EFFECTIVE DATE :
(Department will insert)

REIMBURSEMENT AGREEMENT NO. : R16050004

COUNTY : Northampton

FID NO. : 246000689

MUNICIPALITY : BETHLEHEM

SAP VENDOR NO. : 177573

DISTRICT ORG CODE : 0500

MPMS NO. : 12080

ECMS AGREEMENT NO. :

STANDARD BRIDGE REIMBURSEMENT GRANT AGREEMENT

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

and

City of Bethlehem , of the Commonwealth of Pennsylvania, acting through its proper officials ("MUNICIPALITY").

RECITALS:

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, including bridges on these 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 State Department of Transportation, Federal Highway Administration ("FHWA"); and

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania, pursuant to Act 235 of 1982, as amended, has appropriated funds to aid in the removal, rehabilitation or replacement of eligible bridges under the jurisdiction of eligible local governments; and

WHEREAS, in addition, the General Assembly of the Commonwealth of Pennsylvania, pursuant to Act 26 of 1991, as amended, has provided for the distribution of tax revenues to eligible municipalities to use in offsetting their share of the costs of removing, rehabilitating or replacing eligible bridges; and,

WHEREAS, the MUNICIPALITY is to receive federal, state funds, or a combination of both, as detailed below for the removal, rehabilitation or replacement of eligible bridges; and

WHEREAS, pursuant to Section 2001.1 of the Administrative Code of 1929, as amended, 71 P.S. §511.1, the DEPARTMENT has the power to enter into agreements with political subdivisions for any purpose connected in any way with the DEPARTMENT and pursuant to Section 2002(a)(7) of the Administrative Code of 1929, as amended, 71 P.S. §512(a)(7), has the power to cooperate with political subdivisions in the coordination of plans and policies for the development of commerce and facilities; and,

WHEREAS, pursuant to Section 2305 of the General Local Government Code, as amended, 53 Pa.C.S. §2305, a municipality can delegate any function, power, or responsibility to another governmental unit upon passage of an ordinance by its governing body; and,

WHEREAS, it is necessary for the parties to enter into an agreement to outline their responsibilities and specify the sources of funding.

1. **RECITALS**

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 administration of a project for High Street bridge over abandoned Norfolk Southern Railroad ("Project") in accordance with the policies, procedures, and specifications prepared or approved by the DEPARTMENT, and, if federal funds are provided, the FHWA, and with the conditions of this Agreement. The Project cost estimate is attached as Exhibit "A" and made part of this Agreement.

(b) The MUNICIPALITY's participation shall involve the activities outlined below and shall be in accordance with the provisions and exhibits referenced therein.

(c) The MUNICIPALITY's participation shall be consistent with the most current version of Department Publication 740, *Local Project Delivery Manual*, ftp://ftp.dot.state.pa.us/public/pubsforms/Publications/PUB%20740.pdf incorporated into this Agreement by reference as though physically attached to it.

3. **APPLICABLE PRECONSTRUCTION RESPONSIBILITIES AND FUNDING AUTHORIZATIONS**

The MUNICIPALITY and the DEPARTMENT shall allocate and perform preconstruction responsibilities and administration as indicated below. By receiving funds through the programs indicated below, the MUNICIPALITY agrees to the terms and conditions contained in the exhibit specified under each item as selected and set forth below:

☑ MUNICIPALITY shall be responsible for preconstruction activities including, but not limited to: preliminary engineering, including environmental studies, final design, utility relocation, and right-of-way acquisition, consistent with the provisions of Exhibit "B" attached hereto.

☐ DEPARTMENT shall be responsible for preconstruction activities including, but not limited to: preliminary engineering, including environmental studies, final design, utility relocation, and right-of-way acquisition, all of these activities to be conducted by the DEPARTMENT, by contract or using its own forces, on behalf of the MUNICIPALITY, consistent with the provisions of Exhibit "C" attached hereto.

4. **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 "D" and made part of this Agreement.

(b) If the DEPARTMENT determines that the cost for any phase listed on Exhibit "A" should be redistributed, and the redistribution does not result in an increase or decrease in total Project costs or any increase in costs to the 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 "E" 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.

5. 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 state or federal funding.

6. **CONTRACT DEVELOPMENT**

(a) If the MUNICIPALITY is responsible for preconstruction activities as indicated in Paragraph 3 above, 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, and estimates ("PS&E"). The essential documents to be prepared are set forth in Exhibit "F", 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 Publication 740, *Local Project Delivery Manual.*

(b) If the DEPARTMENT is responsible for preconstruction activities as indicated in Paragraph 3 above, the DEPARTMENT will prepare the PS&E consistent with federal and state laws and requirements and the most current version of Publication 740, *Local Project Delivery Manual.*

(c) Upon completion or submission, as applicable, of the PS&E, 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 bids, upon:

(i) FHWA authorization of the Project, if federal funds are being used on the Project;

(ii) Approval of a right-of-way certification, if applicable;

(iii) Approval of a Utility Clearance Assurance statement;

(iv) Completion of the PS&E review;

(v) Satisfactory resolution of any comments; and

(vi) Receipt of applicable environmental permits.

(d) The DEPARTMENT, prior to issuance to prospective bidders, must review and approve any addenda to the approved bid documents. The DEPARTMENT shall issue addenda no later than three (3) calendar days before the proposed bid opening. All bid documents shall

require that the contractor be prequalified by the DEPARTMENT pursuant to 67 Pa. Code Chapter 457, *Prequalification of Bidders*. All bid documents shall require that the prospective bidders name the MUNICIPALITY and DEPARTMENT as additional insureds on the certificate of insurance.

7. 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. 740. The MUNICIPALITY shall enter into and execute the contract with the successful bidder electronically through 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 the DEPARTMENT's Engineering and Construction Management System ("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.

8. CONSTRUCTION INSPECTION

(a) The MUNICIPALITY, with its own forces or by contract, may 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. If the MUNICIPALITY is providing inspection services, the MUNICIPALITY shall provide the proper supervision and construction inspection to ensure that all work is in accordance with the most current version of

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, 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 inspector is required for each project. The DEPARTMENT will oversee the Project but will not provide inspection services unless the parties, by mutual consent, specifically agree for the DEPARTMENT to provide inspection services. If the parties agree that the DEPARTMENT will provide inspection services, those costs will be included in the budget for the Agreement, as detailed in Exhibit "A".

(b) If federal funds are used, the work shall also be in accordance with the most current version 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.* In addition, if federal funds are used, 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.

9. **PAYMENT PROCEDURES AND RESPONSIBILITIES FOR EXPENSES INCURRED BY MUNICIPALITY**

(a) The MUNICIPALITY 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 MUNICIPALITY's forces on the Project;

(ii) Work performed on the Project by the MUNICIPALITY's consultant(s) or contractor(s); and

(iii) Allowable costs incurred in the acquisition of right-of-way and utility relocations.

(b) The DEPARTMENT shall pay the MUNICIPALITY for all but the MUNICIPALITY's share of the total allowable Project costs for preliminary engineering, final

design, utility relocation, right-of-way acquisition and construction costs incurred by the MUNICIPALITY. Refer to Exhibit "A" for the estimated cost breakdown by dollar amounts and percentages. If federal funds are being used for the Project, the DEPARTMENT, for the federal share of the Project costs, shall submit necessary documents to the FHWA for payment and credit receipt of any funds to the appropriate account.

(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 in subparagraph (a) above, to assure prompt payment of the consultant(s) and contractor(s) for work performed to date.

(d) The MUNICIPALITY shall pay the DEPARTMENT, the MUNICIPALITY, and if applicable, the federal shares to its consultant(s) and contractor(s) within ten (10) calendar days of the date of the DEPARTMENT's payment to the MUNICIPALITY. The MUNICIPALITY, as part of its record-keeping obligations, 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 14 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 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 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 and process the invoices for payment from state and federal funds. As state and/or

federal funds are made available, the DEPARTMENT shall reimburse the MUNICIPALITY for the proportionate share of the approved charges.

(f) The MUNICIPALITY shall be responsible for costs not reimbursed by the DEPARTMENT with federal or state funds, 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 and/or condemnation of lands for the Project or construction of the improvements;

(vi) Unforeseen utility relocation 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.

(g) 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 MUNICPIALITY 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 in subparagraph (b) above.

(h) 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 and/or state financial participation in the Project.

10. PAYMENT PROCEDURES AND RESPONSIBILITIES FOR EXPENSES INCURRED BY DEPARTMENT

(a) For services performed by the DEPARTMENT, including, but not limited to, all preconstruction services specified in Paragraph 3 above if performed by the DEPARTMENT or the DEPARTMENT's consultant(s), as well as required contract development, liaison and supervisory services, the MUNICIPALITY shall directly reimburse the DEPARTMENT for the MUNICIPALITY's share of the DEPARTMENT's incurred costs. The DEPARTMENT will submit invoices to the FHWA for reimbursement of the federal share of such costs if the Project is federally funded. The estimated costs of these services and the MUNICIPALITY's share, by dollar amounts and percentages, are set forth in Exhibit "A".

(b) If the DEPARTMENT is performing preconstruction services as indicated in Paragraph 3 above, the DEPARTMENT shall invoice the MUNICIPALITY no more than monthly, but no less than quarterly, for costs incurred by the DEPARTMENT for the Project on the MUNICIPALITY's behalf during preconstruction. For administrative services performed by the DEPARTMENT during construction the DEPARTMENT shall invoice the MUNICIPALITY no more than annually or once toward end of the Project, for such costs incurred by the DEPARTMENT on the MUNICIPALITY's behalf.

(c) If the MUNICIPALITY is performing preconstruction services as indicated in Paragraph 3 above, the DEPARTMENT shall invoice the MUNICIPALITY no more than annually, or once toward end of the Project, for costs incurred by the DEPARTMENT for the Project on the MUNICIPALITY's behalf.

(d) The MUNICIPALITY shall pay the DEPARTMENT within 45 days of the mailing date of the DEPARTMENT's invoice. Failure to pay the DEPARTMENT within this period may halt further progress on the Project until payment is received and the MUNICIPALITY shall be responsible for any increase in costs due to such stoppage or delay. If such failure to pay exceeds 60 days, the MUNICIPALITY shall be deemed to be in Default, for the purposes of Paragraph 14.

(e) The MUNICIPALITY shall be responsible for costs not eligible for payment by federal or state funds, 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 and/or condemnation of lands for the Project or construction of the improvements;

(vi) Unforeseen utility relocation 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.

11. **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 beyond the termination of this Agreement or submission of the final voucher to the FHWA, whichever is later, for inspection or audit by the DEPARTMENT, the FHWA (if applicable), 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 on the Project 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 records 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. The DEPARTMENT will maintain, and require its consultant(s) and contractor(s) to maintain all records pursuant to applicable state and federal requirements.

12. **MAINTENANCE AND OPERATION OF THE FACILITY**

(a) The MUNICIPALITY, at its sole cost and expense, shall operate and maintain all of the completed improvements financed under this Agreement that fall within its jurisdiction. All stormwater and drainage facilities constructed or improved in connection with the Project are within the MUNICIPALITY's jurisdiction. The MUNICIPALITY shall establish a formalized maintenance program to ensure an acceptable level of physical integrity and operation consistent with original design standards. The MUNICIPALITY certifies that it shall make available sufficient funds to provide for the described maintenance program. This maintenance program shall include, but not be limited to, the following activities:

(i) Periodic inspections in accordance with National Bridge Inspection Standards;

(ii) Appropriate preventative maintenance;

(iii) A systematic record-keeping system; and

(iv) A means to handle the notification and implementation of emergency repairs.

(b) 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 and operation of the completed improvements; or

(ii) Maintain and enforce compliance with any statutes, regulations ordinances or permits necessary for the operation of the improvements under its jurisdiction.

(c) 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 and operation services to a condition of maintenance and operation satisfactory to the DEPARTMENT.

(ii) The MUNICIPALITY has brought traffic operations on the improvements, including enforcement of statutes, regulations or ordinances, up to a level satisfactory to the DEPARTMENT.

(d) The MUNICIPALITY agrees that it will comply with all applicable statutes and regulations relating to traffic control devices, including, but not limited to, 75 Pa. C.S. §6109 and 67 Pa Code §212.5.

(e) This Agreement is without prejudice to the right of the MUNICIPALITY to receive reimbursement for maintenance costs from any railroad or party other than the DEPARTMENT, if so ordered by the PUC, where a rail-highway crossing bridge is under the jurisdiction of the PUC.

13. **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, including, but not limited to, those in eminent domain or otherwise relating to title to real property or under any environmental or historic preservation permit, approval or statute, relating to personal injury, including death, or property damage, arising out of, resulting from or connected with the planning, development, design, acquisition, construction, operation or maintenance of the Project improvements, 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 the work or thereafter, or to any other cause whatever. This provision shall not be construed to limit the MUNICIPALITY's rights, claims or defenses which arise as a matter of law. In the event, the MUNICIPALITY, pursuant to the terms of this Agreement, assumes maintenance

responsibilities for improvements within the right-of-way of the Commonwealth, this Agreement shall be considered a maintenance agreement for the purposes of 42 Pa. C.S. §8542(b)(6).

(b) This Agreement shall not be construed for the benefit of any person or political subdivision not a party to this Agreement, nor shall this Agreement be construed to authorize any person or political subdivision not a party to this Agreement to maintain a lawsuit on or under this Agreement.

14. 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 sixty (60) 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. In the event the amount of such default amounts to more than 100 % of the MUNICIPALITY's annual Liquid Fuels Tax Fund allocation for the fiscal year in which such default occurred, the DEPARTMENT shall withhold no more than 100 % of the MUNICIPALITY's annual Liquid Fuels Tax for said fiscal year, the balance to be withheld up to that maximum percentage each fiscal year thereafter until said balance has been paid in full.

15. NONDISCRIMINATION PROVISIONS

The parties agree, and the MUNICIPALITY shall also provide in its contracts as applicable 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, and reporting provisions and if federal funds are used on the project, auditing requirements. 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:

(a) If **no** federal funds are used, the Commonwealth Nondiscrimination/Sexual Harassment Clause, which is attached as Exhibit "G-1" and made part of this Agreement.

(b) If federal funds **are** used, the Federal Nondiscrimination and Equal Employment Opportunity Clauses, which are attached as Exhibit "G-2" and made part of this Agreement.

(c) Regardless of which provision applies, the term "Contractor" means the MUNICIPALITY.

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

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

(a) The Contractor Integrity Provisions attached as Exhibit "H" and made part of this Agreement;

(b) The Provisions Concerning the Americans with Disabilities Act attached as Exhibit "I" and made part of this Agreement;

(c) The Contractor Responsibility Provisions attached as Exhibit "J" and made part of this Agreement;

(d) The Right-to-Know Law provisions attached as Exhibit "K" and made part of this Agreement;

17. 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.

18. CONTRACT PROVISIONS FOR PROJECTS INVOLVING FEDERAL FUNDS

If federal funds are used for this Project, the MUNICIPALITY shall comply, and shall cause its consultant(s) and contractor(s) to comply with the provisions set forth in this paragraph.

As used in these provisions, the term "Contractor" or "Grantee" or "Subreceipient" means the MUNICIPALITY.

(a) **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 Federal Funding Accountability and Transparency Act of 2006, Grantee Information, attached as Exhibit "L" and made 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.

(b) **LOBBYING CERTIFICATION DISCLOSURE**

Public Law 101-121, §319, 31 U.S.C. §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 as Exhibit "M" and made part of this Agreement, and which an authorized official of the MUNICPALITY has executed.

(c) **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 the 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 "N" and made part of this Agreement.

(d) **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:

(i) 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 "O" 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:

(1) 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.

(2) If the Project is prequalification exempt, the MUNICIPALITY shall comply with the *Disadvantaged Business Enterprise Requirements—Prequalification Exempt*, attached as Exhibit "P" and made a part of this Agreement.

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

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

(e) **REQUIRED DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE PROVISION**

(i) 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, including, but not limited to, withholding progress payments; assessing sanctions; liquidated damages; and/or disqualifying the MUNICIPALITY from future bidding as non-responsible.

(ii) 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.

19. TERMINATION 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 eligible work performed by the MUNICIPALITY or its consultant(s) or contractor(s) up to the date of the notice of termination or such other date that the notice of termination shall specify.

20. ELECTRONIC ACCESS TO ENGINEERING AND CONSTRUCTION MANAGEMENT SYSTEM

If the MUNICIPALITY has not already executed a Business Partner Agreement and registered with the DEPARTMENT as a business partner in order to access the DEPARTMENT's Engineering and Construction Management System ("ECMS"), the MUNICIPALITY must enter into a business partner agreement with the DEPARTMENT in order to obtain such access prior to the advertisement of any Project phases being let through ECMS.

21. AUTOMATED CLEARING HOUSE PROVISIONS

Because the DEPARTMENT will be making any 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 ten (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.

22. **EFFECTIVE DATE AND DURATION OF AGREEMENT**

(a) This Agreement will not be effective until 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.

(b) The Agreement shall remain in effect for three (3) fiscal years, beginning with the state fiscal year in which it takes effect and continuing for the two (2) succeeding fiscal years. The MUNICIPALITY and the DEPARTMENT understand and agree that, regardless of which party is responsible for preconstruction activities as set forth in Paragraph 3, the responsible entity must proceed diligently to move the Project to completion. If no activity, "activity" consisting of the payment of at least one invoice from the MUNICIPALITY by the

DEPARTMENT, occurs prior to the end of the third fiscal year, the Agreement shall terminate on June 30 of the third fiscal year. However, if any activity occurs prior to the end of the third fiscal year, the Agreement shall be automatically extended for a fourth fiscal year, and the MUNICIPALITY shall complete the Project by the end of that fourth fiscal year. If the MUNICIPALITY has not completed the Project by June 30 of that fourth fiscal year, the Agreement shall then automatically terminate, unless the MUNICIPALITY requests a time extension, providing detailed justification therefor, and the DEPARTMENT, in its discretion, authorizes a time extension in writing. If the Project involves federal funds, any such extensions must comply with 23 C.F.R. 630.112(C)(2) relating to limits on federal funding authorization.

(c) If this Agreement is terminated in accordance with Subparagraph (b) above, the MUNICPALITY must reimburse any state or federal funds provided pursuant to this Agreement, because the FHWA and/or the DEPARTMENT will not participate in any costs of a project that is not completed with the exception of state-funded design costs. Accordingly 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) Any and all FHWA funds received by the MUNICIPALITY for return to the FHWA;

(ii) Any and all FHWA funds paid to the DEPARTMENT for work performed under this Agreement for return to the FHWA;

(iii) All costs incurred by the DEPARTMENT under this Agreement prior to the time of termination that the FHWA or the MUNICIPALITY has not already reimbursed;

(iv) All right-of-way acquisition, utility relocation and construction funds made available to the MUNICIPALITY under Act 235 of 1982 and, if applicable, Act 26 of 1991, both as amended. If project development activities are subsequently reinitiated, the MUNICIPALITY should utilize the previous design work. The DEPARTMENT will not provide state funds to update design work from a previously terminated project.

(d) If the MUNICIPALITY fails to reimburse the DEPARTMENT or the FHWA (if applicable) within the time period set forth in subparagraph (c) above, the MUNICIPALITY shall be in default pursuant to Paragraph 14 of this Agreement.

23. RESOLUTIONS AND ORDINANCES

The MUNICIPALITY shall enact, adopt, or both any and all resolutions or ordinances, including, but not limited to, ordinances necessary to authorize the DEPARTMENT to act on the MUNICIPALITY's behalf with respect to acquisition of rights-of-way or applications to the Pennsylvania Public Utility Commission, as may be necessary to effect the purposes of this Agreement.

[Remainder of page left blank intentionally]

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

MUNICIPALITY:

BY: _____ _____
Title: DATE

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

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____ _____
Deputy Secretary or Designee DATE

APPROVED AS TO LEGALITY
AND FORM

BY _____ _____
for Chief Counsel Date

BY _____ _____
for Comptroller Operations Date

Preapproved Form:
OGC No. 18-FA-65.0
Approved OAG 09/30/13

Reimbursement Agreement No. R16050004 is split 100.00% , expenditure amount of $ 1,400,000.00 for federal funds and 0.00% , expenditure amount of $ 0.00 for state funds. The related federal assistance program name and number is Highway Planning and Construction ; 20.205
The state assistance program name and number is N/A
; N/A .

PROJECT ESTIMATED COSTS

Reimbursement Agreement No: R16050004

County: Northampton

Municipality: BETHLEHEM

Project Name: High Street Bridge over abandoned Norfolk Southern Railroad

MPMS No: 12080

Engineering Agreement No:

	Municipality Incurred Costs	Commonwealth Incurred Costs	Phase Totals
Preliminary Engineering			$ 0.00
Final Design			$ 0.00
Utilities			$ 0.00
Right of Way			$ 0.00
Construction	$ 1,340,000.00	$ 60,000.00	$ 1,400,000.00
SUBTOTALS	$ 1,340,000.00	$ 60,000.00	$ 1,400,000.00

COST SHARING (Municipality Incurred Costs)

	Federal	%	State	%	Municipality	%	Phase Totals
Preliminary Engineering	$ 0.00	( )	$ 0.00	( )	$ 0.00	( )	$ 0.00
Final Design	$ 0.00	( )	$ 0.00	( )	$ 0.00	( )	$ 0.00
Utilities	$ 0.00	( )	$ 0.00	( )	$ 0.00	( )	$ 0.00
Right of Way	$ 0.00	( )	$ 0.00	( )	$ 0.00	( )	$ 0.00
Construction	$ 1,340,000.00	(100.00%)	$ 0.00	( )	$ 0.00	( )	$ 1,340,000.00
TOTALS	$ 1,340,000.00		$ 0.00		$ 0.00		$ 1,340,000.00

COST SHARING (Commonwealth Incurred Costs)

	Federal	%	State	%	Municipality	%	Phase Totals
Preliminary Engineering	$ 0.00	( )	$ 0.00	( )	$ 0.00	( )	$ 0.00
Final Design	$ 0.00	( )	$ 0.00	( )	$ 0.00	( )	$ 0.00
Utilities	$ 0.00	( )	$ 0.00	( )	$ 0.00	( )	$ 0.00
Right of Way	$ 0.00	( )	$ 0.00	( )	$ 0.00	( )	$ 0.00
Construction	$ 60,000.00	(100.00%)	$ 0.00	( )	$ 0.00	( )	$ 60,000.00
TOTALS	$ 60,000.00		$ 0.00		$ 0.00		$ 60,000.00

TOTAL COST

Federal	%	State	%	Municipality	%	Total
$ 1,400,000.00	(100.00%)	$ 0.00	(0.00%)	$ 0.00	(0.00%)	$ 1,400,000.00

Amount Eligible to be Reimbursed to Municipality $ 1,340,000.00

Exhibit A

STANDARD BRIDGE EXHIBIT "B"
FOR PROJECTS WHERE MUNICIPALITY IS RESPONSIBLE
FOR MANAGING PRECONSTRUCTION ACTIVITIES

These provisions shall apply if the parties have opted, in Paragraph 3 of the Agreement to which this Exhibit is attached, for the MUNICIPALITY to assume responsibility for preconstruction activities for the Project authorized by this Agreement.

A. **DESIGN**

(1) The MUNICIPALITY, with its own forces or by contract, shall design the Project. The design shall be in accordance with 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:

(a) DEPARTMENT Publication No. 70M, *Guidelines for Design of Local Roads and Streets;*

(b) DEPARTMENT Publication No. 740;

(c) DEPARTMENT Design Manuals (Publication Nos. 10, 13M, 14M, 15M, and 16M;

(d) DEPARTMENT Policy Letters;

(e) DEPARTMENT Form No. 442, *Bureau of Design Specifications for Consultant Agreements,* Division I;

(f) DEPARTMENT Publication 93, *Policy and Procedures for the Administration of Consultant Agreements*; and

(g) DEPARTMENT Publication No. 408, *Specifications,* its supplements and amendments.

(2) The MUNICIPALITY shall secure all necessary approvals, permits and licenses from all other governmental agencies, as may be required to complete the Project. The MUNICIPALITY will be the applicant and ultimately the permitee or licensee. 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.

(3) The MUNICIPALITY is encouraged to use the DEPARTMENT's ECMS selection mechanisms to assist it in its consultant selection process.

B. **UTILITY CONSIDERATIONS**

(1) 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.

(2) 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.

(3) If the MUNICIPALITY owns or operates the existing utility facilities, the MUNICIPALITY shall request the DEPARTMENT to determine if the costs are Project-

eligible costs and if so to prepare a supplement to this agreement to address the costs associated with the relocation of said facilities, if not addressed herein. The supplemental agreement will acknowledge that the utility facilities are located in the right-of-way and that the relocation costs are Project-eligible costs.

(4) Prior to advertising the Project for letting, the MUNICIPALITY, on forms provided by the DEPARTMENT, shall furnish a Utility Clearance Certification, Form D-419, attesting that all arrangements have been made for the relocation of all known utility facilities affected by the Project, and which shall include a description of the written arrangements made with the utilities for the relocation of facilities in a manner that will not impede Project construction.

(5) 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: 23 C.F.R. Part 645; the Federal-Aid Policy Guide Chapter I, Subchapter G, Part 645, Subpart B, *Accommodation of Utilities*, and all subsequent amendments; and, if the utility facilities are being transferred to or remaining at a location within the right-of-way of a state federal-aid highway, 67 Pa Code Chapter 459.

(6) If the Agreement terminates for lack of activity or failure to complete the Project, as provided in Paragraph 22 of the Agreement, after any utility has been authorized to proceed with its 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 termination, plus any additional expenses incurred by the utility in restoring its system to normal operation conditions.

C. APPLICATION TO PENNSYLVANIA PUBLIC UTILITY COMMISSION

The MUNICIPALITY, as necessary, shall make such application to the Pennsylvania Public Utility Commission ("PUC") as required for the construction and completion of the Project. If the Project is a rail-highway crossing bridge under the jurisdiction of the PUC, the DEPARTMENT and the MUNICIPALITY agree to the following:

(1) The DEPARTMENT shall apply any costs contributed voluntarily by a railroad, or allocated to the railroad by the PUC, 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 first to the DEPARTMENT's share, if any, and second to the remaining portion of the Project costs.

(2) 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 Paragraphs 9 and 10 of this Agreement.

(3) If the PUC allocates costs to the DEPARTMENT in excess of the DEPARTMENT's share or the remaining part of the Project costs identified in subparagraph (1) above, the MUNICIPALITY agrees to pay these excess costs.

D. **RIGHT-OF-WAY ACQUISITION**

(1) The MUNCIPALITY certifies that it shall acquire all right-of-way necessary to construct this Project in accordance with all of the applicable federal and/or state laws, policies, and procedures pertinent to right-of-way acquisition, including, but not limited to:

(a) The most current version of DEPARTMENT Publication No. 740; and

(b) Either Procedures for Right-of-Way Acquisition by Municipality Non-Federal, or Procedures for Right-of-Way Acquisition by Municipality-Federal Aid Highway Projects, as applicable, and as attached and made a part of this Agreement as Exhibit "R-1" or "R-2", respectively.

(2) If the MUNICIPALITY must acquire right-of-way to accommodate the Project and the DEPARTMENT determines that the involved costs are eligible project costs, 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 letter of adjustment, as appropriate.

(3) The MUNCIPALITY 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 arrangement to the satisfaction of the District Right-of-Way Administrator prior to beginning right-of-way acquisition.

E. RAILROAD CONSIDERATIONS

The MUNICIPALITY shall furnish Project plans to any railroads known to have facilities within the Project limits.

(1) 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.

(2) 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.

(3) 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.

(4) 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 4 of this Agreement.

(5) 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.

EXHIBIT "C"
FOR PROJECTS WHERE DEPARTMENT IS RESPONSIBLE FOR MANAGING PRECONSTRUCTION ACTIVITIES

These provisions shall apply if the parties have opted, in Paragraph 3 of the Agreement, to which this Exhibit is attached, for the DEPARTMENT to assume responsibility for preconstruction activities for the Project authorized by this Agreement.

A. **DESIGN**

(1) The DEPARTMENT, with its own forces or by contract, shall design the Project. The design shall be in accordance with 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:

(a) DEPARTMENT Publication No. 70M, *Guidelines for Design of Local Roads and Streets;*

(b) DEPARTMENT Publication No. 740;

(c) DEPARTMENT Design Manuals (Publication Nos. 10, 13M, 14M, 15M, and 16M;

(d) DEPARTMENT Policy Letters;

(e) DEPARTMENT Form No. 442, *Bureau of Design Specifications for Consultant Agreements,* Division I;

(f) DEPARTMENT Publication 93, *Policy and Procedures for the Administration of Consultant Agreements*; and

(f) DEPARTMENT Publication No. 408, *Specifications,* its supplements and amendments.

(2) The DEPARTMENT shall, on behalf of the MUNICIPALITY and in the MUNICIPALITY'S name, prepare all necessary approvals, permits and licenses from all other governmental agencies as may be required to complete the Project. This obligation shall include the responsibility for preparing or revising environmental reports or other documents such as environmental impact statements required by law. The MUNICIPALITY shall cooperate with

the DEPARTMENT as necessary in applying for the approvals, permits and licenses, shall submit the appropriate permit applications as prepared by the DEPARTMENT and shall be responsible for defense of any environmental litigation resulting from the planning, design or construction of the Project. The MUNICIPALITY shall submit all necessary permits prepared by the DEPARTMENT and shall furnish the DEPARTMENT with copies of any and all approvals, permits, licenses and approved environmental documents obtained from other agencies or entities. The MUNICIPALITY will be the applicant and ultimately the permitee or licensee.

B. **UTILITY CONSIDERATIONS**

(1) The DEPARTMENT 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.

(2) The DEPARTMENT, in the MUNICIPALITY's name and on its behalf, 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 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 DEPARTMENT shall work with the MUNICIPALITY to obtain 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.

(3) If the MUNICIPALITY owns or operates the existing utility facilities, the MUNICIPALITY shall request the DEPARTMENT to prepare a supplement to this agreement to address the costs associated with the relocation of said facilities, if not addressed herein. The supplemental agreement will acknowledge the relocation costs are Project-eligible costs.

(4) Prior to advertising the Project for letting, the DEPARTMENT shall furnish a Utility Clearance Certification, Form D-419, attesting that all arrangements have been made for the relocation of all known utility facilities affected by the Project, and which shall include a description of the written arrangements made with the utilities for the relocation of facilities in a manner that will not impede Project construction.

(5) 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: 23 C.F.R. Part 645; the Federal-Aid Policy Guide Chapter I, Subchapter G, Part 645, Subpart B, *Accommodation of Utilities*, and all subsequent amendments; and, if the utility facilities are being transferred to or remaining at a location within the right-of-way of a state federal-aid highway, 67 Pa Code Chapter 459.

(6) If the Agreement terminates for lack of activity or failure to complete the Project by the MUNICIPALITY or due to the MUNICIPALITY's failure to reimburse the DEPARTMENT pursuant to this Agreement, as provided in Paragraph 22 of the Agreement, after any utility has been authorized to proceed with its 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 termination, plus any additional expenses incurred by the utility in restoring its system to normal operation conditions.

C. APPLICATION TO PENNSYLVANIA PUBLIC UTILITY COMMISSION

The DEPARTMENT, in the name of and on behalf of the MUNICIPALITY, shall, as necessary, prepare such application to the Pennsylvania Public Utility Commission ("PUC") as required for the construction and completion of the Project and provide it to the MUNICIPALITY to submit to the PUC. If the Project is a rail-highway crossing bridge under the jurisdiction of the PUC, the DEPARTMENT and the MUNICIPALITY agree to the following:

(1) The DEPARTMENT shall apply any costs contributed voluntarily by a railroad, or allocated to the railroad by the PUC, 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 first to the DEPARTMENT's share, if any, and second to the remaining portion of the Project costs.

(2) 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 Paragraphs 9 and 10 of this Agreement.

(3) If the PUC allocates costs to the DEPARTMENT in excess of the DEPARTMENT's share or the remaining part of the Project costs identified in subparagraph (1) above, the MUNICIPALITY agrees to pay these excess costs.

D. **RIGHT-OF-WAY ACQUISITION**

(1) The MUNICIPALITY shall, if necessary, adopt an ordinance authorizing the DEPARTMENT to acquire any needed property sufficient to complete the Project on the MUNICIPALITY's behalf. Such ordinance shall be passed within 90 days of execution of this Agreement.

(2) The DEPARTMENT certifies that, as delegated to the DEPARTMENT by the MUNICIPALITY pursuant to ordinance, the DEPARTMENT shall acquire all right-of-way necessary to construct the Project in accordance with all of the applicable state laws, policies and procedures pertinent to right-of-way acquisition; the most current version of DEPARTMENT Publication No. 378, *Right of Way Manual.* The cost of such right-of way shall be an eligible Project cost.

E. **RAILROAD CONSIDERATIONS**

The DEPARTMENT shall furnish Project plans to any railroads known to have facilities within the Project limits.

(1) The DEPARTMENT 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.

(2) The DEPARTMENT 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.

(3) The DEPARTMENT 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.

(4) 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 4 of the Agreement.

(5) 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.

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 total project costs from $ **(current dollar amount)** to $ **(new dollar amount)**, as shown in the attached Exhibit " ." This amendment will become effective once all required signatures are affixed to this document.

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

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

Your response is required no later than **(Date)**.

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

Signature: Date:

Title:

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

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

Sincerely,

Name, Title
Organization

Exhibit D

Approved for Form and Legality:

_____

for Chief Counsel Date

_____

Comptroller Signature Date

Reimbursement Amendment 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 number is ; .

Exhibit D

SAMPLE LETTER OF ADJUSTMENT

Date
Municipality Name
ATTN: Contact
Address
City, State Zip

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

Dear Local Project Sponsor(s):

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

	Current Total Phase Costs	New Total Phase Costs
Preliminary Engineering	$	$
Final Design	$	$
Utilities	$	$
Right-of-Way	$	$
Construction	$	$
TOTAL PROJECT COST	$	$

All terms and conditions of the agreement and previous 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,

_____
Project Manager

_____
(Asst.) District Executive Date

_____
Office of Comptroller Operations Date

Reimbursement Amendment 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 number is ; .

Exhibit E

PLANS, SPECIFICATIONS, ESTIMATES AND BID PROPOSAL PACKAGE

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

A. Plans and Estimates

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

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

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

C. Special Provisions

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

D. Attachments

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

February 24, 2015

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE
(applies only to agreement involving no federal funds)

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 employement 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 contracts 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 G1

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.

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

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

1. **Employment Practices:** During the performance of this contract, the contractor agrees as follows:

   a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

   b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

   c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractors commitments under section 2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

   d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

   e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

   f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

   g. The contractor will include the provisions of Section 2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. **Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:** During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations) which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontract or supplier shall be notified by the contract of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   (1) withholding of payments to the contractor under the contract until the contractor complies, and/or

   (2) cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The contractor shall include the provisions of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless except by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration my direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department or enter into such litigation to protect the interest of the State, and , in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

CONTRACTOR INTEGRITY PROVISIONS

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

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

   a. **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

   b. **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.

   c. **"Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.

   d. **"Contractor Related Parties"** means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.

   e. **"Financial Interest"** means either:

      (1) Ownership of more than a five percent interest in any business; or

      (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

   f. **"Gratuity"** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor's Code of Conduct, Executive Order 1980-18* , the *4 Pa. Code §7.153(b)*, shall apply.

   g. **"Non-bid Basis"** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

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

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

EXHIBIT H

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.

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.

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 I

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

Exhibit J

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.

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

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

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

(a) Registration and Identification Information – The Subgrantee must maintain current registration in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded pursuant to this agreement. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration. Subgrantee must provide its DUNS number, and DUNS + 4 number if applicable, to the Commonwealth along with the signed grant agreement.

(b) Primary Location - Subgrantee must provide to the Commonwealth the primary location of performance under the award, including the city, State, and zip+4. If performance is to occur in multiple locations, then Subgrantee must list the location where the most amount of the grant award is to be expended pursuant to this grant agreement.

(c) Compensation of Officers - Subgrantee must provide to the Commonwealth the names and total compensation of the five most highly compensated officers of the entity **if-**

1. the entity in the preceding fiscal year received—

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

   b. $25,000,000 or more in annual gross revenues from Federal awards: and

   c. the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchanges Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. If the Subgrantee does not meet the conditions listed above, then it must specifically affirm to the Commonwealth that the requirements of this clause are inapplicable to the Subgrantee. Subgrantee must provide information responding to this question along with Subgrantee's return of the signed grant agreement. The Commonwealth will not process this grant until such time that Subgrantee provides such information responding to this question.

Exhibit L

Federal Funding Accountability and Transparency Act Sub-recipient Data Sheet

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

DUNS NUMBER

DUNS Number:	
DUNS Number +4 (if applicable)	

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

PRIMARY LOCATION

City:	
State:	
Zip+4:	

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

COMPENSATION OF OFFICERS

Officer 1 Name:	
Officer 1 Compensation:	
Officer 2 Name:	
Officer 2 Compensation:	
Officer 3 Name:	
Officer 3 Compensation:	
Officer 4 Name:	
Officer 4 Compensation:	
Officer 5 Name:	
Officer 5 Compensation:	

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

Exhibit L

[INSTRUCTIONS: Grantee must provide to the Commonwealth the names and total compensation of the five most highly compensated officers of the entity if--
(i) the entity in the preceding fiscal year received—

(I) 0 percent or more of its annual gross revenues in Federal awards; and
(II) 0,000 or more in annual gross revenues from Federal awards: and

(ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchanges 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.

Exhibit L

LOBBYING CERTIFICATION FORM

(applies only if Agreement is Federally Funded)

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

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

SIGNATURE: _____

TITLE: _____

DATE: _____

Exhibit M

Applies only if Agreement is federally-funded

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

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

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

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

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

ADDITIONAL POTENTIAL COMPONENTS OF THE SINGLE AUDIT REPORTING PACKAGE.

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

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

SUBMISSION OF TH E AUDIT REPORT

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

SUBMISSION OF THE FEDERAL AUDIT CLEARINGHOUSE CONFIRMATION

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

AUDIT OVERSIGHT PROVISIONS.

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

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

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

Applies only if Agreement is federally-funded

Disadvantaged Business Enterprise & Small Business Concern Involvement

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

Exhibit O

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, Kirbati, 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.

RIGHT-OF-WAY ACQUISITION BY MUNICIPALITY—NON-FEDERAL

a. The MUNICIPALITY, by gift, agreement, purchase, condemnation or any combination of these methods, shall acquire all necessary right-of-way for this Project.

b. The MUNICIPALITY shall strictly comply with all federal and state right-of-way acquisition laws and policies that are applicable to the acquisition of right-of-way by the MUNICIPALITY, including, but not limited to, the most current version of DEPARTMENT Publication No. Publication No. 740, *Local Project Delivery Manual.*

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) Reasonable counsel fees and reasonable expert witness fees required for the adjudication of all property damage claims;

(5) Transcripts of testimony before a board of view; and

(6) All recording costs, including printing costs, in case of appeal to an appellate court.

d. The DEPARTMENT, with funds made available under Act 235 of 1982, as amended, and (if applicable) Act 26 of 1991, as amended, shall reimburse the MUNICIPALITY for the DEPARTMENT's share of the right-of-way costs incurred by the MUNICIPALITY as provided in 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. 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 applicable federal and state laws and policies referenced in Section a. above.

g. Prior to advertisement for the receipt of bids, the MUNICIPALITY shall certify to the DEPARTMENT that all right-of-way required 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. Publication No. 740, *Local Project Delivery Manual.*

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 Publication No. 740, *Local Project Delivery Manual.*

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. Reimbursement 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.

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, DEPARTMENT Publication No. Publication No. 740, *Local Project Delivery Manual.*