

RESOLUTION NO. 041017

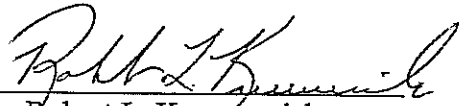
WHEREAS, the Borough of Gettysburg, as sponsor, has submitted an application for funds to be administered by the Pennsylvania Department of Transportation (hereinafter "PennDOT") through the Commonwealth's Multimodal Transportation Fund (hereinafter the "MTF") for the Steinwehr Avenue Corridor Phase 2 utility relocations project; and

WHEREAS, in order to facilitate the receipt of funds by the Borough of Gettysburg under the MTF, the Borough Council of the Borough of Gettysburg desires to authorize the execution and delivery of an agreement with PennDOT for the acceptance of such funds.

WHEREFORE, BE IT RESOLVED, that the Borough Council of the Borough of Gettysburg, Adams County, Pennsylvania does hereby authorize Charles R. Gable, MPA, Borough Manager and Sara L. Stull, Borough Secretary to sign, attest and deliver two (2) original copies to PennDOT, on behalf of the Borough of Gettysburg as a sponsor, of the Multimodal Fund Grant Reimbursement Agreement for Highway and Bridge Projects (hereinafter the "Grant Reimbursement Agreement") with PennDOT relative to grant funding under the MTF for the Steinwehr Avenue Corridor Phase 2 utility relocations project. A true and correct copy of the Grant Reimbursement Agreement is attached hereto as Exhibit "A" and is incorporated herein by reference.

THIS RESOLUTION DULY ADOPTED according to law on this 10th day of April, 2017 at a duly advertised general monthly business meeting of the Borough Council of the Borough of Gettysburg, Adams County, Pennsylvania.


BOROUGH OF GETTYSBURG

By: 
Robert L. Krummerich
President of Borough Council

Attest:


Sara L. Stull, Secretary

I, Sara L. Stull, Secretary of the Borough of Gettysburg, do hereby certify that the foregoing is a true and correct copy of the Resolution adopted by the Borough Council of the Borough of Gettysburg at a general monthly business meeting of the Borough Council held on the 10th day of April, 2017.


Sara L. Stull, Secretary

Date: April 10, 2017

EFFECTIVE DATE _____
(Department will insert)

REIMBURSEMENT AGREEMENT NO. 08A591
FID NO. 23-6002866
SAP VENDOR NO. 138937
MPMS NO. 104681

MULTIMODAL FUND GRANT REIMBURSEMENT AGREEMENT
FOR HIGHWAY AND BRIDGE PROJECTS

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

and

The Borough of Gettysburg, Adams County, whose address is 59 East High Street, Gettysburg, PA 17325, a political subdivision of the Commonwealth of Pennsylvania, acting through its proper officials ("SPONSOR"). As used in this Agreement, PennDOT and the SPONSOR are referred to as the "Parties."

RECITALS:

WHEREAS, Act 89 of 2013, enacted November 25, 2013, amended various sections of Title 74 (Transportation) of the Pennsylvania Consolidated Statutes and added Chapter 21 (Multimodal Fund);

WHEREAS, 74 Pa. C.S. § 2102 established a new funding source, the Multimodal Transportation Fund ("MTF"), to provide grants to be administered by PennDOT for programs related to highway and bridge projects;

WHEREAS, the SPONSOR has submitted an application for PennDOT funds in an amount not to exceed \$495,192.00 for Steinwehr Avenue Corridor Phase 2 utility relocations ("Project");

WHEREAS, PennDOT, following review of the SPONSOR's application by the appropriate evaluation committee, in consultation with the chairman and minority chairman of the Transportation Committee of the Senate and the chairman and minority chairman of the Transportation Committee of the House of Representatives, has confirmed that the SPONSOR is an eligible applicant requesting a grant for an eligible project;

WHEREAS, PennDOT, following review of the SPONSOR's application on a competitive basis, has confirmed the selection of its Project, for funding under the MTF; and,

WHEREAS, the SPONSOR has signified its willingness to accept PennDOT's offer of \$495,192.00 by signing this Agreement and proceeding with the Project in accordance with the terms, conditions and provisions contained in this Agreement.

NOW, THEREFORE, for and inconsideration of the foregoing premises and the mutual promises set forth below, 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 SPONSOR, as part of the Project, 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 PennDOT and the FHWA, where applicable:

Street Name

Project Limits

Steinwehr Avenue
(SR 3001)

Baltimore Street to
Long Lane

- b. 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.
- c. Only work begun on the Project after full execution of this Agreement shall be eligible for reimbursement under the terms of this Agreement, unless PennDOT, in writing, authorizes the SPONSOR to incur costs before full execution of the Agreement. In the event PennDOT authorizes the SPONSOR to incur costs before full execution of the Agreement, any costs incurred prior to that written authorization shall not be eligible for reimbursement.

3. Oversight Requirements.

- a. Project Category: The category of the Project determines the level of PennDOT's oversight to ensure that project development and construction are performed in accordance with this Agreement. The Project is considered to fall within the following (check applicable category below):

_____ Category A - Multimodal projects not within State highway right-of-way and not impacting State highway right-of-way during construction.

_____ Category B - Multimodal projects not within State highway right-of-way, but having a temporary impact on a State highway during construction, e.g. maintenance and protection of traffic (MPT) during construction.

X
_____ Category C - Multimodal project involving a temporary and/or limited permanent improvement within State highway right-of-way. For example, new traffic signals, shoulder improvements, construction of turning lanes, and/or streetscapes on State highways.

_____ Category D - Multimodal projects involving a significant permanent improvement or impact to a State highway. For example, highway widening, significant permanent lane shifts, and multi-turn construction.

_____ Category E - Multimodal projects involving a very significant permanent improvement or impact to a State highway.

- b. The SPONSOR shall participate in the administration of the Project in accordance with the provisions of this Agreement and more specifically with the requirements of the Project Evaluation Intensity Form ("Form"), attached hereto and made part of this Agreement as Exhibit "B." The Form describes the level of oversight required for evaluation of the specific elements that the Project comprises, according to the category into which the Project falls. The Parties acknowledge that PennDOT, in concert with the SPONSOR, may increase or decrease the frequency or intensity of its oversight over the course of the Project, based on the SPONSOR's performance and the result of previous PennDOT compliance reviews. PennDOT shall notify the SPONSOR in writing when oversight changes are made during project development.

4. Amendments and Supplements.

- a. If the SPONSOR determines that the cost for any phase listed on Exhibit "A" should be redistributed, and the redistribution does not result in an

increase or decrease in total Project costs or any increase in costs to the SPONSOR, the SPONSOR will redistribute such costs by sending PennDOT notification via a letter of adjustment that will include a revised Exhibit "A." PennDOT cannot pay or reimburse the SPONSOR for the costs of these phases until the Office of Comptroller Operations signs and dates the letter of adjustment. PennDOT's signature is not required for the letter of adjustment to be effective. A sample letter of adjustment is attached to and made part of this Agreement as Exhibit "C."

- b. If there are changes to any Standard Provisions that need to be addressed, the Parties can incorporate those revised and/or updated Standard Provisions by noting the incorporation and attachment of such Standard Provisions to a letter of amendment, fully executed by the Parties. For the purposes of this subparagraph, Standard Provisions consist of those provisions, exhibits or clauses required to be included in Commonwealth agreements pursuant to federal or state law or Commonwealth Management Directives, including, but not limited to: Americans with Disabilities Act, Right-to-Know Law, Contractor Integrity, Contractor Responsibility, Offset, and Commonwealth Nondiscrimination/Sexual Harassment Clause. Changes that would otherwise require only a letter of adjustment as detailed in subparagraph 4(a) will need a letter of amendment if one of these Standard Provisions described herein needs updated. A sample letter of amendment is attached to and made part of this Agreement as Exhibit "D."
- c. All other changes to terms and conditions of this Agreement must be in the form of a fully executed supplemental agreement signed by all the same entities that executed the original agreement.

5. Design.

- a. The SPONSOR, with its own forces or by contract, shall design the Project. If PennDOT is reimbursing design and engineering activities for this Project, the estimated costs and reimbursement percentages are detailed in Exhibit "A" attached to and made part of this Agreement but in no event may exceed ten percent (10%) of the MTF award. Consultant selection shall be consistent with the level of intensity as set forth in Exhibit "B."
 - b. The design shall be in accordance with policies, procedures and specifications prepared or approved by PennDOT including, but not limited to, PennDOT Publications as set forth in Exhibit "B."
6. Approvals, Permits, and Environmental Coordination. The SPONSOR shall secure all necessary approvals, permits and licenses from all other governmental agencies as may be required to complete the Project. The SPONSOR will be the applicant and ultimately the permittee or licensee. This obligation includes electronically preparing or revising the Multimodal Grant Environmental Document required by Section 2002 of Pennsylvania Act 120 (71 P.S. § 512), which can be accessed via the PennDOT website at <http://www.penndot.gov/ProjectAndPrograms/MultimodalProgram/> (look for MTF Grant Environmental Document (DOCX)) and which follows the form as set forth as Exhibit "E," attached to and made part of this Agreement, and the defense of environmental litigation resulting from the planning, design or construction of the Project. At PennDOT's request, the SPONSOR, prior to advertising and letting the Project, or at any time during the course of the Project, shall furnish PennDOT with evidence of the approvals, permits, licenses and approved environmental documents.
7. Utility Considerations. (check those that apply)

The Project does not involve utility relocation; and the SPONSOR is not subject to the requirements set forth in Exhibit "F," which is attached to and made part of this Agreement;

The Project requires installation of new utilities; and shall follow the requirements set forth in PennDOT Publication No. 282, *Highway Occupancy Permit Guidelines*;

The Project involves utility relocation and shall follow the requirements set forth in Paragraphs 1 and 2 of Exhibit "F," or

The Project involves utility relocation and shall follow the requirements set forth in Paragraphs 1 and 3 of Exhibit "F."

8. Application to Pennsylvania Public Utility Commission ("PUC"). (check one that applies)

The Project does not contain a rail-highway crossing under the jurisdiction of the PUC; and the Parties are not subject to the requirements set forth in Exhibit "G," which is attached to and made part of this Agreement; or

The Project contains a rail-highway crossing under the jurisdiction of the PUC; and the Parties shall follow the requirements set forth in Exhibit "G."

9. Railroad Considerations. (check one that applies)

X The Project does not contain a railroad within its limits; and the Parties are not subject to the requirements set forth in Exhibit "H," which is attached to and made part of this Agreement; or

 The Project contains a railroad(s) within its limits and the Parties shall follow the requirements set forth in Exhibit "H."

10. Right-of-Way Acquisition. (check one that applies)

 X (a) If the Project does not involve right-of-way acquisition; or (b) if the Project does involve right-of-way acquisition but the SPONSOR is neither seeking reimbursement nor does it want the acquisition to be considered part of the matching funds, then the SPONSOR is not subject to the requirements set forth in Exhibit "I," which is attached to and made part of this Agreement;

 The Project involves right-of-way acquisition; and, if seeking reimbursement, the SPONSOR certifies that it shall acquire all right-of-way necessary to construct this Project, including permanent acquisitions and temporary construction easements, in accordance with all of the applicable state laws and policies and procedures pertinent to right-of-way acquisition, and shall provide PennDOT with proper documentation and invoices verifying that it paid fair market value;

 The Project involves right-of-way acquisition and, if seeking reimbursement, the SPONSOR certifies that it shall acquire all right-of-way necessary to construct this Project, including permanent acquisitions and temporary construction easements, in accordance with all of the applicable state laws and policies and procedures pertinent to

_____ right-of-way acquisition and the most current version of PennDOT Publication No. 282, *Highway Occupancy Permit Guidelines*, Chapter 2 and Appendix C-3 (see SOL 470-11-12);

_____ The Project involves right-of-way acquisition; and, if seeking reimbursement, the SPONSOR certifies that it shall acquire all right-of-way necessary to construct this Project, including permanent acquisitions and temporary construction easements, in accordance with all of the applicable state laws and policies and procedures pertinent to right-of-way acquisition and the most current version of PennDOT Publication No. 740, *Local Project Delivery Manual* and the requirements as set forth in Exhibit "I," or

_____ If the Project involves right-of way acquisition and the SPONSOR wants the right-of-way acquisition to be considered part of its matching funds pursuant to Paragraph 12 of this Agreement, the SPONSOR shall provide PennDOT with sufficient documentation and invoices verifying that it paid fair market value.

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

12. Matching Funds.

- a. The SPONSOR shall match the MTF award with local funding in an amount not less than thirty percent (30%) of the non-federal share of the award costs. In-kind contributions are not permitted to satisfy the local match requirement except as set forth below in subsection 12(b).
- b. Costs incurred by the SPONSOR for design, environmental and right-of-way acquisition may be used as part of the matching funds if all the following conditions are met:
 1. the costs identified in Exhibit "A" are directly attributable and reasonable expenses of the Project, subject to review and approval by PennDOT;
 2. the expenditures are eligible costs of the MTF program;
 3. the expenditures were incurred by the SPONSOR after November 25, 2013;
 4. the expenditures meet all MTF program requirements, including, but not limited to, qualifications-based consultant selections;
 5. the SPONSOR has provided full documentation of reasonable costs to PennDOT, subject to review and approval by PennDOT; and
 6. the matching funds approved by PennDOT have not been used as project match funds under another funding source or program.
- c. The SPONSOR's matching funds, as approved by PennDOT, are set forth in Exhibit "J," which is attached to and made part of this Agreement. Any changes to Exhibit "J," which have not been approved in writing by PennDOT, will preclude reimbursement of funds.

13. Contract Development. The SPONSOR, 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. 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: (check one that applies)

 N/A PennDOT Publication No. 740, *Local Project Delivery Manual*, and as more fully set forth in Exhibit "K," which is attached to and made part of this Agreement; or

 N/A PennDOT Publication No. 9, *Policies and Procedures for the Administration of the County Liquid Fuels Tax Act of 1931 and Act 44 of 2007 and the Liquid Fuels Tax Act 655 Dated 1956 and as amended*, and as more fully set forth in Exhibit "K."

This section is not applicable because the SPONSOR is seeking reimbursement from the MTF for utility relocation costs only.

14. Letting and Award. (check one that applies)

 N/A Letting and award shall not be administered in ECMS, and the SPONSOR is required to adhere to the requirements as more fully set forth in Paragraph 1 in Exhibit "L," which is attached to and made part of this Agreement; or

 N/A Letting and award shall be administered in ECMS, and the SPONSOR is required to adhere to the requirements as more fully set forth in Paragraph 2 of Exhibit "L."

This section is not applicable because the SPONSOR is seeking reimbursement from the MTF for utility relocation costs only.

15. Construction Inspection.

- a. The SPONSOR shall pay for all required third-party construction inspection, including inspection conducted by PennDOT, in accordance with PennDOT-issued invoices.
- b. Oversight level shall be administered in accordance with the selected level and other requirements as set forth in the Oversight Level, Exhibit "M," which is attached to and made part of this Agreement.
- c. Upon successful completion of the Project, PennDOT will issue to the SPONSOR a document indicating satisfaction or acceptance of the Project.

16. Payment Procedures and Responsibilities.

- a. Subject to the terms of this Agreement, PennDOT, from funds allocated for this purpose by the MTF, shall pay the SPONSOR for a portion of the total allowable Project costs, as detailed in Exhibit "A" by dollar amounts and percentages. The SPONSOR shall be responsible for the remainder of the total Projects costs, again as detailed in Exhibit "A" by dollar amounts and percentages. This subparagraph shall not preclude the SPONSOR from reducing the scope of the Project, with the approval of PennDOT, if the costs exceed the available funds. The SPONSOR shall also be responsible for all costs incurred in excess of those eligible for MTF funding including, but not limited to, the following:
 1. any and all costs relating to or resulting from changes made to the approved plans or specifications;
 2. time delays and extensions of time or termination of construction work;

3. interest for late payments;
 4. interest incurred by borrowing money;
 5. 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;
 6. unforeseen utility relocations costs;
 7. unforeseen costs for environmental litigation and documents; and
 8. 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.
- b. Payment procedures shall be on a reimbursement basis; and the following procedures shall apply, regardless whether there is periodic invoicing or only a single invoice is submitted at the completion of the Project:
1. The SPONSOR shall submit to PennDOT certified invoices for reimbursement for the following items:
 - i. allowable costs for work performed by the SPONSOR's forces on the Project;
 - ii. work performed on the Project by the SPONSOR's contractors(s) or consultant(s); and
 - iii. allowable costs incurred in the acquisition of right-of-way and utility relocations, if applicable.
 2. If the SPONSOR is submitting periodic invoices, it shall submit a maximum of two (2) invoices per month within seven (7) days of the established estimate dates.
 3. The SPONSOR 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.

4. After reviewing the verification concerning payment of the consultant(s) or contractor(s) and material certifications, and approving a highway occupancy permit if applicable, and determining them to be satisfactory, PennDOT shall approve the invoices for payment.
 5. Upon approval of the invoices, PennDOT shall forward to the Office of Comptroller Operations a cover letter containing the agreement number, and invoice amount, together with a copy of the payment estimate.
 6. As MTF funds are made available, PennDOT shall reimburse the SPONSOR for the proportionate share of the approved charges.
- c. PennDOT shall not reimburse the SPONSOR for additional or extra work done or materials furnished that are not specifically provided for in the approved plans and specifications unless PennDOT has issued prior written approval of the additional or extra work or materials. If the SPONSOR performs any work or furnishes any materials without PennDOT's prior written approval, the SPONSOR does so at its own risk, cost and expense. The SPONSOR shall not interpret PennDOT's approval as authority to increase the maximum amount of reimbursement as specified in subparagraph 16(b) above.
- d. The SPONSOR shall submit its final invoices for reimbursement of the items set forth in subparagraph 16(a) to PennDOT within nine (9) months of the acceptance of the Project. If the SPONSOR fails to submit its final invoices within this nine- (9-) month period, it may forfeit all remaining MTF financial participation in the Project.

17. Excess Funds Remaining Upon Completion of Project. In the event excess funds remain from the MTF award after completion of the Project, said funds will remain in the MTF for future awards.

18. Records. The SPONSOR 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 for inspection or audit by PennDOT, or any other authorized representatives of the 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 SPONSOR 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.

19. Abandonment or Postponement of Project.

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

1. all MTF moneys received by the SPONSOR from PennDOT for work performed under this Agreement for return to the MTF; and
 2. all costs incurred by PennDOT under this Agreement prior to receipt of notice of termination that the SPONSOR has not been reimbursed from the MTF or by the SPONSOR.
- b. If the SPONSOR fails to reimburse PennDOT within the time period set forth in subparagraph 19(a), the SPONSOR shall be in default and PennDOT shall be entitled to pursue appropriate remedies, such as those set forth in Paragraph 23 where applicable, and to also include pursuing any and all actions, causes of action, claims, suits, or demands, before any court of law or other appropriate tribunal.

20. **Maintenance and Operation of the Facility.**—Section 20 and its related exhibits are not applicable because the only facilities being installed and financed under this Agreement are utility facilities.

- a. The SPONSOR, 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 SPONSOR certifies that it shall make available sufficient funds to provide for the described maintenance program. Exhibit "N" attached to and made part of this Agreement, lists the minimum requirements that the SPONSOR must satisfy regarding the traffic engineering services to be provided as part of this maintenance program.
- b. PennDOT, 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:
 1. periodic inspections;
 2. functional review of traffic operations;

3. appropriate preventative maintenance, which shall include cleaning, lubrication and refurbishing of all electrical equipment;
 4. a systematic record-keeping system; and
 5. a means to handle the notification and implementation of emergency repairs.
- c. The existence of functioning maintenance and operation services shall not exempt the SPONSOR from complying with the provisions of the Vehicle Code (75 Pa. C.S. § 101 *et seq.*), pertaining to traffic control devices, or with applicable provisions of the State Highway Law (36 P.S. § 670-101 *et seq.*).
 - d. The SPONSOR and PennDOT 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; and the State Highway Law; as well as those ordinances, rules and regulations issued by appropriate governmental agencies in implementation of these statutes.
 - e. The SPONSOR acknowledges that the traffic controls and parking regulations necessary to be maintained on these improvements are shown on Exhibit "O," attached to and made part of this Agreement. These controls and regulations will be determined at a later date if not already in place.
 - f. The SPONSOR acknowledges that PennDOT may disqualify the SPONSOR from future state participation on SPONSOR-maintained projects if the SPONSOR fails to:
 1. provide for the proper maintenance and operation of the completed improvements; or

2. maintain and enforce compliance with any statutes, regulations or ordinances under its jurisdiction necessary for the operation of the improvements.
- g. The SPONSOR agrees that PennDOT shall withhold state funds until one or both of the following (as applicable) have taken place:
1. the SPONSOR has corrected the operation and maintenance services; and/or
 2. the SPONSOR has brought traffic operations on the improvements, including enforcement of statutes, regulations or ordinances, up to a level satisfactory to PennDOT.
- h. This Agreement is without prejudice to the right of the SPONSOR to receive reimbursement for maintenance costs from any railroad or party other than PennDOT, if so ordered by the PUC, where a rail-highway crossing is under the jurisdiction of the PUC.
- i. If the SPONSOR is not a political subdivision, the municipality within which the Project is located is added as a third-party to this Agreement and agrees to assume operation and maintenance services in accordance with the requirements of this paragraph.

21. Save Harmless. The SPONSOR shall indemnify, save harmless and defend (if requested) the Commonwealth of Pennsylvania, PennDOT, 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 SPONSOR, 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 SPONSOR, its

consultant(s) or contractor(s), their officers, agents and employees, during the performance of said work or thereafter, or to any other cause whatever.

22. **No Third-Party Beneficiary Rights.** It is not intended by any of the provisions of this Agreement or any documents, publications or other written materials referenced herein or related to the Project to benefit any third-party nor to create any third-party beneficiary hereunder nor to authorize any person or entity not a signing party to this Agreement to maintain a claim or lawsuit of any kind against PennDOT or the Commonwealth.
23. **Default Clause.** If the SPONSOR is a political subdivision and if it 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 SPONSOR authorizes PennDOT to withhold so much of the SPONSOR's Liquid Fuels Tax Fund allocation as may be necessary to complete the Project or reimburse PennDOT in full for all costs due under this Agreement; and the SPONSOR authorizes PennDOT to withhold such amount and to apply such funds, or portion thereof, to remedy such default.
24. **Required Contract Provisions.** The Parties agree, and the SPONSOR shall also provide in its contracts for the Project, that all designs, plans, specifications, estimates of cost, construction, utility relocation work, right-of-way acquisition procedures, acceptance of the work and procedures in general shall at all times conform to all applicable federal and state laws, rules, regulations, orders and approvals, including specifically the procedures and requirements relating to labor standards, equal employment opportunity, nondiscrimination, anti-solicitation, information, auditing and reporting provisions. The SPONSOR shall comply, and shall cause its consultant(s) and contractor(s) to comply, with the

following required Commonwealth Provisions (as used in these provisions, the term "Contractor" means the SPONSOR):

- a. the current version of the Commonwealth Nondiscrimination/Sexual Harassment Clauses, which are attached to and made part of this Agreement as Exhibit "P;"
- b. the current version of the Contractor Integrity Provisions, attached to and made part of this Agreement as Exhibit "Q;"
- c. the current version of the Provisions Concerning the Americans with Disabilities Act, attached to and made part of this Agreement as Exhibit "R;" and
- d. the current version of the Contractor Responsibility Provisions, which are attached to and made part of this Agreement as Exhibit "S."

25. Right-to-Know Law. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 – 3104, applies to this Agreement. Therefore, this Agreement is subject to, and the SPONSOR shall comply with, the clause entitled Grant Provisions – Right to Know Law, attached to and made part of this Agreement as Exhibit "T." As used in this exhibit, the term "Grantee" refers to the SPONSOR.

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

27. Termination of Agreement for Lack of Funds. Because this Agreement is to be funded partially by MTF moneys, PennDOT may terminate this Agreement if MTF moneys are not provided to PennDOT for the purposes stated in the Agreement. Termination shall become effective as of the termination date specified in PennDOT's written notice of termination to the SPONSOR specifying the reason

for termination. PennDOT shall reimburse the SPONSOR 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.

28. Diverse Business Participation for Non-Federal-Funded Projects. For local transportation organizations, including municipalities functioning as transit providers, the SPONSOR shall comply with the provisions of Section 303 of Title 74 of the Pennsylvania Consolidated Statutes, 74 Pa. C.S. § 303 (Diverse business participation).

29. Automated Clearing House Provisions. Because PennDOT will be making payments under this Agreement through the Automated Clearing House ("ACH") Network, the SPONSOR shall comply with the following provisions governing payments through ACH:

- a. PennDOT will make payments to the SPONSOR through ACH. Within 10 days of the execution of this Agreement, the SPONSOR must submit or must have already submitted its ACH information on an ACH enrollment form (obtained at www.vendorregistration.state.pa.us/cvnu/paper/Forms/ACH-EFTenrollmentform.pdf) and electronic addenda information, if desired, to the Commonwealth of Pennsylvania's, Payable Service Center, Vendor Data Management Unit at 717-214-0140 (FAX) or by mail to the Office of Comptroller Operations, Bureau of Payable Services, Payable Service Center, Vendor Data Management Unit, 555 Walnut Street - 9th Floor, Harrisburg, PA 17101.
- b. The SPONSOR 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 SPONSOR to properly apply the state agency's payment to the respective invoice or program.

- c. It is the responsibility of the SPONSOR to ensure that the ACH information contained in the Commonwealth's Central Vendor Master File is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

- 30. **Central Contractor Registration.** The Central Contractor Registration and Universal Identifier Requirements apply to this Agreement; and the SPONSOR shall comply with the Central Contractor Registration and Universal Identifier Requirements, which can be found at www.vendorregistration.state.pa.us.
- 31. **Choice of Law.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania and the decisions of the Pennsylvania courts. The SPONSOR consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The SPONSOR agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by Pennsylvania law.
- 32. **Force Majeure.** The obligations of the Parties shall be subject to force majeure (which shall include strikes, riots, floods, accidents, act of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations. The foregoing shall not relieve PennDOT of its obligation to reimburse the SPONSOR for expenses incurred in accordance with Paragraph 16 of this Agreement.
- 33. **Multiple Funding Sources.** If the Project is also funded through 74 Pa. C.S. § 2104(a)(4), relating to funding eligible programs by the Commonwealth Financing

Authority, and the requirements set forth by that funding source conflict with the requirements set forth in this Agreement, the stricter requirements shall control.

34. **No Waiver.** Either party may elect not to enforce its rights and remedies under this Agreement in the event of a breach by the other party of any term or condition of this Agreement. In any event, the failure by either party to enforce its rights and remedies under this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other term or condition of this Agreement.
35. **Severability.** The provisions of this Agreement shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth and the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.
36. **Independence of the Parties.** The Parties understand by and between themselves that nothing contained herein is intended or shall be construed to, in any respect, create or establish the relationship of partners between the SPONSOR and PennDOT, or as constituting PennDOT as the representative or general agent of the SPONSOR for any purpose whatsoever.
37. **Assignment.** This Agreement may not be assigned by the SPONSOR, either in whole or in part, without the written consent of PennDOT.
38. **Successors and Assigns.** All covenants and obligations of the Parties under this Agreement shall bind their successors and assigns, whether or not expressly assumed by such successors and assigns.

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

If to PennDOT:

Anthony Berger, P.E., Planning & Programming Manager
Engineering District 8-0
2140 Herr Street
Harrisburg, PA 17103
PH: (717) 787-7144
FAX: (717) 705-5493
aberger@pa.gov

If to SPONSOR:

Charles Gable, M.P.A., Borough Manager
The Borough of Gettysburg
59 East High Street
Gettysburg, PA 17325
PH: (717) 334-1160 ext. 222
FAX: (717) 334-7258
cgable@gettysburgpa.gov

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

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

41. Completion of Work. The SPONSOR shall expend the MTF award within three (3) years of execution of this Agreement unless extended in writing by PennDOT.
42. Integration and Merger. This Agreement, when executed, approved and delivered, shall constitute the final, complete and exclusive Agreement between the Parties containing all the terms and conditions agreed on by the Parties. All representations, understandings, promises and agreements pertaining to the subject matter of this Agreement made prior to or at the time this Agreement is executed are superseded by this Agreement unless specifically accepted by any other term or provision of this Agreement. There are no conditions precedent to the performance of this Agreement except as expressly set forth herein.
43. 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, PennDOT 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.

[Remainder of page left blank intentionally]

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

ATTEST:

SPONSOR:

BY _____
Date _____
Title _____

BY _____
Date _____
Title _____

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



BY _____
(Asst.) District Executive Date

APPROVED AS TO LEGALITY
AND FORM

BY _____
for Chief Counsel Date

BY _____
for Comptroller Operations Date

BY _____
Deputy General Counsel Date

BY _____
Deputy Attorney General Date

Funds Commitment Document No. _____
Certified Funds Available Under SAP No. _____
GL Account _____
Amount _____

Reimbursement Agreement No. 08A591, is split 0%, expenditure amount of \$0.00 for federal funds and 100%, expenditure amount of \$495,192.00 for state funds. The related federal assistance program name and number is N/A;N/A. The state assistance program name and SAP fund is Multimodal Transportation Fund; 6 03001 0 7 MTF 0810 240.