

EFFECTIVE DATE _____
(Department will insert)
COUNTY _____
MUNICIPALITY _____
DISTRICT ORG CODE _____

REIMBURSEMENT AGREEMENT NO. _____
FID NO. _____
SAP VENDOR NO. _____
MPMS NO. _____
RELATED ECMS AGREEMENT NO. _____

TRANSPORTATION ALTERNATIVES SET-ASIDE PROGRAM REIMBURSEMENT GRANT AGREEMENT

This Transportation Alternatives Set-Aside Program Reimbursement Grant Agreement ("Agreement") is made by and between the Commonwealth of Pennsylvania ("Commonwealth"), acting through the Department of Transportation ("Department"),

a n d

the _____, ("Local Project Sponsor").

BACKGROUND

The Fixing America's Surface Transportation ("FAST") Act, Pub. L. 114-94, 129 Stat. 338, created a set-aside of Surface Transportation Block Grant Program funding for transportation alternatives, to be known as the Transportation Alternatives Set-Aside ("TA Set-Aside"). The entities eligible to receive funding from the TA Set-Aside are defined in 23 U.S.C. §§ 133(h)(4)(B) and include not only governmental entities but also nonprofit entities responsible for the administration of local transportation safety programs.

The Department will receive TA Set-Aside funding from the United States Department of Transportation, Federal Highway Administration ("FHWA") to be spent statewide on eligible projects and activities, in accordance with 23 U.S.C. § 133(h)(3), which will reimburse a portion

of the costs of projects approved by the Department to receive TA Set-Aside funding, the balance of the funding being provided by the project sponsors.

The Department, following either its own review of the Local Project Sponsor's application or review of the application by the appropriate planning organization, has confirmed the selection of the project, more fully described below in Section 1 ("Project"), to receive TA Set-Aside funding. The Local Project Sponsor has signified its willingness to participate in the TA Set-Aside program and proceed with the Project, in accordance with the terms, conditions and provisions set forth below.

The parties, intending to be legally bound, agree as follows:

1. **GENERAL PROVISIONS**

(a) **Project Description.** The Local Project Sponsor, subject to reimbursement or other payment procedures as provided in this Agreement, shall participate in the design and construction of the improvements constituting the Project at the following location in accordance with plans, policies, procedures and specifications prepared, approved, or both by the Department and the FHWA, where applicable:

<u>Type of Improvement</u>	<u>Location</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(b) **When Costs are Incurred.** Only work begun on the Project after full execution of this Agreement shall be eligible for reimbursement under the terms of this Agreement, subject,

furthermore, to any required approvals by the FHWA regarding federal-aid participation, as provided below in Section 28.

(c) **Estimated Costs.** Exhibit A attached to this Agreement sets forth the activities or phases being reimbursed, the estimated costs and the reimbursement percentages.

2. **TERM AND EFFECTIVE DATE**

The term of this Agreement shall commence on the Effective Date (as defined below) and shall remain in effect until Project completion as provided in Section 42 below, unless terminated earlier in accordance with Sections 15 and 29 below, except for those obligations that survive completion of the Project set forth in Sections 16, 17, 18 and 19. The Effective Date shall be the date that this Agreement is fully executed by the Local Project Sponsor and the Department and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature. The authorizations granted in this Agreement shall be effective only after the Effective Date of this Agreement. Following full execution, the Commonwealth shall insert the effective date at the top of Page 1. The authorizations granted by this Agreement shall be further contingent upon written approval of the FHWA, if necessary.

3. **DESIGN**

(a) **Local Project Sponsor Shall Design.** The Local Project Sponsor, with its own forces or by contract, shall design the proposed Project. If the Department is reimbursing design activities for this Project, the estimated costs and reimbursement percentages are detailed in Exhibit A. The design shall be in accordance with plans, policies, procedures, criteria and specifications prepared or approved by the Department and the FHWA, including, but not limited to, the provisions of the current Department Design Manual; the Department Bureau of Design Specifications for Consultant Agreements, Form No. 442, Division I; and the Department

Specifications, Publication 408 Specifications (current edition), its amendments and supplements (collectively, "Publication 408 Specifications").

(b) **Local Project Sponsor Shall Obtain Approvals.** The Local Project Sponsor shall secure and comply with all necessary approvals, permits and licenses from all other governmental agencies as may be required to complete the Project. This obligation shall include the responsibility for the preparation or revision of environmental impact statements, environmental assessments, categorical exclusions, environmental reports or other documents required by law, environmental litigation or both; and the defense of environmental litigation resulting from the planning, design or construction of the Project. At the Department's request, the Local Project Sponsor shall furnish to the Department, prior to advertising and letting the Project, evidence of the approvals, permits, licenses and approved environmental documents.

4. UTILITY CONSIDERATIONS

The Local Project Sponsor shall furnish Project plans to utilities known to have facilities within the Project limits and to all other utilities discovered within the Project limits.

(a) **Utility Relocation or Adjustment.** The Local Project Sponsor shall arrange for any necessary relocation or adjustment for all utility facilities and notify each utility company to relocate any affected facilities to accommodate the construction of the Project. The Local Project Sponsor, with the Department's guidance, shall make these arrangements in accordance with FHWA and Department requirements. If any affected utility claims that the Local Project Sponsor is responsible for reimbursing the affected utility for its relocation costs under state or local laws in existence as of the effective date of this Agreement, the Local Project Sponsor shall furnish the Department with a detailed cost estimate prepared by the utility and documentation justifying the Local Project Sponsor's legal obligation to reimburse the utility for utility relocation costs actually incurred by the utility. The Department, after review and approval of the cost estimates and documentation, shall draft the necessary reimbursement agreement to be

executed by the Local Project Sponsor and the utility. The Department shall submit the reimbursement agreement to the Local Project Sponsor for execution by the parties.

(b) **Utility Owned Facilities.** If the Local Project Sponsor owns or operates the existing utility facilities, the Local Project Sponsor shall request the Department to include such costs in this Agreement or prepare an amendment to this Agreement to address the costs associated with the relocation of these facilities. The amendment shall acknowledge that the utility facilities are located in the right-of-way and that the relocation costs are Project-eligible costs.

(c) **Utility Clearance.** Prior to advertising the Project for letting, the Local Project Sponsor, on forms provided by the Department, shall furnish a utility clearance certification attesting that all arrangements have been made for the relocation of all known facilities affected by the Project in accordance with Department Design Manual Part V. The statement shall be supported by a description of the written arrangements made with the utilities for the relocation of facilities in a manner that will not impede Project construction.

(d) **Accommodation of Utilities.** The parties acknowledge that all utility facilities transferred to or remaining at a location within the right-of-way of a federally-aided highway shall be accommodated in accordance with the provisions of the applicable Federal Regulations, including the then current version of 23 CFR Part 645 and the Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 645, Subpart B, *Accommodation of Utilities*, as amended.

(e) **Reimbursement.** If the Department is reimbursing utility relocation activities for this Project, the Department shall pay the estimated costs and reimbursement percentages in accordance with Exhibit A.

(f) **Local Project Sponsor Cost.** If the Local Project Sponsor exercises its option under Section 15 of this Agreement and abandons the Project after any utility has been authorized to

proceed with its relocation work, the Local Project Sponsor, at its sole cost and expense, hereby agrees to reimburse the utility for its actual and related indirect costs and expense of work actually completed at the time of notification of the abandonment, plus any additional expenses incurred by the utility in restoring its system to normal operating conditions.

5. RAILROAD CONSIDERATIONS

The Local Project Sponsor shall furnish Project plans to any railroad(s) known to have facilities within the Project limits.

(a) **Coordination with Railroads.** The Local Project Sponsor shall coordinate with the railroad(s) to determine railroad design criteria, arrange for protective services as needed and determine levels of insurance that will be required for the completion of the Project.

(b) **Department Forms.** The Local Project Sponsor shall coordinate with the railroad(s) to ensure that Department Forms D-4279 and D-4279A are completed by the railroad(s) and returned to the Department.

(c) **Special Provisions.** The Local Project Sponsor shall include all railroad special provisions, including insurance requirements, right-of-entry requirements and private crossing requirements in the Project bid package.

(d) **Reimbursement.** If there are railroad costs that are eligible for reimbursement, they shall be addressed through either a letter of amendment or a letter of adjustment, as provided below in Section 13.

(e) **Railroad Reimbursement Agreement.** The Department, after review and approval of the cost estimates and documentation, shall draft the necessary reimbursement agreement between the Local Project Sponsor and the railroad and will forward the agreement to the Local Project Sponsor for

execution. The Local Project Sponsor shall provide the Department with a copy of the fully executed reimbursement agreement.

6. APPLICATION TO PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Local Project Sponsor, as necessary, shall make such applications to the Pennsylvania Public Utility Commission ("PUC") as are required for the construction and completion of the Project and shall present this Agreement into evidence before the PUC with the request that the PUC allocate costs for said Project in accordance with this Agreement. If the PUC, by order, allocates costs to the Department as a result of such application, the Local Project Sponsor shall reimburse the Department in full for the costs allocated to the Department.

7. CONTRACT DEVELOPMENT

(a) **Bid Package.** The Local Project Sponsor shall, by contract or with its own forces, be responsible for preparation of all plans, specifications and estimates ("P.S.&E.") for the Project. The Department's list of the essential documents to be prepared by the Local Project Sponsor, entitled "Plans, Specifications, Estimates and Bid Proposal Package," is attached this Agreement as Exhibit B. All work shall be in conformance with applicable state and federal laws and requirements, including, but not limited to, those outlined in the Federal-Aid Policy Guide, Chapter I, Subchapter G and the most current version of the *Stewardship and Oversight Agreement* between the Department and the FHWA, which is accessible online at <https://www.fhwa.dot.gov/federalaid/stewardship/agreements/pa.pdf>.

(b) **Prequalification.** All bid documents shall require that the contractor be prequalified by the Department, unless the Department, in writing, waives prequalification.

(c) **Method of Letting and Award.** Upon completion of all required bid documents, the Local Project Sponsor shall submit them to the Department for review and approval.

The Department, subject to reimbursement by the Local Project Sponsor for its costs, shall be responsible for letting and award of the contract for construction of the Project, as provided below in Section 10, and, after satisfaction of the conditions set forth in subsection (d) below, shall populate the Engineering and Construction Management System (“ECMS”) with all required bid documents (except for those limited instances where the Local Project Sponsor has requested and received the Department’s approval to conduct a paper let instead of having the Project administered through ECMS, in which case Department policies and procedures for projects not administered in ECMS shall apply).

(d) **Advertisement.** The Department shall advertise for bids through ECMS upon:

(i) FHWA authorization of the Project;

(ii) approval of the environmental clearance document;

(iii) approval of a right-of-way certification (if applicable);

(iv) approval of a utility clearance certification;

(v) completion of P.S.&E. review; and

(vi) satisfactory resolution of any comments.

(e) **Addenda.** The Department must review and approve any addenda to the approved bid documents prior to their issuance to prospective bidders. The Department shall issue any addenda no less than three (3) calendar days before the proposed bid opening.

8. OCCUPANCY RIGHTS

(a) **Right to Occupy.** The Local Project Sponsor shall ensure that it has the right to occupy the area of the Project for purposes of constructing and maintaining the Project and that the public has a right to enter and use the area of the Project for a sufficient time after completion of construction to justify the expenditure of public funds on the Project. This right of occupancy by the Local Project Sponsor and continued use by the public may be shown by deed of fee simple or easement; by right-of-way, lease or license agreement; or by any other means found acceptable to the Department.

(b) **Supporting Documentation.** Upon request from the Department, the Local Project Sponsor shall provide information necessary to document the right to occupy the area of the Project for construction, maintenance and use. The Local Project Sponsor shall also supply any additional information as deemed necessary by the Department for this purpose. This may include the creation of a plan showing all property acquired by the Local Project Sponsor's predecessors in title, including a designation of the nature of the predecessors' interests (i.e., whether in fee or easement) and a notation of where the instruments conveying those interests are located. The Project will not advance to the final design phase until the Department is satisfied that the Local Project Sponsor has proven appropriate interest in all affected property.

9. RIGHT-OF-WAY ACQUISITION

(a) **Acquisition of Required Right-of-Way.** The Local Project Sponsor shall ensure that all additional right-of-way necessary to construct this Project are acquired in accordance with all applicable federal and state laws, policies and procedures, as detailed in the Department Publication No. 740, *Local Project Delivery Manual* ("Publication 740").

(b) **Right-of-Way Plan.** The Local Project Sponsor shall acquire all necessary right-of-way by gift, agreement, dedication, purchase or, if it has the authority to do so, condemnation.

The Local Project Sponsor shall show the amount of right-of-way required for the Project on a plan, which it shall prepare in accordance with policies, procedures, criteria and specifications prepared or approved by the Department and the FHWA, including, the provisions of the current Department Publication 14M, Design Manual 3, Plans Presentation, Chapter 3, Right-of-Way Plans.

(c) **Eminent Domain.** If the Local Project Sponsor does not have the authority to acquire property by eminent domain, prior to making an offer for property, the Local Project Sponsor shall advise the owner that it cannot acquire the property by condemnation if negotiations fail to result in an amicable agreement and to inform the owner of what it believes to be the fair market value of the property, in accordance with 49 C.F.R. § 24.101(b)(2).

(d) **Additional Local Project Sponsor Responsibilities.** The Local Project Sponsor, subject to possible reimbursement from the FHWA, shall be responsible for all negotiations, defense of all claims and initial payment of all property damages or right-of-way costs resulting from any acquisition or condemnation. The Local Project Sponsor shall strictly comply with all applicable right-of-way acquisition procedures set forth in the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; the current Department Right-of-Way Manual and its amendments; and the Federal-Aid Policy Guide. Acquisition costs shall include, but shall not be limited to, payment of claims of affected property owners; photographic, appraisal and engineering services; title reports; counsel fees; expert witness fees required for the adjudication of all property damage claims; transcripts of testimony before the board of view; and all record costs, including printing costs, in case of appeal to an appellate court.

(e) **Reimbursement.** If the Department is reimbursing right-of-way acquisition activities for this Project, the Department shall pay the estimated costs and reimbursement percentages in accordance with Exhibit A.

(f) **Property Management Requirements.** The Local Project Sponsor acknowledges that any real property acquired with funds provided under this Agreement shall be managed in accordance with the property management requirements provided in 23 C.F.R. Part 710, Subpart D. Any use of the property for purposes other than that for which the funds were provided must be consistent with the continuation of the original use. If the original use of the real property is converted by sale or lease to another use inconsistent with the original use, the provisions of Section 16 below apply.

10. LETTING AND AWARD

(a) **Department's Responsibilities.** Except as provided in subsection (c) below, relating to paper lets, the Department shall advertise for bids, open bids and with the concurrence of the Local Project Sponsor (which will indicate its concurrence electronically) award the construction contract in the name of the Local Project Sponsor, all in accordance with Publication 740. The Local Project Sponsor shall execute the contract with the successful bidder electronically through ECMS. Following coordination with the Local Project Sponsor, the Department shall issue the notice to proceed through ECMS to the contractor.

(b) **Business Partner.** If the Local Project Sponsor has not already executed a Business Partner Agreement and registered with the Department as a business partner in order to access ECMS, the Local Project Sponsor shall execute a Business Partner Agreement with the Department in order to obtain such access prior to the Project's being advertised.

(c) **Paper Let.** In those limited instances where the Local Project Sponsor has requested and received from the Department approval to conduct a paper let instead of having the Project administered through ECMS, letting and award shall be in accordance with Department policies and procedures applicable to projects not administered in ECMS.

11. INSPECTION

(a) **Construction Inspection.** Construction inspection shall be in accordance with the option selected below:

If the Local Project Sponsor assumes responsibility for construction inspection, the Local Project Sponsor, with its own forces or by contract, shall provide staff to inspect and supervise adequately all construction work in accordance with the approved plans and specifications, including, but not limited to, Publication 408, to assure that all labor and materials furnished under and on account of this Agreement are in strict and complete conformity to these plans and specifications. In addition, the work shall be in accordance with the current version of the Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 635, *Construction and Maintenance*. The Local Project Sponsor, in consultation with the Department, shall determine the level of inspection, number of inspectors required for the Project and the qualifications required for the inspectors in accordance with Publication 740. If inspection of the work performed on the Project reveals defects, malfunctions, or other unsuitable, substandard or inadequate conditions, then the Local Project Sponsor reserves the right to require it to be reperformed by the contractor at no cost to either the Local Project Sponsor or the Department.

If the Department assumes responsibility for construction inspection, the Department, with its own forces or by contract, shall provide staff to inspect and supervise adequately all construction work in accordance with the approved plans and specifications, including, but not limited to, Publication 408, to assure that all labor and materials furnished under and on account of this Agreement are in strict and complete conformity to these plans and specifications. In addition, the work shall be in accordance with the current version of the Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 635, *Construction and Maintenance*. The Department shall determine the level of inspection, number of inspectors required for the Project and the qualifications required for the inspectors in accordance with applicable policies and procedures. If inspection of the work performed on the Project reveals defects, malfunctions, or other

unsuitable, substandard or inadequate conditions, then the Department reserves the right to require it to be reperformed by the contractor at no cost to either the Department or the Local Project Sponsor. The Department's costs in providing construction inspection services appear as Department-incurred costs on Exhibit A.

(b) **Construction Engineering Costs.** Allowable construction engineering costs may include such work items as inspection, certification and test of materials, surveys, construction consultation and construction management in accordance with the Federal-Aid Policy Guide, Chapter I, Subchapter B, Part 140, *Reimbursement*, and 23 C.F.R. § 1.11. Such costs are eligible for federal participation only to the extent that they are directly attributable and properly allocable to the Project.

12. REIMBURSEMENT

(a) **Payment.** Subject to the terms set forth in this Agreement and in conformance with the policies adopted by the Department, the Department, from funds allocated and made available for this purpose by the FHWA, shall make payment to the Local Project Sponsor in one of the following manners, as set forth on Exhibit A:

- (i) Where the Local Project Sponsor assumes financial responsibility for the cost of all preconstruction activities, using funds, in-kind contributions or both, as specified below, the Department shall reimburse one hundred percent (100%) of the allowable construction costs of the Project.
- (ii) Where the Local Project Sponsor is to receive reimbursement during all phases of the Project, the Department shall reimburse the Local Project Sponsor for up to eighty percent (80%) of the total allowable costs of the Project. The Local Project Sponsor shall be responsible for the remainder of the total Project costs.

Any future changes to the estimated costs and reimbursement percentages shall be addressed through a letter of amendment or a letter of adjustment, as provided below in Section 13.

(b) **Local Project Sponsor Funds.** The Local Project Sponsor, by executing this Agreement, certifies (1) that it has on hand, or will obtain over the life of the Project, sufficient funds to meet all of its obligations under the terms of this Agreement, to the extent that they are not satisfied by in-kind contributions as described below in subsection (c), and (2) that it, and not the Department, shall provide all funds needed to pay any costs incurred in excess of those costs eligible for federal-aid participation and shall bear all such excess costs. The Local Project Sponsor shall be solely responsible for one hundred percent (100%) of this portion of the total Project costs. The Local Project Sponsor may use any combination of funds from its own budget and outside sources, whether public or private.

(c) **In-Kind Participation.** The Local Project Sponsor may satisfy all or part of its share of the total Project costs through in-kind participation in the form of real property, materials or services that it contributes itself or that are contributed by third parties. Such real property, materials and services shall be valued at their fair market value in accordance with 23 U.S.C. § 323, as amended, and the policies, procedures, criteria and specifications of the FHWA and the Department and must meet the eligibility requirements of the Project. The Local Project Sponsor shall maintain and, if requested, make available to the FHWA and the Department records establishing how the value placed on contributed real property, materials and services was derived. The contributions must occur after the FHWA's authorization of the Project through approval of Form 4232 and before approval of the final voucher. Any contributions and their estimated value are shown on Exhibit A.

(d) **Periodic Invoices.** The Local Project Sponsor, for the purpose of reimbursement, shall seek payment through ECMS for the following items:

- (i) allowable costs for work performed by the Local Project Sponsor's forces on the Project;
- (ii) work performed on the Project by the Local Project Sponsor's contractors(s) or consultant(s); and
- (iii) allowable costs incurred in the acquisition of right-of-way and utility relocations, if applicable.

The Department shall submit through the Office of Comptroller Operations the request for payment to the FHWA. As FHWA funds are made available, the Department shall reimburse the Local Project Sponsor for the proportionate share of the approved charges.

(e) **Consultant and Contractor Invoices.** The Local Project Sponsor is obligated to submit to the Department invoices from its consultant(s) and contractor(s) to assure prompt payment of the consultant(s) and contractor(s) for work performed to date.

(f) **Payment to Contractors and Consultants.** The Local Project Sponsor shall pay the federal and its own shares to its consultant(s) or contractor(s) within ten (10) calendar days of the date of the Department's payment. The Local Project Sponsor shall, as part of its record-keeping obligation, maintain records of receipt and payment of such funds. Failure to comply with this subsection or the requirements of subsection (e) relating to submission of invoices shall constitute a default, and the Department shall have the right to change payment procedures unilaterally to a reimbursement basis. If the Local Project Sponsor is a political subdivision, the Department shall have the additional right to invoke Section 19, relating to withholding of liquid funds.

(g) **Reimbursement.** If the Department changes payment procedures unilaterally to a reimbursement basis, as provided in subsection (f), the following procedures shall apply:

- (i) The Local Project Sponsor shall seek reimbursement from the Department through ECMS.
- (ii) The Local Project Sponsor shall include with the invoices verification of payment of the consultant(s) or contractor(s) by means of a copy of the proof of payment to the consultant(s) or contractor(s) and its(their) acknowledgement of this payment.
- (iii) After reviewing the verification concerning payment of the consultant(s) or contractor(s) and material certifications and determining them to be satisfactory, the Engineering District Office shall approve the invoices for payment.
- (iv) Upon approval of the invoices, the Department shall submit the request for payment to the Office of Comptroller Operations, including the state and federal shares, as applicable. As FHWA funds are made available, the Department shall reimburse the Local Project Sponsor for the proportionate share of the approved charges.

(h) **Excess Costs.** The Local Project Sponsor shall be responsible for all costs incurred in excess of those eligible for federal-aid participation, including, but not limited to, any and all costs relating to or resulting from changes to the approved plans or specifications; time delays and extensions of time or termination of construction work; interest for late payments or for money borrowed to finance the Project (inasmuch as interest paid by the Local Project Sponsor is not federally reimbursable); unforeseen right-of-way and other property damages and costs resulting from the acquisition or condemnation of lands for the Project or for the construction of the improvements; unforeseen utility relocation costs; unforeseen costs for environmental litigation and reports; and all other unforeseen costs and expenses not included in the estimates

of design, utility relocation, construction and right-of-way acquisition costs, but which are directly related to or caused by the planning, design or construction of the Project. This provision shall not preclude the Local Project Sponsor from modifying the scope of the Project, with the approval of the Department, if the costs exceed the available funds.

(i) **Department-Incurred Costs.** If those costs incurred by the Department, including costs relating to administrative and oversight activities, appear on Exhibit A as being reimbursable from federal funds as eligible Project costs, the Department shall charge such costs directly to the Project automatically through the federal-aid billing system; and the FHWA will reimburse these costs directly to the Department. If a portion of these costs appears on Exhibit A as the responsibility of the Local Project Sponsor in accordance with subsection (b) above, the Department shall invoice the Local Project Sponsor monthly. Failure by the Local Project Sponsor to reimburse the Department within thirty (30) days of receipt of the Department's invoice shall cause the Local Project Sponsor to be in default of payment. In the event of such default, the Department may, in its sole discretion, consider the Project to be abandoned by the Local Project Sponsor. If the Project is abandoned by the Local Project Sponsor, the Local Project Sponsor shall be obligated to reimburse all FHWA and Department funds in accordance with Section 15.

(j) **Additional or Extra Work.** The Department shall not reimburse any additional or extra work done or materials furnished, not specifically provided for in the approved plans and specifications, unless the Department has first approved such additional or extra work or materials in writing. Any such work done or materials furnished without such written approval first being given shall be at the Local Project Sponsor's own risk, cost and expense.

(k) **Final Invoices.** The Local Project Sponsor shall submit its final invoices for payment or reimbursement of the items set forth in subsection (a) to the Department within months (which can be no more than nine (9) months) of the acceptance of the Project.

If the Local Project Sponsor fails to submit its final invoices within this time period, it may forfeit all remaining federal financial participation in the Project.

13. AMENDMENTS

(a) **Letter of Amendment.** If the cost for any phase of the Project listed in Exhibit A is blank, necessitating the subsequent provision of funding over the life of the Project, or the cost of any phase increases, causing the total estimated cost of the Project to increase, and the Department and the FHWA are willing to provide additional funding because of the increased cost, the parties must execute a letter of amendment that will include a revised Exhibit A. The Department cannot pay or reimburse the Local Project Sponsor for the additional costs until the parties execute the letter of amendment. Adequate federal funds must be available before the parties execute the letter of amendment. The letter of amendment is not effective until duly authorized representatives of the Local Project Sponsor, the Department, the Office of Chief Counsel and the Office of Comptroller Operations sign and date the letter of amendment. A sample letter of amendment is attached as Exhibit C to this Agreement.

(b) **Letter of Adjustment.** If the Department determines that the cost for any phase listed on Exhibit A should be redistributed, and the redistribution does not result in an increase or decrease in total Project costs or any increase in costs to the Local Project Sponsor, the Department will redistribute such costs by sending the Local Project Sponsor notification by means of a letter of adjustment that will include a revised Exhibit A. The Department cannot pay or reimburse the Local Project Sponsor for the costs of these phases until the Office of Comptroller Operations signs and dates the letter of adjustment. The Local Project Sponsor's signature is not required for the letter of adjustment to be effective. A sample letter of adjustment is attached as Exhibit D to this Agreement.

(c) **Changes to Standard Provisions.** If there are changes to any Standard Provisions that need to be addressed at the time of a letter of amendment, as described in subsection (a), the parties can incorporate those revised or updated Standard Provisions by noting the incorporation and attachment of such Standard Provisions to such letter of amendment. For the purposes of this subsection, Standard Provisions consist of those provisions or clauses required to be included in Commonwealth agreements pursuant to federal or state law or Commonwealth Management Directives, including, but not limited to: Americans with Disabilities Act, Right-to-Know Law, Contractor Integrity, Contractor Responsibility, Offset, Federal Nondiscrimination, Commonwealth Nondiscrimination, Disadvantaged Business Enterprise Regulatory Compliance Requirements, Disadvantaged Business Enterprise Assurance, Lobbying, Federal Funding Accountability and Transparency Act, Federal Audit Clause and Title VI Assurances. Changes that would otherwise require only a letter of adjustment as detailed in subsection (b) will need a letter of amendment as detailed in subsection (a) if one of these Standard Provisions described herein needs updating.

(d) **Retroactive Reimbursement.** If the Local Project Sponsor proceeds to construction before funds are made available, either through this Agreement, a letter of amendment or letter of adjustment, signed by the appropriate parties, retroactive payment or reimbursement of federal funds will not be permitted unless (i) the federal Form 4232, authorizing federal funds for latter phases of the Project, was in place prior to performance of any work, and (ii) the Department allowed the Local Project Sponsor to exceed the current estimated maximum amount set forth in the current cost estimate exhibit by authorizing a higher amount in writing before the Local Project Sponsor incurred the extra costs or performed the work.

(e) **Amendment.** All other changes to the terms and conditions of this Agreement must be in the form of a fully executed formal amendment signed by all the same entities that executed the original Agreement.

14. RECORDS AND AUDIT REQUIREMENTS

(a) **Maintenance of Records.** The Local Project Sponsor shall maintain, and it shall require its consultants and contractors to maintain, all books, documents, papers, records, supporting cost proposals, accounting records, employees' time cards, payroll records and other evidence pertaining to costs incurred in the Project and shall make such materials available at all reasonable times during the contract period and for three (3) years from the date of submission of the final voucher to FHWA, for inspection and audit by the Department, the FHWA or any other authorized representatives of the state or federal government; and copies shall be furnished, if requested. Time records for personnel performing any work shall account for direct labor performed on the Project as well as the time of any personnel included in the computation of overhead costs. In addition, a complete record of time, including time spent on and off this Project, shall be kept for personnel assigned part-time to the Project.

(b) **Audit Clause.** As specified by the Federal Office of Management and Budget, the Local Project Sponsor shall satisfy the audit requirements contained in the Single Audit Act of 1984, as amended, 31 U.S.C. § 7501 et seq., and, for this purpose, to comply with the Audit Clause to Be Used in Agreements with Subrecipients Receiving Federal Awards from the Commonwealth, attached to and made a part of this Agreement as Exhibit E. As used in the Audit Clause, the term "Subrecipient" means the Local Project Sponsor.

15. ABANDONMENT OR POSTPONEMENT OF PROJECT

If the Local Project Sponsor abandons or indefinitely postpones the Project, it may terminate this Agreement by sending the Department a thirty- (30-) day written notice of termination, with the understanding that, because the FHWA will not participate in any costs of a Project that is not completed and because the Department must be reimbursed for all costs incurred by it for the Project, the Local Project Sponsor shall reimburse the Department accordingly. The Department is entitled to consider the Project to be abandoned due to lack of

activity on the Project by the Local Project Sponsor or failure to pay its contractor(s) or consultant(s). In either case, the Local Project Sponsor shall reimburse the Department, within thirty (30) days of receipt of a statement from the Department, in an amount equal to the sum of (i) all FHWA funds received by the Local Project Sponsor, which the Department shall return to the FHWA, (ii) all FHWA funds paid to the Department for work performed under this Agreement, which the Department shall return to the FHWA and (iii) all costs incurred by the Department under this Agreement prior to receipt of notice of termination that have not been reimbursed by the FHWA or the Local Project Sponsor.

16. **USEFUL LIFE**

The estimated useful life of the completed Project improvements is twenty (20) years and the federal funding provided under this Agreement shall be amortized over the estimated useful life of the Project improvements in equal amounts annually. If in the opinion of the Department the original use of the real property is converted by sale or otherwise to another use inconsistent with the original use for which the federal funding is being provided, the Local Project Sponsor shall take one of the following actions:

- (i) replace the Project improvements, without financial participation from the Department or FHWA, with an equivalent group of improvements, as determined and approved by the Department and the FHWA; or
- (ii) repay the Department the unamortized amount of federal funding provided under this Agreement. The amount to be repaid shall be calculated by taking the total amount of federal funding received by the Local Project Sponsor pursuant to this Agreement and any supplements; dividing the amount by the estimated useful life of the Project improvements; and then multiplying the result by the number of years of

estimated useful life remaining on the Project at the time of the sale or other conversion of the property.

17. **MAINTENANCE AND OPERATION OF IMPROVEMENTS**

[SELECT APPLICABLE PROVISION(S) BY MARKING CHECKBOX NEXT TO SUBSECTION FOR EACH TYPE OF LOCATION AT ISSUE]

PROVISION FOR PROJECT WHERE IMPROVEMENTS ARE LOCATED OUTSIDE LOCAL OR STATE RIGHT-OF-WAY USED BY MOTOR VEHICLES

(a) **Local Project Sponsor's Responsibilities.** The Local Project Sponsor shall operate and maintain, at its sole cost and expense, all completed Project improvements financed under this Agreement that fall within its jurisdiction. The Local Project Sponsor shall, by contract or with its own forces, perform the maintenance described in Exhibit F attached to and made a part of this Agreement, to insure an acceptable level of physical integrity and operation consistent with original design standards. The Local Project Sponsor certifies that it shall make available sufficient funds to provide the maintenance described in this exhibit. This provision shall not preclude the Local Project Sponsor from making arrangements with other governmental bodies or instrumentalities or private parties for sharing the maintenance responsibilities. However, the Local Project Sponsor shall retain primary responsibility pursuant to this subsection.

(b) **Failure to Maintain.** Failure by the Local Project Sponsor to fulfill its maintenance responsibilities may result in the loss of future state and federal funds.

(c) **Transfer of Ownership and Maintenance Responsibilities.** The Local Project Sponsor shall have the right to transfer ownership and maintenance responsibilities for the improvements constructed pursuant to this Agreement, subject to prior approval by the Department. The Department shall determine the appropriate written documentation required to approve and authorize the transfer of ownership and maintenance responsibilities. The Department shall not unreasonably withhold its approval.

(d) **Ordinances or Regulations.** The preceding requirements and authorizations shall not prevent the Local Project Sponsor from imposing responsibility for maintenance of the improvements constructed pursuant to this Agreement on the abutting property owners in accordance with duly enacted ordinances or regulations, as amended or supplemented from time to time. The Local Project Sponsor shall diligently and strictly enforce its ordinances or regulations with reference to the affected property owners.

PROVISION FOR PROJECT WHERE IMPROVEMENTS ARE LOCATED IN LOCAL ROADWAY RIGHT-OF-WAY THAT IS NOT UNDER THE JURISDICTION OF THE LOCAL PROJECT SPONSOR

(a) **Local Project Sponsor's Responsibilities.** The Local Project Sponsor shall operate and maintain, at its sole cost and expense, all of the completed Project improvements financed under this Agreement that fall within its jurisdiction. The Local Project Sponsor shall, by contract or with its own forces, perform the maintenance described in Exhibit F attached to this Agreement, to insure an acceptable level of physical integrity and operation consistent with original design standards. The Local Project Sponsor certifies that it shall make available sufficient funds to provide the maintenance described in this exhibit. This provision shall not preclude the Local Project Sponsor from making arrangements with other governmental bodies or instrumentalities or private parties for sharing the maintenance responsibilities. However, the Local Project Sponsor shall retain primary responsibility pursuant to this subsection.

(b) **Failure to Maintain.** Failure by the Local Project Sponsor to fulfill its maintenance responsibilities may result in the loss of future state and federal funds.

(c) **Transfer of Ownership and Maintenance Responsibilities.** The Local Project Sponsor shall have the right to transfer ownership and maintenance responsibilities for the improvements constructed pursuant to this Agreement, subject to prior approval by the Department. The Department shall determine the appropriate written documentation required

to approve and authorize the transfer of ownership and maintenance responsibilities. The Department shall not unreasonably withhold its approval.

PROVISION FOR PROJECT WITH IMPROVEMENTS IN LOCAL PROJECT SPONSOR'S ROAD OR RIGHT-OF-WAY

(a) **Local Project Sponsor's Responsibilities.** The Local Project Sponsor, at its sole cost and expense, shall operate and maintain all the completed improvements financed under this Agreement that fall under its jurisdiction. The Local Project Sponsor certifies that it shall make available sufficient funds to provide for the described maintenance program. Exhibit G, which is attached to this Agreement, lists the minimum requirements that the Local Project Sponsor must satisfy regarding the traffic engineering services to be provided as part of this maintenance program.

(b) **Methods of Operation and Maintenance.** The Department, in concurrence with the FHWA, when applicable, shall determine the existence of acceptable methods of operation and maintenance. These operation and maintenance services shall include, but not be limited to, the following:

- (i) periodic inspections;
- (ii) functional review of traffic operations;
- (iii) appropriate preventative maintenance, which shall include cleaning, lubrication and refurbishing of all electrical equipment;
- (iv) a systematic record-keeping system; and
- (v) a means to handle the notification and implementation of emergency repairs.

(c) **Traffic Control Devices.** The existence of functioning maintenance and operation services shall not exempt the Local Project Sponsor from complying with the provisions of the Vehicle Code (75 Pa. C.S. § 101 *et seq.*), as amended, pertaining to traffic control devices, or with applicable provisions of the State Highway Law (36 P.S. § 670-101 *et seq.*), as amended.

(d) **Statutes, Regulations or Ordinances.** Each party shall administer, enforce and maintain any statutes, regulations or ordinances within its jurisdiction necessary for the operation of the improvements. The parties further acknowledge that the enforcement obligations relating to the regulations are governed by the statutes of the Commonwealth of Pennsylvania, and more particularly by those statutes relating to municipalities; the Vehicle Code, as amended; and the State Highway Law, as amended; as well as those ordinances, rules and regulations issued by appropriate governmental agencies in implementation of these statutes.

(e) **Traffic Controls and Parking Regulations.** The traffic controls and parking regulations necessary to be maintained on these improvements are shown on Exhibit H, which is attached to this Agreement.

(f) **Disqualification.** The Department may disqualify the Local Project Sponsor from future federal-aid or state participation on Local Project Sponsor-maintained projects if the local Project Sponsor fails to:

- (i) provide for the proper maintenance and operation of the completed improvements; or
- (ii) maintain and enforce compliance with any statutes, regulations or ordinances under its jurisdiction necessary for the operation of the improvements.

(g) **Withholding Funds.** The Department shall withhold federal-aid or state funds, or both, until one or both of the following (as applicable) have taken place:

- (i) the Local Project Sponsor has corrected the operation and maintenance services; and

(ii) the Local Project Sponsor has brought traffic operations on the improvements, including enforcement of statutes, regulations or ordinances, up to a level satisfactory to the Department.

(h) **Reimbursement from Third Parties.** This Agreement is without prejudice to the right of the Local Project Sponsor to receive reimbursement for maintenance costs from any railroad or party other than the Department, if so ordered by the PUC, where a rail-highway crossing is under the jurisdiction of the PUC.

(i) **Ordinances or Regulations.** The preceding requirements shall not prevent the Local Project Sponsor from imposing responsibility for maintenance of the improvements constructed pursuant to this Agreement on the abutting property owners in accordance with duly enacted ordinances or regulations, as amended or supplemented from time to time. The Local Project Sponsor shall diligently and strictly enforce its ordinances or regulations with reference to the affected property owners.

PROVISION FOR PROJECT WITH IMPROVEMENTS IN DEPARTMENT'S RIGHT-OF-WAY

(a) **Responsibilities.** The Department, as the entity exercising authority and jurisdiction over the roads upon which the Project is being constructed, shall operate and maintain all of the completed improvements financed with federal-aid funds as part of the state highway system, consistent with the requirements of the Vehicle Code, State Highway Law of 1945, and Commonwealth regulations. If there is any signalization, it shall be maintained and operated by the Local Project Sponsor, pursuant to a traffic signal permit issued by the Department to the Local Project Sponsor.

(b) **Ordinances or Regulations.** The preceding requirements shall not prevent the Local Project Sponsor from imposing responsibility for maintenance of improvements constructed pursuant to this Agreement within Department right-of-way on the abutting

property owners, if duly enacted municipal ordinances or regulation make abutting property owners responsible for maintenance of the type of improvement. The Local Project Sponsor shall diligently and strictly enforce its ordinances or regulations with reference to the affected property owners.

18. INDEMNIFICATION

The Local Project Sponsor shall indemnify and (if requested) defend the Commonwealth of Pennsylvania, the Department, the FHWA and all of their officers, agents and employees from all suits, actions or claims of any character, name or description, including, but not limited to, those in eminent domain or otherwise relating to title to real property, brought for or on account of any injuries or damages received or sustained by any person, persons or property, arising out of, resulting from or connected with the planning, development, design, acquisition, construction, completion, occupancy, use, operation or maintenance of the Project or the improvements that it comprises, or any other activities relating to the Project or the improvements that it comprises, by the Local Project Sponsor or the Local Project Sponsor's consultant(s) and contractor(s) and their officers, agents and employees, whether the same be due to defective title, defective materials, defective workmanship, neglect in safeguarding the work, or by or on account of any act, omission, neglect or misconduct of the Local Project Sponsor or the Local Project Sponsor's consultant(s) and contractor(s), their officers, agents and employees, during the performance of the work or thereafter, or to any other cause whatever.

19. WITHHOLDING OF LIQUID FUELS FUNDS (POLITICAL SUBDIVISIONS ONLY)

If the Local Project Sponsor is a political subdivision and if it fails to perform any of the terms, conditions or provisions of the Agreement, including any default of payment for a period of thirty (30) days, the Local Project Sponsor authorizes the Department to withhold so much of the Local Project Sponsor's Liquid Fuels Tax Fund allocation as may be necessary to complete the Project or reimburse the Department in full for all costs due under this Agreement; and the

Local Project Sponsor authorizes the Department to withhold the amount due to the Department and to apply the Liquid Fuels Tax funds, or portion thereof, to remedy the Local Project Sponsor's default.

20. REQUIRED CONTRACT PROVISIONS

The parties acknowledge, and the Local Project Sponsor shall also provide in its contracts for the Project, that all design, plans, specifications, estimates of costs, construction, utility relocation work, right-of-way acquisition procedures, acceptance of the work and procedures in general shall, at all times, conform to all applicable federal and state laws, rules, regulations, orders and approvals, including specifically the procedures and requirements relating to labor standards, equal employment opportunity, nondiscrimination, anti-solicitation, information, auditing and reporting provisions. The Local Project Sponsor shall comply, and shall cause its consultant(s) and contractor(s) to comply, with the conditions set forth in the Federal Nondiscrimination and Equal Employment Opportunity Clauses, which are attached to this Agreement as Exhibit I.

21. CONTRACT PROVISIONS FOR CONTRACTOR INTEGRITY, AMERICANS WITH DISABILITIES, CONTRACTOR RESPONSIBILITY, AND RIGHT TO KNOW LAW

The Local Project Sponsor shall comply, and shall cause its consultant(s) and contractor(s) to comply with the current versions of the provisions set forth below. As used in these provisions, the term "Contractor" means the Local Project Sponsor:

- (a) the Contractor Integrity Provisions attached as Exhibit J to this Agreement;
 - (b) the Provisions Concerning the Americans with Disabilities Act attached as Exhibit K to this Agreement;
 - (c) the Contractor Responsibility Provisions attached as Exhibit L to this Agreement;
- and

- (d) the Right-to-Know Law provisions attached as Exhibit M to this Agreement.

22. OFFSET PROVISION

The Local Project Sponsor agrees that the Commonwealth of Pennsylvania ("Commonwealth") may set off the amount of any state tax liability or other obligation of the Local Project Sponsor or its subsidiaries to the Commonwealth against any payments due the Local Project Sponsor under any contract with the Commonwealth.

23. DISADVANTAGED BUSINESS ENTERPRISE REGULATORY COMPLIANCE REQUIREMENTS

The Local Project Sponsor shall take the following steps, where applicable, to comply with the Disadvantaged Business Enterprise ("DBE") requirements of federal transportation legislation and regulations adopted pursuant thereto:

(a) **DBE Requirements.** For federally-assisted transportation-related projects, the Department may establish a percentage participation goal. The Local Project Sponsor shall work with the Department's District Coordinator concerning the necessity of establishing a goal for this Project. If a DBE goal is not applicable, the Local Project Sponsor shall comply with the "Disadvantaged Business Enterprise and Small Business Concern Involvement" provision, attached to this Agreement as Exhibit N. If a goal is established, this goal must be attained by the Local Project Sponsor's contractor or, in the alternative, a showing of good faith effort must be made. Determination of good faith effort shall be made by the Local Project Sponsor and is subject to the concurrence of the Department. The Local Project Sponsor shall comply with the following provisions, as applicable:

- (i) If the Project requires prequalification, the Local Project Sponsor shall comply with "Designated Special Provision 7" of the Publication 408 Specifications (current edition), attached to this Agreement as Exhibit O.

- (ii) If the Project includes a design component, the Local Project Sponsor shall comply with the “DBE Special Requirements – Engineering,” attached to this Agreement as Exhibit P.

(b) **DBE Certification.** Only firms that are certified as DBE’s by the Pennsylvania DBE Unified Certification Program (“PA UCP”) as of the date of the bid opening may be used on the Project. The PA UCP maintains a Directory of certified DBE’s classified according to the North American Industrial Classification System (“NAICS Codes”), and this Directory is accessible online at: www.paucp.com. Use of any other certification directory for this Project is prohibited.

24. REQUIRED DBE ASSURANCE PROVISION

(a) **DBE Assurance.** The Local Project Sponsor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The Local Project Sponsor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of United States Department of Transportation-assisted contracts. Failure by the Local Project Sponsor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Department deems appropriate, including, but not limited to, withholding progress payments; assessing sanctions; liquidated damages; and/or disqualifying the Local Project Sponsor from future bidding as non-responsible.

(b) **Contracts.** As a recipient of funds from the Department, the Local Project Sponsor must include the assurance set forth in subsection (a) in each contract into which it enters to carry out the Project or activities being funded by this Agreement.

25. TITLE VI ASSURANCES

The Local Project Sponsor acknowledges that, as a condition to receiving federal financial assistance from the United States Department of Transportation through the FHWA, the Local Project Sponsor is subject to and shall comply with the Standard Title VI/Non-discrimination Assurances contained in Exhibit Q attached to this Agreement.

26. ANTI-LOBBYING REQUIREMENT

Public Law 101-121, Section 319, 31 U.S. Code § 1352, prohibits the recipient or any lower tier subrecipients of a federal contract, grant, loan or cooperative agreement from expending federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal contract, the making of any federal grant or loan or the entering into of any cooperative agreement. The Local Project Sponsor shall comply with the Lobbying Certification Form attached to this Agreement as Exhibit R, which an authorized official of the Local Project Sponsor has executed.

27. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006

As a subrecipient of federal funding, the Local Project Sponsor shall provide to the Commonwealth the information specified in Exhibit S, Federal Funding Accountability and Transparency Act of 2006 – Grantee Information, attached to this Agreement, to ensure that the Commonwealth meets the reporting requirements imposed on it by the Federal Funding Accountability and Transparency Act of 2006. As used in this exhibit, the term “Grantee” refers to the Local Project Sponsor.

28. FHWA APPROVAL

The parties fully understand and acknowledge that their respective obligations under this Agreement shall be made contingent upon the approvals, prior to commencement of work, of the Project's eligibility for participation in federal funds to the extent of the proportionate share, detailed in Exhibit A; and, if the FHWA does not give such approval, neither of the parties shall be further obligated by the terms of this Agreement.

29. TERMINATION

Because this Agreement is to be funded either partially or completely by federal funds, the Department may terminate this Agreement if federal funds are not provided to the Department for the purposes stated in the Agreement. The Department shall terminate this Agreement by delivery to the Local Project Sponsor of a notice of termination specifying the reason for termination and its effective date. The Department shall compensate the Local Project Sponsor for work performed or services provided in accordance with the terms of this Agreement prior to the date of the notice of termination or such other date as the notice of termination shall specify.

30. AUTOMATED CLEARING HOUSE REQUIREMENTS

Because the Department shall make payments under this Agreement through the Automated Clearing House ("ACH") Network, the Local Project Sponsor shall comply with the following provisions governing payments through ACH if it has not done so already:

(a) **Enrollment in ACH.** Within 10 days of the execution date of this Agreement, the Local Project Sponsor shall submit or must have already submitted its ACH information on a ACH enrollment form (obtained at www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf) and

electronic addenda information, if desired, to the Commonwealth's Payable Service Center, Vendor Data Management Unit at 717-214-0140 (FAX) or by mail to the Office of Comptroller Operations, Bureau of Payable Services, Payable Service Center, Vendor Data Management Unit, 555 Walnut Street – 9th Floor, Harrisburg, PA 17101.

(b) **Invoice Number.** The Local Project Sponsor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth's ACH remittance advice to enable the Local Project Sponsor to properly apply the Department's payment to the respective invoice or program.

(c) **Accuracy of Information.** It is the responsibility of the Local Project Sponsor to ensure that the ACH information contained in the Commonwealth's Central Vendor Master File is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

31. **RESOLUTIONS AND ORDINANCES**

The Local Project Sponsor shall pass such resolutions, ordinances, or both, as may be necessary to accomplish the purposes of this Agreement

32. **CHOICE OF LAW**

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to conflict of laws provisions) and the decisions of the Pennsylvania courts. The Local Project Sponsor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The

Local Project Sponsor acknowledges that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by Pennsylvania law.

33. NO WAIVER

Either party may elect not to enforce its rights and remedies under this Agreement in the event of a breach by the other party of any term or condition of this Agreement. In any event, the failure by either party to enforce its rights and remedies under this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other term or condition of this Agreement.

34. SEVERABILITY

The provisions of this Agreement shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth and the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.

35. INDEPENDENCE OF THE PARTIES

The parties understand by and between themselves that nothing contained herein is intended or shall be construed to, in any respect, create or establish the relationship of partners between the Local Project Sponsor and the Department, or as constituting the Department as the representative or general agent of the Local Project Sponsor for any purpose whatsoever.

36. **ASSIGNMENT**

This Agreement may not be assigned by the Local Project Sponsor, either in whole or in part, without the written consent of the Department.

37. **SUCCESSORS AND ASSIGNS**

All covenants and obligations of the parties under this Agreement shall bind their successors and assigns, whether or not expressly assumed by such successors and assigns.

38. **NO THIRD-PARTY BENEFICIARIES**

The parties to this Agreement understand that this Agreement does not create or intend to confer any rights in or on persons or entities not a party to this Agreement.

39. **FORCE MAJEURE**

Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

40. **TITLES NOT CONTROLLING**

Titles of sections are for reference only, and shall not be used to construe the language in this Agreement.

41. **NOTICES**

All notices and reports arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the addresses provided below, either by regular mail, facsimile, e-mail or delivery in person:

If to the Department:

If to the Local Project Sponsor:

or to such other person or address as the parties may provide to each other in writing.

42. COMPLETION OF WORK AND PROJECT CLOSEOUT

(a) **Completion of Work.** The Local Project Sponsor shall complete the physical work under this Agreement no later than five (5) years from the Effective Date of this Agreement. If the Local Project Sponsor requires additional time to complete the physical work, the Local Project Sponsor shall submit a written request to the Department, which the Department shall approve or deny in writing.

(b) **Project Closeout.** The Project shall be closed out in accordance with the requirements and procedures set forth in Publication 740.

43. INTEGRATION AND MERGER

Upon execution, this document, together with all exhibits and attachments annexed to it, constitutes the entire agreement between the parties and completely expresses their intent. All prior or contemporaneous agreements are hereby merged into this document. No amendment or modification of this document shall be valid unless it is in writing and duly executed and approved by the parties.

[The remainder of this page is intentionally left blank.]

The parties have executed this Agreement to be effective as of the date of the last signature affixed below.

LOCAL PROJECT SPONSOR

BY: _____
Title: _____ Date

.

DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
(Asst.) District Executive Date

APPROVED AS TO LEGALITY
AND FORM

BY _____
for Chief Counsel Date

BY _____
Deputy Chief Counsel Date

BY _____
for Comptroller Operations Date

BY _____
Deputy Attorney General Date

Reimbursement Agreement No. _____ is split _____ %, expenditure amount of \$_____ for federal funds and _____ %, expenditure amount of \$_____ for state funds. The related federal assistance program name and number is _____ ; _____ . The state program name and number is _____ ; _____ .

This paragraph does not affect the costs to the Local Project Sponsor.

18-AT-66.0

PROJECT ESTIMATED COSTS

Reimbursement Agreement No:
 County:
 Municipality:
 Project Name:
 MPMS No:
 Engineering Agreement No:

	Municipality Incurred Costs	Commonwealth Incurred Costs	Phase Totals
Preliminary Engineering			
Final Design			
Utilities			
Right of Way			
Construction			
SUBTOTALS			

COST SHARING (Municipality Incurred Costs)

	Federal	%	State	%	Municipality	%	Phase Totals
Preliminary Engineering	()		()		()		
Final Design	()		()		()		
Utilities	()		()		()		
Right of Way	()		()		()		
Construction	()		()		()		
TOTALS							

COST SHARING (Commonwealth Incurred Costs)

	Federal	%	State	%	Municipality	%	Phase Totals
Preliminary Engineering _____	()		()		()		_____
Final Design _____	()		()		()		_____
Utilities _____	()		()		()		_____
Right of Way _____	()		()		()		_____
Construction _____	()		()		()		_____
TOTALS _____							_____

TOTAL COST

Federal	%	State	%	Municipality	%	Total
()		()		()		

Amount Eligible to be Reimbursed to Municipality

PLANS, SPECIFICATIONS, ESTIMATES AND BID PROPOSAL PACKAGE

*(some items applicable depending on funding source –
please check with District for your particular project)*

A. Plans and Estimates

Title Sheet Mylar or Vellum (for signatures)
All Original Plan Sheets
Engineer's Estimate (D-407)
Federal Estimate
Trainee Calculation

B. Bid Proposal and Specifications (to prospective bidders) Standard Proposal/Contract Documents

Signatures with certifications or anticollusion affidavits
Bid items with work class codes

C. Special Provisions

Pre-Bid Conference
Award of Contract
Anticipated Notice to Proceed Date
Minority Business Enterprise Program
Equal Employment Opportunity Reporting Requirements
Affirmative Action Requirements Equal Employment Opportunity
Sworn Affidavit
Utilities
Specifications
General Contract Conditions
Governing Specifications for state funded projects
Public Works

D. Attachments

D-476—Distribution of Contract Time
Notice
Prevailing Minimum Wage, if applicable
PR-47 (only required for projects over \$500,000)
F.A.R.—C.A. Required Contract Provisions Federal-Aid Construction Contracts
Notice to Prospective Federal-Aid Construction Contractor
Special Supplement—Anti-Pollution Measures

SAMPLE LETTER OF AMENDMENT

Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text. PA Click or tap here to enter text.

Re: Click or tap here to enter text.
Click or tap here to enter text.

Dear Local Project Sponsor(s):

Per the terms of the subject agreement, the Department is willing to amend the terms by increasing the total project costs from Click or tap here to enter text. to Click or tap here to enter text., as shown in the attached Exhibit "Click or tap here to enter text." This amendment will become effective once all required signatures are affixed to this document.

We are requesting your concurrence as to the amendment of the above-referenced agreement. If you agree to the amendment, please indicate below by signing and noting your title where indicated. Please attach a resolution verifying your authorization to sign this letter of amendment.

IF APPLICABLE: Since the date of the Original Agreement, some standard provisions and accompanying exhibits have been updated; copies of these updated Exhibits are attached hereto and hereby supersede and replace the corresponding exhibit attached to the Original Agreement.

Your response is required no later than Click or tap here to enter text..

On behalf of the above-named Local Project Sponsor, I agree to the amendment of the above- referenced agreement. I agree to all terms and conditions included in the subject agreement and all previous amendments thereto, if any.

Signature: _____ Date: _____

Title: _____

All terms and conditions of the agreement and its amendments (if any) not affected by this letter of amendment remain in full force and effect.

This letter of amendment is not effective until the Office of Comptroller Operations signs and dates this letter of amendment. The Department will forward a copy of the fully executed letter of amendment for your files.

Sincerely,

Project Manager

Approved for Form and Legality:

(Asst.) District Executive

Date

for Chief Counsel

Date

Comptroller Signature

Date

Reimbursement Amendment No. [Click or tap here to enter text.](#) is **split** [Click or tap here to enter text.](#), expenditure amount of [Click or tap here to enter text.](#) for federal funds and [Click or tap here to enter text.](#), expenditure amount of [Click or tap here to enter text.](#) for state funds. The related federal assistance program name and number is [Click or tap here to enter text.](#); [Click or tap here to enter text.](#). The state assistance program name and number is [Click or tap here to enter text.](#); [Click or tap here to enter text.](#).

SAMPLE LETTER OF ADJUSTMENT

Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text. PA Click or tap here to enter text.

Re: Click or tap here to enter text.
Click or tap here to enter text.

Dear Local Project Sponsor(s):

Per the terms of the subject agreement, the Department will redistribute the costs in the current Estimated Project Cost Exhibit, with no change in the total Project costs, by increasing/decreasing the costs of the phases within the project as shown below and as further detailed in the attached Exhibit "Click or tap here to enter text.", which replaces the current exhibit.

	Current Total Phase Costs	New Total Phase Costs
Preliminary Engineering	Click or tap here to enter text.	Click or tap here to enter text.
Final Design	Click or tap here to enter text.	Click or tap here to enter text.
Utilities	Click or tap here to enter text.	Click or tap here to enter text.
Right-of-Way	Click or tap here to enter text.	Click or tap here to enter text.
Construction	Click or tap here to enter text.	Click or tap here to enter text.
TOTAL PROJECT COST	Click or tap here to enter text.	Click or tap here to enter text.

All terms and conditions about the agreement and its amendments (if any) not affected by this letter of adjustment remain in full force and effect.

If you have any concerns about the redistribution of costs, please contact us within ten (10) days of this notice; otherwise, the redistribution will be processed as detailed above.

This letter of adjustment is not effective until the Office of Comptroller Operations signs and dates this letter of adjustment. The Department will forward a copy of the fully executed letter of adjustment for your files.

Sincerely,

Project Manager

BY _____
(Asst.) District Executive Date

Comptroller Signature Date

Reimbursement Amendment No. Click or tap here to enter text. is split Click or tap here to enter text., expenditure amount of Click or tap here to enter text. for federal funds and Click or tap here to enter text., expenditure amount of Click or tap here to enter text. for state funds. The related federal assistance program name and number is Click or tap here to enter text.; Click or tap here to enter text.. The state assistance program name and number is Click or tap here to enter text.; Click or tap here to enter text..

EXHIBIT ____

AUDIT CLAUSE TO BE USED IN AGREEMENTS WITH SUBRECIPIENTS RECEIVING FEDERAL AWARDS FROM THE COMMONWEALTH

The [NAME OF SUBRECIPIENT] must comply with all federal and state audit requirements including: *The Single Audit Act Amendments of 1996; 2 CFR Part 200 as amended*; and any other applicable law or regulation, and any amendment to such other applicable law or regulation which may be enacted or promulgated by the federal government.

If the [NAME OF SUBRECIPIENT] is a local government or non-profit organization that expends \$750,000 or more in federal awards during its fiscal year, the [NAME OF SUBRECIPIENT] is required to provide the appropriate single or program specific audit in accordance with the provisions outlined in *2 CFR Part 200.501*.

If *the [NAME OF SUBRECIPIENT] expends total federal awards of less than the threshold established by 2 CFR 200.501, it is exempt from federal audit requirements for that year, but records must be available for review or audit by appropriate officials (or designees) of the federal agency, pass-through entity, and Government Accountability Office (GAO).*

If the [NAME OF SUBRECIPIENT] is a for-profit entity, it is not subject to the auditing and reporting requirements of *2 CFR Part 200, Subpart F - Audit Requirements (Subpart F)*. However, the pass-through commonwealth agency is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract and post-award audits. The post-award audits may be in the form of a financial audit in accordance with *Government Auditing Standards*, a single audit report or program-specific audit report in accordance with *Subpart F*. However, these post-award audits must be submitted directly to the affected commonwealth agency that provided the funding. Only single audit reports for local governmental and non-profit subrecipients are electronically submitted to the Federal Audit Clearinghouse.

ADDITIONAL POTENTIAL COMPONENTS OF THE SINGLE AUDIT REPORTING PACKAGE.

In instances where a federal program-specific audit guide is available, the audit report package for a program-specific audit may be different and should be prepared in accordance with the appropriate audit guide, *Government Auditing Standards*, and *Subpart F*.

In addition to the requirements of *Subpart F*, commonwealth agencies may require that the single audit reporting packages include additional components in the SEFA, or supplemental schedules, as identified through the respective grant agreement.

SUBMISSION OF THE AUDIT REPORT

The [NAME OF SUBRECIPIENT] must submit an electronic copy of the audit report package to the Federal Audit Clearinghouse, which shall include the elements outlined in *Subpart F*.

SUBMISSION OF THE FEDERAL AUDIT CLEARINGHOUSE CONFIRMATION

The subrecipients must send a copy of the confirmation from the Federal Audit Clearinghouse to the resource account RA-BOASingleAudit@pa.gov.

AUDIT OVERSIGHT PROVISIONS.

The [NAME OF SUBRECIPIENT] is responsible for obtaining the necessary audit and securing the services of a certified public accountant or independent governmental auditor.

The commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial or performance nature, if deemed necessary by commonwealth or federal agencies. Any such additional audit work will rely on work already performed by the [NAME OF SUBRECIPIENT]'s auditor and the costs for any additional work performed by the federal or state agencies will be borne by those agencies at no additional expense to the [NAME OF SUBRECIPIENT].

Audit documentation and audit reports must be retained by the [NAME OF SUBRECIPIENT]'s auditor for a minimum of five years from the date of issuance of the audit report, unless the [NAME OF SUBRECIPIENT]'s auditor is notified in writing by the commonwealth, the cognizant federal agency for audit, or the oversight federal agency for audit to extend the retention period. Audit documentation will be made available upon request to authorized representatives of the commonwealth, the cognizant federal agency for audit, the oversight federal agency for audit, the federal funding agency, or the GAO.

MAINTENANCE ACTIVITIES

[To be used where project improvements are not located within either local or state right-of-way; exhibit needs to be printed, completed offline, and then scanned and attached]

Exhibit

**GUIDELINES TO PREPARING
MUNICIPAL METHOD OF
MAINTENANCE OPERATION AND SERVICES**

1. The MUNICIPALITY must provide for the proper maintenance of all completed project(s) under its jurisdiction. To comply with this federal requirement, the MUNICIPALITY shall establish or maintain a functional traffic engineering unit throughout the design life of all project(s).
2. A functional traffic engineering unit consists of, at a minimum:
 - (a) A competent and qualified traffic engineer; and
 - (b) A maintenance staff with at least one licensed electrician skilled in the operation and repair of traffic signal equipment.
3. To be considered capable of effectively maintaining completed project(s), the municipal maintenance staff must be provided with the proper equipment and materials necessary, at a minimum, to:
 - (a) Repair and replace worn out or damaged signal equipment;
 - (b) Install new and replace damaged or obsolete traffic signs; and
 - (c) Install or replace paint and thermoplastic pavement markings.
4. The MUNICIPALITY should evaluate its present and proposed organizational charts to determine if the MUNICIPALITY is capable of providing a functional traffic engineering unit within their government. Guidelines for considering the inclusion of a functional traffic engineering unit have been published by the Institute of Traffic Engineers (“ITE”), and should be reviewed by MUNICIPALITY in evaluating their organizational chart. The ITE guidelines make reference to the Model Traffic Ordinance (*Uniform Vehicle Code and Model Traffic Ordinance*, published by the National Committee on Uniform Traffic Laws and Ordinances) as being the best method of providing the legal basis for establishing a traffic engineering function.
5. If the MUNICIPALITY is unwilling or unable to provide the traffic engineering function from within its organization, the MUNICIPALITY has the option of contracting with an outside agent or agency for the required traffic engineering expertise and maintenance.
6. Functional Traffic Engineering Unit Method.
 - (a) In preparing to comply with this Exhibit, the MUNICIPALITY must select one of the following methods for providing a functional traffic engineering unit:

Exhibit

- (i) Municipal Traffic Engineer and Municipal Maintenance Staff.
 - (ii) Contractual Traffic Engineer and Municipal Maintenance Staff.
 - (iii) Contractual Traffic Engineer and Contractual Maintenance Staff.
 - (iv) Municipal Traffic Engineer and Contractual Maintenance Staff.
- (b) Depending on which method is chosen, the guidelines for the functional traffic engineering unit shall include, but not be limited to, the following:
- (i) **Municipal Traffic Engineer:**
 - (1) A brief description of educational background and work experience including the length of employment as Municipal Traffic Engineer;
 - (2) A description of duties assigned and powers delegated to the Municipal Traffic Engineer under municipal ordinance; and
 - (3) A municipal organizational chart showing the Traffic Engineer's position in the hierarchy of municipal government.
 - (ii) **Municipal Maintenance Staff:**
 - (1) The number of employees permanently assigned to this function and the number which may be assigned on a temporary basis;
 - (2) A brief description of the organization of the staff, including the length of time that it has been in existence; and
 - (3) A clear demonstration of the maintenance staff's ability to properly maintain and repair traffic signal equipment.
 - (iii) **Contractual Traffic Engineer:**
 - (1) The MUNICIPALITY's assurance that the Contractual Traffic Engineer hired is qualified and competent in all aspects of traffic engineering; and
 - (2) It will not be necessary to include the name and professional background of the individual or organization.

Exhibit

(iv) **Contractual Maintenance Staff:**

- (1) A brief description of the organization to be hired, including a history of its experience in this field; and
- (2) The MUNICIPALITY's assurance that the organization is capable of properly maintaining and repairing traffic signal equipment and that it has adequate staff available in case of emergency.

Exhibit

Required Traffic Controls and Parking Regulations

1. The traffic controls and parking regulations necessary to be maintained on each project must be clearly outlined by COMMONWEALTH and agreed upon by MUNICIPALITY prior to physical construction.

2. The MUNICIPALITY agrees to maintain and enforce the traffic controls and parking regulations set forth below and to adopt any resolutions necessary for the accomplishment of same. If MUNICIPALITY fails to provide a functional traffic engineering unit within its own organization, it is understood that prior COMMONWEALTH and/or FHWA approval will be required for changes to the controls and regulations listed. Prior approval will not be required for the following:
 - (a) Expansion of the time restriction for “No Parking” beyond that which is specified.

 - (b) Erection of warning sign, painted crosswalks and other traffic control devices not specified below as long as they conform to the requirements in the current edition of the Manual on Uniform Traffic Control Devices and do not require the Secretary’s approval as specified in the Vehicle Code.

3. The traffic controls and parking regulations that must be maintained by the MUNICIPALITY are as follows:

PROJECT LIMITS	PARKING RESTRICTIONS (use station numbers if feasible)	LOADING RESTRICTIONS	BUS STOP LOCATIONS	TURN PROHIBITION	Signalized Intersection (specify # of phases and of operation)

**FEDERAL NONDISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY CLAUSES
(All Federal Aid Contracts)* (1-76)**

Selection of Labor: During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

1. **Employment Practices:** During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.
 - b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractors commitments under section 2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.
 - e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 - f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
 - g. The contractor will include the provisions of Section 2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
2. **Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:** During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- a. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations) which are herein incorporated by reference and made a part of this contract.
- b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in the Regulations.
- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontract or supplier shall be notified by the contract of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.
- d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (2) cancellation, termination or suspension of the contract, in whole or in part.
- f. Incorporation of Provisions: The contractor shall include the provisions of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless except by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department or enter into such litigation to protect the interest of the State, and , in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Wherever hereinabove the word "contractor" is used, it shall also include the word engineer, consultant, researcher, or other entity (governmental, corporate, or otherwise), its successors and assigns as may be appropriate.

*Not to be used if otherwise included in Construction or Appalachian Contract Provision

CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

- a. **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- b. **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
- c. **"Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.
- d. **"Contractor Related Parties"** means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
- e. **"Financial Interest"** means either:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- f. **"Gratuity"** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#) , the 4 Pa. Code §7.153(b), shall apply.
- g. **"Non-bid Basis"** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

2. In furtherance of this policy, Contractor agrees to the following:

- a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

EXHIBIT

- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - (3) had any business license or professional license suspended or revoked;
 - (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

EXHIBIT

- f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

EXHIBIT

PROVISIONS CONCERNING THE *AMERICANS WITH DISABILITIES ACT*

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth of Pennsylvania (Commonwealth).

During the term of this agreement, the contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of the *Americans with Disabilities Act, 28 C. F. R. § 35.101 et seq.*, the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, the contractor agrees to comply with the "*General Prohibitions Against Discrimination, 28 C. F. R. § 35.130*, and all other regulations promulgated under *Title II of the Americans with Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors.
2. The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of paragraph 1.

EXHIBIT

Contractor Responsibility Provisions

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- 1.** The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- 2.** The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- 3.** The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- 4.** The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- 5.** The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- 6.** The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

Exhibit

Contract Provisions – Right to Know Law

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
 1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

Applies only if Agreement is federally-funded

Disadvantaged Business Enterprise & Small Business Concern Involvement

The Commonwealth of Pennsylvania is committed to providing opportunities for Disadvantaged Business Enterprises and small business concerns to compete for work. Small business concerns are those entities seeking to participate in Commonwealth contracts that meet the definition of a small business concern set forth in Section 3 of the Small Business Act and Small Business regulations implementing it at 13 C.F.R. Part 121. Contractors are encouraged to involve Disadvantaged Business Enterprises and small business concerns in the required work and to submit documentation of any such involvement in the proposal/project.

Exhibit

DESIGNATED SPECIAL PROVISION 7 (DSP7)

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

For Federally-Funded Construction Projects

NOTE: Requires special provision for participation DBE goal percentage.

I. DBE GOAL—

The Department has established, in connection with this contract, a DBE goal as specified in the proposal of the original contract amount for the utilization of firms owned and controlled by socially and economically disadvantaged individuals certified as DBEs. If the DBE goal is zero, make an effort to identify and use DBEs. This DBE goal remains in effect for the life of the project.

Include the following provisions (paragraphs a through d) in every subcontract, so that such provisions will be binding not only upon the prime contractor but also upon each subcontractor, supplier, service provider or consultant.

(a) Policy for Federally-Funded Projects. It is the policy of the U.S. Department of Transportation (DOT) and the Department that DBEs, as defined in 49 CFR Part 26, as amended, (Part 26) and this specification, be given the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of Part 26, as amended, apply to this contract.

(b) DBE Obligation. Take all necessary and reasonable steps to ensure that all DBEs have the opportunity to compete for and perform contracts. Do not discriminate on the basis of race, color, national origin, or sex in the award and performance of PennDOT and DOT-assisted contracts.

(c) Failure to Comply with DBE Requirements. Failure to carry out the requirements as specified constitutes a breach of contract and may result in termination of the contract, being barred from bidding on Department contracts for up to three (3) years, withholding progress payments, assessing sanctions, assessing liquidated damages, or any other remedy that the Department deems appropriate. Failure to comply with DBE requirements may include, but is not limited to, failure to submit DBE Minority Participation and Commitment within the time period specified, failure to exert a reasonable Good Faith Effort to meet the established DBE goal, or failure to realize the approved DBE participation level set forth may result in the bidder being declared ineligible for the contract.

(d) Small Business Enterprise (SBE) Participation. Recruitment and utilization of certified SBEs is in addition to all other equal opportunity requirements of the contract. There is no SBE goal.

II. DEFINITIONS—

The following definitions apply for terms used in this specification:

(a) Disadvantaged Business Enterprise (DBE). A for-profit small business concern:

1. An entity certified by the Pennsylvania Unified Certification Program (PAUCP) as listed on www.paucp.com.
2. That meets the ownership and control requirements of the DBE certification program.

3. That meets the Personal Net Worth requirements of the DBE certification program.

(b) Small Business Enterprise (SBE). A for-profit small business concern:

1. An entity certified by the PennDOT as listed on www.dotsbe.pa.gov.

2. That meets the ownership and control requirements of the Small Business Element (SBE) certification program.

3. That meets the Personal Net Worth requirements of the SBE certification program.

(c) Commercially Useful Function. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material itself.

(d) Interdisciplinary Review Team (IRT). A team of three representing both the Bureau of Equal Opportunity and the Bureau of Project Delivery (Contract Management Section) that performs the initial review of the Good Faith Effort documentation and makes the recommendation to the Director.

(e) Committee. The Good Faith Effort Review Committee.

(f) Days. Calendar days. In computing any period of time described in this specification, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or state holiday, the period extends to the next day that is not a Saturday, Sunday, or state holiday. Similarly, in circumstances where the PennDOT offices are closed for all or part of the last day, the period extends to the next day on which the PennDOT offices are open.

(g) Director. Director, Bureau of Equal Opportunity.

(h) DBE Participation. Minority Participation and Commitment that is accessed by the Department's ECMS website (www.dot14.state.pa.us/ECMS).

(i) Revised DBE Participation. Minority Participation and Commitment that is accessed by the Department's ECMS website which includes new DBE firm(s) as well as those not affected by the revision.

(j) Supplier. A manufacturer, regular dealer, or transaction expeditor/broker.

1. Manufacturer. A DBE/SBE that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

2. Regular Dealer. A DBE/SBE that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided above if the person

both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Whether a DBE/SBE firm meets the criteria for being treated as a regular dealer is a contract-by-contract determination to be made by the Department.

3. Transaction Expeditor/Broker. A DBE/SBE packager, broker, manufacturers' representatives, or other persons who arrange or expedite transactions and who arrange for material drop-shipments.

(k) Service Provider. A DBE/SBE that performs work that does not have a prequalification requirement on a project.

(l) Shortfall. The difference between the dollar amount on the approved DBE commitment in ECMS and the amount of payments to the approved DBE entities as listed in ECMS.

III. COUNTING PARTICIPATION—

COUNTING DBE PARTICIPATION TOWARD THE DBE GOAL

Utilization of certified DBEs is in addition to all other equal opportunity requirements of the contract.

Count DBE participation toward meeting the DBE goal for federal projects as follows: If a firm is a certified DBE contractor or subcontractor at the time that submission of DBE Minority Participation and Commitment documents are due, the total dollar value of the contract awarded to the certified DBE is counted toward the applicable DBE goal as provided below. Any services to be performed by a DBE are required to be readily identifiable to the project.

(a) Construction.

1. Prime Contractor. The Department requires that all prime contractors including DBE prime contractors perform at least 50% of the work on a Department project. A DBE prime contractor will receive credit for all work performed with its own forces. The Department strongly encourages DBE prime contractors to make additional outreach efforts to solicit DBEs to perform subcontracting work on the project.

2. Subcontractor. When a DBE participates in a contract directly as a subcontractor or as a second-tier or lower-tier subcontractor, count only the value of the work actually performed by the DBE.

Count the entire amount of that portion of a construction contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the subcontract, including supplies purchased or equipment leased by the DBE.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count.

Count expenditures to a DBE contractor only if the DBE is performing a CUF on that contract.

(b) Materials and Supplies.

1. DBE Manufacturer. If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies.

2. DBE Regular Dealer. If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies. There is no North American Industry Classification System (NAICS) code for regular dealer.

3. DBE Transaction Expeditor/Broker. If the materials or supplies are purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves.

(c) Service Providers. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance the contract, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

(d) Trucking Firms. Count 100% of trucking costs using the following factors to determine what can be counted:

1. Count if the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

2. Count if the DBE owns and operates at least one fully licensed, insured, and operational truck used on the contract.

3. Count the total value of the transportation services the DBE provides on the contract using trucks it owns, insures, and operates using drivers it employs.

4. The DBE may lease trucks from another DBE firm, including an owner-operator who is a certified DBE. If the DBE leases trucks from another DBE, count the total value of the transportation services the lessee DBE provides on the contract.

5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. If the DBE leases trucks from a non-DBE firm and the DBE operates these leased trucks (with its own forces), count the total value of the transportation services the lessee non-DBE provides on the contract. If the DBE leases trucks from a non-DBE owner-operator, count only the fee or commission it paid as a result of the lease arrangement. Do not count the total value of the transportation services provided by the lessee (non-DBE owner-operator), since these services are not provided by a DBE.

6. For purposes of this provision, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from being used for work for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Specialty Items. In cases where specialty items and DBE involvement overlap, follow the requirements specified in Section 108.01(c).

COUNTING SBE PARTICIPATION

- (a)** Recruitment and utilization of certified SBEs is in addition to all other equal opportunity requirements of the contract.
- (b)** There is no SBE goal.
- (c)** Count SBE participation the same as DBE participation.

IV. ACTIONS REQUIRED BY THE DBE AT THE BIDDING STAGE AND PRIOR TO AWARD FOR PROJECTS WITH A DBE GOAL—

Include the applicable North American Industry Classification System (NAICS) code(s) for each type of work that the DBE firms quotes and intends to perform on the contract.

V. ACTIONS REQUIRED BY THE BIDDER AT THE BIDDING STAGE AND PRIOR TO AWARD FOR PROJECTS WITH A DBE GOAL—

(a) Submission Preparation. The prime contractor is obliged to obtain and to provide all applicable NAICS codes for each proposed DBE and type of work that it will perform on the contract.

(b) Submission Requirements. When the DBE goal established by the Department is met or exceeded, the apparent low bidder is required to electronically submit evidence of such commitments, by accessing the Department's ECMS website to complete and submit the DBE Minority Participation and Commitment including DBE acknowledgement by 3:00 P.M. prevailing local time within seven (7) calendar days after the bid opening. The DBE Minority Participation and Commitment Detail Screen must include the applicable NAICS code(s) as Workflow Comments for each proposed DBE and type of work that it will perform on the contract. If the DBE Minority Participation and Commitment Detail Screen is not sufficient to provide all DBE NAICS information, email the remaining DBE NAICS information to minorityparticipation@pa.gov or fax the remaining DBE NAICS information to (717) 705-1504 so that it is received by the time specified below for consideration. DBE Minority Participation and Commitment Screen completed in ECMS regarding commitments to certified DBEs will become part of the contract. When the seventh (7th) calendar day after the bid opening falls on a day that the PennDOT offices are closed, submit the DBE Minority Participation and Commitment by 3:00 P.M. prevailing local time on the next business day. If assistance with the DBE submission is needed, contact the ECMS Help Desk at 717-783-7711 between 8:00 A.M. to 4:00 P.M. Monday through Friday.

When the DBE goal established by the Department is not met (the Department will not round up), demonstrate a Good Faith Effort (GFE) to meet the contract DBE goal. Demonstrate that the efforts made were those that a bidder seeking to meet the DBE goal established by the Department would make, given all relevant circumstances. Email the GFE documentation to minorityparticipation@pa.gov or fax to (717) 705-1504 so that it is received by the time specified above for consideration. All submissions must include, as a part of the GFE documentation, copies of each DBE and non-DBE subcontractor quote when a non-DBE subcontractor was selected over a DBE subcontractor for work on the contract due to the apparent low bidders' determination that the DBE's quote was too high or unreasonable. Also, indicate on the DBE Minority Participation and Commitment screen that the Good Faith Effort is being submitted for consideration.

Failure to electronically submit the DBE Minority Participation and Commitment Screen including DBE acknowledgement completed in ECMS or email for fax any applicable GFE documentation for consideration within seven (7) calendar days of the bid opening by the 3:00 P.M. deadline will result in the rejection of the bid. The apparent next lowest bidder will be notified by email to electronically submit evidence of such commitments, by accessing the Department's ECMS website to complete and submit the DBE Minority Participation and Commitment by 3:00 P.M. prevailing local time within seven (7) calendar days notification.

(c) Good Faith Effort Requirements. The demonstration of GFEs is accomplished by seeking out DBE participation in the project given all relevant circumstances. The following illustrate the types of efforts that may be taken, but they are not deemed to be exclusive or exhaustive (for more guidance on GFE requirements, refer to 49 CFR Part 26 Appendix C). The Director and/or Committee will consider other factors and types of efforts that may be relevant:

- Efforts made to conduct market research to identify small business contractors and suppliers and solicit through all reasonable and available means (e.g., use of the DBE Directory, attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder should provide written notification, at least 15 calendar days before the bid opening, to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Efforts made to select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Efforts made to negotiate in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract DBE goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder to perform the work of a contract with its own work force does not relieve the bidder of the responsibility to make a GFE. . Bidders are not, however, required to accept quotes from DBEs if the price difference is too high or unreasonable.
- Bidder's determination of a DBE as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the contract DBE goal. Another practice considered an inadequate GFE is the rejection of a DBE because its quotation for

the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy the contract DBE goal.

- Efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
- Efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Efforts to effectively use the services of the Department's DBE Supportive Services Center; services of the Department's SBE Supportive Services Center; services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

VI. ACTIONS TO BE TAKEN BY THE DEPARTMENT BEFORE AWARD—

(a) Approval. If the apparent low bidder submits the DBE Minority Participation and Commitment by the deadline and meets the contract DBE goal and all other contract requirements, the Department will approve the submission.

(b) Conditional Approval. The Department will issue a conditional approval of the DBE Minority Participation and Commitment to the apparent low bidder if (1) any DBE listed on the DBE Minority Participation and Commitment is not prequalified, if required, at the time the Department desires to award the contract or (2) the distinction between regular dealer and transaction expeditor/broker is unclear.

(c) Good Faith Effort Review. If the apparent low bidder submits the DBE submission by the deadline but fails to meet the contract DBE goal and requests a GFE review, the Department will review the GFE documentation. If, during the review of the Contractor's GFE information, the reviewers have questions, the Contractor may be contacted for clarification. The GFE steps are as follows:

1. IRT reviews and makes a recommendation to the Director.
2. The Director either
 - a. Approves recommendation that the GFE was met and the DBE Minority Participation and Commitment will be approved, or
 - b. Recommends that the Committee make a determination.
3. If forwarded to them, the Committee meets and makes the final determination. If the Committee determines that the apparent low bidder met the GFE, the DBE Minority Participation and Commitment will be approved. If the Committee determines that the apparent low bidder has failed to make a GFE, the bid will be rejected and the apparent low bidder will be notified of the rejection. The Department will then notify, by email, the apparent next lowest bidder on the project to electronically submit evidence of such solicitations and commitments, by accessing the Department's ECMS website by selecting DBE Minority Participation and Commitment by 3:00 P.M. prevailing local time within seven (7) calendar days after notification. When the seventh (7th) calendar day after the bid opening falls on a day the PennDOT offices are closed, submit the DBE Minority Participation and Commitment by 3:00 P.M. prevailing local time on the next business day.

VII. ACTION TO BE TAKEN BY THE DEPARTMENT DURING CONSTRUCTION—

To ensure that all obligations awarded to DBEs under this contract are met, the Department will review the Contractor's DBE involvement efforts during the performance of the project whether or not the DBE is listed on the approved DBE Minority Participation and Commitment. The review will include a CUF review and analysis.

Sanctions. Upon completion of the work the Department will review the actual DBE participation and make a determination regarding the Contractor's compliance with the applicable requirements. Sanctions may be imposed for noncompliance or unwarranted shortfalls in the approved DBE goal.

VIII. ACTIONS REQUIRED BY THE CONTRACTOR DURING CONSTRUCTION—

(a) DBE Participation. Must continue to make GFEs for the life of the project. When DBE Minority Participation and Commitment is approved with a DBE participation less than the contract DBE goal, continue GFE toward meeting the contract DBE goal. Ensure that the Commitment is attained. Proof of attainment is provided by payments to DBEs and documented in ECMS.

(b) DBE Subcontractor Approval. Firms listed on DBE Minority Participation and Commitment are not to commence work until they are approved.

All firms listed on the approved DBE Minority Participation and Commitment, including those business types other than subcontractor (i.e. dealers, truckers, service providers), must be submitted for subcontractor approval after the contract is executed and approved before DBEs actual performance of work. The subcontractor request must be equal to or greater than the committed amount. Submit for subcontractor approval any other DBE whether or not they are listed on the approved DBE Minority Participation and Commitment. When submitting request for subcontractor approval, attach a copy of the DBE subcontract or agreement or:

- A copy of the executed signature page,
- A copy of the description of the scope of work, and
- A copy of the unit prices as they appear in the DBE's subcontract or agreement.

(c) Conditional Approval Resolution.

Continually monitor conditional approval of DBE subcontractors. Examples of these conditional approvals may include prequalification requirements and distinction between dealer and broker.

(d) Substitution. Obtain approval before substituting a DBE or making any change to the DBE participation listed on the approved DBE Minority Participation and Commitment or approved DBE subcontractor. Immediately request substitution authorization from the District in writing. The request must include documentation supporting the substitution and written agreement from the DBE to the change. Include proof that a certified letter giving the DBE five (5) days to respond with acceptance or to notify the Department of non-acceptance. Demonstrate that every effort has been made to allow the DBE to perform. The District will contact the Bureau of Project Delivery, Contract Awards.

1. If the arrangement to be replaced is agreeable between the Contractor and the DBE, document the following procedures:

- Make a GFE in accordance with V.(b) to subcontract the work with another DBE, or subcontract other work items to DBE firms, to make up the DBE shortfall. A prime

contractor's inability to find a replacement DBE at the contract price is not, in and of itself, adequate to support a finding that GFEs have been made to replace the original DBE. The fact that the prime contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the prime contractor of the obligation to make GFEs to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

- When the substitution results in meeting the DBE goal, complete a revised DBE Minority Participation and Commitment with DBE acknowledgement and/or a revised subcontractor approval request within seven (7) days of a revision being opened in ECMS. If the DBE performed on the project, the Revised DBE Minority Participation and Commitment and/or subcontractor approval request should include the total amount paid to the DBE before the DBE substitution.
- When the substitution does not result in meeting the DBE goal, complete a revised DBE Minority Participation and Commitment with DBE acknowledgement and/or a revised subcontractor approval request within seven (7) days of a revision being opened in ECMS and provide additional GFE documentation, including (1) a statement of efforts made to negotiate with DBEs for specific work or supplies, including the names, addresses, telephone numbers, and emails of those DBEs that were contacted; (2) the time and date each DBE was contacted; (3) a description of the information provided to DBEs regarding plans and specifications for portions of the work to be performed or the materials supplied; and (4) an explanation of why an agreement between the prime contractor and DBE was not reached. If the DBE performed on the project, the Revised DBE Minority Participation and Commitment and/or subcontractor approval request should include the total amount paid to the DBE before the DBE substitution.

Good Faith Effort Review. The Department will review the GFE documentation for substitution. If, during the review of the Contractor's GFE information, the reviewers have questions, the Contractor may be contacted for clarification. The GFE steps are as follows:

- a. Contract Awards reviews and, if acceptable, approves the GFE and DBE revision or recommends that the IRT make the determination.
- b. The IRT either
 - Approves recommendation that the GFE was met and the Minority Participations substitution will be approved, or
 - Disapproves the GFE resulting in a shortfall requiring the contractor to continue GFEs.
- c. If forwarded to them, the IRT makes a final determination.

Do not perform any of the DBE work included in the substitution request without prior approval from the Department.

If the projected DBE participation on an approved DBE Minority Participation and Commitment meets or exceeds the DBE goal amount for the contract without replacing the DBE, then no contract shortfall exists. A Revised DBE Minority Participation and Commitment and/or subcontractor approval request must be submitted to reflect the decreased dollar amount.

2. If the arrangement to be replaced is not agreeable between the Contractor and the DBE, the following procedures are required:

- Until a determination is made, do not perform the DBE work without prior approval.
- The IRT will review and make a determination and the District will notify both the Contractor and the DBE.
- The Contractor or the DBE may request a meeting with the Department by contacting the District Office.

(e) SBE Participation. SBE Firms are not to commence work until they are approved. The SBE, including those business types other than subcontractor (i.e. supplier, trucking, service provider), must be submitted for subcontractor approval after the contract is executed and approved before to SBEs actual performance of work.

(f) Additional Work. When additional work is required for any classification of work which is identified on the DBE Minority Participation and Commitment to be performed by the DBE, at least 50% of this additional work will be performed by the same DBE unless the DBE submits, in writing, that it cannot perform the work due to its own limitations.

(g) Progress Payments. Make payments in accordance with Section 110.05. Enter DBE and SBE progress payments into ECMS monthly. Bring to the attention of the Department, in writing, any situation in which regularly scheduled progress payments are not made to DBE/SBE subcontractors, suppliers, service provider or consultant.

(h) Records and Reports. Keep such project records as are necessary to determine compliance with DBE Requirements. These records can be used as GFE documentation. Design these records to indicate:

- The number of disadvantaged and non-disadvantaged subcontractors, small businesses, regular dealers, manufacturers, consultants, and service providers, and the type of work or services performed on or materials incorporated in this project.
- The progress and efforts made in seeking out DBE and SBE contractor organizations and individual DBEs and SBEs for work on this project.
- Documentation of all correspondence, personal contacts, telephone calls, etc., to obtain the services of DBEs and SBEs for this project. Submit reports, as required by the Department. Certify that the amounts were actually paid to the DBE and SBE for work performed on the project and keep cancelled checks on file in the home office to reflect payment for the specific project and for inspection and audit by the Department. Enter the payment information in ECMS "DBE Payments" within 5 business days after the end of the month and include the following:
 - The number of contracts awarded to DBEs and SBEs, noting the type of work and amount of each contract executed with each firm and including the execution date of each contract.
 - The amount paid to each DBE and SBE during the month and the amount paid to date. If no payments are made to a DBE/SBE during the month, enter a zero (\$0.00) payment.
 - Paid invoices or a certification attesting to the actual amount paid to each firm, upon completion of the individual DBE's and SBEs work. In the event the actual amount paid is less than the award amount, provide a complete explanation of the difference.

Maintain all such records for a period of three (3) years following acceptance of final payment. Make these records available for inspection by the Department and FHWA.

If DBE credit is being claimed for material costs included in a DBE subcontract or agreement, submit purchase orders for the material to the Inspector-in-Charge on a monthly basis.

DBE Special Requirements - Engineering

The engineer shall attain the Disadvantaged Business Enterprise goal that applies to the total cost of the agreement and all supplements thereto, or in the alternative a showing of good faith effort by the engineer shall be made. Documentation of good faith effort shall be made by the engineer and subject to the concurrence of the Department.

The following is a list of types of actions that should be considered as part of the engineer's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The engineer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The engineer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the engineer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A engineer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a engineer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime to perform the work of a contract with its own organization does not relieve the engineer of the responsibility to make good faith efforts. Primes are not, however, required

Applies only if Agreement is federally-funded

to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the firm's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or firm.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

The United States Department of Transportation (US DOT)
Standard Title VI/Non-Discrimination Assurances
DOT Order No. 1050.2A

General Assurance:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration. "

Specific Assurance:

"The Commonwealth of Pennsylvania, Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§200d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. "

In addition to these assurances, please refer to the attached Appendices A, C, D, and E. Appendices A and E apply to this contract or agreement. Depending upon the nature of the activity, project or program for which Federal financial assistance is being provided under this contract or agreement, Appendices C and D may also apply.

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and Regulations relative to Non-discrimination in Federally- assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are here in incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:**
In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the nondiscrimination provision of this contract, the Recipient will impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. With holding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancel li ng, terminating, or suspending a contract, in whole or i n part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant Thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided ,that if the contractor becomes involved in, or is threatened with litigation by a subcontractor .or supplier because of such direction ,the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Commonwealth of Pennsylvania, Department of Transportation, pursuant to the provisions of Assurance 7(a):

1. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land "] that:
 - a. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. With respect to licenses, leases, permits, etc.. in the event of breach of any of the above Non-discrimination covenants, Commonwealth of Pennsylvania, Department of Transportation, will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon. and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
3. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Pennsylvania, Department of Transportation, will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will thereupon revert to and vest in and become the absolute property of the Commonwealth of Pennsylvania, Department of Transportation, and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Commonwealth of Pennsylvania , Department of Transportation , pursuant to the provision s Assurance 7(b):

- 1 . The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors i n interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination , (3) that the (grantee, licensee, lessee, permittee ,etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations. as amended, set forth in this Assurance.
2. With respect to (licenses, leases, permits, etc .), in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Pennsylvania , Department of Transportation , will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, perm it, etc.. as appropriate) had never been made or issued*
3. With respect to deeds, i n the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Pennsylvania , Department of Transportation will there upon reveIt to and vest in and become the absolute property of Commonwealth of Pennsylvania, Department of Transportation , and itsassigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor ") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities;

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §200d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973. (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12139) as implemented by the Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

LOBBYING CERTIFICATION FORM

(applies only if Agreement is Federally Funded)

[Exhibit needs to be printed, completed offline, and then scanned and attached]

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under *Section 1352, Title 31, U. S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than **\$100,000** for such failure.

SIGNATURE: _____

TITLE: _____

DATE: _____

Exhibit

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The Subgrantee must complete Federal Funding Accountability and Transparency Act (FFATA) form attached here. This form is to be completed and incorporated as part of this agreement.

Failure to provide accurate information for the Subgrantee named as a party to this agreement or to complete the FFATA form will cause the inability of the Commonwealth to process this grant and resulting in delay or loss of funds to the Subgrantee. The Subgrantee's documentation will be considered incomplete until such time that Subgrantee provides accurate FFATA information.

- (a) Registration and Identification Information – The Subgrantee must maintain current registration in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded pursuant to this agreement. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration. Subgrantee must provide its DUNS number, and DUNS + 4 number if applicable, to the Commonwealth along with the signed grant agreement.
- (b) Primary Location - Subgrantee must provide to the Commonwealth the primary location of performance under the award, including the city, State, and zip+4. If performance is to occur in multiple locations, then Subgrantee must list the location where the most amount of the grant award is to be expended pursuant to this grant agreement.
- (c) Compensation of Officers - Subgrantee must provide to the Commonwealth the names and total compensation of the five most highly compensated officers of the entity **if**-
 1. the entity in the preceding fiscal year received—
 - a. 80 percent or more of its annual gross revenues in Federal awards; and
 - b. \$25,000,000 or more in annual gross revenues from Federal awards; and
 - c. the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. If the Subgrantee does not meet the conditions listed above, then it must specifically affirm to the Commonwealth that the requirements of this clause are inapplicable to the Subgrantee. Subgrantee must provide information responding to this question along with Subgrantee's return of the signed grant agreement. The Commonwealth will not process this grant until such time that Subgrantee provides such information responding to this question.

Exhibit

Federal Funding Accountability and Transparency Act Sub-recipient Data Sheet

Grantee must provide information along with Grantee's return of the signed grant agreement. The Commonwealth will not process the grant until such time that Grantee provides such information.

DUNS NUMBER

DUNS Number:

DUNS Number +4 (if applicable)

[INSTRUCTIONS: Grantee must provide its assigned DUNS number, and DUNS + 4 number if applicable. Grantee must maintain current registration in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded pursuant to their sub- grant agreement. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.]

PRIMARY LOCATION

City:

State:

Zip+4:

[INSTRUCTIONS: Grantee must provide to the Commonwealth the primary location of performance under the award, including the city, State, and zip code including 4-digit extension. If performance is to occur in multiple locations, then Grantee must list the location where the most amount of the grant award is to be expended pursuant to the grant agreement.]

COMPENSATION OF OFFICERS

Officer 1 Name:

Officer 1 Compensation:

Officer 2 Name:

Officer 2 Compensation:

Officer 3 Name:

Officer 3 Compensation:

Officer 4 Name:

Officer 4 Compensation:

Officer 5 Name:

Officer 5 Compensation:

By marking the following box Grantee affirms they do not meet the conditions for reporting highly compensated officials

[INSTRUCTIONS: Grantee must provide to the Commonwealth the names and total compensation of the five most highly compensated officers of the entity if--

(i) the entity in the preceding fiscal year received—

(I) 0 percent or more of its annual gross revenues in Federal awards; and

(II) 0,000 or more in annual gross revenues from Federal awards: and

(ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

If the Grantee does not meet the conditions listed above, then it must specifically affirm to the Commonwealth that the requirements of this clause are inapplicable to the Grantee.