

RESOLUTION NO. 19-2011

A RESOLUTION AUTHORIZING THE DAUPHIN COUNTY COMMISSIONERS TO EXECUTE A TRANSPORTATION ENHANCEMENTS PROGRAM FEDERAL-AID REIMBURSEMENT AGREEMENT AND AUTHORIZING LAURA E. EVANS, ESQ. TO ATTEST TO THE AGREEMENT

WHEREAS, Dauphin County is entering into the Transportation Enhancements Program Federal-Aid Reimbursement Agreement with the Commonwealth of Pennsylvania through the Commonwealth's Department of Transportation; and


WHEREAS, a resolution is required under the Federal-Aid Reimbursement Agreement to name the individuals authorized to sign the agreement and attest to the agreement.

NOW THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF COMMISSIONERS OF DAUPHIN COUNTY, PENNSYLVANIA THAT:

Commissioners Jeff Haste, Mike Pries and George P. Hartwick, III are authorized to sign the Transportation Enhancements Program Federal-Aid Reimbursement Agreement on behalf of Dauphin County and that Laura E. Evans, Esq. as Chief Clerk and Chief of Staff is authorized to attest to the Federal-Aid Reimbursement Agreement.

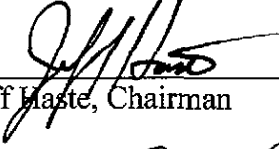
ADOPTED AND RESOLVED, by the Board of Commissioners of Dauphin County, Pennsylvania, in lawful session duly assembled, on the 13 day of July, 2011.

ATTEST:



Laura E. Evans, Esq.
Chief Clerk/Chief of Staff

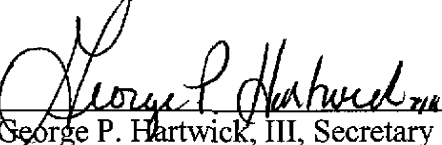
**DAUPHIN COUNTY
BOARD OF COMMISSIONERS**



Jeff Haste, Chairman



Mike Pries, Vice-Chairman



George P. Hartwick, III, Secretary

(SEAL)

EFFECTIVE DATE _____
(DEPARTMENT will insert)

AGREEMENT NO. 089778
FEDERAL ID NO. 23 600 3043
SAP VENDOR NO. 139086

COUNTY Dauphin
MUNICIPALITY Wiconisco Township, Lykens Borough
MPMS NO. 65941

TRANSPORTATION ENHANCEMENTS PROGRAM
FEDERAL-AID REIMBURSEMENT AGREEMENT
(POLITICAL SUBDIVISIONS AND OTHER PUBLIC BODIES)

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

a n d

the Dauphin County Parks and Recreation, Dauphin County, a political subdivision duly and properly formed under the laws of the Commonwealth of Pennsylvania, acting through its proper officials ("SPONSOR").

W I T N E S S E T H:

WHEREAS, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub.L. 109-59, 119 Stat. 1144, approved August 10, 2005 ("SAFETEA-LU"), continues the funding instituted by the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240 ("ISTEA"), and continued by the Transportation Equity Act for the 21st Century, Pub. L. 105-178 ("TEA-21"), for transportation enhancements activities; and,

WHEREAS, 23 U.S.C. Section 101(a)(35) defines the activities that qualify as transportation enhancements activities and are thus eligible for the funding authorized by SAFETEA-LU; and,

WHEREAS, the DEPARTMENT will receive federal funding under SAFETEA-LU from the United States Department of Transportation, Federal Highway Administration ("FHWA") through 2009 to be spent on a statewide Transportation Enhancements Program ("Program"), in accordance with 23 U.S.C. Sections 133(b)(8) and 133(d)(2); and,

WHEREAS, federal funding will reimburse a portion of the costs of projects approved by the DEPARTMENT for participation in the Program, the balance of the funding being provided by the project sponsors; and,

WHEREAS, the DEPARTMENT, following review of the SPONSOR's application, has approved its project, more fully described below in Paragraph 2 ("Project"), for participation in the Program and awarded the Project funding in the amount of one hundred ninety two thousand dollars (\$192,000); and,

WHEREAS, the SPONSOR has signified its willingness to participate in the Program and proceed with the Project, in accordance with the terms, conditions and provisions set forth below.

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

1. RECITALS

The foregoing recitals are incorporated by reference as a material part of this Agreement.

2. GENERAL PROVISIONS

The SPONSOR, subject to reimbursement or other payment procedures as provided in this Agreement, shall participate in the design and construction of the improvements constituting the Project at the following location in accordance with plans, policies, procedures and specifications prepared and/or approved by the DEPARTMENT and the FHWA, where applicable:

<u>Type of Improvement</u>	<u>Location</u>
Construction of a rail trail with three parking areas and signs.	South Edward Street to Mountain Street in Lykens Borough and Wiconisco Township.

3. DESIGN

(a) The SPONSOR, with its own forces or by contract, shall design the proposed Project. If the DEPARTMENT is reimbursing design activities for this Project, the estimated costs and reimbursement percentages are detailed in Exhibit "A" attached to and made part of this Agreement.

The design shall be in accordance with plans, policies, procedures, criteria and specifications prepared or approved by the DEPARTMENT and the FHWA, including, but not limited to, the provisions of the current DEPARTMENT Design Manual; the DEPARTMENT Bureau of Design Specifications for Consultant Agreements, Form No. 442, Division I; and the DEPARTMENT Specifications, Publication 408 Specifications (current edition), its amendments and supplements (collectively, "Publication 408 Specifications").

(b) The SPONSOR shall secure all necessary approvals, permits and licenses from all other governmental agencies as may be required to complete the Project. This obligation shall include the responsibility for the preparation or revision of environmental impact statements, environmental assessments, categorical exclusions, environmental reports or other documents required by law and/or environmental litigation; and the defense of environmental litigation resulting from the planning, design and/or construction of the Project. At the DEPARTMENT's request, the SPONSOR shall furnish to the DEPARTMENT, prior to advertising and letting the Project, evidence of the approvals, permits, licenses and approved environmental documents.

4. UTILITY CONSIDERATIONS

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.

(a) 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 the DEPARTMENT's guidance, shall make these arrangements in accordance with FHWA requirements and/or DEPARTMENT 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 entered into between the SPONSOR and the utility. The DEPARTMENT shall submit the reimbursement agreement to the SPONSOR for execution by the parties.

(b) Where the SPONSOR owns or operates the existing utility facilities, the SPONSOR shall prepare the standard document provided by the DEPARTMENT, which shall be submitted in addition to the above documentation. This document acknowledges that the utility facilities are located in the right-of-way and that the relocation costs are Project-eligible costs. If the SPONSOR-owned or -operated utility facilities are located within DEPARTMENT right-of-way, the DEPARTMENT will not share in the relocation costs pursuant to Section 412.1 of the State Highway Law, as amended, 36 P.S. Section 670-412.1.

(c) Prior to advertising the Project for letting, the SPONSOR, on forms provided by the DEPARTMENT, shall furnish a utility clearance assurance statement attesting that all arrangements have been made for the relocation of all known facilities affected by the Project in accordance with DEPARTMENT 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.

(d) The SPONSOR in conjunction with the DEPARTMENT agrees 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 Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 645 and all amendments thereto.

(e) If the DEPARTMENT is reimbursing utility relocation activities for this Project, the estimated costs and reimbursement percentages are detailed in Exhibit "A."

(f) If the SPONSOR exercises its option under Paragraph 14 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, hereby agrees to 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.

5. APPLICATION TO PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

6. CONTRACT DEVELOPMENT

(a) The SPONSOR shall, by contract or with its own forces, be responsible for preparation of all plans, specifications and estimates ("P.S.&E.") for the Project. The DEPARTMENT's list of the essential documents to be prepared by the SPONSOR, entitled "Plans, Specifications, Estimates and Bid Proposal Package," is incorporated into this Agreement by reference as though physically attached. All

work shall be in conformance with applicable state and federal laws and requirements, including, but not limited to, those outlined in the Federal-Aid Policy Guide, Chapter I, Subchapter G and the DEPARTMENT's Exemption Document, as currently approved by the FHWA.

(b) All bid documents shall require that the contractor be prequalified by the DEPARTMENT, unless the DEPARTMENT, in writing, waives prequalification.

(c) Upon completion of all required bid documents, the SPONSOR shall submit them to the DEPARTMENT for review and approval. The DEPARTMENT, after FHWA authorization of the Project, approval of a right-of-way certification (if applicable), approval of a utility clearance assurance statement, completion of P.S.&E. review and satisfactory resolution of any comments, shall prepare the bid proposal documents required to bid the Project, subject to reimbursement by the SPONSOR for the costs incurred by the DEPARTMENT for preparation (except where the SPONSOR is allowed to handle bidding and award itself, as provided in Paragraph 9, in which case the SPONSOR shall be responsible for preparing all bid proposal documents), and then shall issue an authorization to advertise for bids. The DEPARTMENT must review and approve any addenda to the approved bid documents prior to their issuance to prospective bidders. Issuance of addenda shall occur no later than seven (7) calendar days before the proposed bid opening.

7. OCCUPANCY RIGHTS

(a) The SPONSOR shall ensure that it has the right to occupy the area of the Project for purposes of constructing and maintaining the Project and that the public has a right to enter and use the area of the Project for a sufficient time after completion of construction to justify the expenditure of public funds on the

Project. This right of occupancy by the SPONSOR and continued use by the public may be shown by deed of fee simple or easement; by right-of-way, lease or license agreement; or by any other means found acceptable to the DEPARTMENT.

(b) Upon request from the DEPARTMENT, the SPONSOR shall provide information necessary to document the right to occupy the area of the Project for construction, maintenance and use. The SPONSOR shall also supply any additional information as deemed necessary by the DEPARTMENT for this purpose. This may include the creation of a plan showing all property acquired by the SPONSOR's predecessors in title, including a designation of the nature of the predecessors' interests (i.e., whether in fee or easement) and a notation of where the instruments conveying those interests are located. The Project will not advance to the final design phase until the DEPARTMENT is satisfied that the SPONSOR has proven appropriate interest in all affected property.

8. RIGHT-OF-WAY ACQUISITION

(a) The SPONSOR shall ensure that all additional right-of-way necessary to construct this Project shall be acquired in accordance with all applicable federal and state laws, policies and procedures, as detailed in the DEPARTMENT LPA Brochure: A Guide for Local Public Agency Acquisition of Right-of-Way, Publication No. 98, incorporated into this Agreement by reference as though physically attached.

(b) The SPONSOR shall acquire all necessary right-of-way by gift, agreement, dedication, purchase and/or condemnation. The amount of right-of-way required for the Project shall be shown on a plan, which shall be prepared in accordance with policies, procedures, criteria and specifications prepared or approved by the

DEPARTMENT and the FHWA, including, but not limited to, the provisions of the current DEPARTMENT Design Manual.

(c) The SPONSOR, subject to possible reimbursement from the FHWA, shall be responsible for all negotiations, defense of all claims and initial payment of all property damages or right-of-way costs resulting from any acquisition and/or condemnation. The SPONSOR shall strictly comply with all applicable right-of-way acquisition procedures set forth in the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; the current DEPARTMENT Right-of-Way Manual and its amendments; and the Federal-Aid Policy Guide. Acquisition costs shall include, but shall not be limited to, payment of claims of affected property owners; photographic, appraisal and engineering services; title reports; counsel fees; expert witness fees required for the adjudication of all property damage claims; transcripts of testimony before the board of view; and all record costs, including printing costs, in case of appeal to an appellate court.

(d) If the DEPARTMENT is reimbursing right-of-way acquisition activities for this Project, the estimated costs and reimbursement percentages are detailed in Exhibit "A."

(e) The SPONSOR agrees that any real property acquired with funds provided under this Agreement shall be managed in accordance with the property management requirements provided in 23 C.F.R. Part 710, Subpart D. Any use of the property for purposes other than that for which the funds were provided must be consistent with the continuation of the original use. If the original use of the real property is converted by sale or lease to another use inconsistent with the original use, the SPONSOR shall pay any amounts obtained for that conversion to the DEPARTMENT.

9. LETTING AND AWARD

If the SPONSOR has in place procedures that the DEPARTMENT has previously approved, allowing the SPONSOR to handle the bidding and award itself, the SPONSOR shall advertise for bids, open bids and award the construction contract in its own name, in accordance with applicable state and federal laws and requirements, including, but not limited to, those outlined in the Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 630, Subpart B and the DEPARTMENT Procedures for the Administration of Federal-Aid Municipal Contract Construction Projects. Otherwise, the DEPARTMENT shall advertise for bids, open bids and award the construction contract in the name of the SPONSOR, in accordance with the same state and federal laws and requirements. In either case, the SPONSOR shall execute the contract and issue the notice to proceed.

10. INSPECTION

(a) The SPONSOR, with its own forces or by contract, shall provide staff to inspect and supervise all construction work in accordance with the approved plans and specifications, including, but not limited to, the Publication 408 Specifications, and to assure that all work is in accordance with the Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 635, entitled "Construction and Maintenance."

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

11. REIMBURSEMENT

(a) Subject to the terms set forth in this Agreement and in conformance with the policies adopted by the DEPARTMENT, the DEPARTMENT, from funds allocated for this purpose by the FHWA, to the extent that such funds are first made available by the FHWA to the DEPARTMENT, shall make payment to the SPONSOR in one of the following manners:

- (1) Where the SPONSOR assumes financial responsibility for the cost of all preconstruction activities, using funds, in-kind contributions or both, as specified below, the DEPARTMENT shall reimburse one hundred percent (100%) of the allowable construction costs of the Project.
- (2) Where the SPONSOR is to receive reimbursement during all phases of the Project, the DEPARTMENT shall reimburse the SPONSOR for up to eighty percent (80%) of the total allowable costs of the Project, whether or not it involves construction. The SPONSOR shall be responsible for the remainder of the total Project costs.

Exhibit "A" sets forth the activities or phases being reimbursed, the estimated costs and the reimbursement percentages. The parties may revise any line item amounts set forth in Exhibit "A" by means of a letter amendment, provided that the total estimated cost of the Project and the scope of work remain unchanged as a result of such revisions. The letter amendment shall include as an attachment a

revised version of Exhibit "A" incorporating the revisions. A letter amendment shall not be effective until signed and dated by duly authorized representatives of the SPONSOR, the DEPARTMENT and the Office of the Comptroller.

(b) The SPONSOR, by executing this Agreement, certifies (1) that it has on hand, or will obtain over the life of the Project, sufficient funds to meet all of its obligations under the terms of this Agreement, to the extent that they are not satisfied by in-kind contributions as described below in subparagraph (c), and (2) that it, and not the DEPARTMENT, shall provide all funds needed to pay any costs incurred in excess of those costs eligible for federal-aid participation and shall bear all such excess costs. The SPONSOR shall be solely responsible for one hundred percent (100%) of this portion of the total Project costs. The SPONSOR may use any combination of funds from its own budget and/or outside sources, whether public or private.

(c) The SPONSOR may satisfy all or part of its share of the total Project costs through in-kind participation in the form of real property, materials or services that it contributes itself or that are contributed by third parties. Such real property, materials and services shall be valued at their fair market value in accordance with 23 U.S.C. Section 323, as amended, and the policies, procedures, criteria and specifications of the FHWA and the DEPARTMENT and must meet the eligibility requirements of the Project. The SPONSOR shall maintain and, if requested, make available to the FHWA and the DEPARTMENT records establishing how the value placed on contributed real property, materials and services was derived. The contributions must occur after the FHWA's approval of the Project and before approval of the final voucher. Any contributions and their estimated value are shown on Exhibit "A."

(d) The SPONSOR, for the purpose of reimbursement, shall submit to the DEPARTMENT on a monthly basis, through the DEPARTMENT's local Engineering District Office, certified periodic (maximum of two (2) per month) invoices for:

(1) Allowable costs for work performed by the SPONSOR's forces on the Project.

(2) Work performed on the Project by the SPONSOR's contractors(s) or consultant(s).

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

(e) The SPONSOR shall pay the federal and the SPONSOR shares to its consultant(s) or contractor(s) within ten (10) calendar days of the date of the DEPARTMENT's payment. The SPONSOR shall, as part of its record-keeping obligation, maintain records of receipt and payment of such funds. Failure to comply with this subparagraph shall be a default for purposes of Paragraph 17, and the DEPARTMENT shall have the further right to change payment procedures unilaterally to a reimbursement basis.

(f) The SPONSOR shall be responsible for all costs incurred in excess of those eligible for federal-aid participation, including, but not limited to, any and all costs relating to or resulting from changes to the approved plans and/or specifications, time delays and extensions of time or termination of construction work, interest for late payments or for money borrowed to finance the

Project (inasmuch as interest paid by the SPONSOR is not federally reimbursable), unforeseen right-of-way and other property damages and costs resulting from the acquisition and/or condemnation of lands for the Project and/or for the construction of the improvements, unforeseen utility relocation costs, unforeseen costs for environmental litigation and reports, and all other unforeseen costs and expenses not included in the estimates of design, utility relocation, construction and right-of-way acquisition costs, but which are directly related to or caused by the planning, design, and/or construction of the Project. This provision shall not preclude the SPONSOR from modifying the scope of the Project, with the approval of the DEPARTMENT, in the event that the costs exceed the available funds.

(g) For those costs incurred by the DEPARTMENT, including, but not limited to, costs relating to administrative and oversight activities, which costs are the responsibility of the SPONSOR in accordance with subparagraph (b) above and appear as estimates on Exhibit "A," the DEPARTMENT shall invoice the SPONSOR on a monthly basis. Failure by the SPONSOR to reimburse the DEPARTMENT within thirty (30) days of receipt of the DEPARTMENT's invoice shall cause the SPONSOR to be in default of payment. In the event of such default, the DEPARTMENT may, in its sole discretion, consider the Project to be abandoned by the SPONSOR, whereupon the SPONSOR shall be obligated to reimburse all FHWA and DEPARTMENT funds in accordance with Paragraph 14.

(h) The DEPARTMENT shall not reimburse any additional or extra work done or materials furnished, not specifically provided for in the approved plans and specifications, unless the DEPARTMENT has first approved such additional or extra work or materials in writing. Any such work done or materials furnished without such written

approval first being given shall be at the SPONSOR's own risk, cost and expense.

(i) In accordance with Commonwealth Management Directive 310.30 Amended, issued May 22, 2009, relating to the Pennsylvania Electronic Payment Program and the establishment of the Automated Clearing House Network ("ACH") as the Commonwealth's preferred method of payment, the SPONSOR shall comply with the following provisions:

(1) The DEPARTMENT will make payments to the SPONSOR through ACH. Within 10 days of executing this Agreement, the SPONSOR must submit or must have already submitted its ACH information on a ACH enrollment form (obtained at www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf) and electronic addenda information, if desired, to the Commonwealth'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.

(2) 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.

(3) 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.

12. SUPPLEMENTS AND AMENDMENTS

If this Agreement does not provide funding for all Project activities (in which case they have been left blank on Exhibit "A"), the parties must execute a supplement or an amendment to it before the SPONSOR can proceed with those activities not funded hereunder and obtain reimbursement for them. Moreover, adequate funds must be available to the DEPARTMENT before the parties can execute this supplement or amendment. The supplement or amendment shall be in the same form as this Agreement and shall require execution by the duly authorized representatives of the DEPARTMENT and the SPONSOR and approval by the requisite legal and fiscal offices of the Commonwealth before it becomes effective.

13. RECORDS AND AUDIT REQUIREMENTS

(a) The SPONSOR shall maintain, and it shall require its consultants and contractors 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 such materials available at all reasonable times during the contract period and for three (3) years from the date of submission of the final voucher to FHWA, for inspection and/or audit by the DEPARTMENT, the FHWA or any other authorized representatives of the state or federal government; and copies 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, a complete record of time shall be kept for personnel assigned part-time to the Project. A record of time limited to only their work on this Project will not be acceptable.

(b) As specified by the Federal Office of Management and Budget, the SPONSOR agrees to satisfy the audit requirements contained in the Single Audit Act of 1984, as amended, 31 U.S.C. Section 7501 et seq., and, for this purpose, to comply with the current version of the Audit Clause to Be Used in Agreements with Entities Receiving Federal Awards from the Commonwealth, which is incorporated into this Agreement by reference as though physically attached. As used in the Audit Clause, the term "Subrecipient" means the SPONSOR.

14. ABANDONMENT OR POSTPONEMENT OF PROJECT

In the event that the SPONSOR abandons or indefinitely postpones the Project, it may terminate this Agreement by sending the DEPARTMENT a thirty- (30-) day written notice of termination, with the understanding that, since the FHWA will not participate in any costs of a Project that is not completed and since the DEPARTMENT must be reimbursed for all costs incurred by it for the Project, the SPONSOR shall reimburse the DEPARTMENT, within thirty (30) days of receipt of a statement from the DEPARTMENT, in an amount equal to the sum of (i) all FHWA funds received by the SPONSOR for return to the FHWA, (ii) all FHWA funds paid to the DEPARTMENT for work performed under this Agreement for return to the FHWA and (iii) all costs incurred by the DEPARTMENT under this Agreement prior to receipt of notice of termination that have not been reimbursed by the FHWA or the SPONSOR.

15. MAINTENANCE AND OPERATION OF FACILITY

(a) The SPONSOR shall operate and maintain, at its sole cost and expense, all of the completed Project improvements financed under this Agreement that fall within its jurisdiction. The SPONSOR shall establish a formalized maintenance program, to be performed by contract or with its own forces, to insure an acceptable level of physical integrity and operation consistent with original design standards. This maintenance program, established in accordance with standards determined to be acceptable by the DEPARTMENT, shall include, but not be limited to, periodic inspections; appropriate preventative maintenance, which shall include, where applicable, cleaning, lubricating and refurbishing of electrical equipment; a systematic record-keeping system; and the means to handle notification and implementation of emergency repairs. The SPONSOR certifies that it shall make available sufficient funds to provide the maintenance program described herein. This provision shall not preclude the SPONSOR from making arrangements with other governmental bodies or instrumentalities or private parties for sharing the maintenance responsibilities. However, the SPONSOR shall retain primary responsibility pursuant to this subparagraph.

(b) Failure by the SPONSOR to fulfill its maintenance responsibilities may result in the loss of future state and federal funds.

(c) The SPONSOR shall have the right to transfer ownership and maintenance responsibilities for the improvements constructed pursuant to this Agreement, subject to prior approval by the DEPARTMENT. The SPONSOR shall submit a letter to the DEPARTMENT's local Engineering District Office requesting approval to transfer

ownership and maintenance and stating the name and address of the entity that will assume these responsibilities, which shall also sign the letter. The DEPARTMENT shall signify its approval, which it shall not unreasonably withhold, with the signature of its duly authorized representative on the letter.

16. SAVE HARMLESS

The SPONSOR shall indemnify, save harmless and (if requested) defend the Commonwealth of Pennsylvania, the DEPARTMENT, the FHWA and all of their officers, agents and employees from all suits, actions or claims of any character, name or description, including, but not limited to, those in eminent domain or otherwise relating to title to real property, brought for or on account of any injuries or damages received or sustained by any person, persons or property, arising out of, resulting from or connected with the planning, development, design, acquisition, construction, completion, occupancy, use, operation and/or maintenance of the Project or the improvements that it comprises, and/or any other activities relating to the Project or the improvements that it comprises, by the SPONSOR and/or the SPONSOR's consultant(s) and/or contractor(s) and their officers, agents and employees, whether the same be due to defective title, defective materials, defective workmanship, neglect in safeguarding the work, or by or on account of any act, omission, neglect or misconduct of the SPONSOR and/or the SPONSOR's consultant(s) and/or contractor(s), their officers, agents and employees, during the performance of the work or thereafter, or to any other cause whatever.

17. WITHHOLDING OF LIQUID FUELS FUNDS

If the SPONSOR shall fail to perform any of the terms, conditions or provisions of the Agreement, including, but not limited to, any default of payment for a period of thirty (30) days, the SPONSOR authorizes the DEPARTMENT to withhold so much of the SPONSOR's Liquid Fuels Tax Fund allocation as may be necessary to complete the Project or reimburse the DEPARTMENT in full for all costs due hereunder; and the SPONSOR does hereby and herewith authorize the DEPARTMENT to withhold such amount and to apply such funds, or portion thereof, to remedy such default.

18. REQUIRED CONTRACT PROVISIONS

The parties agree, and the SPONSOR shall also provide in its contracts for the Project, that all design, plans, specifications, estimates of costs, 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 conditions set forth in the current version of the Federal Nondiscrimination and Equal Employment Opportunity Clauses, which are incorporated into this Agreement by reference as though physically attached.

19. DISADVANTAGED BUSINESS ENTERPRISE REGULATORY COMPLIANCE REQUIREMENTS

The SPONSOR shall take the following steps, where applicable, in order to comply with the Disadvantaged Business

Enterprise ("DBE") requirements of SAFETEA-LU and regulations adopted pursuant thereto:

(a) For federally-assisted transportation-related projects, the DEPARTMENT may establish a percentage participation goal. The SPONSOR shall work with the DEPARTMENT's District Transportation Enhancements Coordinator concerning the necessity of establishing a goal for this Project. If a DBE goal is not applicable, the SPONSOR shall comply with the "Disadvantaged Business Enterprise and Small Business Concern Involvement" provision, which is incorporated into this Agreement by reference as though physically attached to it. If a goal is established, this goal must be attained by the SPONSOR's contractor or, in the alternative, a showing of good faith effort must be made. Determination of good faith effort shall be made by the SPONSOR and is subject to the concurrence of the DEPARTMENT. The SPONSOR shall comply with the following provisions, as applicable:

- i. If the Project requires prequalification, the SPONSOR shall comply with "Designated Special Provision 7" of the Publication 408 Specifications, (current edition), which is incorporated into this Agreement by reference as though physically attached to it.
- ii. If the Project is prequalification exempt, the SPONSOR shall comply with the "Disadvantaged Business Enterprise Requirements-Prequalification Exempt," which are incorporated into this Agreement by reference as though physically attached to it.
- iii. If the Project includes a design component, the SPONSOR shall comply with the "DBE Special Requirements-Engineering" which are incorporated into this Agreement by reference as though physically attached to it.

(b) Only firms that are certified as DBE's by the Pennsylvania DBE Unified Certification Program (PA UCP) as of the date of the bid opening may be used on the Project. The PA UCP maintains a Directory of certified DBE's classified according to the North American Industrial Classification System (NAICS Codes) and this Directory is accessible online at: www.paucp.com. Use of any other certification directory for this Project is prohibited.

20. REQUIRED DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE
PROVISION

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

(b) The SPONSOR must include the assurance contained in subparagraph (a) in each contract into which it enters to carry out the Project.

21. FHWA APPROVAL

The parties fully understand and agree that their respective obligations under this Agreement shall be made contingent upon the approvals, prior to commencement of work, of the Project's eligibility for participation in federal funds to the extent of the proportionate share, detailed in Exhibit "A"; and, if the FHWA does

not give such approval, neither of the parties shall be further obligated by the terms of this Agreement.

22. TERMINATION

Because this Agreement is to be funded either partially or completely by federal funds, the DEPARTMENT may terminate it if federal funds are not provided to the DEPARTMENT for the purposes stated in the Agreement. The DEPARTMENT shall effect any such termination by delivery to the SPONSOR of a notice of termination specifying the reason for termination and its effective date. The DEPARTMENT shall compensate the SPONSOR for work performed or services provided in accordance with the terms of this Agreement prior to the date of the notice of termination or such other date as the notice of termination shall specify.

23. RESOLUTIONS AND ORDINANCES

The SPONSOR shall enact and/or adopt such ordinances and/or resolutions as may be necessary to effect the purposes of this Agreement.

24. 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.

25. 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.

26. CONTRACTOR INTEGRITY PROVISIONS

The SPONSOR shall comply with the current version of the Commonwealth Contractor Integrity Provisions, which are incorporated into this Agreement by reference as though physically attached.

27. AMERICANS WITH DISABILITIES ACT PROVISIONS

The SPONSOR shall comply with the current version of the Commonwealth Provisions Concerning the Americans with Disabilities Act, which are incorporated into this Agreement by reference as though physically attached.

28. CONTRACTOR RESPONSIBILITY PROVISIONS

The SPONSOR shall comply with the current version of the Commonwealth Contractor Responsibility Provisions, which are incorporated into this Agreement by reference as though physically attached.

29. ANTI-LOBBYING REQUIREMENT

Public Law 101-121, Section 319, 31 U.S. Code Section 1352, prohibits the recipient or any lower tier subrecipients of a federal contract, grant, loan or cooperative agreement from expending federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal contract, the making of any federal grant or loan or the

entering into of any cooperative agreement. The SPONSOR agrees to comply with the Lobbying Certification Form attached to, and made part of, this Agreement as Exhibit "B," which an authorized official of the SPONSOR has executed.

30. COMPLETION OF WORK

The SPONSOR shall complete the work under this Agreement no later than five (5) years from the date shown on Page 1.

31. RIGHT-TO-KNOW LAW

The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Agreement. Therefore, this Agreement is subject to, and the SPONSOR shall comply with, the clause entitled Contract Provisions - Right to Know Law 8-K-1532, attached as Exhibit "C" and made a part of this Agreement. As used in this exhibit, the term "Contractor" refers to the SPONSOR.

32. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF
2006

As a subrecipient of federal funding, the SPONSOR shall provide to the Commonwealth the information specified in Exhibit "D," Federal Funding Accountability and Transparency Act of 2006-Grantee Information, attached to and made part of this Agreement, to ensure that the Commonwealth meets the reporting requirements imposed on it by the Federal Funding Accountability and Transparency Act of 2006. As used in this exhibit, the term "Grantee" refers to the SPONSOR.

33. EFFECTIVE DATE OF AGREEMENT

This Agreement and the authorizations granted in it shall be effective only after full execution and approval by all necessary Commonwealth officials as required by law. Following full execution, the DEPARTMENT will insert the effective date at the top of Page 1. The authorizations granted by this Agreement shall be further contingent upon written approval of the FHWA, if necessary.


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

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
District Executive DATE

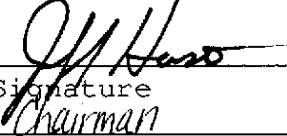
ATTEST:

Dauphin County Parks & Recreation*
(Name of SPONSOR)



Signature DATE 7/13/11
Chief Clerk

Title

BY 

Signature DATE 7/13/11
Chairman

Title

(SEAL)

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

APPROVED AS TO LEGALITY
AND FORM

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

BY _____
for Chief Counsel Date

BY _____
for Comptroller Operations Date

Preapproved Form:
OGC No. 18-K-2684
Approved OAG 10/22/09

*** Unless the individuals signing this Agreement on behalf of the SPONSOR are authorized to do so by statute or regulation, the SPONSOR's resolution authorizing execution and attestation must accompany this Agreement; please indicate the signers' titles in the blanks provided and date all signatures.**

Agreement No. 089778 split 100%, expenditure amount of \$192,000.00 for federal funds and 0%, expenditure amount of \$0.00, for state funds. The related federal assistance program name and number is Highway Planning and Construction (Highway Bill); 20.205. The state program name and SAP fund is N/A; N/A. This paragraph does not affect the costs to the SPONSOR.

political subdivisions

**STANDARD TRANSPORTATION ENHANCEMENTS
ATTACHMENT 'A'**

Agreement No: 089778

MPMS No: 65941

County: Dauphin

Municipality: Wiconisco Township, Lykens Borough

Project Name: Lykens Valley Rail Trail

Derivation of Projects Costs = (Check One)

Federal Aid Contribution: \$192,000.00 for Construction phase.
 (enter amount)
 (100% Federal Aid for Construction / 100% Sponsor dollars for design)

Federal Aid Contribution : \$_____ for all phases.
 (enter amount)
 (80% Maximum Federal Aid/20% Minimum Sponsor Dollars)

Participant

<u>Reimbursable Activity</u>	Federal	Commonwealth	Sponsor	Department Incurred Cost (if any)	Subtotal
Preliminary Design and Environmental Studies	\$0	\$0	100%	\$0	\$0
Final Design	\$0	\$0	100%	\$0	\$0
Right of Way	\$0	\$0	100%	\$0	\$0
Utilities	\$0	\$0	100%	\$0	\$0
Construction and Construction Inspection	\$192,000	\$0	\$0	\$0	\$192,000
Subtotal	\$192,000	\$0			
Total Project Cost					\$192,000

LOBBYING CERTIFICATION FORM

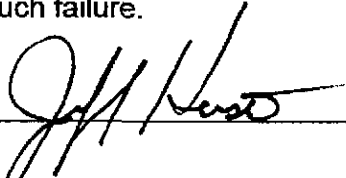
Certification for Contracts, Grants, Loans, and Cooperative Agreements:

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

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employe of any agency, a member of Congress, an officer or employe of Congress, or an employe of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employe of any agency, a member of Congress, an officer or employe of Congress, or an employe of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

SIGNATURE: _____



TITLE: _____

Chairman

DATE: _____

7/13/11

Contract Provisions – Right to Know Law 8-K-1532

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

Revised February 1, 2010

EXHIBIT “C”

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

i. The Contractor's duties relating to the RTKL are *continuing duties* that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.



BOARD OF COMMISSIONERS
JEFF HASTE, CHAIRMAN
MIKE PRIES, VICE CHAIRMAN
GEORGE P. HARTWICK III, SECRETARY

CHIEF CLERK/ CHIEF OF STAFF
LAURA E. EVANS, Esq.

July 13, 2011

Commonwealth of Pennsylvania
Harrisburg, PA

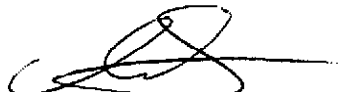
RE: Exhibit D
Federal Funding Accountability and Transparency
Act of 2006 – Grantee Information

In accordance with the above referenced Exhibit, please be advised of the following information:

1. Registration and Identification Information - Dauphin County
DUNS #071207955
2. Primary Location - The primary locations that relate to this particular Agreement are Lykens Borough (Lykens, PA 17048) and Wiconisco Township (Wiconisco, PA 17097).
3. Compensation of Officers – The requirements of this clause are inapplicable to the Grantee.

If you require any additional information, please feel free to contact me.

Sincerely,



Laura E. Evans, Esq.
Chief Clerk

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006 – GRANTEE INFORMATION

1. Registration and Identification Information

Grantee must maintain current registration in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded pursuant to this agreement. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

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

2. Primary Location

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

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

3. Compensation of Officers

Grantee must provide to the Commonwealth the names and total compensation of the five most highly compensated officers of the entity if--

(i) the entity in the preceding fiscal year received--

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

(II) \$25,000,000 or more in annual gross revenues from Federal awards; and

(ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

If the Grantee does not meet the conditions listed above, then it must specifically affirm to the Commonwealth that the requirements of this clause are inapplicable to the Grantee.

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