

RESOLUTION 2022-8
KENNETT TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

Be it RESOLVED, by authority of the Board of Supervisors of Kennett Township, Chester County, and it is hereby resolved by authority of the same, that the Chair of the Board of Supervisors of Kennett Township be authorized and directed to sign the Multimodal Transportation Fund Grant Reimbursement Agreement for Highway and Bridge Projects on its behalf.

RESOLVED, this 16th day of March 2022.

ATTEST:

BOARD OF SUPERVISORS
KENNETT TOWNSHIP

Eden R. Ratliff
Township Manager

Dr. Richard L. Leff

Scudder G. Stevens

Geoffrey Gamble, Esq.

I, Eden R. Ratliff, Secretary of the Board of Supervisors of Kennett Township, do hereby certify that the foregoing is a true and correct copy of the Resolution adopted at a regular meeting of the Board of Supervisors, held the 16th day of March, 2022.

Date: _____

(Signature) Secretary

EFFECTIVE DATE: _____
(PennDOT will insert)

AGREEMENT NO.:
FEDERAL I.D. NO.: 23-600377
SAP VENDOR NO.: 138704
MPMS NO.: 116264

**MULTIMODAL TRANSPORTATION FUND GRANT REIMBURSEMENT
AGREEMENT
FOR HIGHWAY AND BRIDGE PROJECTS**

This Multimodal Transportation Fund Grant Reimbursement Agreement for Highway and Bridge Projects (“Agreement”) is made by and between the Commonwealth of Pennsylvania, acting through the Department of Transportation (“PennDOT”),

and

the Township of Kennett (“Sponsor”), a political subdivision of the Commonwealth of Pennsylvania, with a mailing address of 801 Burrows Run Road, Chadds Ford, PA 19317.

BACKGROUND

The Sponsor submitted an application to PennDOT for a grant from the Multimodal Transportation Fund (“MTF”) for a highway or bridge project. PennDOT determined that the Sponsor is an eligible applicant requesting a grant for an eligible project. Following review of the Sponsor’s application on a competitive basis, PennDOT confirmed the selection of the Sponsor’s project for an MTF grant. The Sponsor has signified its willingness to accept the grant awarded by executing this Agreement and proceeding with the project in accordance with the terms, conditions and provisions contained in this Agreement.

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

1. **Term of Agreement.**

- (a) **Completion of Work.** The term of this Agreement shall commence on the Effective Date (as defined below). The Sponsor shall complete all physical work under this Agreement within three (3) years of the Effective Date unless extended in writing by PennDOT. This Agreement shall remain in effect until the Project is completed, unless it is abandoned or terminated sooner, except for those obligations that survive completion of the Project.
- (b) **Effective Date.** The Effective Date shall be the date that this Agreement is fully executed by the Sponsor and PennDOT and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature. Following full execution, PennDOT will insert the effective date at the top of Page 1.

2. **General Provisions.**

- (a) **Project Location.** The Sponsor shall participate in the preliminary engineering, including environmental studies, final design, utility relocation, right-of-way acquisition, and construction for a project consisting of addressing the safety concerns and congestion of a "5 Points" intersection by replacing it with a roundabout, eliminating vehicular conflicts, enhancing operational efficiency, and improving pedestrian safety in the Village of Five Points, Kennett Township, Chester County, PA. ("Project") at the following location(s) in accordance with policies, procedures and specifications prepared or approved by PennDOT and the FHWA, where applicable:

Street Name	Project Limits
Old Kennett Rd. (SR 3036)	Approx. 500 east of intersection

S. Union St./
Kaolin Rd. (SR
3013)

Approx. 500 north
and south of
intersection

Hillendale Rd.
(T337)

Approx. 500 west of
intersection

- (b) **Project Cost Estimate.** PennDOT is awarding, and the Sponsor is accepting, a grant in the amount of \$2,193,550.00. 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) **Eligibility for Reimbursement.** 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. If 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. **Highway Occupancy Permit.** If the Project involves work either completely or partially on a state highway, the Sponsor shall make application for a highway occupancy permit in accordance with 67 Pa. Code Chapter 441, *Access to and Occupancy of Highways by Driveways and Local Roads* ("HOP Regulations"). The performance, review, and approval of Project activities shall be in accordance with the HOP Regulations.

4. **Amendments and Adjustments.**

- (a) **Letter of Adjustment.** 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 B.

- (b) **Letter of Amendment.** If there are changes to any Standard Provisions that need to be addressed, the Parties can incorporate those revised 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 subsection, 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 Subsection 4(a) will need a letter of amendment if one of these Standard Provisions described herein needs updating. A sample letter of amendment is attached to and made part of this Agreement as Exhibit C.
- (c) **Fully Executed Formal Amendment.** All other changes to terms and conditions of this Agreement must be in the form of a fully executed formal amendment signed by all the same entities that executed the original agreement.

5. **Design.**

- (a) **Sponsor's Responsibility for Design.** The Sponsor, with its own forces or by contract, shall design the Project. If PennDOT is reimbursing design,

engineering, and inspection 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. Selection of consultants for engineering, design, and inspection activities shall be in accordance with PennDOT Publication No. 93, *Policies and Procedures for the Administration of Consultant Agreements* ("Publication 93"), or equivalent qualifications-based selection procedures.

- (b) **Conformity to PennDOT Policies.** The design shall be in accordance with policies, procedures, and specifications prepared or approved by PennDOT including relevant PennDOT publications.

6. **Approvals, Permits, and Environmental Coordination.** The Sponsor shall secure and comply with all necessary approvals, permits, and licenses from all other governmental agencies as may be required to complete the Project. 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 D 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--General.**

- (a) **Applicability.** The requirements of this section and Section 8 below apply only under the following circumstances:
 - (i) The Project involves utility relocation or adjustment; and

(ii) The Project is not subject to the HOP Regulations.

If the Project does not involve utility relocation or adjustment, the requirements of this section do not apply. If the Project involves utility relocation but is subject to the HOP Regulations, utility relocation activities shall be in accordance with these regulations.

- (b) **New Utility Facilities.** If the Project requires installation of new utility facilities, either in addition to or instead of relocation of existing utilities, the Sponsor shall comply with the requirements of 67 Pa. Code Chapter 459, *Occupancy of Highways by Utilities* ("Utility Regulations"), if being installed in a state highway, or the requirements of the political subdivision with jurisdiction over the road, if being installed in a local road.
- (c) **Eligibility for Reimbursement or Match.** To be eligible for reimbursement or to be counted toward the Sponsor's match pursuant to Section 14 below, the costs incurred for utility relocation or, where necessary, installation of new utilities must be related to the Project itself and not incurred to support on-site development.

8. Utility Considerations – Local Roads

- (a) **Project Plans.** The Sponsor shall furnish Project plans to utilities known to have facilities within the Project limits and to all other utilities discovered within the Project limits.
- (b) **Utility Relocation or Adjustment.** The Sponsor shall arrange for any necessary relocation or adjustment for all utility facilities and notify each utility company to relocate any affected facilities to accommodate the construction of the Project. The Sponsor, with PennDOT's guidance, shall make these arrangements in accordance with PennDOT requirements. If any affected utility claims that the Sponsor is responsible for reimbursing the affected utility for its relocation costs under state or local laws in existence as of the effective date of this Agreement, the Sponsor shall furnish the Department with a detailed cost estimate prepared by the utility

and documentation justifying the Sponsor's legal obligation to reimburse the utility for utility relocation costs actually incurred by the utility. The Department, after review and approval of the cost estimates and documentation, shall draft the necessary reimbursement agreement to be executed by the Sponsor and the utility. The Department shall submit the reimbursement agreement to the Sponsor for execution by the parties.

- (c) **Incorporation of Work.** If the utility or municipal authority wishes to incorporate the utility relocation work into the Project's construction contract to be performed by the prime contractor or its subcontractor, the Sponsor shall prepare and submit to PennDOT the agreement addressing the incorporation of work, provided by PennDOT for this purpose, along with the required supplementing documentation in accordance with the most current version of PennDOT Publication No. 16, *Utility Relocation*.
- (d) **Utility Owned Facilities.** If the Sponsor owns or operates the existing utility facilities, the Local Project Sponsor shall request PennDOT to include such costs in this Agreement or prepare an amendment to this Agreement to address the costs associated with the relocation of these facilities. The amendment shall acknowledge that the utility facilities are located in the right-of-way and that the relocation costs are Project-eligible costs.
- (e) **Utility Clearance.** Prior to advertising the Project for letting, the Sponsor, on forms provided by PennDOT, shall furnish a utility clearance certification attesting that all arrangements have been made for the relocation of all known facilities affected by the Project in accordance with PennDOT Design Manual Part V. The statement shall be supported by a description of the written arrangements made with the utilities for the relocation of facilities in a manner that will not impede Project construction.
- (f) **Accommodation of Utilities.** The parties acknowledge that all utility facilities transferred to or remaining at a location within the right-of-way of a federally-aided highway shall be accommodated in accordance with the provisions of the applicable federal regulations, including the then current

version of 23 CFR Part 645; the Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 645, Subpart B, *Accommodation of Utilities*, and all subsequent amendments; and the Utility Regulations.

- (g) **Reimbursement.** If PennDOT is reimbursing utility relocation activities for this Project, the estimated reimbursement amount appears on Exhibit A.
- (h) **Sponsor Cost in Event of Abandonment.** If the Sponsor exercises its option under Section 21 of this Agreement and abandons the Project after any utility has been authorized to proceed with its relocation work, the Sponsor, at its sole cost and expense, shall reimburse the utility for its actual and related indirect costs and expense of work actually completed at the time of notification of the abandonment, plus any additional expenses incurred by the utility in restoring its system to normal operating conditions.

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

10. **Railroad Considerations.** If any railroad(s) is (are) known to have facilities within the Project limits, the Sponsor shall furnish Project plans to the railroad(s) and shall comply with the following requirements regarding any Project work affecting the railroad(s):

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

- (b) **Department Forms.** The Sponsor shall coordinate with the railroad(s) to ensure that PennDOT Forms D-4279 and D-4279A are completed by the railroad(s) and returned to PennDOT.
- (c) **Special Provisions.** The Sponsor shall include all railroad special provisions, including insurance requirements, right-of-entry requirements, and private crossing requirements in the Project bid package.
- (d) **Reimbursement.** If there are railroad costs that are eligible for reimbursement, they shall be addressed through a letter of adjustment or, if appropriate, a formal amendment, as provided above in Section 4.
- (e) **Railroad Reimbursement Agreement.** After PennDOT's review and approval of the cost estimates and documentation, the Sponsor, if it is seeking reimbursement for railroad costs, shall prepare and execute the necessary reimbursement agreement between itself and the railroad. The Sponsor shall provide PennDOT with a copy of the fully executed reimbursement agreement.

11. **Right-of-Way Acquisition.**

- (a) **Conditions Applicable to Reimbursement.** If the Project involves right-of-way acquisition and the Sponsor is seeking reimbursement, the following conditions apply:
 - (i) The Sponsor shall acquire all necessary right-of-way by gift, agreement, dedication, purchase, condemnation (provided that the Sponsor is an entity that possesses the power of eminent domain), or a combination of these methods. If the Sponsor is a private entity and does not have the power to condemn under the Pennsylvania Eminent Domain Code or the Federal Uniform Act, it shall make a written offer to purchase, advising the landowner that it does not have the power of eminent domain if negotiations fail and stating what the Sponsor believes to be the fair market value of the property, as provided in PennDOT Publication No. 282, *Highway Occupancy*

Permit Operations Manual, Chapter 2.

- (ii) PennDOT will neither condemn nor acquire any property on behalf of the Sponsor if negotiations with a landowner fail.
- (iii) The Sponsor shall be responsible for all negotiations, defense of all claims, and payment of all property damages or right-of-way costs resulting from the acquisition. The Sponsor shall strictly comply with all state laws, regulations, and policies governing right-of-way acquisition procedures.
- (iv) Failure of the Sponsor to obtain the necessary right-of-way shall be a breach of this Agreement.
- (v) The Sponsor may not begin to acquire the necessary right-of-way until the District Right-of-Way Administrator has certified that the Sponsor has the facilities and qualified personnel to proceed with right-of-way acquisition. If the Sponsor cannot satisfy the District Right-of-Way Administrator's requirements using the Sponsor's personnel, it must make alternative arrangements to the satisfaction of the District Right-of-Way Administrator prior to beginning right-of-way acquisition.
- (vi) The Sponsor shall provide PennDOT with proper documentation and invoices verifying that it paid fair market value.
- (vii) Unless the Project is subject to the HOP Regulations, the Sponsor is not required to prepare a right-of-way plan. If the Project is subject to the HOP Regulations, the Sponsor shall prepare a right-of-way plan in accordance with the requirements of these regulations.
- (viii) The Sponsor shall transfer right-of-way required for any improvements to state highways to PennDOT upon completion of the Project in accordance with any right-of-way plans or other right-of-way documents. Where the Sponsor is a local government or other such public agency, and where it already owns property that it wishes to convert into legal right-of-way for a state highway as

part of the Project (with or without match), the Sponsor shall provide either the appropriate deed showing such conversion; an ordinance; a resolution; or some other official act acceptable to PennDOT, permanently and irrevocably committing said property to state highway use as appropriate.

- (b) **Matching Funds.** If the Project involves right-of-way acquisition and the Sponsor wants the right-of-way acquisition to be considered as part of its matching funds pursuant to Section 14 of this Agreement, it shall provide PennDOT with sufficient documentation and invoices verifying that it paid fair market value and shall demonstrate compliance with any other applicable conditions of this section.
- (c) **No Reimbursement or Match Sought.** If the Project (i) does not involve right-of-way acquisition or (ii) the Project does involve right-of-way acquisition, but the Sponsor is neither seeking reimbursement nor requesting the acquisition to be considered part of its matching funds, then the conditions of this section do not apply.

12. **Activities Already Completed by Sponsor.** If the Sponsor has already completed utility relocation, railroad coordination, or right-of-way acquisition activities, it must demonstrate compliance with the foregoing requirements applicable to the particular activity to be eligible for reimbursement or matching funds credit. Failure to comply with these requirements may render the Sponsor ineligible for reimbursement or match credit.

13. **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.

14. **Matching Funds.**

- (a) **Percentage Required.** 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 14(b).

- (b) **Design, Environmental, and Right-of-Way Costs.** 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:
 - (i) the costs identified in Exhibit A are directly attributable and reasonable expenses of the Project, subject to review and approval by PennDOT;
 - (ii) the expenditures are eligible costs of the MTF program;
 - (iii) the Sponsor incurred the expenditures after November 25, 2013;
 - (iv) the expenditures meet all MTF program requirements, including selection of consultants for engineering, design, and inspection in accordance with Publication 93 or equivalent qualifications-based selection procedures;
 - (v) the Sponsor has provided full documentation of reasonable costs to PennDOT, subject to review and approval by PennDOT; and
 - (vi) the matching funds approved by PennDOT have not been used as project match funds under another funding source or program.
- (c) **Approved Match.** The Sponsor's matching funds, as approved by PennDOT, are set forth in Exhibit E attached to and made part of this Agreement. Any changes to Exhibit E, which have not been approved in writing by PennDOT, will preclude reimbursement of funds.

15. **Contract Development.**

- (a) **Sponsor's Responsibilities.** 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, and estimates ("PS&E") and bid proposal documents required to bid the Project. All work shall conform with applicable federal and state laws and requirements.

- (b) **Publication to Be Followed.** Specifically, contract development activities shall be in accordance with the current version of either PennDOT Publication No. 740, *Local Project Delivery Manual*, (“Publication 740”) or 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* (“Publication 9”). The Sponsor shall confer with PennDOT representatives to determine the appropriate publication to follow, based on considerations that include location of the improvements, complexity of the Project, familiarity of PennDOT personnel with the subject matter or type of improvements, and allowance of as much flexibility as possible in oversight and administration of the Project.
- (c) **Prequalification.** Regardless which publication is followed, all bid documents shall require that the contractor be prequalified by PennDOT pursuant to 67 Pa. Code Chapter 457, *Prequalification of Bidders*, unless PennDOT waives prequalification as provided in Chapter 457.

16. **Letting and Award.**

- (a) **Options.** The Sponsor shall select one of the following options for letting and award of the Project:
 - (i) Letting and award shall not be administered in PennDOT’s Engineering and Construction Management System (“ECMS”). Instead, letting and award shall be in accordance with PennDOT policies and procedures applicable to projects not administered in ECMS, including Publication 9.
 - (ii) Letting and award shall be administered in ECMS. In this case, PennDOT shall advertise for bids, open bids, and with the concurrence of the Sponsor (to be indicated electronically) award the construction contract in the name of the Sponsor, all in accordance with Publication 740. The Sponsor shall enter into and execute the

contract with the successful bidder electronically through ECMS. PennDOT, on behalf of the Sponsor, will then issue the notice to proceed to the selected contractor.

- (b) **Review and Approval by PennDOT.** Regardless of the option selected, the advertisement and bid proposal documents are subject to PennDOT's review and approval before the Project can be advertised. In addition, if the Sponsor selects the first option set forth above in subsection (a), it shall maintain copies of the advertisement, bid proposal documents, bid tabulations, and other records and documents relating to letting and award for PennDOT's review upon request.
- (c) **Registration as Business Partner.** If the Sponsor intends to utilize ECMS and has not already executed a Business Partner Agreement and registered with PennDOT as a business partner in order to access ECMS, the Sponsor must execute a Business Partner Agreement with PennDOT in order to obtain this access prior to the Project's being advertised.

17. **Construction Inspection.**

- (a) **Sponsor's Financial Responsibility.** The Sponsor shall pay for all required third-party construction inspection, including inspection conducted by PennDOT, in accordance with PennDOT-issued invoices.
- (b) **Level and Frequency.** PennDOT reserves the right to determine the required level and frequency of inspection, according to the complexity of the Project.
- (c) **Allowable Construction Engineering Costs.** Allowable construction engineering costs may include such work items as inspection, certification and testing of materials, and surveys, but in no event may they exceed ten percent (10%) of the MTF award.
- (d) **Acceptance of Project.** Upon successful completion of the Project, PennDOT will issue to the Sponsor a document indicating satisfaction with or acceptance of the Project.

18. **Payment Procedures and Responsibilities.**

- (a) **General Requirements.** 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 Project costs, again as detailed in Exhibit A by dollar amounts and percentages. This subsection 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:
- (i) any and all costs relating to or resulting from changes made to the approved plans or specifications;
 - (ii) time delays and extensions of time or termination of construction work;
 - (iii) interest for late payments;
 - (iv) interest incurred by borrowing money;
 - (v) unforeseen right-of-way and other property damages and costs resulting from the acquisition or condemnation, or both, of lands for the Project or the construction of the improvements;
 - (vi) unforeseen utility relocations costs;
 - (vii) unforeseen costs for environmental litigation and documents; 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.
- (b) **Payment on Reimbursement Basis.** Payment procedures shall be on a reimbursement basis; and the following procedures shall apply, regardless

whether periodic invoicing or the submission of only a single invoice at the completion of the Project occurs:

- (i) The Sponsor shall submit to PennDOT certified invoices for reimbursement for the following items:
 - A. allowable costs for work performed by the Sponsor's forces on the Project;
 - B. work performed on the Project by the Sponsor's contractors(s) or consultant(s); and
 - C. allowable costs incurred in the acquisition of right-of-way and utility relocations, if applicable.
 - (ii) 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.
 - (iii) 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.
 - (iv) 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.
 - (v) 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.
 - (vi) As MTF funds are made available, PennDOT shall reimburse the Sponsor for the proportionate share of the approved charges.
- (c) **Additional or Extra Work.** 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 subsection (a) above.

- (d) **Submission of Final Invoices.** The Sponsor shall submit its final invoices for reimbursement of the items set forth in subsection (b) to PennDOT within nine (9) months of the expiration date of the Agreement or acceptance of the Project, whichever occurs sooner. 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.

19. **Excess Funds Remaining Upon Completion of Project.** If excess funds remain from the MTF award after completion of the Project, those funds will remain in the MTF for future awards.

20. **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.

21. **Abandonment or Postponement of Project.**

- (a) **Termination by Sponsor.** 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:
- (i) all MTF moneys received by the Sponsor from PennDOT for work performed under this Agreement for return to the MTF; and
 - (ii) all costs incurred by PennDOT under this Agreement prior to receipt of notice of termination that have not been reimbursed from the MTF or by the Sponsor.
- (b) **Failure to Reimburse PennDOT.** If the Sponsor fails to reimburse PennDOT within the time period set forth in subsection (a), the Sponsor shall be in default; and PennDOT shall be entitled to pursue appropriate remedies, including those set forth in Section 25 where applicable and any and all actions, causes of action, claims, suits, or demands, before any court of law or other appropriate tribunal.

22. **Maintenance and Operation of the Facility.**

- (a) **Sponsor's Obligations.** 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 F, *Requirements for Traffic Engineering Services and Functions*, 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) **Acceptable Methods of Operation and Maintenance.** 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:
- (i) periodic inspections;
 - (ii) functional review of traffic operations;
 - (iii) appropriate preventative maintenance, which shall include cleaning, lubrication and refurbishing of all electrical equipment;
 - (iv) a systematic record-keeping system; and
 - (v) a means to handle the notification and implementation of emergency repairs.
- (c) **Sponsor's Compliance with Statutes.** 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) **Administration of Statutes, Regulations, and Ordinances.** The Sponsor and PennDOT shall administer, enforce and maintain any statutes, regulations or ordinances within their respective jurisdictions necessary for the operation of the improvements. 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) **Traffic Controls and Parking Regulations.** Upon completion of the Project improvements, the Sponsor shall continue to maintain and enforce within the Project limits existing traffic controls and parking regulations that need to remain in place; and it shall impose within the Project limits any required new traffic controls and parking regulations, subject to the approval of the Department where appropriate. The Sponsor shall adopt any resolutions or enact any ordinances necessary to accomplish the imposition, maintenance, and enforcement of these controls and regulations.
- (f) **Disqualification of Sponsor from Future State Financial Participation.** The Sponsor acknowledges that PennDOT may disqualify the Sponsor from future state participation on Sponsor-maintained projects if the Sponsor fails to:
- (i) provide for the proper maintenance and operation of the completed improvements; or
 - (ii) maintain and enforce compliance with any statutes, regulations, or ordinances under its jurisdiction necessary for the operation of the improvements.
- (g) **Withholding of State Funds.** The Sponsor agrees that PennDOT shall withhold state funds until one or both of the following (as applicable) have taken place:
- (i) the Sponsor has corrected the operation and maintenance services; or
 - (ii) the Sponsor has brought traffic operations on the improvements, including enforcement of statutes, regulations, or ordinances, up to a level satisfactory to PennDOT.
- (h) **PUC-Ordered Reimbursement of Sponsor.** 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) **Addition of Municipality as Third Party.** 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 section.

23. **Indemnification.** The Sponsor shall indemnify 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.

24. **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.

25. **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.

26. **Required Contract Provisions.**

- (a) **Conformity to All Applicable Federal and State Laws.** 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. Furthermore, the Sponsor shall include this same provision in its contracts for the Project.
- (b) **Compliance with Required Commonwealth 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):
 - (i) the current version of the *Nondiscrimination/Sexual Harassment Clause [Grants]*, attached to and made part of this Agreement as Exhibit G;
 - (ii) the current version of the *Contractor Integrity Provisions*, attached to and made part of this Agreement as Exhibit H;
 - (iii) the current version of the *Provisions Concerning the Americans with Disabilities Act*, attached to and made part of this Agreement as Exhibit I; and
 - (iv) the current version of the *Contractor Responsibility Provisions*, attached to and made part of this Agreement as Exhibit J.

27. **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 K. As used in this exhibit, the term “Grantee” refers to the Sponsor.

28. **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.

29. **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.

30. **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).

31. **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) The Commonwealth will make payments to the Sponsor through the Automated Clearing House (“ACH”) Network. Within 10 days of the execution of this

Agreement, the Sponsor must submit or must have already submitted its ACH information in the Commonwealth's Master Database. The Sponsor will also be able to enroll to receive remittance information via electronic addenda and email (e-Remittance). ACH and e-Remittance information is available at <https://www.budget.pa.gov/Services/ForVendors/Pages/Direct-Deposit-and-e-Remittance.aspx>.

- (b) The Sponsor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth's ACH remittance advice to enable the 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 Master Database is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

32. **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.

33. **Applicable Law.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts.

34. **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 Section 18 of this Agreement.

35. **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.

36. **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.

37. **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.

38. **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.

39. **Assignment.** This Agreement may not be assigned by the Sponsor, either in whole or in part, without the written consent of PennDOT.

40. **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.

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

If to PennDOT:

LeAnne Fullard, Project Manager
PennDOT Engineering District 6-0
7000 Geerdes Boulevard
King of Prussia, PA 19406
(610) 205-6581
lfullard@pa.gov

If to Sponsor:

Gretchen Porterfield, Executive Assistant to the Township Manager
Kennett Township
801 Burrows Run Road
Chadds Ford, PA 19317
(610) 338-1300 x117
gretchen.porterfield@kennett.pa.us

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

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

43. **Integration and Merger.** This Agreement, together with its exhibits and attachments, 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.

[The remainder of this page is intentionally blank.]

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

ATTEST:

Kennett Township

BY _____
Title _____ Date

BY _____
Title _____ Date

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

BY _____
(Asst.) District Executive Date

APPROVED AS TO LEGALITY
AND FORM

BY _____
for Chief Counsel Date

BY _____
Deputy General Counsel Date

BY _____
for Comptroller Operations Date

BY _____
Deputy Attorney General Date

Reimbursement Agreement No. _____, is split 0%, expenditure amount of \$0.00 for federal funds and 100%, expenditure amount of \$2,193,550.00 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 MTF;2941100227.

OCC FORM NO. AT-9.5

**EXHIBIT A
Project Cost Estimate**

<h2>Multimodal Transportation Fund</h2>
Sponsor: Kennett Township, Chester County
Project Name: Kennett Township Five-Points Roundabout MTF

NOTES:

1. *MTF Funds for Engineering/Design and Construction Inspection cannot be more than 10% of the MTF Grant Award.*
2. *MTF Funds for Administrative costs cannot be more than 2% of the MTF Grant Award.*
3. *MTF Funds for Contingency costs cannot be more than 5% of the MTF Grant Award.*
4. *If there is more than one source for Sponsor Match funds, attach additional sheets as needed.*

Reimbursable Activity	MTF Funds	Sponsor Match	Source	Other	Subtotals
Administrative					
Contingency					
Engineering/Design (PE & FD)					
Environmental Clearance					
Utility Relocation					
Right-of-Way Acquisition					
Construction	2,193,550	767,743	Township Funds		2,961,293
Construction Inspection					
Subtotals	2,193,550	767,743			2,961,293

TOTAL PROJECT COST

2,961,293

*****THIS PAGE IS FOR COMMONWEALTH USE ONLY*****

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

BY _____
(Assistant) District Executive Date

Approved for Form and Legality:

BY _____
for Chief Counsel Date

Encumbrance Information:

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

BY _____
for Office of Comptroller Operations Date

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

EXHIBIT D

Funding
100% State Funded Multimodal Transportation Fund Project

Applicant	
Name:	Click here to enter text.
Title:	Click here to enter text.
Organization:	Click here to enter text.
Address:	Click here to enter text.
Phone:	Click here to enter text.
Fax:	Click here to enter text.
Email:	Click here to enter text.

Type	
Phase: Evaluation	
Classification: ED Multimodal Transportation Fund Grant Agreements (100% State Funding)	To document an ED: <ul style="list-style-type: none"> • Complete form • Submit form for review and approval by _____
Formal scoping is not required for Multimodal Transportation Fund Grant Agreements.	

PennDOT Assigned Personnel:	
Name:	Click here to enter text.
Phone:	Click here to enter text.
Email:	Click here to enter text.

Multimodal Transportation Fund Grant Environmental Document

for 100% State Funded Multimodal Transportation Fund Grant Projects

Evaluation

Project Information							
MPMS	Enter MPMS if applicable	BMS	Enter BMS if applicable	BRKEY	Enter BRKEY if applicable	SR/Sec	Enter SR/Sec if applicable
County	Enter County	Municipality	Enter Municipality	Seg/Offset Start	Enter Seg/Offset Start if applicable	Seg/Offset End	Enter Seg/Offset End if applicable
Project: Click here to enter text.							
Date of the Scoping Field View (optional): Click here to enter a date.							
Project Description							
Project Purpose Click here to enter text.							
Why the project is needed? — Project Need(s) Click here to enter text.							
Description of Activity Click here to enter text.							
Are temporary easements required? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, describe extent of temporary easements.							
Will there be any permanent acquisitions required? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, describe permanent acquisitions.							
Resource Analysis							
Answer YES to indicate that a resource is present. If YES, briefly discuss potential impacts and related commitments to avoid, minimize or mitigate. Attach additional documentation as required to document project impacts and any mitigation measures. Answer NO to indicate that a resource is not present.							
1. Streams (in general)		<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.					

2. Wild or Stocked Trout Streams	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
3. High Quality/EV Streams	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
4. Federal Wild and Scenic Rivers or Streams	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
5. State Scenic Rivers and Streams	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
6. Wetlands	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
7. Federally Proposed, Candidate, or Listed; or State Listed Threatened & Endangered Species	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
8. Agricultural Resources	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
9. Historic Properties or Archaeological Resources	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
10. Public Controversy on Environmental Grounds	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information here.
11. Resources protected under Section 2002 (Parks & Recreational Facilities; State or National Forests; Game Lands; or Historic Properties).	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
12. Water Trails	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
13. Hazardous, Residual, or Municipal Waste Sites	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
14. Regulated floodplain within or beyond the project limits.	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
15. Navigable watercourses which require U.S. Coast Guard coordination or a waterway which requires an Aid to Navigation Plan.	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.
16. Noise Impacts	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information on potential impacts and mitigation.

17. Land involving: <ul style="list-style-type: none"> • Section 6(f) of LWCF Act • Project 70 (Land Acquisition & Borrowing Act) • Project 500 (Land & Water Conservation & Reclamation Act) 	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No

<ul style="list-style-type: none"> • Recreational Improvement and Rehabilitation Act (RIRA) • Growing Greener Bond Fund (GG2) • Keystone Recreation, Park and Conservation Fund (Key 93) • Environmental Stewardship Fund Act (ESF) • Other 	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	If yes, provide information on potential impacts and mitigation.	
DEP/USACE Permit Required?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information here.	
Mitigation or other commitments included?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide information here.	
The project is appropriate to be described as an Environmental Document (ED) in accordance with PennDOT Publication 10B, Chapter 6.		
Prepared by:	Click here to enter text.	Click here to enter a date.
	Name/Title	Date
Approved by:	Click here to enter text.	Click here to enter a date.
	Name/Title	Date
<u>Additional Information</u>		
Remarks, Footnotes, Supplemental Data		
Click here to enter text.		
Attachments		
Attach: (1) Project Location Map; (2) PNDI receipt; (3) Results of PNDI agency coordination; and (4) any other pertinent project information.		
List attachments below:		
Click here to enter text.		

Additional Information

[Click here to enter text.](#)

EXHIBIT E

MULTIMODAL TRANSPORTATION FUND MATCHING FUNDS DOCUMENTATION

Project Recipient:	Kennett Township
Project Title:	Kennett Five Points Roundabout
County:	Chester
Municipality:	Kennett Township
Total Project Cost:	
Amount of Award:	2,193,550.00
Amount of Matching Funds:	\$767,743.00

Sources of Matching Funds	AMOUNT	DATE FUNDS WERE SECURED	FUNDS USED FOR MATCH IN OTHER PROGRAMS? Y/N
Township Funds	\$767,743.00	05/01/2021	N
TOTAL	\$767,743.00		

EXHIBIT F

REQUIREMENTS FOR TRAFFIC ENGINEERING SERVICES AND FUNCTIONS

1. The Sponsor must provide for the proper maintenance of all completed project(s) under its jurisdiction. To comply with this requirement, the Sponsor 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 SPONSOR 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 Sponsor should evaluate its present and proposed organizational charts to determine if the Sponsor is capable of providing a functional traffic engineering unit within its organization. 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 Sponsor in evaluating its 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 Sponsor is unwilling or unable to provide the traffic engineering function from within its organization, the Sponsor 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 Sponsor must select one of the following methods for providing a functional traffic engineering unit:
 - (i) Sponsor’s Traffic Engineer and Sponsor’s Maintenance Staff;
 - (ii) Contractual Traffic Engineer and Sponsor’s Maintenance Staff;

- (iii) Contractual Traffic Engineer and Contractual Maintenance Staff; or
 - (iv) Sponsor's 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) **Sponsor's Traffic Engineer:**
 - (1) a brief description of educational background and work experience including the length of employment as the Sponsor's Traffic Engineer;
 - (2) a description of duties assigned and powers delegated to the Sponsor's Traffic Engineer under ordinance; and
 - (3) an organizational chart showing the Traffic Engineer's position in the hierarchy of the Sponsor's government.
 - (ii) **Sponsor's 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 Sponsor'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

the Sponsor'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.

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Grants]

The Grantee agrees:

- 1.** In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the grant agreement or any subgrant agreement, contract, or subcontract, the Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
- 2.** The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any of its employees.
- 3.** Neither the Grantee nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the grant agreement, subgrant agreement, contract or subcontract.
- 4.** Neither the Grantee nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- 5.** The Grantee, any subgrantee, contractor or any subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the grant services are performed shall satisfy this requirement for employees with an established work site.
- 6.** The Grantee, any subgrantee, contractor or any subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the grant relates.
- 7.** The Grantee and each subgrantee, contractor and subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Grantee and each subgrantee, contractor and



subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Grantee, any subgrantee, any contractor or any subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the granting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause.

- 8.** The Grantee, any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.
- 9.** The Grantee's and each subgrantee's, contractor's and subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the grant agreement through the termination date thereof. Accordingly, the Grantee and each subgrantee, contractor and subcontractor shall have an obligation to inform the commonwealth if, at any time during the term of the grant agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- 10.** The commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

Exhibit G



CONTRACTOR INTEGRITY PROVISIONS

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

1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
 - a. **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - b. **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
 - c. **"Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.
 - d. **"Contractor Related Parties"** means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
 - e. **"Financial Interest"** means either:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - f. **"Gratuity"** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), the 4 Pa. Code §7.153(b), shall apply.
 - g. **"Non-bid Basis"** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
2. In furtherance of this policy, Contractor agrees to the following:
 - a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.



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

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

Exhibit H



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



PROVISIONS CONCERNING THE *AMERICANS WITH DISABILITIES ACT*

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

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

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

EXHIBIT I



Contractor Responsibility Provisions

(December 2020)

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

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

Exhibit J

Grant Provisions – Right to Know Law

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

EXHIBIT K

- f. If Grantee or Subgrantee fails to provide the Requested Information within the time period required by these provisions, Grantee or Subgrantee shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of Grantee's or Subgrantee's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse Grantee or Subgrantee for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. Grantee or Subgrantee may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, Grantee or Subgrantee shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of Grantee's or Subgrantee's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, Grantee or Subgrantee agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- i. The Grantee's or Subgrantee's duties relating to the RTKL are continuing duties that survive the expiration of this Grant Agreement and shall continue as long as the Grantee or Subgrantee has Requested Information in its possession.

EXHIBIT K