TOWNSHIP OF ANTRIM, FRANKLIN COUNTY, PA
COMMONWEALTH OF PENNSYLVANIA
ORDINANCE NO. 319 OF 2010

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF ANTRIM

WHEREAS, the Township of Antrim currently has regulations as set forth in the Code of the Township of Antrim, Pennsylvania; and

WHEREAS, Section 2304 (b) of the Pennsylvania Second Class Township Code provides as follows:

"The Board of Supervisors may by ordinance provide for the widening, straightening or improvement of a state highway, with the consent of the Department of Transportation, and may spend Township funds in connection therewith." ; and

WHEREAS, the Township of Antrim Board of Supervisors desire to provide for improvements on state highway(s) at the Interstate 81 Exit 3, US Route 11 Interchange, and spend Township funds in connection with said improvements.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of Supervisors of the Township of Antrim pursuant to the "Pennsylvania Second Class Township Code" as follows:

Section 1 – A new Chapter 60 shall be added to the Code of the Township of Antrim, Pennsylvania entitled "ROADS AND BRIDGES" which shall read as follows:

§ 60-1. Title.

This chapter shall be titled "Roads and Bridges."

§ 60-2. Findings; policy.

The Board of Supervisors of the Township of Antrim, Franklin County, Pennsylvania, has determined that in certain areas of the Township improvements need to be made on state highways and Township funds should be spent in connection therewith.

§ 60-3. Specific State Road Improvements.

The Board of Supervisors of the Township of Antrim believe that it would be in best interest of the public, health, safety, and welfare of residents of the Township of Antrim that improvements be made at the Interstate 81 Exit 3, US Route 11 Interchange, generally consisting of, but not limited to, new traffic signals, construction of the Antrim Commons Drive/Route 11 Intersection, timing changes at the Commerce Drive/Route 11 traffic signal, right and left turn lanes and through lane improvements on Route 11 associated with this signal and intersection improvements, and the second storage lane on the I-81 northbound off-ramp.

§ 60-4. Specific State Bridge Improvements. (Reserved for future use.)

§ 60-5. Expenditure of Township Funds.

The expenditure of Township funds to be made in connection with the improvements to be made at the Interstate 81 Exit 3, US Route 11 Interchange are as set forth on the attached Assignment, Assumption and Indemnification Agreement, Traffic Light Agreement and Reimbursement Agreement, copies of which are labeled Exhibits "1", "2" and "3", respectively, attached hereto and incorporated herein by reference as if set forth in full hereunder.

§ 60-6. Effective date.

This Ordinance shall become effective in accordance with the law.

§ 60-7. Repealer.

All other Township ordinances, or parts of other ordinances in conflict herewith, are hereby repealed.

§ 60-8. Severability.

If any article, section, or provision of this Ordinance should be decided by the Courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

ENACTED by the Board of Supervisors of the Township of Antrim at its regular meeting the 12th day of October, 2010.

Attest:

Mary A. Klein, Secretary

SUPERVISORS OF THE TOWNSHIP OF ANTRIM

ASSIGNMENT, ASSUMPTION AND INDEMNIFICATION AGREEMENT

This Assignment, Assumption and Indemnification Agreement (the "Agreement") is entered into this ____ day of _____, 2010, by and between **Antrim Business Park, L.P.**, a Maryland limited partnership, with its principal office located at c/o Atapco Properties, Inc., 10 East Baltimore Street, Suite 1600, Baltimore, MD 21202, **Atapco GP, LLC**, a Maryland limited liability company, with its principal office located at c/o Atapco Properties, Inc., 10 East Baltimore Street, Suite 1600, Baltimore, Maryland 21202, and **Atapco Properties, Inc.** 10 East Baltimore Street, Suite 1600, Baltimore, Maryland 21202, hereinafter collectively referred to as "Developer"; and **Township of Antrim**, a Pennsylvania Municipal Corporation organized under the laws of Commonwealth of Pennsylvania, with its offices located at 10655 Antrim Church Road, Greencastle, (Township of Antrim), Franklin County, Pennsylvania, hereinafter referred to as "Township".

WHEREAS, Antrim Business Park, L.P. ("ABPLP") owns certain property located near the Interstate 81 Exit 3, US Route 11 Interchange, (SR 0081 – 060, MPMS 87201), in Township of Antrim, Franklin County, Pennsylvania; and

WHEREAS, Developer desires that Township enter into that certain Letter Agreement dated August 21, 2009 ("Letter Agreement") and "General Reimbursement Agreement for Federal Aid Highway Projects", with the Pennsylvania Department of Transportation, hereinafter referred to as "PennDOT" ("Reimbursement Agreement"). (A copy of the Letter Agreement and Reimbursement Agreement, with attached Exhibits "A" through "R", are attached hereto and labeled Exhibits "A" and "B" respectively); and

WHEREAS, Developer further desires that Township of Antrim enter into the aforementioned Letter Agreement and Reimbursement Agreement because the improvements to be made to the Interstate 81 Exit 3, US Route 11 Interchange shall enhance the value of Developer's property; and

WHEREAS, in order for Township to sign the Letter Agreement and Reimbursement Agreement, Developer desires, understands and agrees that it shall be responsible to assume the obligations of Township as set forth in said Letter Agreement and Reimbursement Agreement; and

Exhibit "1" to Ordinance

WHEREAS, Developer also understands that Township may be required to sign future agreements with PennDOT concerning the improvements to be made at the Interstate 81 Exit 3, US Route 11 Interchange, generally consisting of , but not limited to, new traffic signals, construction of the Antrim Commons Drive / Rte 11 intersection, timing changes at the Commerce Drive / Rte 11 traffic signal, right and left turn lanes and through lane improvements on Rte 11 associated with the signal and intersection improvements, and a second storage lane on the I-81 NB off-ramp (the "Project"); and

WHEREAS, Developer desires, understands and agrees that it shall assume the obligations of Township as set forth in said future agreements required to be signed by Township concerning the Project, which have been approved by Developer, such approval not to be unreasonably withheld (the "Future Approved Agreements").

W I T N E S S E T H:

For and in consideration of TEN DOLLARS ($10.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Township and Developer, intending to be legally bound, hereby covenant and agree as follows:

1. The terms as set forth in the above "**WHEREAS**" paragraphs are hereby incorporated and made a part of this Agreement as if set forth in full hereunder.
2. Township assigns to Developer all of its rights, duties and obligations of performance under the Letter Agreement and Reimbursement Agreement , copies of which are attached hereto as Exhibits "A" and "B" respectively and incorporated herein by reference as if set forth in full hereunder. At the time of execution of each Future Approved Agreement, Township shall assign to Developer all rights, duties and obligations of performance contained in any such Future Approved Agreement, to the extent that such rights, duties and obligations can be assigned by the Township, and if unable to be assigned, then Developer shall reimburse Township for any costs required to be paid by Township incurred as a result of entering into said "Future Approved Agreements".
3. Notwithstanding anything set forth in the Letter Agreement, Reimbursement Agreement or Future Approved Agreements to the contrary, Developer agrees to assume and perform all duties and obligations of Township under said Letter Agreement, Reimbursement Agreement and any Future Approved Agreement, to

the extent such duties and obligations can be assigned, and if unable to be assigned, then Developer shall reimburse Township for any costs required to be paid by Township incurred as a result of entering into said "Future Approved Agreements", including, but not limited to, the following;

a. Obligation to prepare preliminary engineering, including but not limited to, environmental studies, final design, utility relocation, right-of-way acquisition and construction of improvements for the Project as set forth in Section 2(a) of the Reimbursement Agreement. Developer shall also be required to pay for any and all costs, including, but not limited to, the design, installation, construction costs, etc. for any and all improvements required for the Project. For any and all improvements required for the Project, Developer shall further be required to reimburse the Township for the future maintenance costs for said improvements if Township is required to maintain said improvements.

b. Obligation to administer the Project as set forth in Section 2(b) of the Reimbursement Agreement, except for those Project administration tasks that by their nature must be performed by the Municipality (as defined therein). With regards to Project administration tasks that must be performed by the Municipality, Developer shall reimburse Township for any costs incurred by Township in performing said administration tasks.

c. Obligation to design the Project as set forth in Section 3(a) of the Reimbursement Agreement. Said design and any changes to said design are subject to approval by Township.

d. Obligation to secure all necessary approvals, permits and licenses as set forth in Section 3(b) of the Reimbursement Agreement. Developer shall also be required to pay for any and all costs, including, but not limited to, the design, installation, construction costs, etc. for any and all improvements required in order to receive any approvals, permits and/or licenses for the Project. For any and all improvements required for the Project, Developer shall further be required to reimburse the Township for the future maintenance costs for said improvements if Township is required to maintain said improvements.

e. All obligations of the Municipality concerning Utilities as set forth in first Section 4 of the Reimbursement Agreement.

f. All obligations of the Municipality concerning Utilities as set forth in second Section 4 of the Reimbursement Agreement.

g. Obligations of the Municipality as set forth in Section 5 of the Reimbursement Agreement concerning Pennsylvania Public Utility Commission ("PUC") matters, except to the extent that the Township is required to actually submit the necessary applications to the PUC. If Township is required to submit PUC applications, Developer shall reimburse Township for any costs incurred by Township connected to said PUC applications.

h. Payment of the costs of Right-of-Way Acquisition as set forth in Section 6 of the Reimbursement Agreement.

i. Obligation for Contract Development and preparation of bid documents as set forth in Sections 8(a), 8(b), 8(c), 8(d) and 8(e) of the Reimbursement Agreement.

j. Obligation for Letting and Award of Contracts as set forth in Section 9 of the Reimbursement Agreement. Township will execute the actual construction contract if it is a necessary party to said contract.

k. Obligation for Inspection and Construction Consulting Services as set forth in Sections 10(a) and 10(b) of the Reimbursement Agreement.

l. Payment Procedures and Responsibility Obligations as set forth in Sections 11(a)(b)(c)(d)(e)(f)(g)(h) and (i) of the Reimbursement Agreement, except for the establishment of necessary accounts and payment and deposit procedures that can't be assigned or delegated by the Township. Developer shall reimburse Township for any costs incurred by Township in connection with the establishment of necessary accounts and payment and deposit procedures that can't be assigned or delegated by the Township.

m. Recordkeeping Obligations as set forth in Section 12 of the Reimbursement Agreement, except for those Record Keeping obligations that can't be assigned or delegated under the Reimbursement Agreement. Developer

shall reimburse Township for any costs incurred by Township in connection with Record Keeping that can't be assigned or delegated under the Reimbursement Agreement.

n. Audit Obligations as set forth in Section 13 of the Reimbursement Agreement.

o. Obligations as set forth in Section 14 of the Reimbursement Agreement if the Project is abandoned or postponed; provided that the Township shall not abandon or postpone the Project or terminate the Reimbursement Agreement without the Developer's consent.

p. Reimbursement of the costs incurred by the Township to perform Maintenance and Operation Obligations, but not enforcement obligations, as set forth in Sections 15 (a)(b) and (e) of the Reimbursement Agreement insofar as they relate to the traffic signals. A Traffic Light Agreement shall be signed by the Parties for any traffic lights required to be installed for the Project. A copy of said Agreement is labeled Exhibit "C", attached hereto and incorporated herein by reference as if set forth in full hereunder. With regards to such traffic lights to be installed for the Project, the Parties agree that Township shall pay for the maintenance costs for said lights provided that Developer pays a one time payment in the amount of One Hundred Thousand Dollars ($100,000.00) per traffic light to Township for future maintenance costs for said lights. Each One Hundred Thousand Dollar payment shall be made by Developer to Township within thirty (30) days after such traffic light to be constructed is operating.

q. Obligation to save harmless as set forth in Section 16 of the Reimbursement Agreement.

r. Obligations for Compliance with the Required Contract Provisions as set forth in Section 19 of the Reimbursement Agreement.

s. Obligations for Compliance with the Contractor Integrity Provisions as set forth in Section 20 of the Reimbursement Agreement.

t. Obligations for Compliance with the Disadvantaged Business Enterprise Regulation Requirements as set forth in Section 23 of the Reimbursement Agreement.

u. Obligations for Compliance with the Disadvantaged Business Enterprise Assurance Provisions as set forth in Sections 24(a) and (b) of the Reimbursement Agreement.

v. Obligations for Compliance with the Lobbying Certification Disclosure Requirements as set forth in Section 25 of the Reimbursement Agreement.

w. Obligations for Compliance with the Americans with Disabilities Act Requirements as set forth in Section 26 of the Reimbursement Agreement.

x. Obligations for Compliance with the Contractor Responsibility Provisions as set forth in Section 27 of the Reimbursement Agreement.

y. Developer shall reimburse Township for any costs incurred by Township in connection with adhering to Compliance with the Electronic Access to Engineering and Construction Management System Provisions as set forth in Section 28 of the Reimbursement Agreement.

z. Developer shall cooperate with the Township so as to enable the Township to comply with the obligations set forth in Section 29 of the Reimbursement Agreement with respect to the Automated Clearing House Network. Developer shall reimburse Township for any costs incurred by Township in order to comply with the obligations of Township as set forth in Section 29 of the Reimbursement Agreement.

4. Notwithstanding anything in the Reimbursement Agreement, Letter Agreement or Future Approved Agreements to the contrary, Developer shall be completely and solely responsible for any and all costs, expenses, fees, or other related costs which are incurred and/or required as a result of performing any duties and obligations as set forth in Paragraph 3 above, elsewhere in this Agreement or in connection with the Project, whether or not such costs, expenses, fees, or other related costs are reimbursable or not under the Reimbursement Agreement or are in excess of the funding provided by such Reimbursement Agreement. The purpose of this provision is to acknowledge that while Township is agreeable to act as the local

governmental conduit through the federal grant and/or Letter Agreement, Reimbursement Agreement, or Future Approved Agreements to facilitate the design, bidding, and construction of the Project, under no circumstance is the Township agreeable to share in any costs, expenses, fees, or other related costs involved in the Project. Accordingly, any and all such costs, expenses, fees, or other related costs in any manner reasonably connected and/or required in connection with the Project shall be paid by Developer and Developer hereby agrees to indemnify and hold the Township harmless from any and all such costs, expenses, fees, or other related costs. Such indemnification shall include all costs, expenses, fees, or other related costs before, during, and after construction, including, but not limited to, any and all engineering fees which may be required to prepare specifications or other documentation relating to bidding for the Project, all costs associated with the bidding process, any and all costs associated with advertisement for bids, any local match portion of the grant funding, any and all costs which, before, during, and after the construction process, may by design or otherwise by necessity exceed the grant funds received by the Township for the Project and for any and all improvements required for the Project. Developer shall further be required to reimburse the Township for future maintenance costs for said improvements if the Township is required to maintain said improvements. Furthermore, as set forth more fully herein, the Township shall be entitled to be fully reimbursed by Developer, whether through grant funds or otherwise, for any Township administrative, legal, and/or engineering costs, expenses, and/or fees incurred by the Township concerning the Project. Developer acknowledges that the above costs, expenses, and/or fees shall include costs, expenses, and/or fees incurred by the Township prior to the execution of this Agreement.

5. In addition to assuming the obligations of Township to save harmless the Federal Highway Administration, the Commonwealth of Pennsylvania and the Pennsylvania Department of Transportation as set forth in Section 16 of the Reimbursement Agreement, Developer also agrees to indemnify, save harmless and defend (if requested) the Township and all of their officers, agents and employees, from all suits, actions or claims of any character, name or description, relating to personal

injury, including death, or property damage, arising out of the Project, by the Developer, 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 Developer, its consultants or contractors, their officers, agents and employees, during the performance of said work or thereafter, or to any other cause whatever. For purposes of the preceding sentence, any individuals that Township hires to perform work on behalf of Developer or the Township in connection with the Project shall be deemed to be agents of the Developer.

6. In addition to the indemnification obligations of Developer as set forth in Sections 4 and 5 of this Agreement, Developer also agrees to pay for, indemnify, hold harmless, and defend the Township for any and all costs whatsoever arising from the Project including, but not limited to the following:

a. Relocation costs;

b. Right-of-way acquisition costs;

c. Township loss of Liquid Fuels Funds caused by the Developer's failure to perform its obligations under this Agreement;

d. Monetary offset as set forth in Paragraph 21 of the Reimbursement Agreement arising from the failure by the Developer to perform its obligations under this Agreement;

e. Withholding of Federal-aid or State funds as set forth in Section 15(g) of the Reimbursement Agreement;

f. Maintenance and operation costs, but not enforcement obligations as set forth in Sections 15(a)(b)and (e) of the Reimbursement Agreement;

g. Maintenance and operation costs, but not enforcement obligations, for traffic control devices, including, but not limited to, traffic lights, signs and future maintenance costs for said devices as set forth in Section 15 (a)(b) and (e) of the Reimbursement Agreement and the Traffic Light Agreement;

h. For any and all improvements required for the Project, Developer shall further be required to reimburse the Township for the future maintenance for said improvements if Township is required to maintain said improvements.

In order to guarantee payment for the obligations of Developer as set forth in Sections 4, 5 and 6 of this Agreement, and elsewhere in this Agreement, Developer shall provide a Letter of Credit in the initial amount of Two Million ($2,000,000.00) Dollars that the Township can draw upon in order to pay for the obligations of Developer as set forth in the Agreement. The Letter of Credit shall be provided to Township at the time of execution of this Agreement. The amount of the Letter of Credit shall be reduced to One Million Dollars ($1,000,000) at the time that the construction contract is awarded for the Project. The Letter of Credit shall be obtained from a Pennsylvania bank located within a fifty (50) mile radius of the Township main office building. It shall be on a form approved by the Township Solicitor. In addition to the above Letter of Credit, Developer shall provide to the Township the sum of Fifty Thousand ($50,000.00) Dollars to be held by the Township in an interest bearing account to be utilized to offset the Township's legal, engineering, and/or administrative costs, expenses, and/or fees incurred by the Township, including any costs, expenses, and/or fees which were incurred prior to the execution of this Agreement. The Township shall have the right to draw against this amount at any time if the Developer shall fail to pay within thirty (30) days from receipt of any invoice submitted by the Township detailing such costs, expenses, and/or fees. If the Township legal, engineering, and/or administrative costs, expenses and/or fees exceed Fifty Thousand ($50,000.00) Dollars, Developer shall be responsible to pay said expenses, and upon failure to pay, Township may draw on the Letter of Credit to pay the excess. The administrative costs of Township may include fees paid to a consultant to help Township comply with the administration aspects of the Project.

7. Notwithstanding anything set forth in the Reimbursement Agreement, Letter Agreement or Future Approved Agreements, to the contrary, Developer, and/or its consultants, shall ensure that the Developer and/or Township has the right to occupy the area of the Project for purposes of constructing and maintaining the Project and that the public has the right to enter and use the area of the Project for a sufficient time after completion of construction to justify the expenditure of public funds on the Project; provided that the Township shall undertake the necessary right-of-way

acquisition pursuant to Section 3(h) of this Agreement. This right of occupancy by the Township and continued use by the public may be shown by deed of easement; by right-of-way, lease or license agreement; or by any other means found acceptable to the Township.

Upon request from the Township, Developer shall provide information necessary to document the right to occupy the area of the Project for construction, maintenance and use. Developer shall also supply any additional information as deemed necessary by the Township for this purpose. This may include the creation of a plan showing all property acquired by Developer's predecessors in title, including a designation of the nature of the predecessors' interests (i.e., whether in fee or easement) and a notation of where the instruments conveying those interests are located.

8. The Developer, by executing this Agreement, certifies that it has on hand sufficient funds to meet all of its obligations under the terms of this Agreement and that the Developer and not the Township shall bear and provide for all costs of the Project.

9. The parties by executing this Agreement certify that they have the legal authority to sign on behalf of the named parties to this Agreement.

10. This Agreement shall be binding upon the parties and their heirs, administrators, successors and assigns.

11. This Agreement shall be construed and enforced pursuant to the laws of the State of Pennsylvania.

12. Developer further agrees to indemnify fully and hold harmless the Township from any and all liability, loss or damage which the Township, its officers, agents and employees may suffer as a result of any and all claims, demands, costs, or judgments of any type arising against it as a result of the Project. The Developer shall obtain and at all times maintain commercial general liability insurance in the amount of at least $10,000,000, insuring against liability of the Developer for damages as a result of any bodily injury, property damage or personal injury. The Township shall be named as an additional insured under each commercial liability insurance policy.

13. Developer's obligations under this Agreement shall be joint and several.

14. This Agreement shall be recorded at the Franklin County Register and Recorder's office.

15. Developer shall comply with all regulations of the Code of the Township of Antrim concerning the Project, including, but not limited to, Subdivision and Zoning Regulations. In addition, the Parties acknowledge and understand that prior to signing this Agreement, Township is required to enact an Ordinance approving the Agreement.

16. This Agreement may be modified or amended only in writing, executed by all parties.

17. Counsel for all parties participated in the drafting of this Agreement, and all counsel shall be considered scriveners of the Agreement for interpretations purposes.

18. If any portion of this Agreement is found to be of no effect and/or unenforceable, then it shall be deemed stricken and the Agreement shall be treated as if such portion did not exist, and the remaining provisions shall encompass the total substance of this Agreement; provided, however, that if any portion of this Agreement is found to be partially enforceable, then it shall be enforceable to that extent.

19. This Agreement shall become effective on the date that the last party signs the Agreement. This Agreement shall remain in effect until all obligations of Township in all agreements with the Pennsylvania Department of Transportation have terminated and the Project is abandoned or completed, except for obligations of the Parties intended to survive completion of the Project as set forth in this Agreement, the Reimbursement Agreement, the Traffic Light Agreement and future agreements, if any, including, but not limited to, Developer's obligations as set forth in paragraph 6 of this Agreement. The Township shall be the last party to sign the Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed, with intent to be legally bound hereby, pursuant to due and proper authority.

Antrim Business Park, L.P
By: ATAPCO GP, LLC,
its General Partner

By: ATAPCO PROPERTIES, INC.
its Sole Member

Attest

_____

By:_____
Robert G. Aaron, President
Date:_____

Atapco GP, LLC
By: ATAPCO PROPERTIES, INC.
its Sole Member

_____

By:_____
Robert G. Aaron, President
Date:_____

Atapco Properties, Inc.

_____
Secretary

By:_____
Robert G. Aaron, President
Date:_____

Township of Antrim

_____
Secretary

By:_____
Chairman
Date:_____

STATE OF :
: SS
COUNTY OF :

On this day of , 2010, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be a duly authorized officer of Atapco Properties, Inc., the sole member of the general partner of Antrim Business Park, L.P., a Maryland limited partnership, and that, as such general partner, being authorized to do so, executed the foregoing instrument for the purposes therein contained and in such capacity.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public

STATE OF :
: SS
COUNTY OF :

On this day of , 2010, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be a duly authorized officer of Atapco Properties, Inc., the sole member of Atapco GP, LLC, and that he/she as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as a President.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public

STATE OF :
: SS
COUNTY OF :

On this day of , 2010, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be President of Atapco Properties, Inc., and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as President.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public

STATE OF PENNSYLVANIA :
: SS
COUNTY OF FRANKLIN :

On this, the ___ day of _____, 2010, before me, the undersigned officer, personally appeared , who acknowledged himself to be Chairman of the Township of Antrim Board of Supervisors, a municipal corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Board by himself as Chairman.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public

CERTIFICATE OF RESIDENCE

I hereby certify that the precise residence of the within Township is:

10655 Antrim Church Road
Greencastle, PA 17225

Witness my hand on _____day of _____, 2010.

_____

OS-2 (4-01)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
www.dot.state.pa.us

Engineering District 8-0
2140 Herr Street
Harrisburg 17103-1699
August 21, 2009

RECEIVED
AUG 24 2009
BY:

Antrim Township
Fred Young, III, Supervisor
P. O. Box 130
10655 Antrim Church Road
Greencastle, PA 17225

Dear Mr. Young:

This letter addresses the Interstate 81 Exit 3, US Route 11 Interchange (SR 0081-060, MPMS 87201) improvements project in your municipality. Our intention is to clarify the roles and responsibilities of the Township as the sponsor and PennDOT. This correspondence also serves as a general basis for any future reimbursement agreement.

The project is located in Antrim Township, Franklin County at Exit 3 (US Route 11) of Interstate 81. The project involves the design and construction of a realignment of the Interstate 81 Southbound off ramp at its terminus with US Route 11, traffic signals, and related improvements. The project may also involve improvements at the Interstate 81 Northbound off ramp at its terminus with US Route 11.

The project was approved by the Franklin County Rural Planning Organization on August 19, 2009. The 2009 TIP for Franklin County has been adjusted as shown below:

Phase	Federal	State	Local	Total
Preliminary Engineering	0	0	$850,000	$850,000
Final Design				
ROW				
Utilities				
Construction	$3,400,000	0	0	$ 3,400,000

Please note that the Federal funds shown in the table above are the $3,400,000 Federal earmark that will be made available for the construction phase of the project. The Township must agree as the local sponsor to perform and fund all costs associated with preliminary engineering (including but not limited to environmental clearances), final design, right-of-way acquisition, and utility clearances and relocation. These costs are estimated to be $850,000 or twenty percent (20%) of the overall project cost and are shown as the Local share in the table above.

-more-

EXHIBIT "A"

The Township will bid the project. The Commonwealth will be responsible for providing construction inspection and oversight. The Township will be required to fund at its expense any construction consultation or shop drawing review services performed by the design team during construction.

As noted above, an earmark in the maximum amount of $3,400,000 has been set aside to fund the construction phase of the project. The Department agrees to use the full earmark amount of $3,400,000 for all costs associated with construction including construction inspection up to the $3,400,000.00 earmarked amount (with the exception of construction consultation and shop drawing review conducted by the design team). Any significant change to the scope of work, unforeseen cost increases or any other request prompting further funding from either the Commonwealth or Federal Government may be requested through the planning process established by the Franklin County RPO.

The Department appreciates your continued interest and support for transportation improvements in the Commonwealth of Pennsylvania. We respectfully request your concurrence to this correspondence by signing below so the project development process may proceed. Please do not hesitate to contact Michael Lapano, Senior Project Manager, at 717-787-7482 or email him at mlapano@state.pa.us if you have any questions or need additional information.

Sincerely,

Michael S. Gillespie

Michael S. Gillespie, P.E.
Acting District Executive

Antrim Township concurs that the project description, project scope and the project funding scenario as outlined in this letter are consistent with our understanding of the project.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

TRAFFIC LIGHT AGREEMENT

THIS AGREEMENT, is made this _____ day of _____, 2010, by and between **Antrim Business Park, L.P.**, a Maryland limited partnership ("ABPLP"), with its principal office located at c/o Atapco Properties, Inc., 10 East Baltimore Street, Suite 1600, Baltimore, Maryland 21202, and **Atapco GP, LLC**, a Maryland limited liability company ("Atapco GP"), with its principal office located at c/o Atapco Properties, Inc., 10 East Baltimore Street, Suite 1600, Baltimore, Maryland 21202, hereinafter collectively referred to as "Developer"; and **Township of Antrim**, a Pennsylvania Municipal Corporation organized under the laws of Commonwealth of Pennsylvania, with its offices located at 10655 Antrim Church Road, Greencastle, (Township of Antrim), Franklin County, Pennsylvania 17225, hereinafter referred to as "TOWNSHIP".

WITNESSETH

WHEREAS, ABPLP owns certain property located near the Interstate 81 Exit 3, US Route 11 Interchange, (SR 0081 – 060, MPMS 87201), in Township of Antrim, Franklin County, Pennsylvania (the "Property"); and

WHEREAS, as a result of the development of the Property, traffic control lights will need to be constructed as per the Pennsylvania Department of Transportation specifications ("Traffic Control Lights"); and

WHEREAS, DEVELOPER, as part of the development, will be constructing the Traffic Control Lights as per Pennsylvania Department of Transportation specifications. All construction and installation shall be in accordance with the Pennsylvania Vehicle Construction Code and those regulations for traffic signs, signals and markings as promulgated by the Pennsylvania Department of Transportation; and

WHEREAS, the parties hereto do desire to reach an agreement with regard to the Traffic Control Lights; and

WHEREAS, traffic signal equipment is installed to serve a specific purpose through a distinct mode of operations; and

WHEREAS, the useful life of traffic signal equipment is defined as the time from installation until it is either removed or replaced with signal equipment which better serves the need of the intersection; and

WHEREAS, the Commonwealth of Pennsylvania and the Federal Highway Administration have established policies that mandate that all traffic signal lights be properly maintained and operated throughout its useful life; and

Exhibit "2" to Ordinance
Exhibit "C" to Assignment, Assumption and Indemnification Agreement

WHEREAS, the TOWNSHIP has indicated its willingness to accept ownership of the traffic signal lights.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound hereby, the parties hereto do covenant and agree as follows:

1.

The terms as set forth in the above "**WHEREAS**" paragraphs are hereby incorporated and made a part of this Agreement as if set forth in full hereunder.

2.

The parties hereto will submit to the Pennsylvania Department of Transportation ("PennDot") a Traffic Signal permit application to construct the lights. DEVELOPER, at its sole cost and expense, shall construct the Traffic Control Lights. Notice of intent to cause the construction thereof shall be provided to TOWNSHIP in writing no less than thirty (30) days prior to such construction. All construction and installation shall be in accordance with the Pennsylvania Vehicle Code and those regulations for traffic signs, signals and markings as promulgated by the Pennsylvania Department of Transportation. TOWNSHIP agrees to execute and/or join in necessary applications or agreements required in connection with the Traffic Control Lights set forth in Paragraph One (1) of this Agreement.

3.

Upon completion of the Traffic Control Lights and final acceptance by the Commonwealth of Pennsylvania, DEVELOPER shall dedicate same to TOWNSHIP and TOWNSHIP shall accept dedication whereon the title to the traffic signal installation(s) shall become the property of TOWNSHIP. In this connection, it is further understood that the TOWNSHIP shall provide preventive and response maintenance for the installation(s) covered by this Agreement.

4.

DEVELOPER shall have no ownership interest in the Traffic Control Lights or any of its components and this Agreement shall constitute a deed of gift to TOWNSHIP of the Traffic Control Lights and their components.

5.

DEVELOPER shall pay to TOWNSHIP those reasonable amounts incurred by TOWNSHIP for legal and engineering fees in the review and preparation of any plans, applications or agreements relating to this project. In addition, DEVELOPER shall pay to TOWNSHIP any reasonable amounts incurred by TOWNSHIP for fees charged by a licensed inspector for a necessary inspection of the installation and construction of the Traffic Control Lights.

6.

DEVELOPER and TOWNSHIP agree that in lieu of making any payments in respect of the costs to energize, operate, maintain, repair or insure the Traffic Control Lights, all of which costs shall be the responsibility of the TOWNSHIP, the DEVELOPER shall make a one-time payment to the TOWNSHIP in the amount of One Hundred Thousand Dollars ($100,000) for each Traffic Control Light. Such payment shall be made within thirty (30) days following the date on which the applicable Traffic Control Light becomes operational. Upon making such payment with respect to each of the Traffic Control Lights, DEVELOPER shall be deemed to have satisfied all of its obligations hereunder.

7.

Any costs or expenses chargeable to DEVELOPER under the terms hereof shall be due and payable within thirty (30) days after written demand therefore has been made. In the event of a default in such payment, DEVELOPER shall be responsible for the payment of all reasonable costs and expenses incurred by TOWNSHIP for collection, including reasonable attorney's fees actually incurred. Additionally, TOWNSHIP shall be authorized by this Agreement to place a lien of record with Franklin County against DEVELOPER, evidencing the amount of any unpaid portion of costs/expenses outstanding to TOWNSHIP by DEVELOPER. Said lien may be placed at any time following the expiration of the thirty (30) day payment period set forth above, and shall be deemed to have taken effect as of the date of recording.

8.

This Agreement shall be binding upon the parties hereto, their successors, legal representatives and assigns.

9.

This Agreement shall be construed and interpreted pursuant to the laws of the Commonwealth of Pennsylvania and all parties hereto do consent to jurisdiction and venue of The Court of Common Pleas of Franklin County, Pennsylvania.

10.

This Agreement may be assigned by either party hereto, and may be assumed by a third party, only with the written approval of the other party hereto. In the event DEVELOPER sells all of the remaining Property, no consent shall be required in connection with the assignment and assumption of this Agreement. Upon such sale, DEVELOPER shall be released from any liability hereunder, except for liability incurred to the date of sale. Such approval for the assignment or assumption of this Agreement shall not be unreasonably withheld or delayed. Either party may request reasonable financial information as to the new party to be added to this Agreement. In the event the parties hereto do agree to and approve the assignment or assumption of the rights and obligations set forth herein, the assignor shall thereby be released from any further rights, obligations or duties hereunder upon the execution of such assignment.

11.

In the event any portion or provision of this Agreement shall be deemed to be illegal, unconstitutional or unenforceable by any court of competent jurisdiction, such determination shall not affect the remaining portions hereof which shall remain in full force and effect.

12.

This Agreement constitutes the entire agreement between the parties hereto and may not be amended or modified except by a written document duly signed by all parties.

13.

All notices and other communications under or relating to this Agreement shall be in writing and shall be deemed duly given (i) if personally delivered with a signed and dated receipt, (ii) one (1) day after deposit with an overnight commercial courier, or (iii) three (3) days after being mailed by registered or certified mail, return receipt requested, first class, postage prepaid, addressed as follows:

If to DEVELOPER:

10 East Baltimore Street
Suite 1600
Baltimore, Maryland 21202

If to TOWNSHIP:

10655 Antrim Church Road
Greencastle, PA 17225

IN WITNESS WHEREOF, the parties hereto, with intent to be legally bound hereby, have set their hands and seals the date and year first above written.

Attest

Antrim Business Park, L.P.

By: Atapco GP, LLC,
its General Partner

By: Atapco Properties, Inc.,
its sole member

_____

By:_____
Robert G. Aaron, President

Date:_____

Atapco GP, LLC
By: Atapco Properties, Inc.,
its sole member

_____

By:_____
Robert G. Aaron, President

Date:_____

Township of Antrim

_____
Secretary

By:_____
Chairman

Date:_____

STATE OF :
: SS
COUNTY OF :

On this day of , 2010, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be a duly authorized representative of Atapco Properties, Inc. the sole member of the general partner of Antrim Business Park, L.P., a Maryland limited partnership, and that, as such representative, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited partnership by himself/herself in such capacity.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public

STATE OF :
: SS
COUNTY OF :

On this day of , 2010, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be a duly authorized officer of the sole member of Atapco GP, LLC, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself/herself in such capacity.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public

STATE OF PENNSYLVANIA :
: SS
COUNTY OF FRANKLIN :

On this, the ___ day of _____, 2010, before me, the undersigned officer, personally appeared , who acknowledged himself to be Chairman of the Township of Antrim Board of Supervisors, a municipal corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Board by himself as Chairman.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public

CERTIFICATE OF RESIDENCE

I hereby certify that the precise residence of the within Township is:

10655 Antrim Church Road
Greencastle, PA 17225

Witness my hand on _____day of _____, 2010.

_____

EFFECTIVE DATE _____ AGREEMENT NO. 089447
(Department will insert)
COUNTY Franklin FID NO. _____
MUNICIPALITY Antrim SAP VENDOR NO. _____
MPMS NO. 87201

GENERAL REIMBURSEMENT AGREEMENT
FOR FEDERAL-AID HIGHWAY PROJECTS

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

and

the Antrim Township, a political subdivision in the County of Franklin, 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 both on and off federal-aid systems within the states for the purpose of enhancing the safety and traffic flow on these roads, and has provided funds to be administered in accordance with the provisions of the various federal-aid highway acts, as amended, by the United States Department of Transportation, Federal Highway Administration ("FHWA"); and,

WHEREAS, the DEPARTMENT has adopted policies and procedures for the initiation and conduct of improvements by political subdivisions of the Commonwealth within such a Program for those public roads, pursuant to the requirements set forth in FHWA regulations

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Exhibit "3" to Ordinance

Exhibit "B" to Assignment, Assumption and Indemnification Agreement

implementing the provisions of the federal-aid highway acts and amendments to them, as set forth in the applicable provisions of Title 23 of the United States Code; and,

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

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

1. INCORPORATION BY REFERENCE

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

2. GENERAL PROVISIONS

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

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Street Name	Project Limits
Exit 3 Improvements	I-81 Interchange@ Exit3 with US11

(b) The MUNICIPALITY shall participate in the administration of the Project in accordance with the provisions of this Agreement and more specifically with the most current version of DEPARTMENT Publication No. 39, *Procedures for the Administration of Municipal Projects*, incorporated into this Agreement as though physically attached to it.

(c) The Project cost estimate, attached to and made a part of this Agreement as Exhibit "A," sets forth the phases being reimbursed, the estimated costs and the reimbursement percentages.

(d) If the cost for any phase 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 reimburse the MUNICIPALITY for the costs of these phases until the parties execute the letter of amendment. Adequate federal funds must be available before the parties may execute a letter of amendment, with a revised Exhibit "A" attached. A 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

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the letter of amendment. A sample letter of amendment is attached as Exhibit "Q" and made a part of this Agreement.

(e) If the DEPARTMENT determines that the cost for any phase listed in Exhibit "A" should be redistributed, and the redistribution does not result in an increase or decrease in the total Project costs, the parties must execute a letter of adjustment that will include a revised Exhibit "A." The DEPARTMENT cannot reimburse the MUNICIPALITY for the costs of these phases until the parties execute the letter of adjustment. A letter of adjustment is not effective until duly authorized representatives of the DEPARTMENT, the MUNICIPALITY and the Office of Comptroller Operations sign and date the letter of adjustment. A sample letter of adjustment is attached as Exhibit "R" and made a part of this Agreement.

(f) All other changes to terms and conditions of this Agreement must be in the form of a fully executed supplemental agreement signed by the same entities that executed the original agreement.

3. DESIGN

(a) 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:

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

(ii) DEPARTMENT Publication No. 39;

(iii) DEPARTMENT Design Manuals (Publication Nos. 10, 10A, 13M, 14M, 15M, 16M and 24);

(iv) DEPARTMENT Policy Letters;

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

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

(b) The MUNICIPALITY shall secure all necessary approvals, permits and licenses from all other governmental agencies, as may be required to complete the Project. This obligation includes preparing or revising environmental reports or other documents such as environmental impact statements, environmental assessments or categorical exclusions required by law, environmental litigation or both; and the defense of environmental litigation resulting from the planning, design or construction of the Project. At the DEPARTMENT's request, the

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MUNICIPALITY, prior to advertising and letting the Project, shall furnish the DEPARTMENT with evidence of the approvals, permits, licenses and approved environmental documents.

4. UTILITY CONSIDERATIONS (ON STATE HIGHWAYS)

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

(i) This coordination shall include:

(1) Obtaining written relocation agreements with all utilities located on the Project;

(2) Furnishing the MUNICIPALITY with a Project Utility Relocation Estimate, Form 4171-B, on which is shown:

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

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

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

(1) The DEPARTMENT's established procedures as defined in the most current version of DEPARTMENT Publication No. 16M, *Design Manual Part 5—Utility Relocation*; and

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

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

(i) If the utility documents that it has a real property interest compensable in eminent domain, in which case reimbursements shall be made pursuant to Section 412 of the State Highway Law, as amended (36 P.S. § 670-412);

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

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(iii) If the existing facilities affected are owned or operated by the MUNICIPALITY or a municipal authority that requests cost sharing pursuant to Section 412.1 of the State Highway Law, as amended (36 P.S.§ 670-412.1; or

(iv) If a municipal authority owns or operates the affected existing facilities, and the MUNICIPALITY attests that it normally pays for or assumes the costs of adjusting the facilities on projects undertaken by the MUNICIPALITY.

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

(i) If reimbursing a utility under subparagraphs (b)(i) or (b)(ii), the DEPARTMENT and the utility shall enter into the DEPARTMENT's standard reimbursement agreement. The DEPARTMENT will provide the MUNICIPALITY with a copy of the agreement and Form 4181-A, *Preliminary Estimate for Utility Relocation* to reimburse the DEPARTMENT, upon completion of the utility's work, for that portion of the actual utility relocation cost, as verified in Form 4181-B, *Summary of Billing for Utility Relocation*, not reimbursed to the DEPARTMENT by the FHWA, that portion being the percentage set forth in both Paragraph 11 and Exhibit "A."

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(ii) If the utility relocation costs incurred fall under subparagraph (b)(iii) or (b)(iv), and the MUNICIPALITY wishes to incorporate the utility relocation work into the Project's construction contract to be performed by the prime contractor or its subcontractor, the MUNICIPALITY shall prepare and submit to the DEPARTMENT the agreement addressing the incorporation of work, provided by the DEPARTMENT for this purpose, along with the required supplementing documentation in accordance with the most current version of DEPARTMENT Publication No. 16M. The MUNICIPALITY, upon completion of the utility work, shall reimburse the DEPARTMENT for that portion of the actual utility relocation cost paid to the contractor and not reimbursed to the DEPARTMENT by the FHWA, that portion being the percentage cited in Paragraph 11(b) of this Agreement.

(iii) If the utility relocation cost incurred falls under subparagraph (b)(iii) or (b)(iv) and the relocation work is not incorporated into the Project's construction contract, the MUNICIPALITY shall furnish the DEPARTMENT a detailed cost estimate package complying with the requirements in the most current version of DEPARTMENT Publication No. 16M together with the standard document provided by the DEPARTMENT, plus the required supplementing documentation in accordance with current procedures. The MUNICIPALITY agrees to

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

(d) If the MUNICIPALITY exercises its option under Paragraph 14 of this Agreement and abandons the Project after any utility has been authorized to proceed with its utility relocation work, the MUNICIPALITY, at its sole cost and expense, shall reimburse the utility for its actual and related indirect costs of work completed at the time of notification of the abandonment, plus any additional expenses incurred by the utility in restoring its system to normal operating conditions.

4. UTILITY CONSIDERATIONS (ON LOCAL ROADS)

(a) The MUNICIPALITY shall furnish Project plans to utilities known to have facilities within the Project limits and to all other utilities subsequently discovered within the Project limits.

(b) The MUNICIPALITY shall arrange for any necessary relocation or adjustment of all utility facilities and notify each utility company to relocate any affected facilities to accommodate the construction of the Project. The MUNICIPALITY, with the DEPARTMENT's guidance, shall make these arrangements in accordance with FHWA and DEPARTMENT requirements, as applicable. If any affected utility claims that the MUNICIPALITY is responsible for reimbursing the

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affected utility for its utility relocation costs pursuant to applicable state or local laws in effect when this Agreement is executed, the MUNICIPALITY shall furnish the DEPARTMENT with Form 4181-A, *Preliminary Estimate for Utility Relocation.* The utility shall prepare the form, which shall be accompanied by documentation justifying the MUNICIPALITY's legal obligation to reimburse the utility for utility relocation costs actually incurred by the utility. The DEPARTMENT, after review and approval of the cost estimates and documentation, will draft the necessary reimbursement agreement into which the MUNICIPALITY and the utility will enter. The DEPARTMENT will submit the agreement to the MUNICIPALITY for execution by the parties.

(c) If the MUNICIPALITY owns or operates the existing utility facilities, the MUNICIPALITY shall prepare and submit to the DEPARTMENT the standard intergovernmental agreement provided by the DEPARTMENT for this purpose. This document acknowledges that the utility facilities are located in the right-of-way and that the relocation costs are Project-eligible costs. If the MUNICIPALITY-owned or MUNICIPALITY-operated utility facilities are located within the DEPARTMENT right-of-way, the DEPARTMENT may share in the relocation costs pursuant to Section 412.1 of the State Highway Law, as amended, 36 P.S. § 670-412.1.

(d) Prior to advertising the Project for letting, the MUNICIPALITY, on forms provided by the DEPARTMENT, shall furnish a Utility Clearance Assurance

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Statement attesting that all arrangements have been made for the relocation of all known utility facilities affected by the Project. The MUNICIPALITY shall support this statement with a description of the written arrangements made with the utilities for the relocation of facilities, in a manner that will not impede Project construction.

(e) The MUNICIPALITY agrees that all utility facilities transferred to or remaining at a location within the right-of-way of a federal-aid highway shall be accommodated in accordance with the most current version of the *Federal-Aid Policy Guide Part 645*, Chapter I, Subchapter G, *Subpart B, Accommodation of Utilities,* and all subsequent amendments.

(f) If the MUNICIPALITY exercises its option under Paragraph 14 of this Agreement and abandons the Project after authorizing a utility to proceed with its utility relocation work, the MUNICIPALITY, at its sole cost and expense, shall reimburse the utility for its actual and related indirect cost of work completed at the time of notification of the abandonment, plus any additional expenses incurred by the utility in restoring its system to normal operating conditions.

5. APPLICATION TO PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

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

(b) If the PUC allocates costs to a railroad, and the railroad does not voluntarily agree to contribute the costs allocated to it by the PUC, these costs shall be shared as specified in Paragraph 11 of this Agreement.

(c) If the PUC allocates costs to the DEPARTMENT in excess of the DEPARTMENT's share provided for in Paragraph 11 of this Agreement, the MUNICIPALITY agrees to pay those excess costs.

6. RIGHT-OF-WAY ACQUISITION

(a) The MUNICIPALITY certifies that it shall acquire all right-of-way necessary to construct this Project in accordance with all of the applicable federal and state laws and policies and procedures pertinent to right-of-way acquisition; the most current version of DEPARTMENT Publication No. 98, *Guide for Local Public Agency Acquisition of Right-of-Way;* and *Procedures for Right-of-Way Acquisition*

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by Municipality—Federal-Aid Highway Projects, the latter of which is attached to and made a part of this Agreement as Exhibit "B."

(b) If the MUNICIPALITY must acquire right-of-way to accommodate the Project and the DEPARTMENT determines that the involved costs are eligible for federal-aid participation, the MUNICIPALITY and the DEPARTMENT shall include the eligible costs for the right-of-way phase in this Agreement, or in a letter of amendment or a letter of adjustment, as appropriate. If the right-of-way being acquired for the Project includes donated right-of-way, the DEPARTMENT shall utilize the federally-approved amount for donated credits in determining the eligible costs for the right-of-way phase.

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

7. AVAILABILITY OF MUNICIPAL FUNDS

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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, and that the MUNICIPALITY, and not the DEPARTMENT, shall bear and provide for all costs incurred in excess of those costs eligible for federal-aid participation.

8. CONTRACT DEVELOPMENT

(a) The MUNICIPALITY, by contract or with its own forces, shall be responsible for all work involved with contract development, including preparation of all plans, specifications, estimates ("PS&E") and bid proposal documents required to bid the Project. The essential documents to be prepared are listed in Exhibit "C," which is attached to and made part of this Agreement. All work shall conform with applicable federal and state laws and requirements including, but not limited to, those outlined in the most current version of the Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 633, Subpart C, *Direct Federal Construction* Contracts, and the *Stewardship and Oversight Agreement Between the FHWA and the DEPARTMENT,* dated February 2002.

(b) The MUNICIPALITY, upon completion, shall submit all required bid documents to the DEPARTMENT for review and approval. The DEPARTMENT, subject to reimbursement by the MUNICIPALITY for preparation costs, shall review the bid proposal documents required to bid the Project and issue an authorization to advertise for bids, upon:

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(i) FHWA authorization of 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; and

(v) Satisfactory resolution of any comments.

(c) The DEPARTMENT, prior to issuance to prospective bidders, must review and approve any addenda to the approved bid documents. The MUNICIPALITY shall issue addenda no later than seven (7) calendar days before the proposed bid opening.

(d) All bid documents shall require that the contractor be prequalified by the DEPARTMENT pursuant to 67 Pa. Code Chapter 457, *Prequalification of Bidders*.

(e) All bid documents shall require that the prospective bidders name the MUNICIPALITY as an additional insured on the certificate of insurance.

9. LETTING AND AWARD

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The MUNICIPALITY, if the FHWA and the DEPARTMENT have determined that the MUNICIPALITY has the experience and the expertise to administer the proper procedures, shall advertise for bids, open bids and award the construction contract in the MUNICIPALITY's name in accordance with applicable federal and state laws and requirements, including, but not limited to, those outlined in the most current versions of the Federal-Aid Policy Guide, Chapter 1, Subchapter G, Part 635, Subpart A, *Contract Procedures*, and DEPARTMENT Publication No. 39. If the FHWA and the DEPARTMENT determine that the MUNICIPALITY does not have the experience and the expertise to administer the proper procedures, the DEPARTMENT shall handle the letting and award procedures itself. In either case, the MUNICIPALITY shall enter into the contract with the successful bidder and issue the notice to proceed.

10. CONSTRUCTION INSPECTION

(a) The DEPARTMENT, with its own forces or by contract, shall provide staff to inspect and supervise adequately all construction work in accordance with the approved plans and specifications, including, but not limited to, the most current version of DEPARTMENT Publication No. 408, and its supplements and amendments. The DEPARTMENT shall provide the proper supervision and construction inspection to ensure that all work is in accordance with the most current versions of the Federal-Aid Policy Guide, Chapter I, Subchapter G, Parts 633, 635, and 637, *Required Contract Provisions, Construction and Maintenance, and Construction Inspection and Approval;* and DEPARTMENT Publication No. 9, *Policies and Procedures for the Administration of the County Liquid Fuels Tax*

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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. 39, will determine the level of inspection and the number of inspectors required for the Project. The MUNICIPALITY through its own forces, or by contract will provide construction consultation services to the DEPARTMENT during the construction of the PROJECT. The cost for construction consultant will be the responsibility of the

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

11. PAYMENT PROCEDURES AND RESPONSIBILITIES

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

(i) The MUNICIP*ALITY's payments made on current estimates of the construction work performed on the Project by the MUNICIPALITY or the MUNICIPALITY's con*sultant(s) or contractor(s).

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The DEPARTMENT shall submit these certified invoices to the FHWA for payment. As FHWA funds are made available, the DEPARTMENT shall pay the MUNICIPALITY for the proportionate share of the approved charges. As is the case with donated right-of-way (addressed above in Paragraph 6(b)), if the work being performed on the Project includes donated services, the DEPARTMENT shall utilize the federally-approved amount for donated credits in determining the eligible costs for these services.

(b) Subject to the terms of this Agreement, the DEPARTMENT, from funds allocated for this purpose by the FHWA, shall pay the MUNICIPALITY for ____ percent (__%) of the total allowable Project costs, as detailed in Exhibit "A." The MUNICIPALITY shall be responsible for the remaining _____ % of the total Project costs. This subparagraph shall not preclude the MUNICIPALITY from reducing the scope of the Project, with the approval of the DEPARTMENT, if the costs exceed the available funds. The MUNICIPALITY shall also be responsible for all costs incurred in excess of those eligible for federal-aid participation including, but not limited to, the following:

(i) Any and all costs relating to or resulting from changes made to the approved plans or specifications;

(ii) Time delays and extensions of time or termination of construction work;

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(iii) Interest for late payments;

(iv) Interest incurred by borrowing money;

(v) Unforeseen right-of-way and other property damages and costs resulting from the acquisition or condemnation, or both, of lands for the Project or the construction of the improvements;

(vi) Unforeseen utility relocations costs;

(vii) Unforeseen costs for environmental litigation and reports; and

(viii) All other unforeseen costs and expenses not included in the estimates of preliminary engineering, final design, utility relocation, right-of-way acquisition and construction costs, but which are directly related to or caused by the planning, design or construction of the Project.

(c) The MUNICIPALITY is obligated to submit to the DEPARTMENT invoices from the contractor(s) as it receives them, in accordance with the periodic schedule set forth above, to assure prompt payment of the consultant(s) and contractor(s) for work performed to date.

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(d) The MUNICIPALITY shall pay the federal and the MUNICIPALITY shares to its consultant(s) or contractor(s) within ten (10) calendar days of the date of the DEPARTMENT's payment. The MUNICIPALITY, as part of its record-keeping obligation, shall maintain records of receipt and payment of such funds. If the MUNICIPALITY fails to comply with this subparagraph or with the requirements of subparagraph (c) relating to submission of invoices, the MUNICIPALITY shall be in default pursuant to Paragraph 17; and the DEPARTMENT shall have the further right to change payment procedures unilaterally to a reimbursement basis.

(e) If the DEPARTMENT changes payment procedures unilaterally to a reimbursement basis, as provided in subparagraph (d), the following procedures shall apply:

(i) The MUNICIPALITY, within seven (7) days of the established estimate dates, shall submit to the DEPARTMENT certified periodic (maximum of two (2) per month) invoices for reimbursement.

(ii) The MUNICIPALITY shall include with the invoices verification of payment of the consultant(s) or contractor(s) by means of a copy of the cancelled check or a certified letter from the consultant(s) or contractor(s) acknowledging payment.

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(iii) After reviewing the verification concerning payment of the consultant(s) or contractor(s) and material certifications and determining them to be satisfactory, the DEPARTMENT shall approve the invoices for payment.

(iv) Upon approval of the invoices, the DEPARTMENT shall forward to the Office of Comptroller Operations a cover letter containing the agreement number, federal project number, federal percentage, and invoice amount, together with a copy of the payment estimate.

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

(f) The DEPARTMENT shall not reimburse the MUNICIPALITY for additional or extra work done or materials furnished that are not specifically provided for in the approved plans and specifications, unless the DEPARTMENT has issued prior written approval of the additional or extra work or materials. If the MUNICIPALITY performs any work or furnishes any materials without the DEPARTMENT's prior written approval, the MUNICIPALITY does so at its own risk, cost and expense. The MUNICIPALITY shall not interpret the DEPARTMENT's approval as authority to increase the maximum amount of reimbursement as specified in subparagraph (b) above.

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(g) For services performed by the DEPARTMENT, including, but not limited to, all required contract development, liaison and supervisory services, the MUNICIPALITY shall directly reimburse the DEPARTMENT for the DEPARTMENT's incurred costs. The DEPARTMENT will submit invoices to the FHWA for reimbursement of the federal share of such costs. The estimated cost of these services is set forth in Exhibit "A."

(h) The DEPARTMENT shall invoice the MUNICIPALITY on a monthly basis for those costs set forth in subparagraph (g). If the MUNICIPALITY fails to reimburse the DEPARTMENT within forty-five (45) days, the MUNICIPALITY shall be in default of payment; and the DEPARTMENT shall take necessary action in accordance with Paragraph 17 of this Agreement.

(i) The MUNICIPALITY shall submit its final invoices for payment or reimbursement, as the case may be, of the items set forth in subparagraph (a) to the DEPARTMENT within one (1) year of the acceptance of the Project. If the MUNICIPALITY fails to submit its final invoices within this one- (1-) year period, it may forfeit all remaining federal financial participation in the Project.

12. RECORDS

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The MUNICIPALITY shall maintain, and shall require its consultant(s) and contractor(s) to maintain, all books, documents, papers, records, supporting cost proposals, accounting records, employees' time cards, payroll records and other evidence pertaining to costs incurred in the Project and shall make these materials available at all reasonable times during the contract period and for three (3) years from the date of submission of the final voucher to the FHWA, for inspection or audit by the DEPARTMENT, the FHWA, or any other authorized representatives of the federal or state government; and copies thereof shall be furnished, if requested. Time records for personnel performing any work shall account for direct labor performed on the Project as well as the time of any personnel included in the computation of overhead costs. In addition, the MUNICIPALITY shall keep, and shall require its consultant(s) or contractor(s), as applicable, to keep, a complete record of time for personnel assigned part-time to the Project. A record of time limited to only their work on this Project will not be acceptable.

13. AUDIT REQUIREMENTS

As specified by the Federal Office of Management and Budget, the MUNICIPALITY agrees to satisfy the audit requirements contained in the Single Audit Act of 1984, 31 U.S.C. § 7501 *et seq.*, and, for this purpose, to comply with the *Audit Clause to Be Used in Agreements with Entities Receiving Federal Awards from the Commonwealth*, dated December 3, 2003, which is attached as Exhibit "D" and made a part of this Agreement. As used in the Audit Clause, the term "Subrecipient" means the MUNICIPALITY.

14. ABANDONMENT OR POSTPONEMENT OF PROJECT

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(a) If the MUNICIPALITY abandons or indefinitely postpones the Project, the MUNICIPALITY may terminate this Agreement by sending to the DEPARTMENT a thirty- (30-) day written notice of termination. By sending the written notice of termination, the MUNICIPALITY acknowledges that the FHWA will not participate in any costs of a project that is not completed and that the MUNICIPALITY must reimburse the DEPARTMENT for all costs incurred by the DEPARTMENT for the Project, with the exception of state-funded design costs. The MUNICIPALITY shall reimburse the DEPARTMENT, within forty-five (45) days of receipt of a statement from the DEPARTMENT, in an amount equal to the sum of the following:

(i) All FHWA funds received by the MUNICIPALITY for return to the FHWA;

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

(iii) All costs incurred by the DEPARTMENT under this Agreement prior to receipt of notice of termination that the FHWA or the MUNICIPALITY has not reimbursed.

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(b) If the MUNICIPALITY fails to reimburse the DEPARTMENT or the FHWA within the time period set forth in subparagraph (a) above, the MUNICIPALITY shall be in default pursuant to Paragraph 17 of this Agreement.

15. 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 under its jurisdiction. The MUNICIPALITY certifies that it shall make available sufficient funds to provide for the described maintenance program. Exhibit "E," attached to and made a part of this Agreement, lists the minimum maintenance requirements that the MUNICIPALITY must perform.

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

(i) Periodic inspections;

(ii) Functional review of traffic operations;

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(iii) Appropriate preventative maintenance, which shall include cleaning, lubrication and refurbishing of all electrical equipment;

(iv) A systematic record-keeping system; and

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

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

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

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(e) The MUNICIPALITY acknowledges that the traffic controls and parking regulations necessary to be maintained on these improvements are shown on Exhibit "F," attached to and made a part of this Agreement.

(f) 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 or ordinances under its jurisdiction necessary for the operation of the improvements.

(g) The MUNICIPALITY agrees that the DEPARTMENT shall withhold federal-aid or state funds, or both, until one or both of the following (as applicable) have taken place:

(i) The MUNICIPALITY has corrected the operation and maintenance services.

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(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.

(h) 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 is under the jurisdiction of the PUC.

16. SAVE HARMLESS

The MUNICIPALITY shall indemnify, save harmless and defend (if requested) the FHWA (if applicable), the Commonwealth of Pennsylvania, the DEPARTMENT, and all of their officers, agents and employees, from all suits, actions or claims of any character, name or description, relating to personal injury, including death, or property damage, arising out of the preliminary engineering, final design, right-of-way acquisition, utility relocation, construction, 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 consultants or contractors, their officers, agents and employees, during the performance of said work or thereafter, or to any other cause whatever.

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17. DEFAULT CLAUSE

If the MUNICIPALITY fails to perform any of the terms, conditions or provisions of this Agreement, including, but not limited to, any default of payment for a period of forty-five (45) days, the MUNICIPALITY authorizes the DEPARTMENT to withhold so much of the MUNICIPALITY's Liquid Fuels Tax Fund allocation as may be necessary to complete the Project or reimburse the DEPARTMENT in full for all costs due under this Agreement; and the MUNICIPALITY authorizes the DEPARTMENT to withhold such amount and to apply such funds, or portion thereof, to remedy such default.

18. FHWA APPROVAL

The parties agree that their responsibilities under this Agreement shall be made contingent upon the approval, prior to commencement of work, of the Project's eligibility for participation in federal funds to the extent of the proportionate share detailed in Exhibit "A," limited to the maximum dollar amount shown there; and, if this approval is not obtained, neither of the parties shall be further obligated by the terms of this Agreement.

19. REQUIRED CONTRACT PROVISION

The parties agree, and the MUNICIPALITY shall also provide in its contracts for the Project, that all designs, plans, specifications, estimates of cost, construction, utility relocation work, right-of-way acquisition procedures, acceptance of the work and procedures in general

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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, non-discrimination, anti-solicitation, information, auditing and reporting provisions. The MUNICIPALITY shall comply, and shall cause its consultant(s) and contractor(s) to comply, with the conditions set forth in the *Federal Nondiscrimination and Equal Employment Opportunity Clause*, dated January 1976, and the *Commonwealth Nondiscrimination/Sexual Harassment Clause*, dated June 30, 1999, which are attached as Exhibits "G" and "H," respectively, and made a part of this Agreement. As used in these clauses, the term "Contractor" means the MUNICIPALITY.

20. CONTRACTOR INTEGRITY PROVISIONS

The MUNICIPALITY shall comply, and shall cause its consultant(s) and contractor(s) to comply, with the *Contractor Integrity Provisions*, dated December 20, 1991, which are attached as Exhibit "I" and made a part of this Agreement. As used in these provisions, the term "Contractor" means the MUNICIPALITY.

21. OFFSET PROVISION

The MUNICIPALITY agrees that the Commonwealth may offset the amount of any state tax or Commonwealth liability of the MUNICIPALITY or its affiliates and subsidiaries that is owed to the Commonwealth against any payments due the MUNICIPALITY under this or any other contract with the Commonwealth.

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22. TERMINATION OF AGREEMENT FOR LACK OF FUNDS

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

23. DISADVANTAGED BUSINESS ENTERPRISE REGULATORY COMPLIANCE REQUIREMENTS

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

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

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Agreement. If a goal is established, this goal must be attained by the MUNICIPALITY's contractor or, in the alternative, a showing of good faith effort must be made. Determination of good faith effort shall be made by the MUNICIPALITY and is subject to the concurrence of the DEPARTMENT. The MUNICIPALITY shall comply with the following provisions, as applicable:

(i) If the Project requires prequalification, the MUNICIPALITY shall comply with *Designated Special Provision 7* of the Publication 408 Specifications, current edition, which is attached as Exhibit "K" and made a part of this Agreement.

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

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

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

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24. REQUIRED DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE PROVISION

(a) The MUNICIPALITY shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The MUNICIPALITY shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of United States Department of Transportation-assisted contracts. Failure by the MUNICIPALITY to carry out these requirements is a material breach of this Agreement, which may result in either the termination of this Agreement or such other remedy the DEPARTMENT deems appropriate.

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

25. LOBBYING CERTIFICATION DISCLOSURE

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

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26. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT

The MUNICIPALITY shall comply, and shall cause its consultant(s) and contractor(s) to comply, with the *Provisions Concerning the Americans with Disabilities Act*, dated January 16, 2001, which are attached as Exhibit "O" and made a part of this Agreement. As used in these provisions, the term "Contractor" means the MUNICIPALITY.

27. CONTRACTOR RESPONSIBILITY PROVISIONS

The MUNICIPALITY shall comply, and shall cause its consultant(s) and contractor(s) to comply, with the *Contractor Responsibility Provisions*, dated April 16, 1999, which are attached as Exhibit "P" and made a part of this Agreement. As used in these provisions, the term "Contractor" means the MUNICIPALITY.

28. ELECTRONIC ACCESS TO ENGINEERNG AND CONSTRUCTION MANAGEMENT SYSTEM

The DEPARTMENT, in furtherance of the powers and duties conferred on it by Section 2002 of the Administrative Code of 1929, as amended, 71 P.S. Section 512, to design and construct state highways and other transportation facilities and to enter into contracts for this purpose, has established a program whereby political subdivisions and other entities, both public and private, are permitted to register as DEPARTMENT business partners in order to access the DEPARTMENT's Engineering and Construction Management System ("System") for the

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purpose of electronically submitting technical proposals, invoices, engineering plans, designs and other documents necessary to design and construct transportation projects. If the MUNICIPALITY has not already executed a Business Partner Agreement and registered with the DEPARTMENT as a business partner, to be authorized electronic access to the System for the purposes of entering information into and exchanging data with the System, the MUNICIPALITY, by executing this Agreement, authorizes the DEPARTMENT to enter electronically the data necessary to register the MUNICIPALITY as a DEPARTMENT business partner. The MUNICIPALITY understands and acknowledges that registration as a business partner is necessary for it to receive payment for the Project. Furthermore, by becoming registered as a business partner, the MUNICIPALITY agrees to the following conditions:

(a) The MUNICIPALITY is responsible for furnishing and assuming the total costs of all software and hardware necessary to connect to the System. Such software shall include an operating system, an Internet browser and any software needed to operate a modem. The MUNICIPALITY is responsible for the procurement and cost of any data communications lines required to connect to the System. The MUNICIPALITY is responsible for the cost of telephone lines and usage.

(b) The MUNICIPALITY will be permitted access to the System as the DEPARTMENT shall direct.

(c) The MUNICIPALITY shall implement appropriate security measures to insure that only authorized employees of the MUNICIPALITY will have access to and enter

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data into the System. The MUNICIPALITY agrees to assign only its current employees User Identification Internet System access codes ("User ID codes") provided to the MUNICIPALITY by the DEPARTMENT. The MUNICIPALITY agrees to assign a separate and distinct User ID code to each current employee who will concur in awards, sign contracts and approve payments. The MUNICIPALITY agrees to accept full responsibility for controlling the User ID codes that the MUNICIPALITY assigns to the employees of the MUNICIPALITY. The MUNICIPALITY agrees to deactivate an employee's User ID code immediately upon the employee's separation and/or dismissal from the employ of or association with the MUNICIPALITY. The MUNICIPALITY agrees that the MUNICIPALITY'S employees may not share User ID codes. The MUNICIPALITY agrees to be responsible for the items submitted under one of its assigned User ID codes.

(d) The DEPARTMENT shall make provisions for the MUNICIPALITY to obtain initial training for the System. This training may not include any non-System program topics, nor may it include training on any other computer hardware or software, including, but not limited to, operation of a personal computer.

(e) The DEPARTMENT will make reasonable attempts (barring unforeseen interruptions due to calamity, natural disaster or technical impossibility) to make the System available for on-line access 24 hours per day, seven days per week, except for ten hours each workday when the System databases are updated. The

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DEPARTMENT will provide support only during the normal business hours of the DEPARTMENT offices.

29. AUTOMATED CLEARING HOUSE PROVISIONS

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

(a) The DEPARTMENT will make payments to the MUNICIPALITY through ACH. Within 10 days of the execution of this Agreement, the MUNICIPALITY must submit or must have already submitted its ACH information on an ACH enrollment form (obtained at www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf) 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

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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.

30. EFFECTIVE DATE

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

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

ATTEST: MUNICIPALITY*

_____ BY _____

Title: Date Title Date

DO NOT WRITE BELOW THIS LINE – FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
District Executive Date

APPROVED AS TO LEGALITY
AND FORM

BY _____
for Chief Counsel Date

BY _____
Deputy General Counsel Date

BY _____
Deputy Attorney General Date

FUNDS COMMITMENT DOC. NO._____
CERTIFIED FUNDS AVAILABLE UNDER
SAP NO. _____
SAP COST CENTER_____
GL ACCOUNT_____
AMOUNT_____

BY_____
for Comptroller Operations Date

Contract No. 089447, is split 100%, expenditure amount of $3,400,000 for federal funds and 0%, expenditure amount of _____ for state funds. The related federal assistance program name and number is_____;_____. The state assistance program name and SAP fund is _____;_____.

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

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PROJECT ESTIMATED COSTS

	Municipality-Incurred Costs	Commonwealth-Incurred Costs	Phase Totals
Preliminary Engineering	$ 850,000	$ 0.00	$ 850,000
Final Design	$ 0.00	$ 0.00	$ 0.00
Utilities	$ 0.00	$ 0.00	$ 0.00
Right-of-Way	$ 0.00	$ 0.00	$ 0.00
Construction	$ 3,036,000.00	$ 364,000.00	$ 3,400,000.00
SUBTOTALS	$ 3,886,000.00	$ 364,000.00	$ 4,250,000.00

COST SHARING (Municipality-Incurred Costs)

	Federal (80 %)	State (0 %)	Municipality (20 %)	State Act 26 (0 %) (If Applicable)	Phase Subtotals
Preliminary Engineering	$ 0.00	$ 0.00	$ 850,000.00	--	$ 850,000.00
Final Design	$ 0.00	$ 0.00	$ 0.00	--	$ 0.00
Utilities	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Right-of-Way	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Construction	$ 3,400,00.00	$ 0.00	$ 0.00	$ 0.00	$3,400,000.00
TOTALS	$ 3,400,000.00	$ 0.00	$ 850,000.00	$ 0.00	$4,250,000.00

COST SHARING (Commonwealth-Incurred Cost)

	Federal (%)	State (%)	Municipality (%)	State Act 26 (%) (If Applicable)	Phase Subtotals
Preliminary Engineering	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Final Design	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Utilities	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Right-of-Way	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
Construction	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
TOTALS	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

TOTAL COST

Federal	State	Municipality	Total
($ 3,400,00.00)	($0.00)	($850,000.00)	($ 4,250,000.00)

COUNTY: Franklin
MUNICIPALITY: Antrim Township
PROJECT NAME: Exit 3 Improvements

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

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

b. The MUNICIPALITY shall strictly comply with all applicable right-of-way acquisition procedures set forth in the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the DEPARTMENT's current Right-of-Way Manual and its amendments.

c. The MUNICIPALITY, subject to the supervision of the DEPARTMENT, shall be responsible for all negotiations, defense of all claims, and initial payment of all property damages resulting from the acquisition, condemnation or both, of right-of-way for this Project. These acquisition costs shall include, but are not limited to:

(1) Payment of claims of the affected property owners;

(2) Photographic, appraisal and engineering services;

(3) Title reports;

(4) Counsel fees;

(5) Expert witness fees required for the adjudication of all property damage claims;

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

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

d. The DEPARTMENT, with funds allocated to it by the FHWA, shall reimburse the MUNICIPALITY for the Federal share of the right-of-way costs incurred by the MUNICIPALITY as provided in Paragraph 11 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.

h. Prior to advertisement for the receipt of bids, the MUNICIPALITY shall certify to the DEPARTMENT that all right-of-way acquired by the MUNICIPALITY for this Project was acquired in accordance with all applicable federal and state laws and policies, including, but not limited to, DEPARTMENT Publication No. 98.

PLANS, SPECIFICATIONS, ESTIMATES AND BID PROPOSAL PACKAGE

A. Plans and Estimates

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

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

Proposal Cover Sheet
Bidder's Understanding of Conditions Applicable to Proposal
Bid Proposal Guaranty Bond
Bidder Certification of Prequalification, Classification and Work Capacity
List of Subcontractors
Statement of Joint Venture Participation
Affirmative Action Certification
Signatures (Three (3) Pages)

C. Special Provisions

Pre-Bid Conference
Award of Contract
Anticipated Notice to Proceed Date
Minority Business Enterprise Program
Equal Employment Opportunity Reporting Requirements
Affirmative Action Requirements Equal Employment Opportunity
Sworn Affidavit
Act 287
Act 247
Air Pollution Control
Trainees
Utilities
Specifications
General Contract Conditions

D. Attachments

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

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

The [NAME OF SUBRECIPIENT] must comply with all federal and state audit requirements including: the *Single Audit Act, as amended, 31 U. S. C. 7501 et. seq.*; Office of Management and Budget (OMB) *Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, as amended*; and any other applicable law or regulation and any amendment to such other applicable law or regulation which may be enacted or promulgated by the federal government.

If the [NAME OF SUBRECIPIENT] is a local government or non-profit organization and expends total federal awards of $500,000 or more during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, the [NAME OF SUBRECIPIENT] is required to have an audit made in accordance with the provisions of OMB *Circular A-133*.

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

SUBMISSION OF AUDIT INFORMATION TO THE COMMONWEALTH.

The [NAME OF SUBRECIPIENT] must submit copies of the audit report package to the Commonwealth, which shall include:

1. Data Collection Form.

2. Financial statements and schedule of expenditures of federal awards.

3. Auditor's reports on the financial statements and schedule of expenditures of federal awards, internal control and compliance as well as a schedule of findings and questioned costs.

4. Summary schedule of prior audit findings.

5. Corrective action plan.

6. Management letter comments.

The number of copies to be submitted shall equal one for the Bureau of Audits (archival copy) plus one for each Commonwealth agency which provided federal pass-through awards to the entity, as reflected in the entity's Schedule of Expenditures of Federal Awards. The audit report package should be submitted to the:

Office of the Budget/Bureau of Audits
Division of Subrecipient Audit Review
Verizon Tower – 6th Floor
303 Walnut Street
Harrisburg, PA 17101
Phone: (717) 783-9120
Fax: (717) 783-0361

Exhibit "D"

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 audit guide and OMB *Circular A-133*.

GENERAL AUDIT PROVISIONS.

The [NAME OF SUBRECIPIENT] is responsible for obtaining the necessary audit and securing the services of a certified public accountant or other independent governmental auditor. Federal regulations preclude public accountants licensed in the Commonwealth of Pennsylvania from performing audits of federal awards.

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

Exhibit "D"

GUIDELINES TO PREPARING MUNICIPAL METHOD OF MAINTENANCE OPERATION AND SERVICES

1. The MUNICIPALITY must provide for the proper maintenance of all completed project(s) under its jurisdiction. To comply with this federal requirement, the MUNICIPALITY shall establish or maintain a functional traffic engineering unit throughout the design life of all project(s).

2. A functional traffic engineering unit consists of, at a minimum:

   (a) A competent and qualified traffic engineer; and

   (b) A maintenance staff with at least one licensed electrician skilled in the operation and repair of traffic signal equipment.

3. To be considered capable of effectively maintaining completed project(s), the municipal maintenance staff must be provided with the proper equipment and materials necessary, at a minimum, to:

   (a) Repair and replace worn out or damaged signal equipment;

   (b) Install new and replace damaged or obsolete traffic signs; and

   (c) Install or replace paint and thermoplastic pavement markings.

4. The MUNICIPALITY should evaluate its present and proposed organizational charts to determine if the MUNICIPALITY is capable of providing a functional traffic engineering unit within their government. Guidelines for considering the inclusion of a functional traffic engineering unit have been published by the Institute of Traffic Engineers ("ITE"), and should be reviewed by MUNICIPALITY in evaluating their organizational chart. The ITE guidelines make reference to the Model Traffic Ordinance (*Uniform Vehicle Code and Model Traffic Ordinance*, published by the National Committee on Uniform Traffic Laws and Ordinances) as being the best method of providing the legal basis for establishing a traffic engineering function.

5. If the MUNICIPALITY is unwilling or unable to provide the traffic engineering function from within its organization, the MUNICIPALITY has the option of contracting with an outside agent or agency for the required traffic engineering expertise and maintenance.

6. Functional Traffic Engineering Unit Method.

   (a) In preparing to comply with this Exhibit, the MUNICIPALITY must select one of the following methods for providing a functional traffic engineering unit:

(i) Municipal Traffic Engineer and Municipal Maintenance Staff.

(ii) Contractual Traffic Engineer and Municipal Maintenance Staff.

(iii) Contractual Traffic Engineer and Contractual Maintenance Staff.

(iv) Municipal Traffic Engineer and Contractual Maintenance Staff.

(b) Depending on which method is chosen, the guidelines for the functional traffic engineering unit shall include, but not be limited to, the following:

(i) **Municipal Traffic Engineer:**

(1) A brief description of educational background and work experience including the length of employment as Municipal Traffic Engineer;

(2) A description of duties assigned and powers delegated to the Municipal Traffic Engineer under municipal ordinance; and

(3) A municipal organizational chart showing the Traffic Engineer's position in the hierarchy of municipal government.

(ii) **Municipal Maintenance Staff:**

(1) The number of employees permanently assigned to this function and the number which may be assigned on a temporary basis;

(2) A brief description of the organization of the staff, including the length of time that it has been in existence; and

(3) A clear demonstration of the maintenance staff's ability to properly maintain and repair traffic signal equipment.

(iii) **Contractual Traffic Engineer:**

(1) The MUNICIPALITY's assurance that the Contractual Traffic Engineer hired is qualified and competent in all aspects of traffic engineering; and

(2) It will not be necessary to include the name and professional background of the individual or organization.

(iv) **Contractual Maintenance Staff:**

(1) A brief description of the organization to be hired, including a history of its experience in this field; and

(2) The MUNICIPALITY's assurance that the organization is capable of properly maintaining and repairing traffic signal equipment and that it has adequate staff available in case of emergency.

Required Traffic Controls and Parking Regulations

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

2. The MUNICIPALITY agrees to maintain and enforce the traffic controls and parking regulations set forth below and to adopt any resolutions necessary for the accomplishment of same. If MUNICIPALITY fails to provide a functional traffic engineering unit within its own organization, it is understood that prior COMMONWEALTH and/or FHWA approval will be required for changes to the controls and regulations listed. Prior approval will not be required for the following:

   (a) Expansion of the time restriction for "No Parking" beyond that which is specified.

   (b) Erection of warning sign, painted crosswalks and other traffic control devices not specified below as long as they conform to the requirements in the 1971 edition of the Manual on Uniform Traffic Control Devices and do not require the Secretary's approval as specified in the Vehicle Code.

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

(See attached for format)

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

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

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

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

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

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

   c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the 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.

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

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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 Provisions.

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COMMONWEALTH NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

Each contract entered into by a governmental agency shall contain the following provisions by which the contractor agrees:

1. In the hiring of any employees(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the contractor, subcontractor, or any person acting on behalf of the contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

3. Contractors and subcontractors establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

4. Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.

5. The contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency an the Bureau of Contract Administration and Business Development, for purposes of investigations, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

6. The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontractor so that such provisions will be binding upon each subcontractor.

7. The Commonwealth may cancel or terminate the contract, and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the contractor in the Contractor Responsibility File.

Exhibit "H"

December 20, 1991

CONTRACTOR INTEGRITY PROVISIONS

1. Definitions.

   a. Confidential Information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

   b. Consent means written permission signed by a duly authorized officer or employe 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 execution of this agreement.

   c. Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employes, and owners of more than a 5% interest.

   d. Financial interest means:

      (1) ownership of more than a 5% interest in any business; or

      (2) holding a position as an officer, director, trustee, partner, employe, or the like, or holding any position of management.

   e. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

2. The contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

3. The contractor shall not disclose to others any confidential information gained by virtue of this agreement.

4. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employe of the Commonwealth.

5. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employe of the Commonwealth.

6. Except with the consent of the Commonwealth, neither the contractor nor anyone in privity with him shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.

7. Except with the consent of the Commonwealth, the contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

8. The contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

9. The contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.

10. The contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractor's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the contractor for a period of three years beyond the termination of the contract unless otherwise provided by law.

11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

Exhibit "I"

January 29, 2001

Disadvantaged Business Enterprise & Small Business Concern Involvement

The Commonwealth of Pennsylvania is committed to providing opportunities for Disadvantaged Business Enterprises and small business concerns to compete for work. Small business concerns are those entities seeking to participate in Commonwealth contracts that meet the definition of a small business concern set forth in Section 3 of the Small Business Act and Small Business regulations implementing it at 13 C.F.R. Part 21. Contractors are encouraged to involve Disadvantaged Business Enterprises and small business concerns in the required work and to submit documentation of any such involvement in the proposal/project.

APPENDIX C
DESIGNATED SPECIAL PROVISION 7 (DSP7)
DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

NOTE: Use on Federal aid projects only. Requires merge-line document for participation goal percentage.

I. DBE GOAL -

To create a level playing field on which DBE's can compete fairly for U.S. Department of Transportation assisted contracts, the Pennsylvania Department of Transportation has established, in connection with this contract, a goal of __% of the original contract amount for the utilization of firms owned and controlled by socially and economically disadvantaged individuals certified as DBEs by the Department at the time submission of Attachment A documents are due. This goal remains in effect throughout the life of the contract. When the award of the contract is made with a DBE participation less than the contract goal, continue Good Faith Effort throughout the life of the contract to increase the DBE participation to meet the contract goal.

Include the following provisions in every subcontract, so that such provisions will be binding upon each subcontractor, regular dealer, manufacturer, consultant, or service agency.

(a) **Policy.** It is the policy of the U.S. Department of Transportation and the Pennsylvania Department of Transportation that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, as amended, and this provision, be given the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of 49 CFR Part 26, as amended, apply to this contract. The term DBE as used throughout also applies to Women Business Enterprises and all requirements herein are applicable.

(b) **DBE Obligation.** Take all necessary and reasonable steps, in accordance with 49 CFR Part 26, as amended, to ensure that DBEs have the opportunity to compete for and perform contracts. Do not discriminate on the basis of race, color, national origin, or sex in the award and performance of Pennsylvania Department of Transportation and U.S. Department of Transportation assisted contracts.

(c) **Failure to Comply with DBE Requirements.** All contractors and subcontractors are hereby advised that failure to carry out the requirements specified hereinabove constitutes a breach of contract and, after notification to the U.S. Department of Transportation, may result in termination of the contract, being barred from bidding on Department contracts for up to three (3) years, or any other remedy that the Pennsylvania Department of Transportation deems appropriate. Failure to comply with DBE requirements includes, but is not limited to, failure to submit Attachment A within the time period specified, failure to exert a reasonable Good Faith Effort to meet the established goal, or failure to realize the DBE participation set forth on the approved Attachment A. Failure to submit Attachment A within the specified time requirements may result in forfeiture of the bid guaranty. Failure to exert reasonable Good Faith Effort may result in forfeiture of the bid guaranty.

II. DEFINITIONS -

Consistent with the federal regulations, the following definitions apply for terms used in this specification:

(a) Disadvantaged business enterprise or DBE means a for-profit small business concern -

(1) That is a 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 DBE's 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 subsection 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 --

- Any individual who the Department finds to be a socially and economically disadvantaged individual on a case-by-case basis.

- Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

1. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

2. "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;

3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

4. "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;

5. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

6. Women;

7. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

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

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

(f) Attachment A. Pennsylvania Department of Transportation Form EO-3 80, Schedule of DBE Participation.

(g) Revised Attachment A. Form EO-3 80, Schedule of DBE Participation, which includes new DBE firm(s) as well as those not affected by the revision.

III. COUNTING DBE PARTICIPATION TOWARD THE DBE GOAL -

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

Count DBE participation toward meeting the DBE goal as follows:

(a) **DBE Firms.** If a firm is certified by the Department as an eligible DBE at the time submission of Attachment A documents are due, the total dollar value of the contract awarded to the DBE is counted toward the applicable DBE goal except as provided below.

When a DBE participates in a contract, count only the value of the work actually performed by the DBE toward DBE goals.

The Department requires that all prime contractors including DBE prime contractors perform at least fifty percent (50%) of the work on a Department project. A DBE bidder on a prime contract will receive credit toward any DBE goal for all work performed with its own forces. The Department strongly encourages DBE prime contractors to make additional outreach efforts to solicit DBEs to perform subcontracting work on the project.

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

Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

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

Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

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

(b) **Materials and Supplies.**

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

   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.

2. DBE Regular Dealer. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

   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.

   To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

(c) **Services.** With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

(d) **Trucking Firms.** The following factors are used in determining DBE credit:

(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 above, 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.

Any services to be performed by a DBE agency are required to be readily identifiable to the project.

(e) **Specialty Items.** In cases where specialty items and DBE involvement overlap, follow the requirements in Section 108.0 1(c).

IV. ACTIONS REQUIRED BY THE BIDDER AT THE BIDDING STAGE AND PRIOR TO AWARD -

When the goal established by the Department is met or exceeded, the apparent low bidder is required to:

(a) deposit Attachment A documents signed by the apparent low bidder and DBE in Contract Awards Office, 6th Floor, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, by 3:00 P.M. Prevailing Local Time of the seventh (7th) calendar day after the bid opening.

(b) or send them to the Pennsylvania Department of Transportation, P.O. Box 2827, Harrisburg, PA 17105 via FIRST CLASS MAIL by the fifth (5th) calendar day after the bid opening. Provide U.S. Postal Service Form 3817 (Certificate of Mailing), executed, as required, by an authorized postal official, as proof of timely mailing. Include the 6-digit CMS Number for the project on the executed Form 3817. Attach the original executed Form 3817 to the submission prior to sealing the envelope, or firmly affix it to the sealed envelope, and retain a copy as proof of mailing in the event of nonreceipt by the Department.

(c) or send them to Contract Awards Office by facsimile (FAX) 717-705-1504 by 3:00 P.M. Prevailing Local Time of the seventh (7th) calendar day after the bid opening. Contractor shall assume all risk for the receipt of the Attachment A by the required time. The fax line is a dedicated line to be used exclusively for submission of the Attachment A and not for other communication with the Department.

When the goal established by the Department is not met, demonstrate a Good Faith Effort to meet the DBE contract goal. Demonstrate that the efforts made were those that a bidder seeking to meet the goal established by the Department would make, given all relevant circumstances. Deposit original Attachment A documents and the Good Faith Effort documentation so that they are received by the time specified above.

When the above-required documentation is not provided by the apparent low bidder within the time specified, the bid will be rejected and the apparent next lowest bidder will be notified by telephone to:

(a) deposit Attachment A documents signed by the apparent low bidder and DBE in Contract Awards Office, 6th Floor, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, by 3:00 P.M. Prevailing Local Time of the seventh (7th) calendar day after the notification.

(b) or send them to the Pennsylvania Department of Transportation, P.O. Box 2827, Harrisburg, PA 17105 via FIRST CLASS MAIL by the fifth (5th) calendar day after the notification. Provide U.S. Postal Service Form 3817 (Certificate of Mailing), executed, as required, by an authorized postal official, as proof of timely mailing. Include the 6-digit CMS Number for the project on the executed Form 3817. Attach the original executed Form 3817 to the submission prior to sealing the envelope, or firmly affix it to the sealed envelope, and retain a copy as proof of mailing in the event of nonreceipt by the Department.

(c) or send them to Contract Awards Office by facsimile (FAX) 717-705-1504 by 3:00 P.M. Prevailing Local Time of the seventh (7th) calendar day after the notification. Contractor shall assume all risk for the receipt of the Attachment A by the required time. The fax line is a dedicated line to be used exclusively for submission of the Attachment A and not for other communication with the Department.

The demonstration of "Good Faith Effort" is accomplished by seeking out DBE participation in the project given all relevant circumstances. A list of general work classifications is listed in the proposal under "Items Subcontractible to DBE firms." The following are the kinds of efforts that may be taken, but they are not deemed to be exclusive or exhaustive. The Director and/or Committee will consider other factors and types of efforts that may be relevant:

- 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 opening, to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

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

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

- Efforts made to negotiate in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract 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 Effort. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

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

- Efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.

- Efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

- Efforts to effectively use the 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.

If the goal has not been met at the time of bid submission, the Bidder is expected to make a concerted effort between that time and the time that Attachment A documents are due.

V. ACTIONS TO BE TAKEN BY THE DEPARTMENT BEFORE AWARD.

If the apparent low bidder meets the DBE contract goal and all other contract requirements, the Department will approve the submission.

NOTE: If any DBE listed on the Attachment A is not prequalified, if required, at the time the Department desires to award the contract, the Department will issue a conditional approval of the Attachment A to the apparent low bidder.

If the apparent low bidder fails to meet the DBE contract goal, the Director and/or Committee will review the apparent low bidder's DBE data and Good Faith Effort to meet the DBE contract goal. If the Good Faith Effort is deemed satisfactory, the Director and/or Committee will recommend award.

If the Committee determines that the apparent low bidder has failed to make a Good Faith Effort, the bid will be rejected and the apparent low bidder will be notified of the rejection. The Department will then notify, by telephone, the apparent next lowest bidder on the project to:

(a) deposit Attachment A documents signed by the apparent low bidder and DBE in Contract Awards Office, 6th Floor, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, by 3:00 P.M. Prevailing Local Time of the seventh (7th) calendar day after the notification.

(b) or send them to the Pennsylvania Department of Transportation, P.O. Box 2827, Harrisburg, PA 17105 via FIRST CLASS MAIL by the fifth (5th) calendar day after the notification. Provide U.S. Postal Service Form 3817 (Certificate of Mailing), executed, as required, by an authorized postal official, as proof of timely mailing. Include the 6-digit CMS Number for the project on the executed Form 3817. Attach the original executed Form 3817 to the submission prior to sealing the envelope, or firmly affix it to the sealed envelope, and retain a copy as proof of mailing in the event of nonreceipt by the Department.

(c) or send them to Contract Awards Office by facsimile (FAX) 717-705-1504 by 3:00 P.M. Prevailing Local Time of the seventh (7th) calendar day after the notification. Contractor shall assume all risk for the receipt of the Attachment A by the required time. The fax line is a dedicated line to be used exclusively for submission of the Attachment A and not for other communication with the Department.

The bidder's proposal and all appropriate DBE data will be submitted to the Director and/or Committee for evaluation. If, during the review of the bidder's DBE data and Good Faith Effort information, the Director and/or Committee has questions, the bidder may be contacted for clarification.

VI. ACTION TO BE TAKEN BY THE DEPARTMENT AFTER AWARD -

To ensure that all obligations awarded to DBEs under this contract are met, the Department will review the Contractor's DBE involvement efforts during the performance of the contract.

(a) **Sanctions.** Upon completion of the work the Department will review the actual DBE participation realized and make a determination regarding the Contractor's compliance with the applicable requirements specified herein.

In the event the Contractor is found to be in noncompliance the Prequalification Officer, acting under the direction of the Committee, may impose sanctions that the Committee deems appropriate.

Sanctions may be imposed for unwarranted shortfalls in the approved goal.

VII. ACTION REQUIRED BY THE CONTRACTOR AFTER AWARD -

(a) **DBE Participation Goal.** When Attachment A is approved with a DBE participation less than the contract goal, continue efforts toward meeting the contract goal.

(b) **Prequalification or Approval.** Firms listed on Attachment A are not to commence work until they are prequalified or approved, if required.

When submitting Form 4339R, Request for Subcontractor Approval, to the District for approval of a DBE named on Attachment A, in accordance with this Special Provision, attach the following when electing not to attach a copy of the DBE subcontract or agreement:

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

(c) **Substitution.** The contractor shall immediately notify the District Engineer and the Bureau of Equal Opportunity, in writing, before substituting a DBE or making any change to the DBE participation listed on the approved Attachment A. The notification from the contractor must include documentation supporting the substitution. Requests to substitute DBEs will be scrutinized closely. Contractors should demonstrate that a DBE is unwilling or unable to successfully perform and that every effort has been made to allow the DBE to perform.

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

   - The contractor must make a Good Faith Effort to recontract the work with another DBE, or subcontract other work items to DBE firms, to make up the DBE shortfall.

   - Contact available qualified DBEs and DBE referral sources in an effort to recontract the work or subcontract other work items with DBEs, if a DBE contract shortfall exists.

   - Provide the District Engineer with a Revised Attachment A and additional Good Faith Effort information, when the approved Attachment A amount is not met, within seven (7) calendar days after written notification to the District Engineer. If the DBE performed on the project, the Revised Attachment A should include the total amount paid to the DBE prior to the DBE substitution.

   The contractor's Good Faith Effort information will be forwarded to the Director and/or Committee for evaluation. If, during the review of the Contractor's Good Faith Effort information, the Director and/or Committee has questions, the Contractor maybe contacted for clarification.

   During the seven (7) calendar day period specified above and the additional period required for Department processing of the Revised Attachment A, the contractor may continue the substituted work with their own forces to maintain the scheduled progress of the work, with the written approval of the District Engineer.

   If the projected DBE participation on an approved Attachment A exceeds the goal amount for the contract without counting the amount committed to a substituted DBE, then no contract shortfall exists and the Contractor is not required to replace the DBE. A revised Attachment A must be submitted to reflect the decreased dollar amount.

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

   - The contractor or the affected DBE must immediately request a mediation meeting with the Department by contacting the District Office.

   - The contractor or any other subcontractor may not perform the DBE work until the completion of the mediation meeting.

   - Upon completion of the mediation meeting, if a Revised Attachment A is required, the contractor must submit a Revised Attachment A in accordance with VII.(c) 1. above.

   Failure to make Good Faith Effort as determined by the Committee, or failure to comply with the provisions of this Section for substitution of a DBE, will constitute a breach of contract and, after notification to the U.S. Department of Transportation, may result in termination of the contract, being barred from bidding on Department contracts for up to three (3) years, or any other remedy that the Pennsylvania Department of Transportation deems appropriate.

(d) **Additional Work.** When additional work is required for any classification of work which is identified on the Attachment A to be performed by the DBE, at least 50% of this additional work will be performed by the same DBE unless the DBE submits, in writing, that he/she cannot perform the work due to his/her own limitations. If the DBE cannot perform this additional work, the prime may take necessary measures to complete the work.

(e) **Progress Payments.** Bring to the attention of the Department, in writing, any situation in which regularly scheduled progress payments are not made to DBE subcontractors, regular dealers, manufacturers, consultants, or service agencies.

(f) **Records and Reports.** Keep such project records as are necessary to determine compliance with Disadvantaged Business Enterprise Utilization obligations. Design these records to indicate:

- The number of disadvantaged and nondisadvantaged subcontractors, regular dealers, manufacturers, consultants, and service agencies, and the type of work or services performed on or materials incorporated in this project.

- The progress and efforts made in seeking out DBE contractor organizations and individual DBEs for work on this project to maintain the level of DBE participation outlined on Attachment A.

- Documentation of all correspondence, personal contacts, telephone calls, etc., to obtain the services of DBEs for this project. Submit reports, as required by the Pennsylvania Department of Transportation, but at least on a monthly basis, on those contracts and other business executed with DBEs, with respect to the records referred to above, in such form and manner as prescribed by the Pennsylvania Department of Transportation. Submit monthly reports, Form EO-402 (Monthly DBE/MBE/WBE Status Report), to the Inspector-in-Charge within five (5) working days following the end of the month and have them contain:

- The number of contracts awarded to DBEs, noting the type of work and amount of each contract executed with each firm and including the execution date of each contract.

- The amount paid to each DBE during the month and the amount paid to date.

- Paid invoices or a certification attesting to the actual amount paid to each firm, upon completion of the individual DBE's work. In the event the actual amount paid is less than the award amount, provide a complete explanation of the difference.

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

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.

July 3, 2003

LOBBYING CERTIFICATION FORM

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

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

SIGNATURE: _____

TITLE: _____

DATE: _____

EXHIBIT "N"

PROVISIONS CONCERNING *THE AMERICANS WITH DISABILITIES ACT*

During the term of this contract, 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 contract or from activities provided for under this contract. As a condition of accepting and executing this contract, 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 of Pennsylvania through contracts with outside contractors.

2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of paragraph 1.

EXHIBIT "O"

April 16, 1999

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 subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any sup- pliers 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 the bid/proposal, a written explanation of why such certification cannot be made.

2. The contractor must also certify, in writing, that as of the date of its execution, of any Common wealth contract it has no tax liabilities or other Commonwealth obligations.

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 contracting agency 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 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 contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the con- tract 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, which 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/debarment.htm** 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 "P"

SAMPLE LETTER OF AMENDMENT

Date

Municipality/Contractor Name
ATTN: Contact
Address
City, State Zip

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

Dear **(Mr./Ms. Name)**,

Per the terms of the subject agreement, the Department is willing to amend the terms by increasing the costs in Exhibit "A" and Paragraph **(reference the location in the agreement document)** from **(current dollar amount)** to **(new dollar amount)**. This amendment will become effective once all required signatures are affixed to this document.

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

Your response is required no later than **(Date)**. Please mail your response to the following address:

PENNDOT
Attn: **Your Name**
Your Organization
Your Address

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

Yes ☐ No ☐

Signature _____ Date _____

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

or ☐ _____ ***(Indicate title)***

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

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

Sincerely,

Name, Title
Organization

Approved for Form and Legality:

_____
for Chief Counsel Date

FOR DEPARTMENT USE ONLY

Encumbrance Information:

SAP Document No. _____
SAP Fund _____
SAP Cost Center _____
GL Account _____
Renewal Amount: $_____

_____
Comptroller Signature Date

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

SAMPLE LETTER OF ADJUSTMENT

Date

Municipality/Contractor Name
ATTN: Contact
Address
City, State Zip

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

Dear **(Mr./Ms. Name)**,

Per the terms of the subject agreement, the Department is willing to redistribute the costs in Exhibit "A," with no change in the total Project costs, by increasing/decreasing the costs of the phases within the Project as shown below. These adjustments will become effective once all required signatures are affixed to this document.

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

We are requesting your concurrence as to the redistribution of costs of the above referenced agreement. If you agree to this redistribution, please indicate below by checking "Yes," and signing and dating where indicated. Please attach a resolution verifying your authorization to sign this letter of adjustment.

Your response is required no later than **(Date)**. Please mail your response to the following address:

PENNDOT
Attn: **Your Name**
Your Organization
Your Address

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

Yes ☐ No ☐

Signature _____ Date _____

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

or ☐ _____ *(Indicate title)*

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

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,

Name, Title
Organization

FOR DEPARTMENT USE ONLY

Encumbrance Information:

SAP Document No. _____
SAP Fund _____
SAP Cost Center _____
GL Account _____
Renewal Amount: $_____

_____
Comptroller Signature Date

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