

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PAUL PECUNAS, ET AL.,	}	
	}	
Plaintiffs,	}	
	}	No. 1:11-cv-00016-MRH
vs.	}	
	}	Judge Hornak
COMMONWEALTH OF PENNSYLVANIA	}	
DEPARTMENT OF TRANSPORTATION,	}	
ALLEN D. BIEHLER and MILLCREEK	}	
TOWNSHIP, PA	}	
	}	<i>Electronically Filed.</i>
Defendants.	}	

**JOINT MOTION TO APPROVE JOINT PARTIAL
SETTLEMENT AGREEMENT AMONG ALL PARTIES**

1. In this action, Plaintiffs Paul Pecunas, Shona Eakin, and Voices for Independence (each a "Plaintiff" and collectively, "Plaintiffs") assert that Defendants the Commonwealth of Pennsylvania Department of Transportation ("PennDOT") and Millcreek Township (collectively, "Defendants") violated provisions of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq., with regard to street level pedestrian walkways, intersections and other facilities.

2. Plaintiffs and Millcreek Township have entered into four separate Consent Decrees and Partial Settlements, see (Docs. # 17, 82, 106, and 120), resolving many issues but leaving some unresolved and subject to further litigation.

3. Likewise, Plaintiffs and PennDOT have entered into three separate partial settlements and orders, see (Docs. # 93-94, 103, 109, and 124-126), resolving many issues but leaving some unresolved and subject to further litigation.

4. Plaintiffs, Millcreek Township, and PennDOT (collectively, the "Parties") have continued discussions and negotiations regarding several unresolved additional issues. The Parties now have reached agreement to resolve potential claims and issues raised by Plaintiffs regarding the accessibility of roadway shoulders and bus stops in Millcreek Township. Consequently, the Parties have entered into a Joint Partial Settlement Agreement Among All Parties (the "Settlement Agreement", attached hereto as **Exhibit 1**), and the Parties request that the Court order that the Settlement Agreement is enforceable by the Court and retain jurisdiction in the matter and over the Settlement Agreement.

5. PennDOT is unable to enter into any consent decree in any legal matter without express prior authority of the legislature of the Commonwealth of Pennsylvania. However, PennDOT may be made subject to settlement agreements without express authority of the legislature. The Parties desire to resolve certain issues arising in this lawsuit in an expeditious and economical manner that addresses the interests of the Plaintiffs and the concerns of all other parties. The Parties do not desire to permit the legal limitations upon the ability of PennDOT to participate in a consent decree to delay their resolution of the pending dispute.

6. Therefore, the Parties respectfully submit this joint request that this Honorable Court issue an order approving the Settlement Agreement attached hereto as **Exhibit 1** and that the Court expressly retain jurisdiction to enforce the Settlement Agreement.

Respectfully submitted,

s/ Mark T. Pavkov
Mark J. Shaw, Esq.
Mark T. Pavkov, Esq.
MACDONALD, ILLIG,
JONES & BRITTON
100 State Street, Suite 700
Erie, PA 16507-1459
(814) 870-7613
(814) 454-4647 fax

Attorneys for Defendant Millcreek

s/ J. Mark Finnegan, Esquire (with consent)
J. Mark Finnegan (40261)
Denise M. Heberle (42453)
HEBERLE & FINNEGAN, PLLC.
2580 Craig Road
Ann Arbor, MI 48103
(734) 302-3233
(734) 302-3234 fax

Attorneys for All Plaintiffs

s/ Craig A. Markham, Esquire (with consent)
Craig A. Markham (38531)
ELDERKIN LAW FIRM
Jones School Square
150 East Eighth Street
Erie, PA 16501
(814) 456-4000

Attorneys for All Plaintiffs

s/ Scott A. Bradley (with consent)
Scott A. Bradley, SDAG
Litigation Section
Office of Attorney General
6th Floor Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
(412) 565-3586

Attorney for PennDOT

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2016, the foregoing Joint Motion to Approve Joint Partial Settlement Agreement Among all Parties was filed electronically with the Clerk of Court, using the CM/ECF system. Notice of this filing will be sent to all parties who have appeared of record by operation of the Court's ECF system and constitutes service of this filing under Rule 5(b)(2)(E) of the Federal Rules of Civil Procedure. Those parties may access this filing through the Court's ECF system.

s/ Mark T. Pavkov

Mark T. Pavkov

Exhibit 1

Joint Partial Settlement Agreement Among All Parties

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PAUL PECUNAS, ET AL.,

Plaintiffs,

vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,
ALLEN D. BIEHLER and MILLCREEK
TOWNSHIP, PA

Defendants.

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No. 1:11-cv-00016-MRH

Judge Hornak

Electronically Filed.

JOINT PARTIAL SETTLEMENT AGREEMENT AMONG ALL PARTIES

SETTLEMENT AGREEMENT

I. BACKGROUND

Plaintiffs Paul Pecunas, Shona Eakin, Mark Zahar, and Voices for Independence (each a "Plaintiff" and collectively, "Plaintiffs") and Defendant Millcreek Township (a "Defendant") have entered into four separate Consent Decrees and Partial Settlements, see (Docs. # 17, 82, 106, and 120), resolving many issues but leaving some unresolved and subject to further litigation in the above-captioned case alleging violations of the Americans with Disabilities Act and the Rehabilitation Act of 1973 (collectively, the "ADA"). Likewise, Plaintiffs and Defendant Commonwealth of Pennsylvania Department of Transportation ("PennDOT" or a "Defendant", and collectively with Millcreek Township, "Defendants") have entered into three separate partial settlements and orders, see (Docs. # 93-94, 103, 109, and 124-126), resolving many issues but leaving some unresolved and subject to further litigation. In the meantime, Plaintiffs, Millcreek Township, and PennDOT (collectively, the "Parties") have continued discussions and negotiations regarding several unresolved additional issues. The Parties now have reached agreement to resolve

potential claims and issues raised by Plaintiffs regarding the accessibility of roadway shoulders and bus stops in Millcreek Township. Consequently, the Parties now enter into this Joint Partial Settlement Agreement Among All Parties (the "Settlement Agreement"), which the Parties acknowledge and the Court orders is enforceable by the Court, which retains jurisdiction in the matter and over this Settlement Agreement.

PennDOT is unable to enter into any consent decree in any legal matter without express prior authority of the legislature of the Commonwealth of Pennsylvania. However, PennDOT may be made subject to settlement agreements without express authority of the legislature. The Parties desire to resolve certain issues arising in this lawsuit in an expeditious and economical manner that addresses the interests of the Plaintiffs and the concerns of all other parties. The Parties do not desire to permit the legal limitations upon the ability of PennDOT to participate in a consent decree to delay their resolution of the pending dispute. Therefore, this Court, by this Settlement Agreement, resolves certain issues in this lawsuit as follows, and expressly retains jurisdiction to enforce this Settlement Agreement.

II. SETTLEMENT AGREEMENT

A. Scope of Settlement Agreement.

1. **Claims Resolved.** This Settlement Agreement resolves Plaintiffs' two claims generally characterized as the Road Shoulder Claim and the Bus Stop Claim.

- i. **Road Shoulders.** Under the Road Shoulder Claim, Plaintiffs allege that the roadways within the boundaries of Millcreek Township that do not have ADA compliant sidewalks constitute Pedestrian Access Routes ("PARs") that must comply with the ADA requirements for PARs. This claim covers two scenarios: roads within Millcreek Township where there are no or incomplete sidewalks and roads within Millcreek Township where there are sidewalks but the sidewalks do not comply with the ADA. Plaintiffs' were seeking, among other things, that the edge/shoulder of the impacted roads meet the ADA specifications for PARs, including, but not limited to, the 2% cross slope requirement, ADA compliant storm sewer covers and curb ramps and blended transitions at intersections. The Road Shoulder Claim

also sought to require the Defendants to install curb ramps or blended transitions connecting the sidewalk to the road shoulder at locations where a sidewalk terminates at a location other than an intersection. Plaintiffs also claimed that each time a road in Millcreek Township is/was resurfaced since 1991, it triggers/triggered the obligation to ensure that the PARs within the roads complied with the ADA. These claims shall be referred to in this Settlement Agreement as the "Road Shoulder Claims."

- ii. Road Shoulder Claims do not include claims arising from existing sidewalks or from the construction of sidewalks in the future, including but not limited to the matters to be addressed by the parties as described in the Fourth Consent Decree with Millcreek Township, (ECF Doc 118) and in the Third Settlement Agreement with PennDOT (ECF Doc 124).
- iii. Bus Stops. Under the Bus Stop Claim, Plaintiffs allege that the bus stops within the boundaries of Millcreek Township are "Programs, Services, or Activities" of the Township and/or PennDOT under the ADA. Plaintiffs also claim that Millcreek Township and PennDOT are responsible for the accessibility of bus stops because they are located within the public rights-of-way of each. Plaintiffs allege that they cannot use and/or get to and from the bus stops located in Millcreek Township. Plaintiffs' Bus Stop Claims consist of two parts. First, Plaintiffs claim that each bus stop must comply with the requirements for bus/transit stops and bus/transit shelters under the ADA. Second, Plaintiffs claim that the PAR to and from each bus stop must comply with the ADA and/or that there must be a PAR to and from each bus stop and between each bus shelter or waiting areas and the bus boarding and alighting areas. These claims shall be referred to in this Settlement Agreement as the "Bus Stop Claims."

2. **Earlier Settlement Orders or Consent Decrees Remain in Effect.** The requirements of prior Consent Decrees between Millcreek Township and the Plaintiffs and the requirements of the prior Partial Settlement Agreements and Orders between PennDOT and the Plaintiffs remain in full force and effect, except to the extent expressly modified in this Settlement Agreement as set forth below.

3. **Limited to Inside Millcreek Township.** This Settlement Agreement is limited geographically to Millcreek Township. Plaintiffs along with PennDOT and Millcreek Township enter into this Settlement Agreement merely to amicably resolve only the Road Shoulder Claims

and Bus Stop Claims by Plaintiffs against PennDOT and Millcreek Township arising within the boundaries of Millcreek Township.

4. **No Admission of Liability.** It is acknowledged and agreed that this Settlement Agreement is in compromise of a disputed claims embodied in or encompassed by the underlying case and is being entered into to avoid further protracted litigation of the matter and to buy peace. This Settlement Agreement is not to be construed as any form of admission, either of liability or of any disputed fact or issue, on the part of anyone or any Defendant being released hereunder, or understood to be one in any sense. No consideration assumed or provided by Defendants under this Settlement Agreement shall be construed to establish liability or otherwise construed as any form of admission or wrongdoing on the part of any Defendant, and all liability or wrongdoing is expressly denied. Defendants specifically deny that either has any obligation, liability, or duties under or arising from the ADA with respect to the accessibility of bus stops or the accessibility of roadways or roadway shoulders within Millcreek Township or that such roadways or roadway shoulders are PARs.

B. Construction of Sidewalks and/or Pedestrian Access Routes.

1. In consideration of the Parties' execution of this Settlement Agreement, their undertakings, releases, and agreements herein, and intending to be legally bound, the Parties agree as follows:

- (a) PennDOT will remediate any non-compliant sections of sidewalk that were installed by PennDOT during prior PennDOT construction projects in Millcreek Township, SR 0005 A02 ECMS #57836 (West 12th Street from Asbury Road to east of Harper Drive and from Fillmore Ave to just east of Yorktown Center/Cancer Center Drive) and the SR 832 A03 ECMS #68271 (West 26th Street from James/Angle Street to Legion Road and on West 12th Street from east of Harper Drive to Fillmore Ave) projects, where such non-compliance was the result of prior PennDOT work.

- (b) PennDOT will address connectivity issues on Peninsula Drive (SR0832) from West 26th Street (SR0020) North to West 12th Street (SR0005) by installing sidewalk along the East side of Peninsula Drive, as further described in the Sidewalk Reimbursement and Maintenance Agreement to be entered into between Millcreek Township and PennDOT attached hereto as Exhibit A.
- (c) PennDOT will address accessibility issues on West 12th Street (SR0005), in any areas where sidewalks were not previously installed and that are not covered by Paragraph (a) above, from Asbury Road to just east of Yorktown Center/Cancer Center Drive by providing an ADA accessible path in those areas where an ADA accessible path of travel does not exist along both sides of West 12th Street; as further described in the Sidewalk Reimbursement and Maintenance Agreement to be entered into between Millcreek Township and PennDOT attached hereto as Exhibit A.
- (d) PennDOT will address connectivity issues on West 26th Street (SR0020) from James Ave/Angle St to Zuck Road by installing sidewalk in those areas where no sidewalk or pedestrian access is present along both sides of West 26th Street, as further described in the Sidewalk Reimbursement and Maintenance Agreement to be entered into between Millcreek Township and PennDOT attached hereto as Exhibit A.
- (e) Along Caughey Road between West 26th Street and Sterrettania Road where there are no sidewalks on either side of the road, Millcreek Township will install sidewalk as needed along that stretch of Caughey Road so that there is a single Pedestrian Access Route ("PAR") that will extend along Caughey Road from Sterrettania Road to West 26th Street. The single PAR may be located on either the West or East side of Caughey Road, crossing between the two sides as needed or appropriate. Millcreek Township's engineer shall have sole discretion to determine which side of Caughey Road along the various segments between intersections shall contain the PAR and to determine at which intersections the PAR may cross Caughey Road to then continue along the other side. While not limiting Millcreek Township's discretion if a different design is later determined to be necessary or more feasible or desirable, Millcreek Township presently anticipates that the path of the PAR will be as follows: (i) the PAR will run on the East side of Caughey Road between Sterrettania Road and Meadow Drive; (ii) the PAR will cross Caughey Road at the intersection of Caughey Road and Meadow Drive; and (iii) the PAR will run on the West side of Caughey Road between Meadow Drive and West 26th Street.
- (f) Millcreek Township will participate in the funding of the foregoing projects identified in Paragraphs (b), (c), and (d) above by providing a 20% match in local funding via a Sidewalk Reimbursement and Maintenance

Agreement to be entered into between Millcreek Township and PennDOT, a form of which is attached hereto as Exhibit A.

- (g) For the project identified in Paragraph (e) above, Millcreek Township and PennDOT will both seek approval of federal transportation improvement project ("TIP") funding for the project, and if approved for TIP funding, Millcreek and PennDOT will enter into a General Reimbursement Grant Agreement For Federal-Aid Highway Projects, a form of which is attached hereto as Exhibit B, pursuant to which PennDOT, using funds allocated by the Federal Highway Administration, will pay to Millcreek Township 80% of the total costs of the project and Millcreek Township will be responsible for the remaining 20% of the costs of the project.
- (h) The obligations and work to be undertaken pursuant to this Agreement are not dependent upon, nor contingent upon, the receipt of any specific funding or upon the compliance or fulfillment of the cost-sharing described herein.

2. Barring any unforeseen delays, the work identified in Paragraphs (b), (c), and (d) above is anticipated to be completed by PennDOT by December 31, 2019. Barring any unforeseen delays and subject to the provisions of this Settlement Agreement, the work identified in Paragraph (e) above is anticipated to be completed by Millcreek Township by December 31, 2020. The Parties will agree that if PennDOT or Millcreek Township encounter any delays prior to the stated completion dates, for good cause shown, the Plaintiffs will negotiate in good faith for extension(s) of these dates if requested by PennDOT or Millcreek Township.

3. To the extent required, PennDOT and Millcreek Township shall work cooperatively to obtain the funding necessary to support these projects.

4. It is understood and agreed by the Parties that any sidewalk construction or other work undertaken by PennDOT and/or Millcreek Township pursuant to this Settlement Agreement is being done pursuant to this Settlement Agreement to avoid further litigation and should not be viewed as committing PennDOT and/or Millcreek Township to any other future sidewalk construction in Millcreek Township and should not be considered as setting any sort of precedent with respect to future sidewalk construction in Millcreek Township. Rather, PennDOT and/or

Millcreek Township are simply making an effort to resolve the current portion of the instant litigation.

C. Design and Construction Standards Inside Millcreek Township.

Any sidewalk construction inside Millcreek Township by PennDOT will comply with the standards for sidewalk construction in the Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG 2011), as amended in the Second Partial Settlement Agreement between PennDOT and the Plaintiffs. Any sidewalk construction inside Millcreek Township by Millcreek Township will comply with the standards for sidewalk construction in the Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG 2011).

D. Partial Release and Indemnification.

1. Plaintiffs, Paul Pecunas, Shona Eakin, Mark Zahar, and Voices for Independence, for themselves and on behalf of their predecessors, successors, affiliates, parents, subsidiaries, officers, directors, insurers, representatives, agents, employees, descendants, dependents, heirs, executors, administrators and assigns, and all others claiming by, through or under them, shall, and do hereby, release and forever discharge with prejudice Millcreek Township and PennDOT and their successors, subsidiaries, supervisors, officers, insurers, representatives, agents, employees and assigns, of and from: (i) any and all claims and causes of action, asserted or unasserted, legal or equitable including any claims or causes of action for declaratory or injunctive relief that were, or could have been, raised in this action relating to or regarding the Road Shoulder Claims; and (ii) any and all claims and causes of action, asserted or unasserted, legal or equitable including any claims or causes of action for declaratory or injunctive relief that were, or could have been, raised in this action relating to or regarding the Bus Stop Claims.

2. The release of the Road Shoulder Claims and the Bus Stop Claims includes claims which a Plaintiff does not know or suspect to exist in his or her favor against either Defendant as of the Effective Date of this Settlement Agreement. The Plaintiffs each waive all rights and benefits afforded by any statutory law as to known or unknown claims which fall within the definitions of Road Shoulder Claims or Bus Stop Claims, and do so understanding the significance of said waiver. Each Plaintiff hereby confirms that he understands that facts relating to the allegations that are the subject of this lawsuit may turn out to be other than or different from the facts now known or believed by such Plaintiff to be true, and each Plaintiff knowingly assumes that risk and acknowledges and agrees that this Settlement Agreement shall remain in effect and shall not be subject to termination or revocation by reason of any such different facts.

3. In the event that Plaintiffs, Paul Pecunas, Shona Eakin, Mark Zahar or Voices For Independence file a lawsuit against Erie Metropolitan Transit Authority, its successors, assigns, officers and/or employees and/or any other entity operating public transportation services with bus stops within Millcreek Township (collectively, "EMTA") and

- a. Plaintiffs assert in that lawsuit any liability against EMTA for bus stop claims relating or regarding the accessibility or ADA compliance of any bus stop within Millcreek Township that were or could have been brought in this action against Millcreek Township and/or PennDOT ("EMTA Bus Stop Claims"); and
- b. thereafter EMTA joins or sues Millcreek Township and/or PennDOT based upon the claim that Millcreek Township and/or PennDOT is liable to Plaintiffs for the EMTA Bus Stop Claims; and
- c. any judgment is entered against Millcreek and/or PennDOT in favor of EMTA and/or Plaintiffs on the EMTA Bus Stop Claims;

then and in that event this Agreement shall operate as a full and complete release of Millcreek Township and/or PennDOT for all such EMTA Bus Stop Claim liability asserted by the EMTA against Millcreek Township and/or PennDOT and Plaintiffs shall satisfy or release any judgment entered in favor of Plaintiffs and against EMTA to the extent necessary to satisfy or release any judgment entered in favor of EMTA against Millcreek Township and/or PennDOT on the EMTA Bus Stop Claims. It is the intent of this Agreement that Millcreek Township and PennDOT shall have no liability to Plaintiffs for any EMTA Bus Stop Claims.

4. Plaintiffs, Paul Pecunas, Shona Eakin, Mark Zahar, and Voices for Independence further agree not to take any action following the execution of this Settlement Agreement that is taken with the specific intent to support or assist the filing of a lawsuit or the maintenance of such a lawsuit by other parties against Millcreek Township and/or PennDOT relating in any way to the Road Shoulder Claims and/or the Bus Stop Claims, including but not limited to sharing any information obtained through discovery in this lawsuit, unless compelled by order of court to do so. If Plaintiffs are determined to have taken such action, Plaintiffs shall pay the amount of \$37,843.55 to Millcreek and the amount of \$34,693.59 to PennDOT, which is equal to the amount of attorneys' fees and costs paid by each as part of this settlement, including and all attorney's fees and costs incurred in recovering such amounts, and Millcreek and/or PennDOT also may seek such other relief as the court may deem appropriate. In any action filed to enforce this paragraph or to recover damages for a breach of this paragraph, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs of litigation in addition to any other recoverable damages. Lawsuits, which relate in any way to the Road Shoulder Claims and/or the Bus Stop Claims, that are filed and maintained against Millcreek Township and/or PennDOT by a third party as a result

of Plaintiffs filing of a lawsuit against such third party are not intended to be covered by this Paragraph.

E. Attorneys Fees and Costs

Within fifteen days of the Court's approval of this Settlement Agreement, Millcreek Township shall pay \$29,901.05 to Heberle & Finnegan, PLLC and \$7,942.50 to the Elderkin Firm. Within eight weeks of the Court's approval of this Settlement Agreement, PennDOT shall pay \$25,355.99 to Heberle & Finnegan, PLLC and \$9,337.60 to the Elderkin Firm. These amounts will be payment in full for all fees and costs claimable by Plaintiffs or Plaintiffs' counsel in this matter from the beginning of this matter up to September 23, 2016 for the Elderkin Firm and October 6, 2016 for Heberle & Finnegan, PLLC. By paying these amounts, Millcreek Township and PennDOT in no way admit liability for any future payments, and Plaintiffs do not waive any claims for payments for future fees and costs that may be incurred.

F. Nonwaiver of Defenses.

Except as otherwise expressly provided in this Settlement Agreement or in the Parties' earlier respective Partial Settlement Agreements and Orders or Consent Decrees, neither Plaintiffs nor PennDOT nor Millcreek Township waive any defenses or rights they may have to any presently stated or future claims as the result of negotiating and executing the present Settlement Agreement or as the result of any actions taken pursuant thereto.

G. Effective Date.

The Effective Date of this Settlement Agreement shall be the date indicated below that the Settlement Agreement was read and approved by the Parties.

Received:

Nov 9 2016 03:56pm

11/09/2016 17:08

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VOICES FOR INDEPEND

PAGE 02/02

IN WITNESS WHEREOF, intending to be legally bound hereby, Plaintiffs individually or by its duly authorized representative, have executed this Settlement Agreement effective as of the date set forth below.

Dated: _____

By _____
Paul PecunasDated: 11/9/16By Shona Eakin
Shona Eakin

Voices for Independence

Dated: 11/9/16By Shona Eakin
Shona Eakin Executive Director
[Printed Name, Position]

IN WITNESS WHEREOF, intending to be legally bound hereby, Plaintiffs individually or by is duly authorized representative, have executed this Settlement Agreement effective as of the date set forth below.

Dated: 11/14/2016

By Paul Pecunas
Paul Pecunas

Dated: _____

By _____
Shona Eakin

Voices for Independence

Dated: 11/14/2016

By Bill Hoffman (Director)
Rick Hoffman Director
[Printed Name; Position]

Read and Approved on this 14th day of November, 2016, by:

s/ Scott A. Bradley

Scott A. Bradley, SDAG
Litigation Section
Office of Attorney General
6th Floor Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
(412) 565-3586

Attorney for PennDOT

s/ J. Mark Finnegan, Esquire

J. Mark Finnegan (40261)
Denise M. Heberle (42453)
HEBERLE & FINNEGAN, PLLC.
2580 Craig Road
Ann Arbor, MI 48103
(734) 302-3233
(734) 302-3234 fax

Attorneys for All Plaintiffs

s/ Mark J. Shaw

Mark J. Shaw, Esq.
Mark T. Pavkov, Esq.
MACDONALD, ILLIG,
JONES & BRITTON
100 State Street, Suite 700
Erie, PA 16507-1459
(814) 870-7613
(814) 454-4647 fax

Attorneys for Defendant Millcreek

s/ Craig A. Markham, Esquire

Craig A. Markham (38531)
ELDERKIN LAW FIRM
Jones School Square
150 East Eighth Street
Erie, PA 16501
(814) 456-4000

Attorneys for All Plaintiffs

REIMBURSEMENT & MAINTENANCE AGREEMENT
PURSUANT TO SETTLEMENT AGREEMENT

THIS REIMBURSEMENT & MAINTENANCE AGREEMENT ("AGREEMENT"), is made and entered into by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PENNDOT), hereinafter called the COMMONWEALTH,

a n d

MILLCREEK TOWNSHIP, a political subdivision duly and properly formed under the laws of the Commonwealth of Pennsylvania, acting through its proper officials, hereinafter called the MUNICIPALITY.

W I T N E S S E T H:

WHEREAS, the COMMONWEALTH has under its jurisdiction SR0832, SR0005, and SR0020, located in Millcreek Township, Erie County;

WHEREAS, pursuant to Section II.B.(b), (c), and (d) of the Joint Partial Settlement Agreement Among All Parties entered in the lawsuit captioned, *Pecunas, et al. v. Commonwealth of Pennsylvania, Department of Transportation, et al.*, W.D. Pa. Case No. 1:11-cv-00016-MRH (the "Settlement Agreement"), the COMMONWEALTH is required to design, construct and install sidewalks or other pedestrian facilities ("PEDESTRIAN FACILITIES") along SR0832, from Segments 0220 and 0221 Offsets 0000 and 0000 to Segments 0240 and 0241 Offsets 0000 and 0000, SR0005, from Segments 0400 and 0401 Offsets 0650 and 0650 to Segments 0480 and 0481 Offsets 1349 and 1335, and SR0020, from Segments 0500 and 0501 Offsets 1031 and 1027 to Segments 0510 and 0511 Offsets 1675 and 1692, hereinafter referred to as the COMMONWEALTH PROJECT, as shown on R & M Exhibits "A," "B," and "C," which are attached hereto and made part of this Agreement;

WHEREAS, the PEDESTRIAN FACILITIES will be installed to serve pedestrian traffic and must meet the design guideline standards for pedestrian accessibility required by the Americans with Disabilities Act (ADA), as further specified in the Settlement Agreement;

WHEREAS the COMMONWEALTH and the MUNICIPALITY intend to fund the COMMONWEALTH PROJECT using money from the Transportation Improvement Program, which requires a 20% match, and have agreed to cooperate in seeking such funding;

WHEREAS, under the Transportation Improvement Program funding, the COMMONWEALTH is the entity that is responsible for constructing the COMMONWEALTH PROJECT, and in this case, the MUNICIPALITY is providing the twenty percent (20%) match; and

WHEREAS, the parties desire to enter into this Agreement to set forth the construction, inspection, financial and maintenance obligations for the COMMONWEALTH PROJECT and the PEDESTRIAN FACILITIES.

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual promises set forth below, the parties agree, with the intention of being legally bound, to the following:

1. The recitals set forth above are incorporated by reference as a material part of this Agreement.
2. The COMMONWEALTH, with the support of the MUNICIPALITY, shall seek funding from the Transportation Improvement Program for the COMMONWEALTH PROJECT, such that the COMMONWEALTH PROJECT can be completed within the time frame contained in the Settlement Agreement.
3. The COMMONWEALTH, by contract or with its own forces, will design and construct the COMMONWEALTH PROJECT in compliance with the ADA and in accordance with

the plans, specifications, and drawings prepared by or for the COMMONWEALTH, which are incorporated herein by reference as if physically attached hereto.

4. While the parties are seeking funding from the Transportation Improvement Program, the COMMONWEALTH PROJECT is not dependent on this funding, and shall be completed and funded as described below if such funding is not provided.
5. The COMMONWEALTH shall be responsible for eighty percent (80%) of all costs of the COMMONWEALTH PROJECT and the MUNICIPALITY shall be responsible for twenty percent (20%) of all costs of the COMMONWEALTH PROJECT, as provided below.
6. The MUNICIPALITY shall pay to the COMMONWEALTH, by way of reimbursement, for twenty percent (20%) of all actual costs associated with construction of the COMMONWEALTH PROJECT, including construction inspection costs, as tabulated on R & M Exhibit "D," which is attached to and made part of this Agreement, estimated to be Two Hundred and Thirty-Seven Thousand, Three Hundred and Twenty-Four Dollars (\$237,324.00); and,
7. Upon completion of the COMMONWEALTH PROJECT, the COMMONWEALTH shall send the MUNICIPALITY a written notice of completion and an invoice specifying the total cost of the PEDESTRIAN FACILITIES for which MUNICIPALITY is responsible in accordance with Paragraphs 5 and 6 above. The MUNICIPALITY shall make payment to the COMMONWEALTH in full through the Option circled below:

Option A:

The MUNICIPALITY shall make payment to the COMMONWEALTH in full within thirty (30) days of receipt of such invoice.

Option B:

The MUNICIPALITY shall, after receipt of such invoice, make monthly payments to the COMMONWEALTH for a period of one (1) year. The payments will be in equal amounts and total all costs due hereunder.

Option C:

The MUNICIPALITY shall make payment to the COMMONWEALTH in full after receiving the necessary funds from a Pennsylvania Infrastructure Bank (PIB) loan. The MUNICIPALITY shall make payment to the COMMONWEALTH in full within thirty (30) days of receipt of such loan, which must be no longer than sixty (60) days after completion of the Project.

Option D:

The MUNICIPALITY authorizes the COMMONWEALTH to withhold and apply so much of the MUNICIPALITY's Liquid Fuels Tax Fund allocation as necessary to reimburse the COMMONWEALTH in full for all costs due hereunder.

8. Upon completion of the COMMONWEALTH PROJECT, responsibility for future maintenance of and removal of snow and ice from the PEDESTRIAN FACILITIES installed or constructed under the COMMONWEALTH PROJECT shall be governed by MUNICIPALITY's ordinances and the State Highway Law. Nothing contained in this Agreement must be construed as an assumption or acknowledgment by the COMMONWEALTH or MUNICIPALITY of responsibility for the maintenance and future repair of the said PEDESTRIAN FACILITIES. If MUNICIPALITY proposes to change the language of Section 121.5(A) of Millcreek Township Code in a manner that modifies or eliminates the responsibility of the owner for the proper care, maintenance and condition of a sidewalk within the right of way of a State highway, MUNICIPALITY shall provide written notice to COMMONWEALTH of such proposed change at the same time MUNICIPALITY is required to provide public notice of such proposed change.

MUNICIPALITY's failure to provide such notice shall in no way delay or void the effectiveness of any change, and shall not constitute a breach of this Agreement.

9. The MUNICIPALITY, by executing this Agreement, certifies that it has on hand or will acquire sufficient funds to meet all of its obligations for the PEDESTRIAN FACILITIES to be constructed/installed under this Agreement.
10. If the MUNICIPALITY fails to perform any of the terms, conditions or provisions of this Agreement; including, but not limited to, any default of payment for a period of forty-five (45) days, the MUNICIPALITY authorizes the COMMONWEALTH to withhold so much of the MUNICIPALITY's Liquid Fuels Tax Fund allocation as may be necessary to reimburse the COMMONWEALTH in full for all costs due hereunder; and the MUNICIPALITY does hereby and herewith authorize the COMMONWEALTH to withhold such amount and to apply such funds or portion thereof, to remedy such default.
11. The MUNICIPALITY shall enact and/or adopt such ordinances and/or resolutions as may be necessary to effect the purposes of this Agreement.
12. The actions that the COMMONWEALTH is either required or authorized to perform pursuant this Agreement are not intended to enlarge, and must not be construed as enlarging, its obligations regarding maintenance and operation of the state highway system under either the State Highway Law, Act of June 1, 1945, P.L. 1242, as amended, 36 P.S. § 670-101 et seq., or the Act of September 18, 1961, P.L. 1389, No. 615, as amended, 36 P.S. § 1758-101 et seq.
13. This Agreement will not be effective until all necessary COMMONWEALTH officials as required by law have executed it, and the Court in *Pecunas, et al. v. Commonwealth of Pennsylvania, Department of Transportation, et al.*, W.D. Pa. Case No. 1:11-cv-00016-MRH has approved the Settlement Agreement. The date of the Court's approval shall be the effective date of this Agreement.

14. Although the parties recognize that this provision may not be applicable because the COMMONWEALTH, by contract or with its own forces, will design and construct the COMMONWEALTH PROJECT, to the extent applicable the MUNICIPALITY agrees to comply with the *Contractor Integrity Provisions*, the *Commonwealth Nondiscrimination/Sexual Harassment Clause*, the *Provisions Concerning the Americans with Disabilities Act*, and the *Right-to-Know Law Provisions* which are attached hereto and made part hereof as Exhibits "E," "F," "G," and "H", respectively.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

ATTEST

MUNICIPALITY

Title: DATE

BY _____
Title: DATE

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
Deputy Secretary for DATE
Highway Administration

APPROVED AS TO LEGALITY
AND FORM

BY _____
for Chief Counsel Date

FUNDS COMMITMENT DOC. NO. _____
CERTIFIED FUNDS AVAILABLE UNDER
SAP NO. _____
SAP COST CENTER _____
GL ACCOUNT _____
AMOUNT _____

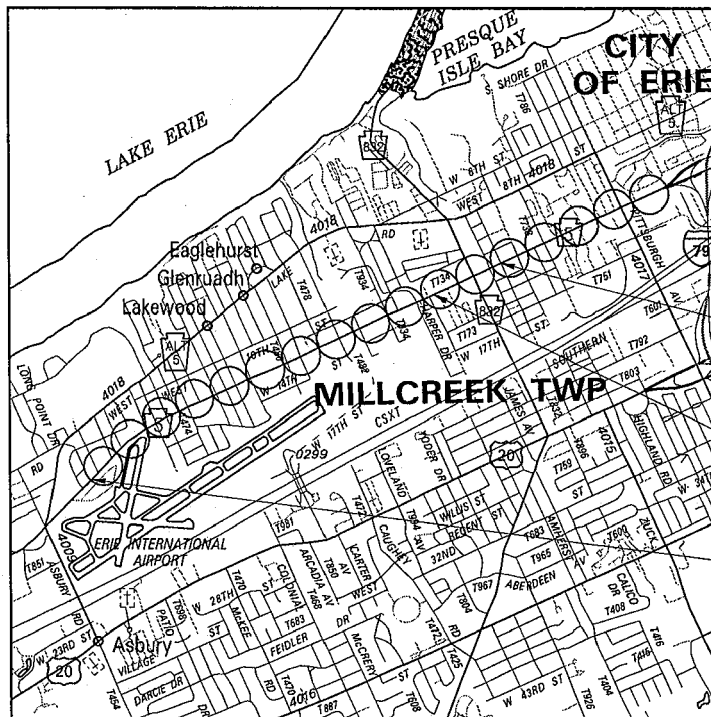
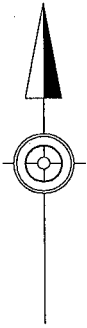
BY _____
Deputy General Counsel Date

BY _____
for Comptroller Date

BY _____
Deputy Attorney General Date

#1485908

LOCATION MAP SR 5, WEST TWELFTH STREET



LIMIT OF WORK

0.2 MI. WEST OF I-79
SEG. 0480 OFFSET 1349
SEG. 0481 OFFSET 1335
S.R. 0005 SECTION A02
CITY OF ERIE
ERIE COUNTY

STOP WORK SR 5-A03/
START WORK SR 5-A02

SEG. 0460 OFFSET 2522
SEG. 0461 OFFSET 2508







STOP WORK SR 5-A02/
START WORK SR 5-A03

SEG. 0460 OFFSET 0914
SEG. 0461 OFFSET 0900

LIMIT OF WORK

0.1 MI. EAST OF ASBURY RD.
SEG. 0400 OFFSET 0650
SEG. 0401 OFFSET 0650
S.R. 0005 SECTION A02
MILLCREEK TWP.
ERIE COUNTY

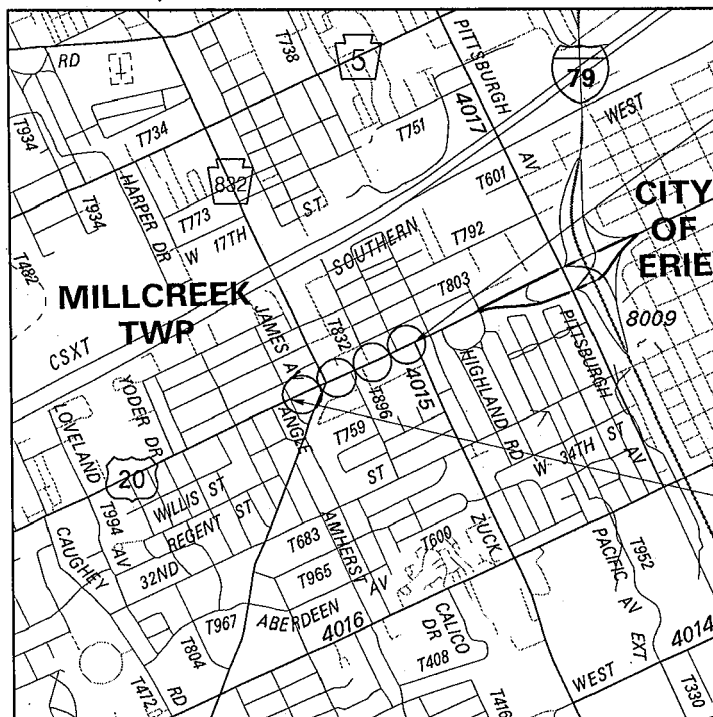
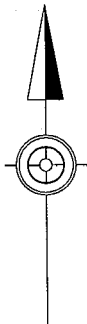
LEGEND

-  U.S. TRAFFIC ROUTE
-  INTERSTATE ROUTE
-  P.A. TRAFFIC ROUTE
-  STATE ROUTE
-  TOWNSHIP ROAD
-  PROJECT- SIDEWALK ACCESSIBILITY

SCALE

0 0.5 1 MILES


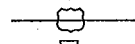




LOCATION MAP SR 20, WEST TWENTY SIXTH STREET



LIMIT OF WORK
INTERSECTION OF SR 0020
(WEST 26TH ST) & ZUCK RD.
SEG. 0510 OFFSET 1675
SEG. 0511 OFFSET 1692
MILLCREEK TWP.
ERIE COUNTY

LIMIT OF WORK
INTERSECTION OF SR 0020
(WEST 26TH ST) & JAMES
AVE/ANGLE ST
SEG. 0500 OFFSET 1031
SEG. 0501 OFFSET 1027
MILLCREEK TWP.
ERIE COUNTY

LEGEND

-  INTERSTATE ROUTE
-  U.S. TRAFFIC ROUTE
-  P.A. TRAFFIC ROUTE
-  STATE ROUTE
-  TOWNSHIP ROAD
-  PROJECT- SIDEWALK CONNECTIVITY (BOTH SIDES)

SCALE

0 0.5 1 MILES

PRELIMINARY CONSTRUCTION COST ESTIMATE

Date: 12-Oct-16

County: Erie

S.R.: 832 & 20

Section: _____

ADT: _____

Trucks: _____ %

SR 832 (Sr 20-SR 5)

Location: SR 20 (Angle St.-Zuck)

Seg./Offset: _____ To Seg./Offset: _____

Posted Speed: _____ MPH

Length: _____ L.F.

Length: 0.00 Miles

Prepared By: KDM

Type of Project: Sidewalk and Curb Ramps

Scope of Work:

	Construction Item	Quantity	Unit	Cost/Unit	Cost
Pavement:					
SR 20	Sidewalk (Including Excavation)	535	S.Y.	80.00	\$42,800
SR 20	Curb Ramps	22	Each	5,000.00	\$110,000
SR 832	Sidewalk (Including Excavation)	2,167	S.Y.	80.00	\$173,360
SR 832	Curb Ramps	40	Each	5,000.00	\$200,000
	Widening 6" B.C.B.C including Exc.		S.Y.	35.00	\$0
	Widening 8" B.C.B.C including Exc.		S.Y.	40.00	\$0
	Widening 10" B.C.B.C including Exc.		S.Y.	45.00	\$0
	WMA Binder, 2" min. Depth (220# / SY)		TON	75.00	\$0
	WMA Wear. Crse., 1 1/2" Depth (SRL L,M,G,H)		S.Y.	8.00	\$0
	WMA Wear. Crse., 1-1/2" Depth (SRL E)		S.Y.	8.50	\$0
	WMA Wear. Crse., 1-1/2" Depth (SRL E 76-22)		S.Y.	8.50	\$0
	Cold Mill Recycle 3" depth		S.Y.	3.00	\$0
	Bituminous Material		GALLON	1.70	\$0
Shoulders					
	Paved Shoulders Type 1-I		S.Y.	30.00	\$0
	Paved Shoulders Type 6-I		S.Y.	30.00	\$0
	Paved Shoulders Type 7		S.Y.	7.00	\$0
Guide Rail:					
	Reset Exist. Guide Rail		L.F.	6.00	\$0
	Removal of Guide Rail		L.F.	2.00	\$0
	Proposed Guide Rail		L.F.	20.00	\$0
	Perm. Impact Attenuators		EACH	2,000.00	\$0
	End Anchorage		EACH	400.00	\$0
	Strong Post End Treatment		EACH	900.00	\$0
	Remove End Anchor		EACH	200.00	\$0
Drainage:					
	50,000/Mi.	0	L.S.	0.00	\$0
Drives:					
	Gravel		TON	50.00	\$0
	Bit.(4" B.C.B.C. & 1 1/2" Wear.)		EACH	190.00	\$0
	Conc.		EACH	600.00	\$0
Miscellaneous:					
	M & P Traffic		L.S.		\$40,000
	Inspector's Field Office		L.S.		\$10,000
	Cheek Well (18" average)	1,677	S.F.	75.00	\$125,775
	Curb Gutter		S.Y.	80.00	\$0

25% of L.F. of sidewalk

Disclaimer: As Per JAW 2-12-13
 Prices apply to 3R Betterment projects only
 For other types of projects, obtain prices
 from Contract Management

Construction Subtotal \$701,935
 Mobilization 5% \$35,097
 Contingencies 40% \$294,813
 Construction Engineering 15% \$154,777
TOTAL COST \$1,186,621

Cost Sharing

PennDOT 80% \$949,297
 Millcreek Township 20% \$237,324
TOTAL COST \$1,186,621

January 14, 2015

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.

- 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 if 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 E

- 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.

February 24, 2015

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Contracts]

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause 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.
4. The Contractor and each subcontractor shall not discriminate in violation of PHRA and applicable federal laws against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers subject to *Title VII* of the *Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Small Business Opportunities (BSBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

Exhibit F

February 24, 2015

6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Contractor's and each subcontractor'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 and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
8. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

Exhibit F

October 14, 2011

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 G

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.

EXHIBIT H

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.

EXHIBIT H

Federal Aid Highway- MUNI Acquisition of ROW

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

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

GENERAL REIMBURSEMENT GRANT AGREEMENT
FOR FEDERAL-AID HIGHWAY PROJECTS.

THIS AGREEMENT is made by and between the Commonwealth of Pennsylvania, acting through the Department of Transportation ("DEPARTMENT"),

and

Millcreek Township, a political subdivision in the County of Erie, of the Commonwealth of Pennsylvania, acting through its proper officials ("MUNICIPALITY").

RECITALS:

WHEREAS, the MUNICIPALITY has under its jurisdiction Caughey Road between W. 26th Street (SR0020) and Sterrettania Road (SR0832); and

WHEREAS, pursuant to the Joint Partial Settlement Agreement Among All Parties entered in the lawsuit captioned, Pecunas, et al. v. Commonwealth of Pennsylvania, Department of Transportation, et al., W.D. Pa. Case No. 1:11-cv-00016-MRH (the "Settlement Agreement"), the MUNICIPALITY is required to construct and install PEDESTRIAN FACILITIES on Caughey Road between W. 26th Street and Sterrettania Road, hereinafter referred to as the PROJECT.

WHEREAS, the PEDESTRIAN FACILITIES will be installed to serve pedestrian traffic and must meet the design guideline standards for pedestrian accessibility required by the Americans with Disabilities Act (ADA), as further specified in the Settlement Agreement; and,

WHEREAS the DEPARTMENT and the MUNICIPALITY intend to fund the PROJECT using monies awarded through the Transportation Improvement Program process, which requires a 20% local match, and have agreed to cooperate in seeking such funding; and

WHEREAS, the Congress of the United States has found it to be in the national interest to promote through the states a continuing federal-aid highway program ("Program") to improve public roads both on and off federal-aid systems within the states for the purpose of enhancing the safety and traffic flow on these roads, and has provided funds to be administered in accordance with the provisions of the various federal-aid highway acts, as amended, by the United States Department of Transportation, Federal Highway Administration ("FHWA"); and,

WHEREAS, the DEPARTMENT has adopted policies and procedures for the initiation and conduct of improvements by political subdivisions of the Commonwealth within such a Program for those public roads, pursuant to the requirements set forth in FHWA regulations implementing the provisions of the federal-aid highway acts and amendments to them, as set forth in the applicable provisions of Title 23 of the United States Code; and,

WHEREAS, the MUNICIPALITY has signified its willingness to participate in the Program by undertaking the improvements described in Paragraph 2(a) in accordance with the terms, conditions and provisions contained in this Agreement and the Settlement Agreement.

NOW, THEREFORE, the parties, intending to be legally bound, agree to the following:

1. INCORPORATION BY REFERENCE

The recitals set forth above are incorporated by reference as a material part of this Agreement.

2. GENERAL PROVISIONS

- (a) The MUNICIPALITY shall participate in the preliminary engineering, including environmental studies, final design, utility relocation, right-of-way acquisition and construction of sidewalks (collectively, "Project") at the following locations in accordance with policies, procedures and specifications prepared or approved by the DEPARTMENT and the FHWA, where applicable:

Caughey Road between W. 26th Street (SR0020) and Sterrettania Road (SR0832)

- (b) The MUNICIPALITY shall participate in the administration of the Project in accordance with the provisions of this Agreement and more specifically with the most current version of DEPARTMENT Publication No. 740, *Local Project Delivery Manual*, incorporated into this Agreement as though physically attached to it.
- (c) The Project cost estimate, attached to and made a part of this Agreement as Exhibit "A," sets forth the phases being reimbursed, the estimated costs and the reimbursement percentages.

3. AMENDMENTS AND SUPPLEMENTS

- (a) If the cost for any phase of the Project listed in Exhibit "A" is blank, or the cost of any phase increases, causing the overall Agreement cost to increase, the parties must execute a letter of amendment that will include a revised Exhibit A. The DEPARTMENT cannot pay or reimburse the MUNICIPALITY for the costs of these phases until the parties execute the letter of amendment. Adequate federal and/or state funds must be available before the parties execute a letter of amendment. The letter of amendment is not effective until duly authorized representatives of the

DEPARTMENT, the MUNICIPALITY, 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 "O" and made part of this Agreement.

- (b) If the DEPARTMENT determines that the cost for any phase listed on Exhibit "N" 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 MUNICIPALITY, the DEPARTMENT will redistribute such costs by sending the MUNICIPALITY notification via a letter of adjustment that will include a revised Exhibit A. The DEPARTMENT cannot pay or reimburse the MUNICIPALITY for the costs of these phases until the Office of Comptroller Operations signs and dates the letter of adjustment. The MUNICIPALITY's signature is not required for the letter of adjustment to be effective. A sample letter of adjustment is attached as Exhibit "P" and made part of this Agreement.
- (c) If there are changes to any Standard Provisions that need to be addressed at the time of a letter amendment, as described in subparagraph (a), the parties can incorporate those revised and/or updated Standard Provisions by noting the incorporation and attachment of such Standard Provisions to such letter amendment. For the purposes of this subparagraph, Standard Provisions consist of those provisions, exhibits 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, and Federal Audit Requirements. Changes that would otherwise require only a letter adjustment as detailed in subparagraph (b) will need a letter amendment as detailed in subparagraph (a) if one of these Standard Provisions described herein needs updating.

- (d) If the MUNICIPALITY proceeds to construction before funds are made available, either through this Agreement, or a letter of amendment or letter of adjustment, signed by the appropriate parties, the DEPARTMENT may reimburse the MUNICIPALITY for the state funded portion of the Project. Retroactive reimbursement of federal funds will not be permitted unless the Federal Form 4232, authorizing federal funds for latter phases of the Project, was in place prior to performance of any work,
- (e) All other changes to terms and conditions of this Agreement must be in the form of a fully executed supplemental agreement signed by all the same entities that executed the original agreement.

4. DESIGN

- (a) The MUNICIPALITY, with its own forces or by contract, shall design the Project. The design shall be in accordance with the Americans with Disabilities Act ("ADA") and specifically the proposed 2011 Public Right of Way Access Guidelines ("PROWAG") and, to the extent applicable and not inconsistent with the ADA and PROWAG, the policies, procedures and specifications prepared or approved by the DEPARTMENT and the FHWA, including, but not limited to, the most current versions of the following:
 - (i) DEPARTMENT Publication No. 70M, *Guidelines for Design of Local Roads and Streets*;

- (ii) DEPARTMENT Publication No. 740, *Local Project Delivery Manual*;
 - (iii) DEPARTMENT Design Manuals (Publication Nos. 10, 10A, 13M, 14M, 15M, 16M and 24);
 - (iv) DEPARTMENT Policy Letters;
 - (v) DEPARTMENT Form No. 442, *Bureau of Design Specifications for Consultant Agreements*, Division I; and
 - (vi) DEPARTMENT Publication No. 408, *Specifications*, its supplements and amendments.
- (b) The MUNICIPALITY shall secure all necessary approvals, permits and licenses from all other governmental agencies as may be required to complete the Project. This obligation includes preparing or revising environmental reports or other documents such as environmental impact statements, environmental assessments or categorical exclusions 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 MUNICIPALITY, prior to advertising and letting the Project, shall furnish the DEPARTMENT with evidence of the approvals, permits, licenses and approved environmental documents.

5. UTILITY CONSIDERATIONS FOR ALL LOCATIONS

- (a) Prior to advertising the Project for letting, the MUNICIPALITY, 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 utility facilities affected by the Project to the extent necessary. The MUNICIPALITY shall support this

statement with a description of any written arrangements, Utility Clearance Form D-419, made with the utilities for the relocation of facilities in a manner that will not impede Project construction.

- (b) The MUNICIPALITY agrees that all utility facilities transferred to or remaining at a location within the right-of-way of a federal-aid highway shall be accommodated in accordance with the most current version of the Federal Regulations, 23 CFR Part 645; the Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 645, Subpart B, *Accommodation of Utilities*, and all subsequent amendments; and 67 Pa. Code Chapter 459, if the utility facilities are being transferred to a location within the right-of-way of a state federal-aid highway.

6. UTILITY CONSIDERATIONS (ON STATE HIGHWAYS)

- (a) The MUNICIPALITY, in liaison with the DEPARTMENT, shall coordinate the relocation or adjustment of any existing utility facilities as required by the Project.

- (i) This coordination shall include:

Obtaining written arrangements with all utilities located on the Project;

Furnishing the DEPARTMENT with estimated relocation costs, including:

The total estimated utility relocation costs to be incurred by each utility; and

Estimated amounts, if any, eligible for reimbursement by the MUNICIPALITY to each affected utility.

(ii) All utility relocation activities shall be in accordance with:

(1) The DEPARTMENT's established procedures as defined in the most current version of DEPARTMENT Publication No. 16M, *Design Manual Part 5—Utility Relocation*, DEPARTMENT Publication No. 740, *Local Project Delivery Manual* and 67 Pa Code Chapter 459; and

(2) All applicable Federal Regulations, 23 CFR Part 645, and Federal-Aid Policy Guide guidelines relating to the relocation and accommodation of utilities on federal-aid highway projects.

(b) The costs incurred by a utility, municipal authority, or the MUNICIPALITY in relocating or adjusting existing facilities affected by the Project shall be eligible for reimbursement only under the following conditions:

If the utility or municipal authority documents that it has a real property interest compensable in eminent domain;

If the Public Utility Commission allocates utility relocation costs on rail highway crossing projects pursuant to Section 2704 of the Public Utility Code, as amended (66 Pa. C.S. § 2704);

If the existing facilities affected are owned or operated by the MUNICIPALITY then the cost of the relocation of the facilities is a Project cost; or

If a utility or municipal authority owns or operates the affected existing facilities, and the MUNICIPALITY attests that it normally pays for or assumes the costs of adjusting the facilities on projects undertaken by the MUNICIPALITY pursuant to existing law or ordinance; or

If a utility or municipal authority owns or operates the affected existing facilities, and the MUNICIPALITY attests that it does NOT normally pay for or assume the costs of adjusting the facilities on projects undertaken by the MUNICIPALITY, then, if the utility or municipal authority has a compensable interest, the procedures in subparagraph (c)(i) shall apply.

(c) The reimbursement of eligible utility relocation costs shall be made in accordance with the following:

If reimbursing the MUNICIPALITY for utility relocation costs under subparagraphs (b)(i), (b)(ii), or (b)(v), the DEPARTMENT shall draft a reimbursement agreement to be executed by the MUNICIPALITY and the utility/municipal authority. The MUNICIPALITY will provide the DEPARTMENT with a copy of the agreement and Form 4181-A, *Preliminary Estimate for Utility Relocation*.

If the utility relocation costs incurred fall under subparagraph (b) and the utility or municipal authority wishes to incorporate the utility relocation work into the Project's construction contract to be performed by the prime contractor or its subcontractor, the MUNICIPALITY shall prepare and submit to the DEPARTMENT the agreement addressing the incorporation of work, provided by the DEPARTMENT for this purpose, along with the required supplementing documentation in accordance with the most current version of DEPARTMENT Publication No. 16M.

If the utility relocation cost incurred falls under subparagraph (b) and the relocation work is not incorporated into the Project's construction contract, the MUNICIPALITY shall furnish the DEPARTMENT a detailed cost estimate package complying with the requirements of the most current version of DEPARTMENT Publication No. 16M together with the standard document provided by the

DEPARTMENT, plus the required supplementing documentation in accordance with current procedures.

The MUNICIPALITY agrees to accept, as its payment in full, the portion of the actual utility relocation cost eligible for federal-aid participation, that amount being the percentage set forth in Exhibit "A."

If the MUNICIPALITY exercises its option under Paragraph 18 of this Agreement and abandons the Project after any utility has been authorized to proceed with its utility relocation work, the MUNICIPALITY, at its sole cost and expense, shall reimburse the utility for its actual and related indirect costs of work 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.

UTILITY CONSIDERATIONS (ON LOCAL ROADS)

- (a) The MUNICIPALITY shall furnish Project plans to utilities known to have facilities within the Project limits and to all other utilities subsequently discovered within the Project limits.
- (b) The MUNICIPALITY shall arrange for any necessary relocation or adjustment of all utility facilities and notify each utility company to relocate any affected facilities to accommodate the construction of the Project. The MUNICIPALITY, with the DEPARTMENT's guidance, shall make these arrangements in accordance with FHWA and DEPARTMENT requirements, as applicable. If any affected utility claims that the MUNICIPALITY is responsible for reimbursing the affected utility for its utility relocation costs pursuant to applicable state or local laws in effect when this Agreement is executed, the MUNICIPALITY shall furnish the DEPARTMENT with Form 4181-A, *Preliminary Estimate for Utility Relocation*. The utility shall prepare

the form, which shall be accompanied by documentation justifying the MUNICIPALITY'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, will draft the necessary reimbursement agreement into which the MUNICIPALITY and the utility will enter. The DEPARTMENT will submit the agreement to the MUNICIPALITY for execution by the parties.

- (c) If the utility or municipal authority wishes to incorporate the utility relocation work into the Project's construction contract to be performed by the prime contractor or its subcontractor, the MUNICIPALITY shall prepare and submit to the DEPARTMENT the agreement addressing the incorporation of work, provided by the DEPARTMENT for this purpose, along with the required supplementing documentation in accordance with the most current version of DEPARTMENT Publication No. 16M.
- (d) If the MUNICIPALITY owns or operates the existing utility facilities, the MUNICIPALITY shall request the DEPARTMENT prepare a supplement to this Agreement to address the costs associated with the relocation of said facilities. This supplemental agreement acknowledges that the utility facilities are located in the project limits and that the relocation costs are Project-eligible costs.
- (e) If the MUNICIPALITY exercises its option under Paragraph 18 of this Agreement and abandons the Project after authorizing a utility to proceed with its utility relocation work, the MUNICIPALITY, at its sole cost and expense, shall reimburse the utility for its actual and related indirect costs of work 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.

7. APPLICATION TO PENNSYLVANIA PUBLIC UTILITY COMMISSION

The MUNICIPALITY, as necessary, shall make such applications to the Pennsylvania Public Utility Commission ("PUC") as are required for the construction and completion of the Project.

If the Project contains a rail-highway crossing under the jurisdiction of the PUC, the DEPARTMENT and the MUNICIPALITY agree to the following:

The DEPARTMENT shall apply any costs contributed voluntarily by a railroad to help defray the cost of the Project to the MUNICIPALITY's share of the Project cost. If the railroad share exceeds the MUNICIPALITY's share, the excess shall be applied to the DEPARTMENT's share.

If the PUC allocates costs to a railroad, and the railroad does not voluntarily agree to contribute the costs allocated to it by the PUC, these costs shall be shared as specified in Paragraph 15 of this Agreement.

If the PUC allocates costs to the DEPARTMENT in excess of the DEPARTMENT'S share provided for in Paragraph 15 of this Agreement, the MUNICIPALITY agrees to pay these excess costs.

8. RAILROAD CONSIDERATIONS

The MUNICIPALITY shall furnish Project plans to any railroads known to have facilities

(a) within the Project limits. The MUNICIPALITY 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) The MUNICIPALITY 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) The MUNICIPALITY shall include all railroad special provisions, including, but not limited to, insurance requirements, right-of-entry requirements and private crossing requirements, in the Project bid package.

(d) If there are railroad costs that are Project eligible, they shall be addressed through either a letter of amendment or a letter of adjustment, as provided in Paragraph 3 of the Agreement.

(e) The DEPARTMENT, after review and approval of the cost estimates and documentation, shall draft the necessary reimbursement agreement to be entered into between the MUNICIPALITY and the railroad and will forward the agreement to the MUNICIPALITY for execution. A copy of the executed agreement shall be returned to the DEPARTMENT.

9. RIGHT-OF-WAY ACQUISITION

The MUNICIPALITY certifies that it shall acquire all right-of-way necessary to construct this Project in accordance with all of the applicable federal and state laws and policies and procedures pertinent to right-of-way acquisition; the most current version of DEPARTMENT Publication No. 740, *Local Project Delivery Manual*; and *Procedures for Right-of-Way Acquisition by Municipality—Federal-Aid Highway Projects*, the latter of which is attached to and made a part of this Agreement as Exhibit "B."

(a) If the MUNICIPALITY must acquire right-of-way to accommodate the Project and the DEPARTMENT determines that the involved costs are eligible for federal-aid participation, the MUNICIPALITY and the DEPARTMENT shall include the eligible costs for the right-of-way phase in this Agreement, or in a letter of amendment or a

letter of adjustment, as appropriate. If the right-of-way being acquired for the Project includes donated right-of-way, the DEPARTMENT shall utilize the federally-approved amount for donated credits in determining the eligible costs for the right-of-way phase.

- (b) The MUNICIPALITY may not begin to acquire the necessary right-of-way until the District Right-of-Way Administrator has certified that the MUNICIPALITY has the facilities and qualified personnel to proceed with right-of-way acquisition. If the MUNICIPALITY cannot satisfy the District Right-of-Way Administrator's requirements using the MUNICIPALITY's personnel, it must make alternative arrangements to the satisfaction of the District Right-of-Way Administrator prior to beginning right-of-way acquisition.

10. AVAILABILITY OF MUNICIPAL FUNDS

The MUNICIPALITY, by executing this Agreement, certifies that it has on hand sufficient funds to meet all of its obligations under the terms of this Agreement. Further, the MUNICIPALITY, and not the DEPARTMENT, shall bear and provide for all costs incurred in excess of those costs eligible for federal-aid participation.

11. CONTRACT DEVELOPMENT

- (a) The MUNICIPALITY, by contract or with its own forces, shall be responsible for all work involved with contract development, including preparation of all plans, specifications, estimates ("PS&E") and bid proposal documents required to bid the Project. The essential documents to be prepared are listed in Exhibit "C," which is attached to and made part of this Agreement. All work shall conform with applicable federal and state laws and requirements including, but not limited to, those outlined in the most current version of the Federal-Aid Policy Guide, Chapter I, Subchapter G,

Part 633, Subpart C, *Direct Federal Construction Contracts*, the most current version of the *Stewardship and Oversight Agreement Between the FHWA and the DEPARTMENT*, and the most current version of DEPARTMENT Publication 740, *Local Project Delivery Manual*.

- (b) The MUNICIPALITY, upon completion, shall submit all required bid documents to the DEPARTMENT for review and approval. The DEPARTMENT, subject to reimbursement by the MUNICIPALITY for preparation costs, shall prepare the bid proposal documents required to bid the Project and issue an authorization to advertise for bid, upon FHWA authorization of the Project;
 - (i) Approval of a right-of-way certification (if applicable);
 - (ii) Approval of a Utility Clearance Assurance Statement;
 - (iii) Completion of the PS&E review; and
 - (iv) Satisfactory resolution of any comments.
- (c) The DEPARTMENT, prior to issuance to prospective bidders, must review and approve any addenda to the approved bid documents. The MUNICIPALITY shall issue addenda no later than three (3) calendar days before the proposed bid opening.
- (d) All bid documents shall require that the contractor be prequalified by the DEPARTMENT pursuant to 67 Pa. Code Chapter 457, *Prequalification of Bidders*.
- (e) All bid documents shall require that the prospective bidders name the MUNICIPALITY as an additional insured on the certificate of insurance.

11. LETTING AND AWARD

- (a) Except as provided in subparagraph (c) below, relating to paper lets, the DEPARTMENT shall advertise for bids, open bids and with the concurrence of the MUNICIPALITY (which will indicate its concurrence electronically) award the construction contract in the name of the MUNICIPALITY, all in accordance with DEPARTMENT Publication No. 526, *ELMS Municipal/Sponsor Guidance*. The MUNICIPALITY shall enter into and execute the contract with the successful bidder electronically through the DEPARTMENT'S Engineering and Construction Management System ("ECMS"). Following coordination with the MUNICIPALITY, the DEPARTMENT shall issue the notice to proceed through ECMS to the contractor.
- (b) If the MUNICIPALITY has not already executed a Business Partner Agreement and registered with the DEPARTMENT as a business partner in order to access ECMS, the MUNICIPALITY must execute a Business Partner Agreement with the DEPARTMENT in order to obtain such access prior to the Project's being advertised.
- (c) In those limited instances where the MUNICIPALITY 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.

12. CONSTRUCTION INSPECTION

- (a) The MUNICIPALITY, 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, the most current version of

DEPARTMENT Publication No. 408, and its supplements and amendments. The MUNICIPALITY shall provide the proper supervision and construction inspection to ensure that all work is in accordance with the most current versions of the Federal-Aid Policy Guide, Chapter I, Subchapter G, Parts 633, 635, and 637, *Required Contract Provisions, Construction and Maintenance*, and *Construction Inspection and Approval*,. and DEPARTMENT Publication No. 9, *Policies and Procedures for the Administration of the County Liquid Fuels Tax Act of 1931 and the Liquid Fuels Tax Act 655 Dated 1956 and as Amended*. The DEPARTMENT, based on requirements of the most current version of DEPARTMENT Publication No. 740, *Local Project Delivery Manual*, will determine the level of inspection and the number of inspectors required for the Project, as well as the qualifications required for the MUNICIPALITY's inspectors. Normally at least one full-time inspector is required for each project. The DEPARTMENT will oversee the Project but will not provide inspection services.

- (b) Allowable construction engineering costs may include such work items as inspection, certification, and test of materials and surveys in accordance with the Federal-Aid Policy Guide, Chapter I, Subchapter B, Part 140, 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.

13. PAYMENT PROCEDURES AND RESPONSIBILITIES

- (a) The MUNICIPALITY, within seven (7) days of the established estimate dates, shall submit to the DEPARTMENT certified periodic (maximum of two (2) per month) invoices for the following items:

- (i) Allowable costs for work performed by the MUNICIPALITY's forces on the Project;
- (ii) The MUNICIPALITY's payments made on current estimates of the construction or design work performed on the Project by the MUNICIPALITY or the MUNICIPALITY's consultant(s) or contractor(s). At its discretion, the MUNICIPALITY may withhold a percentage of the amount invoiced by the design consultant as retainage, pending completion and acceptance by the DEPARTMENT and the FHWA of the Project; provided, however, that the MUNICIPALITY shall not request federal-aid participation for any amounts under retainage until such amounts are released; and
- (iii) Allowable costs incurred in the acquisition of right-of-way and utility relocations.

The DEPARTMENT shall submit these certified invoices to the FHWA for payment. As FHWA funds are made available, the DEPARTMENT shall pay the MUNICIPALITY for the proportionate share of the approved charges.

- (b) Subject to the terms of this Agreement, the DEPARTMENT, from funds allocated for this purpose by the FHWA, shall pay the MUNICIPALITY for eighty percent (80%) of the total allowable Project costs, as detailed in Exhibit "A." The MUNICIPALITY shall be responsible for the remaining twenty percent (20%) of the total Projects costs. This subparagraph shall not preclude the MUNICIPALITY from reducing the scope of the Project, with the approval of the DEPARTMENT, if the costs exceed the available funds. The MUNICIPALITY shall also be responsible for all costs

incurred in excess of those eligible for federal-aid participation including, but not limited to, the following:

- (i) Any and all costs relating to or resulting from changes made to the approved plans or specifications;
 - (ii) Time delays and extensions of time or termination of construction work;
 - (iii) Interest for late payments;
 - (iv) Interest incurred by borrowing money;
 - (v) Unforeseen right-of-way and other property damages and costs resulting from the acquisition or condemnation, or both, of lands for the Project or the construction of the improvements;
 - (vi) Unforeseen utility relocations costs;
 - (vii) Unforeseen costs for environmental litigation and reports; and
 - (viii) All other unforeseen costs and expenses not included in the estimates of preliminary engineering, final design, utility relocation, right-of-way acquisition and construction costs, but which are directly related to or caused by the planning, design or construction of the Project.
- (c) The MUNICIPALITY is obligated to submit to the DEPARTMENT invoices from its consultant(s) and contractor(s) as it receives them, in accordance with the periodic schedule set forth above, to assure prompt payment of the consultant(s) and contractor(s) for work performed to date.
- (d) The MUNICIPALITY shall pay the federal and the MUNICIPALITY shares to its consultant(s) or contractor(s) within ten (10) calendar days of the date of the DEPARTMENT's payment. The MUNICIPALITY, as part of its record-keeping

obligation, shall maintain records of receipt and payment of such funds. If the MUNICIPALITY fails to comply with this subparagraph or with the requirements of subparagraph (c) relating to submission of invoices, the MUNICIPALITY shall be in default pursuant to Paragraph 21; and the DEPARTMENT shall have the further right to change payment procedures unilaterally to a reimbursement basis.

- (e) If the DEPARTMENT changes payment procedures unilaterally to a reimbursement basis, as provided in subparagraph (d), the following procedures shall apply:
 - (i) The MUNICIPALITY, within seven (7) days of the established estimate dates, shall submit to the DEPARTMENT certified periodic (maximum of two (2) per month) invoices for reimbursement.
 - (ii) The MUNICIPALITY shall include with the invoices verification of payment of the consultant(s) or contractor(s) by means of a copy of the cancelled check or a certified letter from the consultant(s) or contractor(s) acknowledging 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 DEPARTMENT shall approve the invoices for payment.
 - (iv) Upon approval of the invoices, the DEPARTMENT shall forward to the Office of Comptroller Operations a cover letter containing the agreement number, federal project number, federal percentage, and invoice amount, together with a copy of the payment estimate.
 - (v) The DEPARTMENT shall submit these certified invoices to the FHWA for payment of the federal share. As FHWA funds are made available, the

DEPARTMENT shall reimburse the MUNICIPALITY for the proportionate share of the approved charges.

- (f) The DEPARTMENT shall not reimburse the MUNICIPALITY for additional or extra work done or materials furnished that are not specifically provided for in the approved plans and specifications unless the DEPARTMENT has issued prior written approval of the additional or extra work or materials. If the MUNICIPALITY performs any work or furnishes any materials without the DEPARTMENT's prior written approval, the MUNICIPALITY does so at its own risk, cost and expense. The MUNICIPALITY shall not interpret the DEPARTMENT's approval as authority to increase the maximum amount of reimbursement as specified in subparagraph (b) above.
- (g) For services performed by the DEPARTMENT, including, but not limited to, all required contract development, liaison and supervisory services, the MUNICIPALITY shall directly reimburse the DEPARTMENT for 20% of the DEPARTMENT's incurred costs. The DEPARTMENT will submit invoices to the FHWA for reimbursement of the federal share of such costs. The estimated cost of these services is set forth in Exhibit "A."
- (h) The DEPARTMENT shall invoice the MUNICIPALITY on a monthly basis for those costs set forth in subparagraph (g). If the MUNICIPALITY fails to reimburse the DEPARTMENT within forty-five (45) days, the MUNICIPALITY shall be in default of payment; and the DEPARTMENT shall take necessary action in accordance with Paragraph 21 of this Agreement.
- (i) The MUNICIPALITY shall submit its final invoices for payment or reimbursement, as the case may be, of the items set forth in subparagraph (a) to the DEPARTMENT within one (1) year of the acceptance of the Project. If the MUNICIPALITY fails to

submit its final invoices within this one- (1-) year period, it may forfeit all remaining federal financial participation in the Project.

14. RECORDS

The MUNICIPALITY shall maintain, and shall require its consultant(s) and contractor(s) 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 these 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 the FHWA , for inspection or audit by the DEPARTMENT, the FHWA, or any other authorized representatives of the federal or state government; and copies thereof 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, the MUNICIPALITY shall keep, and shall require its consultant(s) or contractor(s), as applicable, to keep, a complete record of time for personnel assigned part-time to the Project. A record of time limited to only their work on this Project will not be acceptable.

15. AUDIT REQUIREMENTS

As specified by the Federal Office of Management and Budget, the MUNICIPALITY agrees to satisfy the audit requirements contained in the Single Audit Act of 1984, 31 U.S.C. § 7501 *et seq.*, and, for this purpose, to comply with the current version of the *Audit Clause to Be Used in Agreements with Entities Receiving Federal Awards from the Commonwealth*, which is attached as Exhibit "D" and made a part of this Agreement. As used in the Audit Clause, the term "Subrecipient" means the MUNICIPALITY.

16. ABANDONMENT OR POSTPONEMENT OF PROJECT

- (a) If the MUNICIPALITY abandons or indefinitely postpones the Project, the MUNICIPALITY may terminate this Agreement by sending to the DEPARTMENT a thirty- (30-) day written notice of termination. By sending the written notice of termination, the MUNICIPALITY acknowledges that the FHWA will not participate in any costs of a project that is not completed and that the MUNICIPALITY must reimburse the DEPARTMENT for all costs incurred by the DEPARTMENT for the Project, with the exception of state-funded design costs. The MUNICIPALITY shall reimburse the DEPARTMENT, within forty-five (45) days of receipt of a statement from the DEPARTMENT, in an amount equal to the sum of the following:
 - (i) All FHWA funds received by the MUNICIPALITY for return to the FHWA;
 - (ii) All FHWA funds paid to the DEPARTMENT for work performed under this Agreement for return to the FHWA; and
 - (iii) All costs incurred by the DEPARTMENT under this Agreement prior to receipt of notice of termination that the FHWA or the MUNICIPALITY has not reimbursed.
- (b) If the MUNICIPALITY fails to reimburse the DEPARTMENT or the FHWA within the time period set forth in subparagraph (a) above, the MUNICIPALITY shall be in default pursuant to Paragraph 21 of this Agreement.

17. MAINTENANCE OF THE FACILITY

- (a) Under Section 121-5 of the Millcreek Township Code, the owners of all properties which abut a street within whose right of way a sidewalk has been constructed shall be responsible for the proper care, maintenance and condition of said sidewalk. The

property owner's duty extends to, but is not limited to, removal of snow, ice, debris or obstructions and to repair, reconstruction and replacement as necessary to ensure that said sidewalks are in reasonably good and safe condition for the use of pedestrians.

- (b) Millcreek agrees that it shall enforce the maintenance provisions of its sidewalk Ordinance as they apply to this Project. Under Section 121-7 of the Millcreek Township Code, if the property owner refuses to maintain the sidewalk in accordance with the Code, Millcreek agrees to use such remedies available under the Code as are appropriate, including performing the maintenance itself and seeking reimbursement from the property owner.
- (c) The MUNICIPALITY and the DEPARTMENT agree that 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 agree 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.
- (d) The MUNICIPALITY acknowledges that the DEPARTMENT may disqualify the MUNICIPALITY from future federal-aid or state participation on MUNICIPALITY-maintained projects if the MUNICIPALITY fails to:
 - (i) Provide for the proper maintenance of the Project; or
 - (ii) Maintain and enforce compliance with any statutes, regulations or ordinances under its jurisdiction necessary for the maintenance of the Project.

(g) The MUNICIPALITY agrees that 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 MUNICIPALITY has corrected the maintenance issue(s).

18. SAVE HARMLESS

(a) The MUNICIPALITY shall indemnify, save harmless and defend (if requested) the FHWA (if applicable), the Commonwealth of Pennsylvania, the DEPARTMENT, and all of their officers, agents and employees, from all suits, actions or claims of any character, name or description, relating to personal injury, including death, or property damage, arising out of the preliminary engineering, final design, right-of-way acquisition, utility relocation, construction, or maintenance of the Project, performed by the MUNICIPALITY, its consultant(s) or contractor(s), their officers, agents and employees, whether the same be due to the use of defective materials, defective workmanship, neglect in safeguarding the work, or by or on account of any act, omission, neglect or misconduct of the MUNICIPALITY, its consultant(s) or contractor(s), their officers, agents and employees, during the performance of said work or thereafter, or to any other cause whatever.

(b) It is not intended by any of the provisions of this Agreement or any documents, publications or other written materials referenced herein or related to the Project to benefit any third party nor to create any third party beneficiary hereunder nor to authorize any person or entity not a signing party to this Agreement to maintain a claim or lawsuit of any kind against the DEPARTMENT or the Commonwealth.

19. DEFAULT CLAUSE

If the MUNICIPALITY fails to perform any of the terms, conditions or provisions of this Agreement, including, but not limited to, any default of payment for a period of forty-five (45) days, the MUNICIPALITY authorizes the DEPARTMENT to withhold so much of the MUNICIPALITY'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 MUNICIPALITY authorizes the DEPARTMENT to withhold such amount and to apply such funds, or portion thereof, to remedy such default.

20. FHWA APPROVAL

The parties agree that their responsibilities under this Agreement shall be made contingent upon the approval, 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," limited to the maximum dollar amount shown there; and, if this approval is not obtained, neither of the parties shall be further obligated by the terms of this Agreement.

21. REQUIRED CONTRACT PROVISIONS

The parties agree, and the MUNICIPALITY shall also provide in its contracts for the Project, that all designs, plans, specifications, estimates of cost, 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, antisolicitation, information, auditing and reporting provisions. The MUNICIPALITY shall comply, and shall cause its consultant(s) and contractor(s) to comply, with

the conditions set forth in the current version of the *Federal Nondiscrimination and Equal Employment Opportunity Clauses*, which are attached as Exhibit "G" and made a part of this Agreement. As used in this clause, the term "Contractor" means the MUNICIPALITY.

22. CONTRACTOR INTEGRITY PROVISIONS

The MUNICIPALITY shall comply, and shall cause its consultant(s) and contractor(s) to comply, with the current version of the *Contractor Integrity Provisions*, which are attached as Exhibit "H" and made a part of this Agreement. As used in these provisions, the term "Contractor" means the MUNICIPALITY.

23. OFFSET PROVISION

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

24. TERMINATION OF AGREEMENT FOR LACK OF FUNDS

The DEPARTMENT may terminate this Agreement if the DEPARTMENT does not receive the necessary federal or state funds allocated for the purpose stated in this Agreement. Termination shall become effective as of the termination date specified in the DEPARTMENT's written notice of termination to the MUNICIPALITY specifying the reason for termination. The DEPARTMENT shall reimburse the, MUNICIPALITY for all eligible work performed under this Agreement up to the date of the notice of termination, or such other date that the notice of termination shall specify.

25. DISADVANTAGED BUSINESS ENTERPRISE REGULATORY COMPLIANCE REQUIREMENTS

The MUNICIPALITY shall take the following steps, where applicable, in order to comply with the Disadvantaged Business Enterprise ("DBE") requirements of current federal highway funding authorizations and regulations adopted pursuant thereto:

- (a) For federally-assisted transportation-related projects, the DEPARTMENT may establish a percentage participation goal. The MUNICIPALITY shall work with the DEPARTMENT's District Office concerning the necessity of establishing a goal for this Project. If a DBE goal is not applicable, the MUNICIPALITY shall comply with the *Disadvantaged Business Enterprise and Small Business Concern Involvement* provision, which is attached as Exhibit "I" and made a part of this Agreement. If a goal is established, this goal must be attained by the MUNICIPALITY'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 MUNICIPALITY and is subject to the concurrence of the DEPARTMENT. The MUNICIPALITY shall comply with the following provisions, as applicable:

- (i) If the Project requires prequalification, the MUNICIPALITY shall comply with "Designated Special Provision 7" of the Publication 408 Specifications, (current edition), accessible online at:
<ftp://ftp.dot.state.pa.us/public/bureaus/design/pub408/Pub%20408%202011%20IE/DSP7-final.pdf>.
- (ii) If the Project is prequalification exempt, the MUNICIPALITY shall comply with the *Disadvantaged Business Enterprise Requirements—Prequalification Exempt*, which are attached as Exhibit "J" and made a part of this Agreement.

(iii) If the Project includes a design component, the MUNICIPALITY shall comply with the *DBE Special Requirements Engineering*, which are attached as Exhibit "K" and made a part of this Agreement.

(b) All DBE's must be certified by the Pennsylvania Unified Certification Program CPA UCP") before the bid submission date.

26. REQUIRED DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE PROVISION

(a) The MUNICIPALITY shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The MUNICIPALITY 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 MUNICIPALITY to carry out these requirements is a material breach of this Agreement, which may result in either the termination of this Agreement or such other remedy the DEPARTMENT deems appropriate.

(b) As a recipient of funds from the DEPARTMENT, the MUNICIPALITY must include the assurance set forth in subparagraph (a) in each contract into which it enters to carry out the Project or activities being funded by this Agreement.

27. LOBBYING CERTIFICATION DISCLOSURE

Public Law 101-121, Section 319, 31 U.S. Code Section 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 MUNICIPALITY agrees to comply with the *Lobbying Certification Form* attached to and made part of this Agreement as Exhibit "L," which an authorized official of the MUNICIPALITY has executed.

28. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT

The MUNICIPALITY shall comply, and shall cause its consultant(s) and contractor(s) to comply, with the current version of the *Provisions Concerning the Americans with Disabilities Act*, which are attached as Exhibit "M" and made a part of this Agreement. As used in these provisions, the term "Contractor" means the MUNICIPALITY.

29. CONTRACTOR RESPONSIBILITY PROVISIONS

The MUNICIPALITY shall comply, and shall cause its consultant(s) and contractor(s) to comply, with the current version of the *Contractor Responsibility Provisions*, which are attached as Exhibit "N" and made a part of this Agreement. As used in these provisions, the term "Contractor" means the MUNICIPALITY.

30. AUTOMATED CLEARING HOUSE PROVISIONS

Because the DEPARTMENT will be making payments under this Agreement through the Automated Clearing House ("ACH") Network, the MUNICIPALITY shall comply with the following provisions governing payments through ACH:

- (a) The DEPARTMENT will make payments to the MUNICIPALITY through ACH. Within 10 days of the execution of this Agreement, the MUNICIPALITY must submit or must have already submitted its ACH information on an 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 of Pennsylvania'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) The MUNICIPALITY must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the MUNICIPALITY to properly apply the state agency's payment to the respective invoice or program.
- (c) It is the responsibility of the MUNICIPALITY 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. RIGHT-TO-KNOW LAW

The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Agreement. Therefore, this Agreement is subject to, and the MUNICIPALITY shall comply with, the clause entitled *Contract Provisions — Right to Know Law*, attached as Exhibit "Q" and made a part of this Agreement. As used in this exhibit, the term "Contractor" refers to the MUNICIPALITY.

32. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006

As a subrecipient of federal funding, the MUNICIPALITY shall provide to the Commonwealth the information specified in the document entitled *Federal Funding Accountability and Transparency Act of 2006- Grantee Information*, attached as Exhibit "R" and made a part of 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 MUNICIPALITY.

33. EFFECTIVE DATE

This Agreement will not be effective until it has been executed by all necessary Commonwealth officials as required by law. Following full execution, the DEPARTMENT will insert the effective date at the top of Page 1. This Agreement shall remain in effect until the Project is abandoned or completed, whichever occurs first.

34. APPLICABILITY OF CERTAIN SECTIONS

The Parties understand and agree that certain provisions in this Agreement are standard form terms included in every GENERAL REIMBURSEMENT GRANT AGREEMENT FOR FEDERAL-AID HIGHWAY PROJECTS that is entered into by the DEPARTMENT regardless of applicability, and the Parties understand and agree that certain of these terms included in this Agreement are inapplicable and do not pertain to the Project, including but not limited to all or portions of Section 4(b), Section 6, and Section 7.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

MUNICIPALITY*

BY _____
Title Date

***MUNICIPALITY's resolution authorizing execution and attestation must accompany this Agreement; please indicate the signers' titles in the blanks provided and date all signatures.**

DO NOT WRITE BELOW THIS LINE — FOR COMMONWEALTH USE ONLY
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY

District Executive

Date

APPROVED AS TO LEGALITY
AND FORM

Date

BY

for Comptroller Operations

Date

Date

BY _____

BY _____

BY

Deputy Attorney General

Date

Reimbursement Agreement No. _____, is split _____%, expenditure amount of _____ for federal funds for Chief Counsel and _____%, expenditure amount of _____ for state funds. The related federal assistance program name and number is _____ . The state assistance program name and SAP fund is

Deputy General Counsel

PROJECT ESTIMATED COSTS

	Municipality- Incurred Costs	Commonwealth- Incurred Costs	Phase Totals
Preliminary			
Engineering	\$ 30,000.00	\$ 0	\$ 30,000.00
Final Design	\$ 35,000.00	\$ 0	\$ 35,000.00
Utilities	\$ 0	\$ 0	\$ 0
Right-of-Way	\$ 0	\$ 0	\$ 0
Construction	<u>\$325,000.00</u>	<u>\$ 10,000.00</u>	<u>\$335,000.00</u>
SUBTOTALS	\$390,000.00	\$ 10,000.00	\$400,000.00

COST SHARING (Municipality-Incurred Costs)

	Federal (20 %)	State (0 %)	Municipality (20 %)	State Act 26 (0 %) (If Applicable)	Phase Subtotals
Preliminary					
Engineering	\$ 24,000.00		\$ 6,000.00		\$ 30,000.00
Final Design	\$ 28,000.00	\$ _____	\$ 7,000.00	\$ _____	\$ 35,000.00
Utilities	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Right-of-Way	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Construction	<u>\$ 260,000.00</u>	<u>\$ _____</u>	<u>\$ 65,000.00</u>	<u>\$ _____</u>	<u>\$ 325,000.00</u>
TOTALS	\$ 312,000.00	\$ _____	\$ 78,000.00	\$ _____	\$ 390,000.00

COST SHARING (Commonwealth-Incurred Cost)

	Federal (80 %)	State (0 %)	Municipality (20 %)	State Act 26 (0 %) (If Applicable)	Phase Subtotals
Preliminary					
Engineering	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Final Design	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Utilities	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Right-of-Way	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Construction	<u>\$ 8,000.00</u>	<u>\$ _____</u>	<u>\$ 2,000.00</u>	<u>\$ _____</u>	<u>\$ 10,000.00</u>
TOTALS	\$ 8,000.00	\$ _____	\$ 2,000.00	\$ _____	\$ 10,000.00

TOTAL COST

Federal (\$320,000.00)	State (\$ _____)	Municipality (\$80,000.00)	Total (\$400,000.00)
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COUNTY: ERIE
MUNICIPALITY: MILLCREEK TWP.
PROJECT NAME: CAUGHEY RD. SIDEWALK

Exhibit "A"

Page 1 of 1

PROCEDURES FOR
RIGHT-OF-WAY ACQUISITION BY MUNICIPALITY—FEDERAL-AID HIGHWAY
PROJECTS

- a. The MUNICIPALITY shall acquire all necessary right-of-way for this Project by gift, agreement, purchase, condemnation, or any combination of these methods.
- b. The MUNICIPALITY 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, and the DEPARTMENT's current Right-of-Way *Manual* and its amendments.
- c. The MUNICIPALITY, subject to the supervision of the DEPARTMENT, shall be responsible for all negotiations, defense of all claims, and initial payment of all property damages resulting from the acquisition, condemnation or both, of right-of-way for this Project. These acquisition costs shall include, but are not limited to:
 - (1) Payment of claims of the affected property owners;
 - (2) Photographic, appraisal and engineering services;
 - (3) Title reports;
 - (4) Counsel fees;
 - (5) Expert witness fees required for the adjudication of all property damage claims;
 - (6) Transcripts of testimony before a board of view; and
 - (7) All record costs, including printing costs, in case of appeal to an appellate court.
- d. The DEPARTMENT, with funds allocated to it by the FHWA, shall reimburse the MUNICIPALITY for the Federal share of the right-of-way costs incurred by the MUNICIPALITY as provided in the PAYMENT PROCEDURES Paragraph of this Agreement.
- e. The DEPARTMENT shall not reimburse the MUNICIPALITY for:
 - (1) Right-of-way administrative costs; or
 - (2) Any items that are not compensable:
 - (i) Under the Eminent Domain Code of 1964, Act of June 22, 1964, P.L. 84, as amended; or
 - (ii) Pursuant to appellate court order or agreement between the DEPARTMENT and the MUNICIPALITY.
- f. by the DEPARTMENT to the MUNICIPALITY shall be further conditioned upon the following terms for determining an acquisition price for the property to be acquired :
 - (1) If any parcel or property is to be acquired prior to a court of common pleas verdict, an agreement for acquisition shall be executed only after the MUNICIPALITY and the DEPARTMENT have agreed in writing on the acquisition price, including all items of damage.
 - (2) If the demands of time require (e.g., at a pretrial conference or at trial), the MUNICIPALITY and the DEPARTMENT may agree orally, provided that such agreement shall be confirmed in writing immediately thereafter.
 - (3) The acquisition price shall not exceed the amount of court verdict, plus applicable detention damages and other items of special damage, unless the DEPARTMENT and the MUNICIPALITY shall have first agreed thereto in writing.
 - (4) The MUNICIPALITY agrees to notify the DEPARTMENT promptly of all board of view awards and verdicts of the court of common pleas. The parties agree that appeals will be taken from any award of judgment whenever either party deems it necessary or advisable.
- g. The terms "right-of-way costs" and "other property damages," as used in this Agreement, shall include, but are not limited to:
 - (1) Consequential damages;
 - (2) Damages from de facto or inverse takings;
 - (3) Special damages for displacement;

- (4) Damages for the preemption, destruction, alteration, blocking and diversion of drainage facilities; and
 - (5) Any other damages that may be claimed or awarded under the Eminent Domain Code or the State Highway Law, whether awarded or entered against the DEPARTMENT or the MUNICIPALITY.
- h. Prior to advertisement for the receipt of bids, the MUNICIPALITY shall certify to the DEPARTMENT that all right-of-way acquired by the MUNICIPALITY for this Project was acquired in accordance with all applicable federal and state laws and policies, including, but not limited to, the most current version of DEPARTMENT Publication No. 740, *Local Project Delivery Manual*.

PLANS, SPECIFICATIONS, ESTIMATES AND BID PROPOSAL PACKAGE

- 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**
 - Proposal Cover Sheet
 - Bidder's Understanding of Conditions Applicable to Proposal
 - Bid Proposal Guaranty Bond
 - Bidder Certification of Prequalification, Classification and Work Capacity
 - List of Subcontractors
 - Statement of Joint Venture Participation
 - Affirmative Action Certification
 - Signatures (Three (3) Pages)
- 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
 - Act 287
 - Act 247
 - Air Pollution Control
 - Trainees
 - Utilities
 - Specifications
 - General Contract Conditions
- D. Attachments**
 - D-476—Distribution of Contract Time
 - Notice
 - Prevailing Minimum Wage
 - 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
 - Commonwealth Nondiscrimination/Sexual Harassment Clause

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

SINGLE AUDIT REPORT REQUIREMENTS.

The [NAME OF SUBRECIPIENT] must comply with all federal and state audit requirements including: *The Single Audit Act Amendments of 1996; Office of Management and Budget, Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, (OMB Circular A-133) 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 and expends total federal awards of \$500,000 or more during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, the [NAME OF SUBRECIPIENT] is required to have an audit made in accordance with the provisions of *OMB Circular A-133*.

If the [NAME OF SUBRECIPIENT] is a local government or non-profit organization and expends total federal awards of \$500,000 or more during its fiscal year **under one federal program**, received either directly from the federal government or indirectly from a recipient of federal funds, the [NAME OF SUBRECIPIENT] can submit a program-specific audit in lieu of a single audit in accordance with the provisions of *OMB Circular A-133*.

If the [NAME OF SUBRECIPIENT] expends total federal awards of less than \$500,000 during its fiscal year, it is exempt from these audit requirements, but is required to maintain auditable records of federal awards and any state funds which supplement such awards, and to provide access to such records by federal and state agencies or their designees.

If the [NAME OF SUBRECIPIENT] is a for-profit entity, it is not subject to the auditing and reporting requirements of *OMB Circular A-133*. 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 *OMB Circular A-133*. 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 Office of the Budget, Office of Comptroller Operations, Bureau of Audits.

COMPONENTS OF THE SINGLE AUDIT REPORTING PACKAGE.

The [NAME OF SUBRECIPIENT] must submit an electronic copy of the audit report package to the commonwealth, which shall include:

1. Auditor's reports

a. Independent auditor's report on the financial statements, which expresses an opinion on whether the financial statements are presented fairly in all material respects in conformity with the stated accounting principles.

b. Independent auditor's report on the supplementary Schedule of Expenditures of Federal Awards (SEFA), which expresses an opinion on whether the SEFA is presented fairly in all material respects in relation to the financial statements taken as a whole. This report can be issued separately or combined with the independent auditor's report on the financial statements.

c. Report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with *Government Auditing Standards*.

d. Report on compliance for each major program and report on internal control over compliance.

e. Schedule of findings and questioned costs.

2. Financial statements and notes to the financial statements

3. SEFA and notes to the SEFA

a. All single audit reporting packages must contain a SEFA prepared by the subrecipient, not the subrecipient's auditor. In accordance with §____.310(b) of *OMB Circular A-133*, all SEFAs, at a minimum, shall:

(1) List individual federal programs by federal agency. For federal programs included in a cluster of programs, list individual programs within a cluster of programs. For research and development (R&D), the total federal awards expended shall be shown either by individual award or by federal agency and major subdivision within the federal agency;

(2) For federal awards received as a subrecipient, include the name of the pass-through entity and the identifying number assigned by the pass-through entity;

(3) Provide the total federal awards expended for each individual federal program and the CFDA number or other identifying number when the CFDA information is not available;

(4) Include notes that describe the significant accounting policies used in preparing the SEFA;

(5) For federal awards received as a pass-through entity, identify, to the extent practical, the total amount provided to subrecipients from each federal program;

(6) Include, in either the SEFA or a note to the SEFA, the value of federal awards expended in the form of noncash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end.

b. In addition to the requirements of OMB Circular A-133, single audit reporting packages containing federal funding passed through a commonwealth agency must include the following components in the SEFA as required by the pass through agency:

(1) A breakdown of federal funds passed through the commonwealth, by federal grantor, CFDA number, CFDA name and state program name (if different from CFDA name), state program year, and state contract number (if applicable);

(2) Contract period beginning and ending dates for federal funds passed through each commonwealth agency, by contract;

(3) Program or award amount for each commonwealth agency, by contract;

(4) Total received during the year for each commonwealth agency, by contract;

(5) Accrued or deferred revenue at the beginning of the year for each commonwealth agency, by contract;

(6) Revenue recognized during the year for each commonwealth agency, by contract;

(7) Accrued or deferred revenue at the end of the year for each commonwealth agency, by contract.

4. Schedule of Findings and Questioned Costs

5. Summary schedule of prior audit findings

6. Corrective action plan (if applicable)

7. Data collection form

8. Management letter (if applicable)

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 OMB Circular A-133.

SUBMISSION OF THE AUDIT REPORT

The Office of the Budget, Office of Comptroller Operations, Bureau of Audits accepts **only** electronic submissions of single audit/program-specific audit reporting packages. Instructions and information regarding submission of the single audit/program-specific audit reporting package are available to the public on Single Audit Submissions page of the Office of the Budget website (<http://www.budget.state.pa.us>).

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 Government Accountability Office.

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

1. **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.
2. **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 contractor's 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.
3. **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 Provisions.

(Revised March 4, 2011)

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 procurement process.

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

1. 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 with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, 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.
9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor

under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law*, 65 P.S. §§ 67.101-3104, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:

- a. Approved in writing by the Commonwealth prior to its disclosure; or
 - b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
 - c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
 - d. Necessary for purposes of Contractor's internal assessment and review; or
 - e. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
 - f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
 - g. Otherwise required by law.
10. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
- a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
 - b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
 - (1) obtaining;
 - (2) attempting to obtain; or
 - (3) performing a public contract or subcontract.
 Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.
 - c. Violation of federal or state antitrust statutes.
 - d. Violation of any federal or state law regulating campaign contributions.
 - e. Violation of any federal or state environmental law.
 - f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
 - g. Violation of the *Act of June 2, 1915 (P.L. 736, No. 338)*, known as the *Workers' Compensation Act*, 77 P.S. 1 *et seq.*

- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.

11. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
- a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
 - b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

12. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these 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 Commonwealth Inspector General in writing.
14. 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.
15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of 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 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 refers to or concern this contract.

16. 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.
17. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.
 - a. "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.
 - 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 pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
 - c. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
 - d. "Financial interest" means:
 - (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.
 - e. "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.
 - f. "Immediate family" means a spouse and any unemancipated child.
 - 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.
 - h. "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political

committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

January 29, 2001

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 21. 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.

January 2, 2002

DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS—Prequalification Exempt

1. POLICY

- A. The Pennsylvania Department of Transportation (PennDOT) does not discriminate on the basis of race, color, national origin or sex. It is the policy of PennDOT and the United States Department of Transportation that Disadvantaged Business Enterprises (DBEs) be given the opportunity to participate in the performance of contracts financed, in whole or in part, with federal funds.
- B. The requirement of 49 CFR 26 apply to this contract.
- C. Only DBE firms certified by PennDOT count toward the DBE Goal.

2. DEFINITIONS

- A. Disadvantaged Business Enterprise or DBE means a for-profit small business concern:
 - 1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
 - 2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- B. Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).
- C. Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
 - 1) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - vi) Women;
 - vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- 2) Any individual who the Department finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- D. DBE Goal means the amount of DBE participation stated by PennDOT in the proposal. This DBE Goal is stated in terms of total project cost and is based on the project's potential for subcontracted work and the availability of DBEs to perform such subcontract work.
- E. Certified DBE means those firms certified by PennDOT's Bureau of Equal Opportunity. Refer to PennDOT's Disadvantaged Business Enterprise Directory. For information regarding DBE Certification, please see our web site at www.dot.state.pa.us or contact the Bureau's DBE Division at 1-800-468-4201 or (717) 787-5891.

3. FAILURE TO COMPLY WITH DBE REQUIREMENTS

- A. Failure of a bidder to meet the DBE Goal and failure to provide a verifiable "good faith effort" in a response to the proposal will result in rejection of the bid. Furthermore, if PennDOT does not approve the "good faith effort," the bid will be rejected.
- B. Failure by a prime contractor and subcontractors to carry out the DBE requirements constitutes a breach of contract and may result in termination of the contract or action as appropriate.
- C. Upon completion of the project, PennDOT will review the actual DBE expenditures to determine compliance with the DBE Goal. If the DBE Goal is not met, written explanation from the contractor will be reviewed by PennDOT. If the shortfall in meeting the DBE Goal is determined to be unjustified and unwarranted, PennDOT may impose sanction as appropriate.
- D. Failure to comply with any DBE requirements may result in termination of the contract, being barred from bidding on PennDOT contracts for up to three years, or any other remedy, as PennDOT deems appropriate.

4. PROCEDURES

- A. In response to the proposal, the bidder must make a "good faith effort" to subcontract a portion of the project work to a certified DBEs. This portion should be equal to or greater than the DBE Goal stated in the proposal. Efforts to subcontract work include but are not limited to:
 - 1) Efforts made to 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 must provide written notification, at least 15 calendar days prior to the bid due date, 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.

- 2) 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.
 - 3) 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.
 - 4) 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 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 good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
 - 5) Failure to accept 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 DBE Goal.
 - 6) Efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - 7) Efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - 8) Efforts to effectively use the Department's DBE Supportive Services Contractors, 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.
- B. The bidder is prohibited from requiring any DBE to agree not to provide subcontracted effort to other bidders.

- C. The bidder must submit Form(s) EO-380 meeting the DBE Goal, indicating the name of the DBE(s), contact person, phone number, PennDOT DBE Certification Number, expiration date, and a narrative description of the service to be provided by the DBE(s) with the bid. Failure to submit Form EO-380 with the bid will result in the rejection of the bid.
- D. If a DBE cannot be located or if the percent of bid allocated to the DBE(s) is less than the DBE Goal, the bidder must provide a "good faith effort" in as mentioned Section 4-A, with the bid. Failure to submit the "good faith effort," if required, will result in the rejection of the bid. The "good faith effort" must explain and document the effort made by the bidder to obtain DBE participation. Documentation must be verifiable and must include:
 - 1) The names, addresses and phone numbers of DBEs, DBE assistance agencies and general circulation media who were contacted, the dates of initial contact and the follow-up efforts made by the prime contractor;
 - 2) A description of the information provided to the DBE, DBE assistance agency or general circulation media to define the work to be performed;
 - 3) Documentation of the reasons why any DBE contacted would not agree to participate.
- E. If the low bid contains a "good faith effort" because the low bidder failed to meet the established DBE Goal, PennDOT will review the "good faith effort" provided. If the "good faith effort" is deemed to be satisfactory, the "good faith effort" will be approved. In such a case the contractor shall continue a "good faith effort" throughout the life of the contract to increase the DBE participation to meet the contract DBE Goal. If PennDOT cannot accept the "good faith effort" submitted by the low bidder, the bid will be considered non-responsive and PennDOT will notify the low bidder that the bid is rejected.
- F. Any low bid that does not meet the DBE Goal and does not provide a "good faith effort" which identified DBEs, DBE referral/assistance agencies and others, who were contacted, will be rejected without review. Use of a DBE certified by others and not by PennDOT, use of a DBE whose certification has expired or cannot be confirmed by PennDOT's Bureau of Equal Opportunity, or statements that the DBE Goal will be met after a contractor is awarded a contract are unacceptable and will result in rejection of bid.
- G. The prime contractor shall include the Disadvantaged Business Enterprise Requirements in all subcontracts. Subcontractors must conform to the intent of these requirements.
- H. If it becomes necessary to replace a DBE subcontractor during the contract, make a "good faith effort" to re-contract the same or other work with another certified DBE firm. Such an effort must include:
 - 1) Alert PennDOT immediately and document the problem in writing;
 - 2) Contact available DBE referral sources and individual qualified DBEs in an effort to re-contract work to fulfill the DBE Goal stated in the proposal; and
 - 3) Provide PennDOT with a revised form(s) EO-380 and additional "good faith effort" information if the original DBE Goal is not met, by the close of business of the 7th calendar day of PennDOT's receipt of written notice of the need to replace a DBE.

- I. Inform PennDOT, in writing, of any situation in which payments are not made to the DBE Subcontractor as required by the subcontract.
- J. Keep records necessary for compliance with DBE utilization obligations by indicating:
 - 1) The number of DBE and non-DBE subcontractors and the type of work, materials or services performed in the project;
 - 2) Efforts to secure DBE firms and individual whenever a subcontractor is contemplated during a contact;
 - 3) Documentation of all communication to obtain the services of DBEs on a project;
 - 4) The amounts paid to DBEs by invoice period.
- K. Upon completion of a DBE's work, the prime contractor must submit a certification of the actual amount paid to the DBE. If the actual amount paid is less than the amount of the subcontract, an explanation is required and subject to the review and action of PennDOT.

5. COUNTING DBE PARTICIPATION

- A. If the contractor submitting the bid and serving as prime contractor is a certified DBE, count the dollar amount of the work to be performed by the DBE toward the DBE Goal.
- B. If the materials or supplies are purchased from a DBE supplier performing as regular dealer, count 60 percent of the cost of the materials or supplies toward DBE Goal. A regular dealer is a firm 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.
- C. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE Goal. A manufacturer is a firm 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.
- D. Count toward the DBE Goal 100% of expenditures of DBE services including professional, technical consultant or managerial services. Count fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract.
- E. Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
 - 1) The DBE must be 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) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - 3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks its owns, insures, and operates using drivers it employs.
 - 4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit

for 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. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - 6) For purposes of this paragraph (E), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working 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.
- F. Any services to be performed by a DBE are required to be project related. The use of DBEs is in addition to all other equal opportunity requirements of the contract.

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 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.

July 3, 2003

LOBBYING CERTIFICATION FORM

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: _____

October 14, 2011

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.

Enclosure 1 to Management Directive 215.12 Amended
Page 1

Exhibit "M"

October 25, 2010

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

Enclosure 1 to Management Directive 215.9 Amended
Page 1 of 1

Exhibit "N"

SAMPLE LETTER OF AMENDMENT

Date

Municipality/Contractor Name

ATTN: Contact

Address

City, State Zip

**Re: Amendment (Amendment Letter Designation)
Agreement # (Contract Number)**

Dear (Mr./Ms. Name),

Per the terms of the subject agreement, the Department is willing to amend the terms by increasing the costs in Exhibit "A" and Paragraph (reference the location in the agreement document) from (current dollar amount) to (new dollar amount). 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 checking "Yes," and signing and dating where indicated. Please attach a resolution verifying your authorization to sign this 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 (Date). Please mail your response to the following address:

PENNDOT

Attn: Your Name

Your Organization

Your Address

SAMPLE LETTER OF ADJUSTMENT

Date
Municipality Name
ATTN: Contact
Address
City, State Zip

Re: Amendment (Amendment Letter Designation)
Agreement # (Contract Number)

Dear (Mr./Ms. Name)

Per the terms of the subject agreement, the Department will redistribute the costs in Exhibit "A", with no change in the total Project costs, by increasing/decreasing the costs of the phases within the project as shown below.

	Current	Phase	New Phase Costs
Costs			
Final Design	\$		\$
Utilities	\$		\$
	\$		\$
Construction	\$		\$
Department Incurred Costs	\$		\$
TOTAL PROJECT COST	\$		\$

All terms and conditions of 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 of 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,

_____[District Name, Title]
_____[District/Organization]

Comptroller Signature Date

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

Exhibit "P"

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.

Revised February 1, 2010

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

Yes ☐

No ☐

Signature: _____

Date: _____

Indicate Title: ☐ Chairman ..☐ President ☐ Executive Director ☐ Commissioner

or ☐ _____ (Indicate 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,

Name, Title

Organization

Approved for Form and Legality:

_____ for Chief Counsel

_____ Date

_____ Comptroller Signature..... 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 assistance program name and SAP program is ;

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006 – GRANTEE INFORMATION

1. Registration and Identification Information

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 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.

Grantee must provide its assigned DUNS number, and DUNS + 4 number if applicable, to the Commonwealth along with Grantee's return of the signed grant agreement. The Commonwealth will not process this grant until such time that Grantee provides this information.

2. Primary Location

Grantee 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 Grantee must list the location where the most amount of the grant award is to be expended pursuant to this grant agreement.

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

3. Compensation of Officers

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) 80 percent or more of its annual gross revenues in Federal awards; and

(II) \$25,000,000 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.

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