the Borough shall incur certain costs and expenses associated with the Fire Department;
- ii. that such costs and expenses are greater than they would otherwise be if the Fire Department were to provide Fire Protection Services (as hereinafter defined) only to the Borough;
- iii. that the Borough is relying upon this Agreement and the Townships' performance of their obligations hereunder in planning for and accommodating such additional costs and expenses; and
- iv. that, but for this Agreement and the Townships' representations, covenants, and warranties set forth herein, the Borough would not incur such additional costs and expenses.

In furtherance, and not in limitation, of the foregoing, the Townships shall pay to the Borough the total and aggregate sum of Three Million Eight Hundred Six Nine Hundred Eighty-Nine and 00/100 Dollars (\$3,806,989.00) in ten (10) equal semi-annual installments of Three Hundred Eighty

Thousand Six Hundred Ninety-Eight and 90/100 Dollars (\$380,698.90) (each, a “Semi-Annual Installment”) as more fully set forth in this Agreement.

B. Apportionment. The Townships shall apportion each Semi-Annual Installment between and amongst themselves pursuant to the schedule attached hereto as Exhibit A. Each Semi-Annual Installment shall be remitted to the Borough on March 1<sup>st</sup> and June 1<sup>st</sup> of each calendar year during the Term (as hereinafter defined) without offset or deduction, such that the first Semi-Annual Installment is and shall be due on March 1, 2019, and the last Semi-Annual Installment is and shall be due on June 1, 2023. The obligation to remit each Semi-Annual Installment is and shall be absolute and unconditional under all circumstances whatsoever. Each of the Townships shall remit its share of each Semi-Annual Installment (as set forth on Exhibit A) directly to the Borough or, as they may elect, one or more of the Townships may remit their collective shares of each Semi-Annual Installment to the Borough together.

C. Authority to Terminate and/or Suspend. Notwithstanding anything to the contrary set forth in this Agreement or elsewhere the Townships acknowledge that, at the Borough’s sole and absolute option, the Borough may terminate this Agreement as to any Township which does not remit to the Borough that Township’s share of any Semi-Annual Installment, which such termination shall be effective upon the Borough’s transmission to the delinquent Township of notice of the Borough’s election to terminate. In lieu of such termination, the Borough may elect to suspend its duty to Provide Fire Protection Services under and pursuant to this Agreement for any Township which does not remit to the Borough that Township’s share of any Semi-Annual Installment (or, otherwise, pursuant to Section 3.B. of this Agreement), which such suspension shall be effective upon the Borough’s transmission to the delinquent Township notice of the Borough’s election to suspend and shall not be lifted until twenty-four (24) hours after the Borough receives from that Township the delinquent Semi-Annual Installment together with interest thereon calculated at a rate equal to the prime rate as listed in the first edition of the *Wall Street Journal* published in the year in which the delinquent payment was due, plus 1% per annum compounded monthly (or, otherwise, affects a resolution pursuant to Section 3.B. of this Agreement). In the event that this Agreement is terminated by the Borough as to any Township, the amount of each successive Semi-Annual Installment due from the remaining Townships shall be increased by an amount equal to the amount which would have otherwise been paid by the eliminated Township provided, however, that the remaining Townships may elect to allocate the amount of such increase amongst themselves in whatever manner they see fit by providing notice of such allocation to the Borough not later than thirty (30) days prior to the due date of the next due Semi-Annual Installment.

3. Provision Regarding Service.

A. Requirement to Serve. Except as to any Township for which the Borough has elected to terminate this Agreement or suspend service pursuant to Section 2.C. of this Agreement (and, in the latter case, except during such period of suspension), the Borough shall cause the Fire Department to Provide Fire Protection Services to the areas of the Townships more fully described below (each, a “Fire Service Area”):

- i. the area within the jurisdictional limits of Birmingham as more fully shown on Exhibit B attached hereto; and
- ii. the area within the jurisdictional limits of East Bradford as more fully shown on Exhibit C attached hereto; and
- iii. the area within the jurisdictional limits of Thornbury as more fully shown on Exhibit D attached hereto; and
- iv. the area within the jurisdictional limits of West Goshen as more fully shown on Exhibit E attached hereto; and
- v. the area within the jurisdictional limits of Westtown as more fully shown on Exhibit F attached hereto.

B. No Actions Contrary to Borough Obligation. No Township shall adopt any ordinance, resolution or other official action, and no official, officer, agent, or employee of any Township shall take any action, which might, in the reasonable judgment of the Fire Chief (as hereinafter defined) materially impair or impede the ability of the Borough (acting through the Fire Department, as applicable) to meet the Borough's obligations under and pursuant to this Agreement. If the Fire Chief becomes aware of any such ordinance, resolution, or action, he or she shall notify the subject Township thereof and, within thirty (30) days following such notice, the Township shall take all steps to remedy or negate the same. If the applicable Township does not take the necessary steps to resolve the subject condition within such thirty (30) days period and, thereafter, pursue such resolution with due diligence, the Borough may elect to suspend its duty to Provide Fire Protection Services pursuant to Section 2.C. of this Agreement.

C. Delegation of Authority to Fire Chief. When used in this Agreement, the term "Provide Fire Protection Services" means, as and when necessary, and as determined by the Fire Chief in the sole exercise of his or her reasonable professional judgment, (A) responding to all fire calls and other emergencies within the responsibility of the Fire Department within each Fire Service Area under and pursuant to the Prior Fire Services Agreements, and (B) furnishing all fire protection to and for the inhabitants of the Townships within the respective Fire Service Areas for and during the Term, subject only to Section 2.C. of this Agreement, through the use of such fire and emergency equipment and personnel of the Fire Department as the Chief of the Fire Department (or, as applicable, his or her designee) (the "Fire Chief") shall determine to be reasonable and prudent in the context of each such call. In furtherance, and not in limitation, of the foregoing, the Fire Chief shall determine the numbers and types of apparatus and personnel which shall respond to fire calls and other types of emergency calls.

D. Borough Financial Responsibilities. It is the intention of the Borough and the Townships that, except as expressly set forth in this Agreement to the contrary or as arising out of the negligence or willful misconduct of any Township (or, as applicable, any officer, official, agent, or employee of any Township), no Township shall have any financial responsibility for, or liability

arising out of, any firefighting activities provided to that Township by the Fire Department under the express terms of this Agreement, such activities being solely within the control and under the direction of the Borough and the Fire Department.

- i. Workers' Compensation Insurance. The Borough shall pay for and provide to all paid and volunteer firefighters and all other personnel of the Fire Department and the Constituent Fire Companies such workers' compensation and other insurance in at least such minimum amounts as mandated by Pennsylvania law and shall keep such insurance in full force and effect for and during the Term. In no event shall this Agreement be construed or interpreted to make any paid or volunteer firefighter or other personnel of the Fire Department or the Constituent Fire Companies, employees of any Township, and no Township shall have any responsibility or liability to such firefighter or personnel or any of them arising out of the performance of their duties as volunteer or paid firefighters, fire volunteers, or emergency volunteer personnel while performing their duties as required under the terms of this Agreement, or otherwise, in the Township.
- ii. Errors and Omissions Insurance. The Borough shall maintain in full force and effect during the Term adequate errors and omissions and liability insurance coverage and to insure the operations of the Fire Department, the Constituent Fire Companies, personnel and apparatus during their performance or use of such equipment for fire protection and firefighting services in the Township under this Agreement. The amounts of such insurance coverages are listed on Exhibit G attached hereto.

4. Committee. The Borough acknowledges that it has duly appointed a committee within the Borough known as the West Chester Borough Police and Fire Committee (the "Committee") and that the duties of the Committee include ongoing review and oversight of the Fire Department's operations. Upon execution of this Agreement, each Township shall appoint not more than two (2) Township delegates to the Committee, which such delegates shall attend one meeting of the Committee per year during the Term to review Fire Department operations as they affect the appointing Township municipalities, it being the intention that each such representative shall act in the interests of and represent his or her respective municipality.

5. Term. The term of this Agreement shall commence at 12:00 A.M. on January 1, 2019, and, unless earlier terminated by the Borough as to a given Township pursuant to Section 2.C. of this Agreement, shall terminate at 11:59 P.M. on December 31, 2023.

6. Notice. Any notice, report or demand required, permitted or desired to be given under or pursuant to this Agreement shall be in writing and shall be deemed to have been sufficiently given or served to a party hereto for all purposes if it is (A) deposited by the sender with a nationally

recognized overnight courier service guaranteeing next Business Day (as hereinafter defined) delivery with delivery confirmation or (B) mailed by Express Overnight Mail or certified mail, return receipt requested, postage prepaid, in any event to the address set forth in the Introductory Section of this Agreement or such other address as the party may from time to time designate by like notice. Each such notice shall be effective, if sent by overnight delivery, on the next Business Day following timely deposit with an overnight courier service pursuant to Subsection 6.(A) of this Agreement, or in the case of Express Mail, following acceptance at a United States Postal Service facility, or, if sent by certified mail pursuant to Subsection 6.(B) of this Agreement, then on the second Business Day following such mailing. Rejection or refusal to accept delivery or an inability to deliver because of change of address of which no notice was given shall all be deemed to be receipt of the notice, report or demand. When used in this Agreement, the term "Business Day" does and shall mean any day other than a Saturday, Sunday, or legal holiday in the Commonwealth of Pennsylvania. This Section 6. of this Agreement shall survive termination of this Agreement.

7. Requirement for Notice to Fire Department. During the Term, each of the Townships shall forward to the Fire Department for review and comment upon matters within the purview of the Fire Department all applications (or revisions thereof) which the Township receives pursuant to the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101 *et seq.* The Fire Department shall provide such comments to the requesting Township within thirty (30) days of the Fire Department's receipt of the application (or, as applicable, revisions thereto).

8. Dispute Resolution. In the event of a dispute between the parties with respect to any of the terms or conditions hereof or the performance of any party during the term of this Agreement, such dispute shall be submitted to a three (3)-member panel of arbitrators for resolution and determination. Each of the Borough (on the one hand) and the Township(s) which are party(ies) to such dispute (on the other hand) shall select one such arbitrator within ten (10) days of notification by the other of an unresolved dispute, and the arbitrators so selected shall choose the third within ten (10) days after their appointment. The arbitrators are empowered to conduct such hearings and subpoena such witnesses as shall be necessary for the full and complete determination of any such dispute. The decision of a majority of arbitrators shall be final and conclusive upon the parties and there shall be no appeal therefrom. Each party shall pay the fee charged by the respective arbitrator which it selected, and otherwise shall share equally the fee of the third arbitrator and all other costs of the proceeding.

9. No Waiver. Failure by any party to insist upon compliance with any term or provision of this Agreement at any time or under any set of circumstances shall not operate to waive or modify the provision or render it unenforceable then or at any other time whether the circumstances are the same or not.

10. Contingent Nature of Obligations. The Townships acknowledge that the Borough's obligations under and pursuant to this Agreement as to any of the Townships is contingent upon approval and execution of this Agreement by all of the Townships.

11. Severability. If any provision of this Agreement shall at any time be deemed to be invalid or illegal by the entry by a court of competent jurisdiction of a final judgment which is not subject to appeal or as to any of the Townships then, in that event, this Agreement shall continue in full force and effect with respect to the remaining provisions of this Agreement (and as to the remaining Townships) as and if the invalidated provision (or Township) had not be contained herein or a party hereto.

12. No Third-Party Beneficiaries. Notwithstanding anything to the contrary set forth in this Agreement or elsewhere, no provision of this Agreement is intended to benefit any party other than the Borough and each of the Townships in their respective corporate capacities, and neither this Agreement nor any provision hereof shall be enforceable by any other individual or entity.

13. Entire Agreement; No Amendment. The foregoing constitutes the written agreement of the parties, and no modifications, amendments, additions or revisions thereto shall be valid and binding until executed in two (2) simultaneous counterparts by the respective parties.

14. Governing Law. This Agreement shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania without regard to principles of conflicts of laws.

***[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]***

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**BOROUGH OF WEST CHESTER,**  
a political subdivision of the  
Commonwealth of Pennsylvania

By: Borough Council,  
the duly elected and constituted  
governing body thereof

By: \_\_\_\_\_  
Name: Diane LeBold  
Title: President

**TOWNSHIP OF BIRMINGHAM,**  
a political subdivision of the  
Commonwealth of Pennsylvania

By: its Board of Supervisors,  
the duly elected and constituted  
governing body thereof

By: \_\_\_\_\_  
Name: Scott Boorse  
Title: Chairperson

**TOWNSHIP OF EAST BRADFORD,**  
a political subdivision of the  
Commonwealth of Pennsylvania

By: its Board of Supervisors,  
the duly elected and constituted  
governing body thereof

By: \_\_\_\_\_  
Name: Vincent M. Pompo  
Title: Chairperson

**TOWNSHIP OF WEST GOSHEN,**  
a political subdivision of the  
Commonwealth of Pennsylvania

By: its Board of Supervisors,  
the duly elected and constituted  
governing body thereof

By: \_\_\_\_\_  
Name: Christopher Pielli  
Title: Chairperson

**TOWNSHIP OF THORNBURY,**  
a political subdivision of the  
Commonwealth of Pennsylvania

By: its Board of Supervisors,  
the duly elected and constituted  
governing body thereof

By: \_\_\_\_\_  
Name: Robert Anthony  
Title: Chairperson

**TOWNSHIP OF WESTTOWN**  
a political subdivision of the  
Commonwealth of Pennsylvania

By: its Board of Supervisors,  
the duly elected and constituted  
governing body thereof

By: \_\_\_\_\_  
Name: Carol R. DeWolf  
Title: Chairperson



**EXHIBIT A**

**2018 FIRE PROTECTION  
CONTRACT NEGOTIATIONS**

**2019 – 2023 PROJECTED COSTS  
& FORMULA**

\*\*\*\*\*  
**2018 FIRE PROTECTION CONTRACT NEGOTIATIONS**  
**2019 - 2023 PROJECTED COSTS & FORMULA**  
 \*\*\*\*\*

### LEVEL PAYMENTS 5 YEAR SCHEDULE

	YEAR	YEAR	YEAR	YEAR	5 YEAR	
	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>GRAND TOTALS</u>	
				<u>2023</u>	<u>PERCENTAGE</u>	
E. BRADFORD	\$187,193	\$187,193	\$187,193	\$187,193	\$935,964	15.8%
THORNBURY	\$79,474	\$79,474	\$79,474	\$79,474	\$397,369	6.7%
WESTTOWN	\$108,656	\$108,656	\$108,656	\$108,656	\$543,280	9.2%
BIRMINGHAM	\$39,777	\$39,777	\$39,777	\$39,777	\$198,883	3.4%
WEST GOSHEN	\$346,298	\$346,298	\$346,298	\$346,298	\$1,731,492	29.3%
WEST CHESTER	\$422,419	\$422,419	\$422,419	\$422,419	\$2,112,095	35.7%
TOTALS	<u>\$1,183,817</u>	<u>\$1,183,817</u>	<u>\$1,183,817</u>	<u>\$1,183,817</u>	<u>\$5,919,083</u>	

**EXHIBIT B**

**WCFD COVERAGE AREA**

**BIRMINGHAM TOWNSHIP**



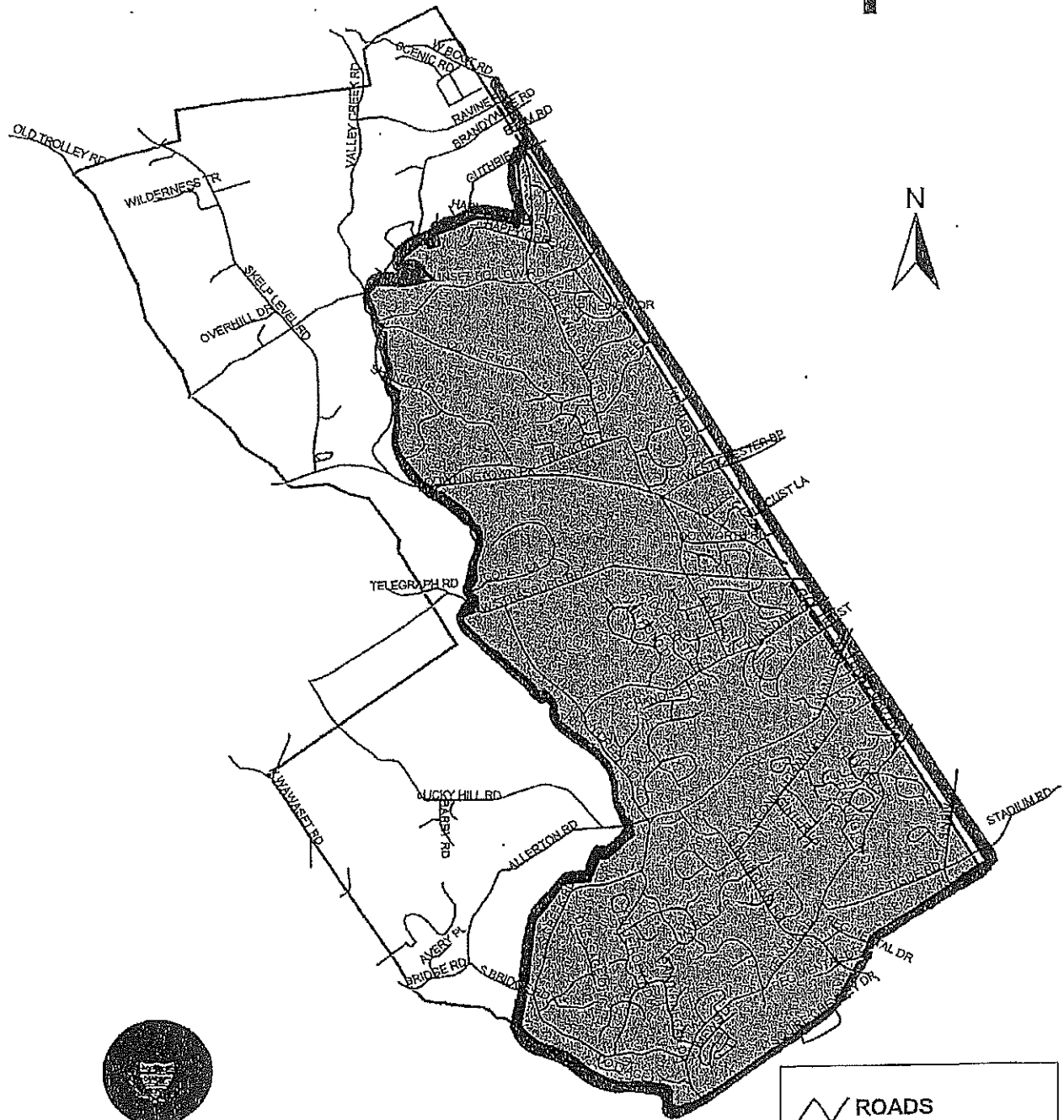
**EXHIBIT C**

**WCFD COVERAGE AREA**

**EAST BRADFORD TOWNSHIP**

EXHIBIT C

# WCFD Coverage Area East Bradford Twp.



Chester Co. Emergency Services  
March, 2003

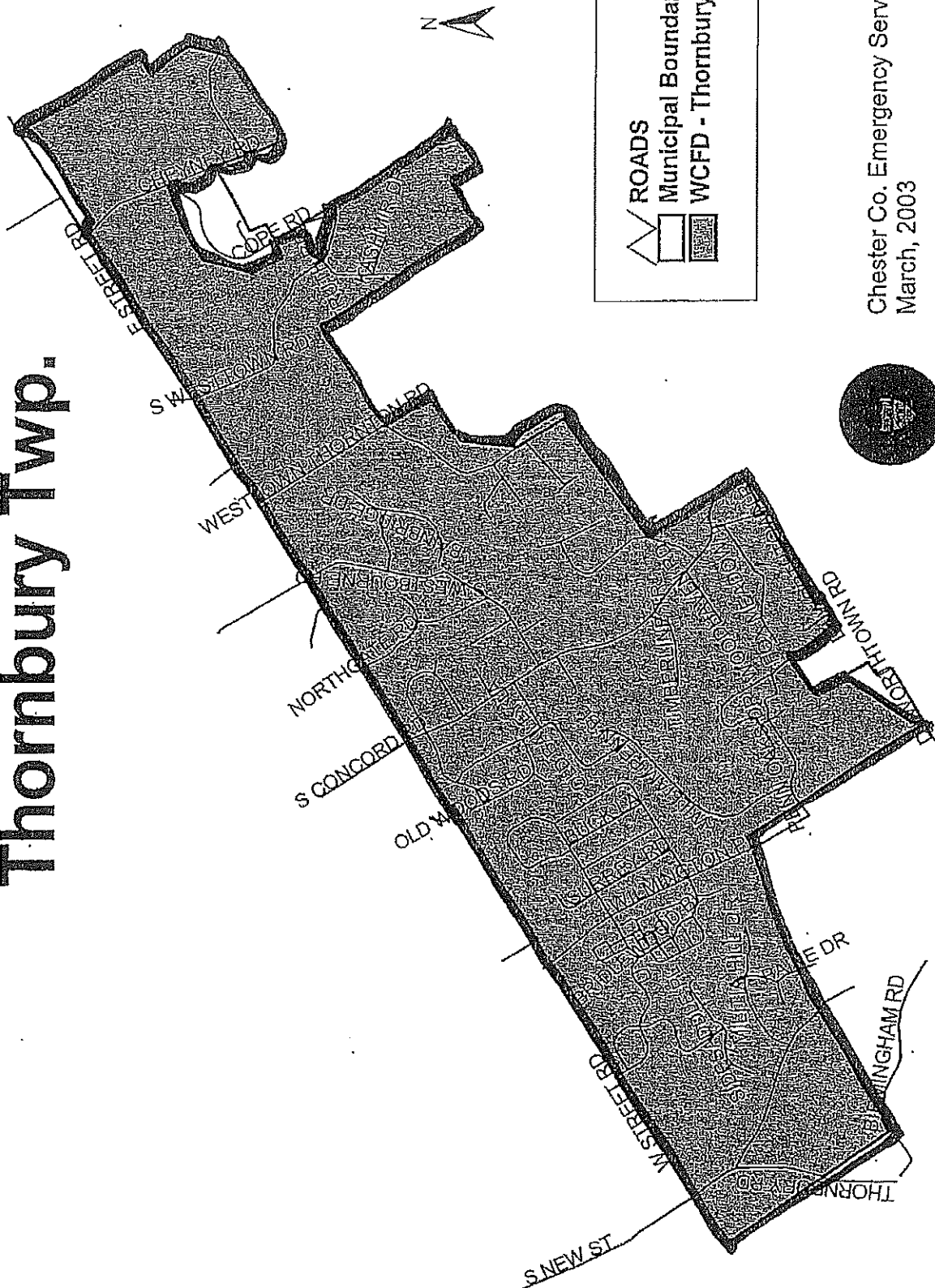
**EXHIBIT D**

**WCFD COVERAGE AREA**

**THORNBURY TOWNSHIP**

# WCFD Coverage Area Thornbury Twp.

EXHIBIT D



Chester Co. Emergency Services  
March, 2003



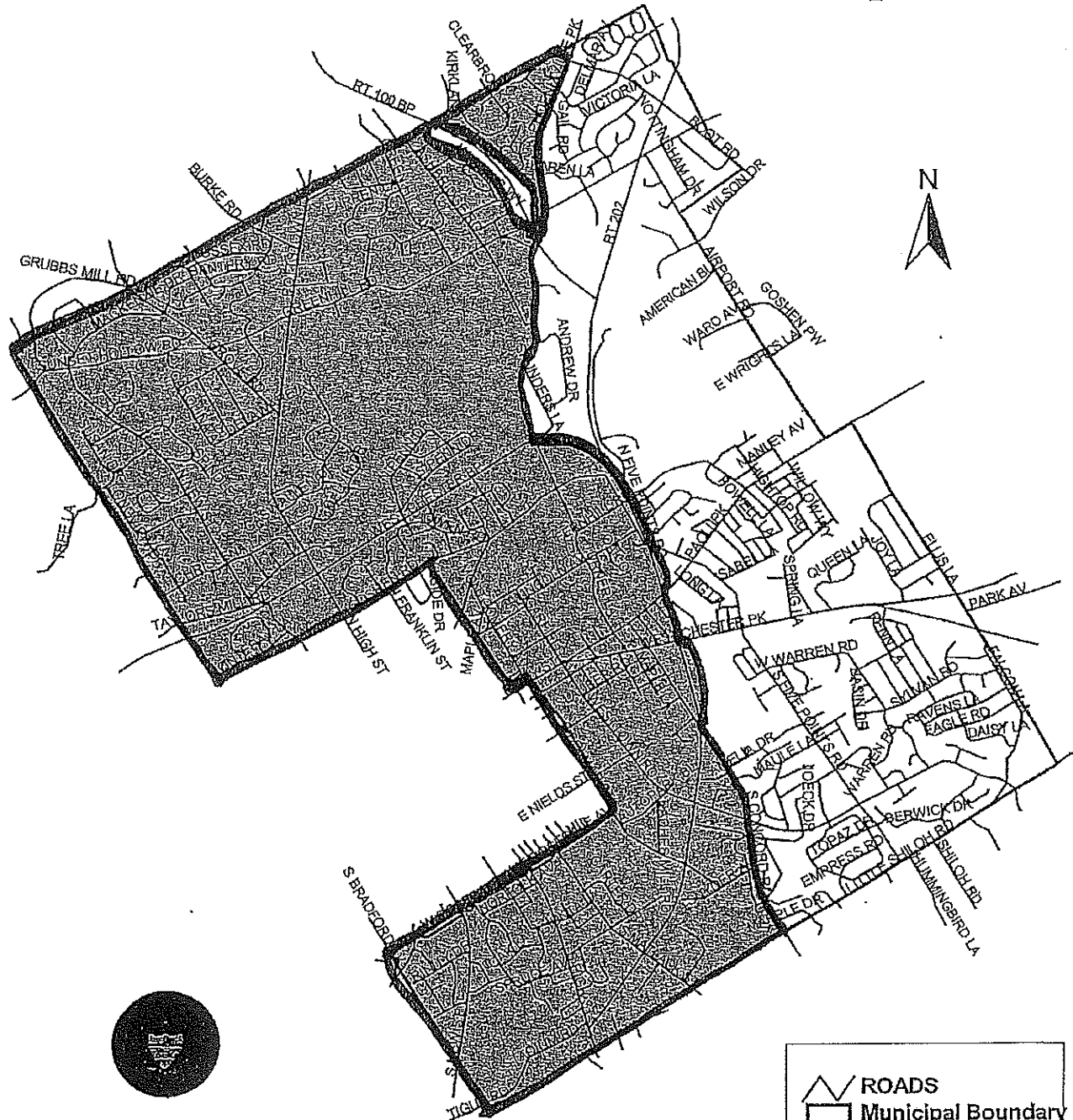


**EXHIBIT E**

**WCFD COVERAGE AREA**

**WEST GOSHEN TOWNSHIP**

# WCFD Coverage Area West Goshen Twp.



Chester Co. Emergency Services  
March, 2003

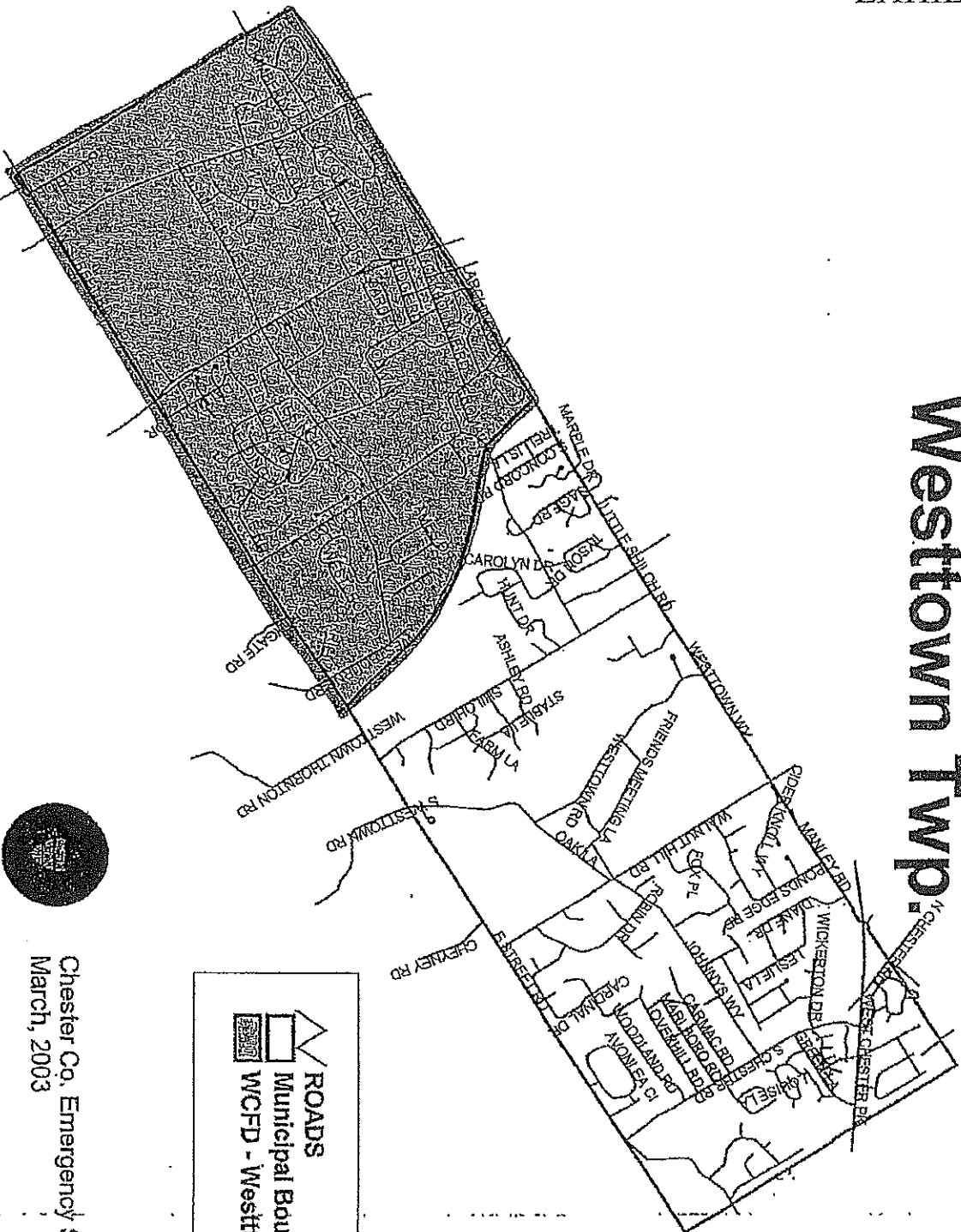
**EXHIBIT F**


**WCFD COVERAGE AREA**


**WESTTOWN TOWNSHIP**


# EXHIBIT F

## WCFD Coverage Area Westtown Twp.




**ROADS**


**Municipal Boundary**


**WCFD - Westtown**

Chester Co. Emergency Services  
March, 2003



**EXHIBIT G**

**WEST CHESTER BOROUGH  
COVERAGE FOR FIRE COMPANIES**

**EXHIBIT G**  
**WEST CHESTER BOROUGH COVERAGE FOR FIRE COMPANIES**

---

**COVERAGE**

**Liability Coverages**

General Liability	\$1,000,000.00
Firemen's Errors & Omissions	\$1,000,000.00
Medical Malpractice	\$1,000,000.00
Umbrella Liability over these	\$5,000,000.00

**Vehicle Coverages**

Liability Limit	\$1,000,000.00
Automobile Physical Damage	Included (Stated Amount)

**Covered Vehicles**

**Total Values**

1	Ladder	Fire Truck	\$6,542,000.00
4	Pumper	Fire Trucks	
1	Tanker	Fire Truck	
1	Rescue	Fire Truck	
1	Fire Police	Van	
4	Interceptor	First Responder	
3	Squad	Vehicles	
	Brush &		
2	Support	Fire Trucks	
4	Support	Trailers	

**Workers Compensation for Volunteer Firemen**

Population	
First Response	52,784