

MEMORANDUM OF AGREEMENT

BETWEEN

LUZERNE COUNTY

AND THE

LUZERNE COUNTY TRANSPORTATION AUTHORITY

This AGREEMENT, made at Wilkes-Barre, Pennsylvania, this _____ day of _____, 20____, between LUZERNE COUNTY located at the Luzerne County Courthouse, 200 N. River St., Wilkes-Barre, Pennsylvania, herein referred to as “COUNTY” and the LUZERNE COUNTY TRANSPORTATION AUTHORITY, with offices located at 315 Northampton Street, Kingston, Pennsylvania, herein referred to as “AUTHORITY”.

WITNESSETH:

WHEREAS, COUNTY desires to complete the transit elements under the FY 2014-2015 Unified Work Program; and

WHEREAS the AUTHORITY is the local agency charged by the Federal Government to complete this transit work; and

WHEREAS, the AUTHORITY is willing to perform the work as described in (Exhibit A) according to the terms and conditions of this Contract; and with Exhibit A, attached herewith:

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter expressed and intending to be legally bound hereby, it is agreed between the parties as follows:

1. RETENTION OF FIRM

COUNTY hereby engages AUTHORITY, and the AUTHORITY agrees to supply the technical and professional services to assist in completing the transit elements for 2014-2015.

2. SCOPE OF SERVICES

AUTHORITY undertakes to perform on behalf of COUNTY the “Scope of Work” contained in Exhibit A, attached hereto and made part hereof.

3. PERFORMANCE

AUTHORITY shall do, perform, and carry out, or cause to be done, performed and carried out, in a satisfactory and proper manner as determined by COUNTY, all services as set forth in “Scope of Work” in Exhibit A. In the performance of these services, the AUTHORITY will:

- (a) Employ all personnel necessary to perform the services under this AGREEMENT, except that COUNTY shall provide the person/days of assistance to carry out assigned tasks. Personnel of the AUTHORITY shall not be employed or have contractual relationship with COUNTY.**
- (b) Submit in the event of temporary or permanent absence of any of the team members performing the scope of service for prior approval, the experience record of personal proposed as substitutes.**

AUTHORITY agrees to perform services under direction of the LUZERNE COUNTY PLANNING COMMISSION’S Planning Director, who will be responsible for the certification of services rendered according to the terms set forth in this AGREEMENT.

4. ACCOUNTS AND RECORDS

AUTHORITY shall keep, or cause to be kept, accurate records and books of accounts, and shall record and report, with all essential details, the receipt and disbursement of all funds under the terms of this AGREEMENT. COUNTY and the Federal Transit Administration shall have access at all reasonable times to all records and books of accounts pertaining to this AGREEMENT. Authority shall permit the authorized representatives of COUNTY and the U.S. Government to inspect and audit all data and records of the AUTHORITY relating to the carrying out of this AGREEMENT

AUTHORITY shall preserve all documents, records, and books of accounts pertaining to this AGREEMENT for inspection and/or audit by authorized representatives of the above-mentioned agencies.

5. TIME OF PERFORMANCE

Services of AUTHORITY under this Contract will be provided during a reasonable time period starting on the date of the PaDOT notice to proceed letter.

6. REPORTS

Reports will be prepared on each of the work tasks as mentioned in Exhibit A.

7. COMPENSATION

It is understood that the total cost of this AGREEMENT to the COUNTY shall not exceed the amount of Twelve Thousand Nine Hundred Sixty Dollars (\$12,960) without the written approval of the COUNTY, and funding will be provided by PaDOT AGREEMENT No. 520902, work order No. 5.

8. PAYMENT

The COUNTY agrees to pay the AUTHORITY on a quarterly basis upon receipt of proper invoice and certification, for services actually required and performed.

AUTHORITY shall use a provisional overhead rate, which is the AUTHORITY'S current FY 2014-15 estimated overhead rate. It is further agreed that actual indirect rates may be determined through an audit, at the sole expense of the AUTHORITY, of both direct charges and overhead charges conducted by an appropriate agency of the Federal Government upon completion of this Contract or at such time as AGREEMENT is cancelled.

AUTHORITY shall submit to COUNTY periodically, a bill for each period including labor cost and provisional overhead cost. Each invoice shall be supported by adequate back-up data showing services and other costs expended. The final invoice shall bill that portion of fee not previously billed as well as costs for the final month. In no event will total billings under this Contract exceed the ceiling price of \$12,960. The periodic invoices will be accompanied by appropriate progress reports and shall be paid in full by COUNTY unless it is determined, at the sole discretion of the COUNTY, that the work performed is unsatisfactory.

9. CHANGES

Any changes, corrections or additions to this AGREEMENT shall be in writing in the form of a letter from COUNTY to the AUTHORITY setting forth therein the proposed change, correction or addition, approved by endorsement of

LUZERNE COUNTY PLANNING COMMISSION'S Planning Director on the bottom of said letter. Thereafter, the original of said letter, together with the AUTHORITY'S approval, shall be attached to each copy of said AGREEMENT. Such letter will then become an amendment to this AGREEMENT and will become a part hereof.

10. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, AUTHORITY shall fail to fulfill in timely and proper manner, its obligations under this AGREEMENT, or if AUTHORITY shall violate any of the covenants, agreements, or stipulations of this AGREEMENT, COUNTY shall thereupon have the right to terminate this AGREEMENT by giving written notice to AUTHORITY of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by AUTHORITY shall, by the option of COUNTY, become its property, and AUTHORITY shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, AUTHORITY shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this AGREEMENT by AUTHORITY, and COUNTY may withhold any payments to AUTHORITY for the purpose of setoff until such time as the exact amount of damage is determined.

11. **TERMINATION FOR CONVENIENCE OF COMMISSION**

COUNTY may terminate this AGREEMENT at any time, giving written notice to AUTHORITY of such termination, and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials shall become the property of COUNTY. If this AGREEMENT is terminated by COUNTY, as provided herein, AUTHORITY will be paid an amount to cover actual services and expenses to the termination date.

12. **NON-DISCRIMINATION AND EQUAL OPPORTUNITY**

During the performance of this AGREEMENT, AUTHORITY agrees as follows:

AUTHORITY will not discriminate against any employee or applicant for employment because of race, religion, creed, color, age, sex or national origin. AUTHORITY will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, age, sex or national origin, and AUTHORITY agrees that the foregoing requirements will be inserted in all contracts for any worker covered by this AGREEMENT so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or sub-contracts for standard commercial supplies or raw materials.

13. MINORITY BUSINESS ENTERPRISE

In connection with the performance of this contract, the AUTHORITY will cooperate with COUNTY in meeting its commitments and goals with regard to the maximum utilization of minority business enterprises and will use its best efforts to ensure that minority business enterprises shall have the maximum practicable opportunities to compete for sub-contract work under this contract.

14. OFFICIALS NOT TO BENEFIT

It is agreed that no Member or Delegate to the Congress of the United States of America and no County Council Person shall be admitted to any share or part of this AGREEMENT or to any benefits arising herefrom.

15. INTEREST OF MEMBERS OF COUNTY AND OTHERS

It is agreed that no officer, member or employee of COUNTY and no member of its governing body, and no public official of the governing body of the locality or localities in which the services to be performed is situated or being carried out, who exercises any functions or responsibilities in connection with the review of approval of the undertaking or the carrying out the services, shall participate in any decision relating to this AGREEMENT which effects his personal interest, or have any personal or pecuniary interest in this AGREEMENT or in the proceeds thereof.

16. CONFLICT OF INTEREST

AUTHORITY covenants that it will employ no person or sub-contractors in the performance of this AGREEMENT where AUTHORITY has reason to believe

that such person has any financial or any other interest which would conflict in any manner or degree to the performance of this AGREEMENT, and in conformance with current COUNTY policy.

17. **ASSIGNABILITY**

AUTHORITY shall not assign any interest in this AGREEMENT and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of COUNTY thereto: Provided, however, that claims for money due or to become due to AUTHORITY under this AGREEMENT may be assigned to a bank, trust or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to COUNTY.

18. **INTEREST OF AUTHORITY**

AUTHORITY covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this AGREEMENT. AUTHORITY further covenants that in the performance of this AGREEMENT, no person having such interest shall be employed, in conformance with current COUNTY policy.

19. **FINDING CONFIDENTIAL**

Any reports, information, data, etc., given to our prepared or assembled AUTHORITY under this AGREEMENT, which COUNTY requests to be kept as confidential, shall not be made available to any individual or organization by AUTHORITY, without the prior written approval of COUNTY.

20. COPYRIGHT

No reports, maps or other documents produced in whole or in part under this AGREEMENT shall be the subject to an application for copyright by or in behalf of the AUTHORITY.

21. ARBITRATION

Any dispute between the parties to this contract which cannot be resolved by good faith negotiation between them shall be submitted to an Arbitration Panel, whose decision shall be final and binding upon the parties and enforceable in any competent court having jurisdiction of the matter. The Arbitration Panel shall consist of an arbitrator appointed by both parties and a neutral arbitrator selected by the arbitrators of the parties. If in the event the arbitrators cannot select a neutral arbitrator within twenty (20) days, either party may petition the Court for appointment of a neutral arbitrator.

Arbitration proceedings may be initiated at the election of either party by giving ten (10) days written notice to the other and to the Association of his demand, and such proceedings shall be conducted according to the then prevailing applicable rules of the Association.

22. CLEAN AIR ACT OF 1970

AUTHORITY hereby agrees to comply with all orders, applicable standards, or regulations issued pursuant to the Clean Air Act of 1970.

IN WITNESSETH WHEREOF, the intending to be legally bound hereby, the parties hereto have executed this MEMORANDUM OF AGREEMENT by affixing their hands and seals, or causing the same to be signed by their duly authorized representative, the day and year aforesaid.

ATTEST:

LUZERNE COUNTY

**Jennifer Thomas,
Executive Assistant to the County Manager**

Robert C. Lawton, County Manager

Solicitor Review and Approval:

I hereby certify that I am a Solicitor for Luzerne County, that I have reviewed this Agreement, and that it is prepared in the proper form and is in accordance with the laws of the Commonwealth of Pennsylvania and the County.

Atty. Stephen Menn

ATTEST:

**LUZERNE COUNTY TRANSPORTATION
AUTHORITY:**

Joseph Blazosek, Solicitor

Robert Chepalonis, Board Chairman

EXHIBIT 'A'

SCOPE OF WORK

The Luzerne County Transportation Authority agrees to accomplish the following work items as listed in the Fiscal Year 2014-2015 Lackawanna/Luzerne Transportation Study's Unified Planning Work Program:

TASK III –SURVEILLANCE

Work Task 3.2 Transit System Monitoring

The AUTHORITY will provide the COUNTY and the federal and state transit agencies with the required reports and selected operational and financial data, including the following:

- A. Number and age of vehicles.
- B. Total unlinked passenger trips.
- C. Total vehicle miles and hours.
- D. Passengers per mile.
- E. Total annual vehicle miles for each transit route.
- F. Annual passenger and vehicle mile revenue
- G. Vehicle hour revenue.
- H. Fare structure, operating costs, deficit costs and subsidies.
- I. Operating costs, revenue and revenue passengers for each transit route.

The AUTHORITY will assist the Planning Commission in updating the transit route map.

Total Cost

\$ 3,000

80% Funding Level

\$ 2,400

TASK IV – SYSTEMS PLANNING

Work task 4.2 Transit Planning

The AUTHORITY will review and revise the transit routes, when necessary, and continue operational and administrative efforts to promote the utilization of the system and meet the reporting requirements of the federal and state transit agencies.

<u>Total Cost</u>	<u>80% Funding Level</u>
\$ 7,000	\$ 5,600

TASK IV – SYSTEMS PLANNING

Work Task 4.5 Elderly and Handicapped

The AUTHORITY will continue its administration and monitoring activities of the Special Transportation Efforts Program and fulfill the requirements of the American With Disabilities Act.

<u>Total Cost</u>	<u>80% Funding Level</u>
\$ 5,000	\$ 4,000

TASK V – PROGRAMMING

Work task 5.2 TIP – Transit

The AUTHORITY will develop the transit portion of the TIP, including both federally and non-federally funded programs for mass transit and Federal Transit Administration requirements in regard to financial capacity and competitive contracting, and prepare any TIP amendments and modifications to the current TIP as needed.

<u>Total Cost</u>	<u>80% Funding Level</u>
\$ 1,200	\$ 960

APPENDIX "A"

During the performance of this contract, the contractor, for itself, its assigns, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- (1) **Compliance with Regulations:** The Contractor shall comply with the Regulations relative to non-discrimination in Federally-assisted programs of the Department (hereinafter, "DOT"), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Non-Discrimination:** The Contractor, with regard to that work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.
- (3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontractor, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin.
- (4) **Information Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Recipient or the Federal Transit Administration, as appropriate, and shall set forth the efforts it has made to obtain this information.
- (5) **Sanctions for Noncompliance:** In the event of the Contractor's non-compliance with the non-discrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:
 - (a) Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - (b) Cancellation, termination, or suspension of the contract in whole or in part.

- (6) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontractor or procurement as the Recipient or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a Contractor become involved in, or is threatened with, litigations with a subcontractor or supplier as a result of such direction, the Contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient and, in addition, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

In the case of **Termination for Convenience** no advance notice by the grantee to the contractor is allowed. This type of notice when issued is effective upon receipt. In addition, no agreement by the parties is required before a Notice for Convenience can be issued.

In the Case of **Termination for Cause** the Federal Transit Administration recommends the grantee to give the contractor a ten-day period in which to “cure or show cause for breach”. If the contractor makes a positive effort to cure, the grantee may extend the ten-day period another ten days; if not, the grantee will terminate for default. Here also no agreement by the parties is required before the grantee terminates the contract. Finally, the contractor has no right in either case to terminate a contract.