

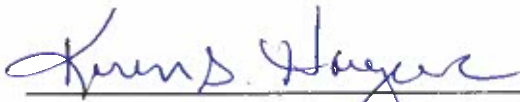
**WASHINGTON TOWNSHIP
FRANKLIN COUNTY, PENNSYLVANIA**

RESOLUTION NO 816

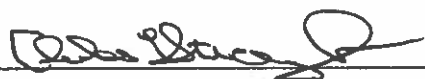
BE IT RESOLVED, by authority of the Board of Supervisors of the Township of Washington, Franklin County, and it is hereby resolved by authority of the same, that Township Manager of Washington Township, Vernon Ashway, is hereby authorized and directed to sign and/or submit the attached Roundabout Maintenance Agreement, to submit future modifications to the attached Roundabout Maintenance Agreement on its behalf and that Township Secretary, Karen S. Hargrave be authorized and directed to attest the same.

Attest:

**TOWNSHIP OF WASHINGTON
FRANKLIN COUNTY, PENNSYLVANIA**



Karen S. Hargrave, Township Secretary



**Charles L. Strausbaugh
Chairman**

2062



County: Franklin
Project Short Title: PA 997 & SR 2015 Intersection
Project (SR & Sec): SR 0997-037

Agreement #:08B449
MPMS #:106709
Federal ID #:23-6000561

ROUNABOUT MAINTENANCE AGREEMENT

This Roundabout Maintenance Agreement is made between the Commonwealth of Pennsylvania, acting through the Department of Transportation ("PennDOT"),

and

Washington Township, a political subdivision duly and properly formed under the laws of the Commonwealth of Pennsylvania, acting through its proper officials ("Municipality").

PennDOT intends to install a roundabout(s). The cost of installing a Roundabout under this agreement is being partially or totally funded with state, federal, or combined state and federal funds. The Municipality has agreed, upon completion of the Project, to assume year-round responsibility for maintenance of the roundabout(s) as stated in this agreement.

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

1. **Definitions.** Capitalized terms used in this agreement have the meanings given in this section. A term defined the in singular may be used in the plural, and vice versa.

a. **"Components"** means roundabout components, which includes, but is not limited to,

1. roadway pavement;
2. concrete splitter islands;
3. center island;
4. all Landscaping associated with the Roundabout to the extent it has been reviewed and approved by the Municipality;
5. truck apron around the center island;
6. all curbs associated with the Roundabout;

7. Americans with Disabilities Act-compliant sidewalks and adjacent curb ramps including splitter island refuge areas when applicable;
 8. all signing associated with the Roundabout;
 9. all pavement markings associated with the Roundabout; and
 10. the Lighting System.
- b. "Landscaping" means vegetated and non-vegetated items such as grass, shrubs, trees, rocks, associated drainage, and lighting.
 - c. "Lighting Plan" means the plan related to the lighting for the project, showing the places and positions and the intensities shown for the Lighting System.
 - d. "Lighting System" means electrical roadway lighting system, including, but not limited to, poles, arms, bases, conduit, junction boxes, wire, cables, luminaires, controls, related equipment, and energizing.
 - e. "Project" means installing roundabouts at the following location(s): PA 997 (Anthony Highway) and SR 2015 (Orchard Road) intersection and the PA 997 (Anthony Highway) and Washington Township Boulevard (T429) intersection.
 - f. "Publication 408" means PennDOT's Specifications, Publication 408 (current edition), its amendments and supplements.
 - g. "Roundabout" means the roundabout(s) to be installed by PennDOT in the Project under this agreement.

2. **Construction.** PennDOT will, with its own forces or by contract, construct the Project and install the Roundabout in accordance with the plans prepared by PennDOT, incorporated by reference as though physically attached, including the Roundabout Components.

3. **Project Completion.** PennDOT will notify the Municipality during construction and invite municipal representatives to participate in all construction observation and inspections of the Components to be maintained by the Municipality. Upon completion of the Project, PennDOT will send to the Municipality a written notice of completion.

4. **Maintenance.** Upon receipt of the notice of completion from PennDOT, the Municipality shall, at its sole cost and expense, be responsible for the year-round maintenance and repair of the following Roundabout Components:

- a. **Landscaping Maintenance.** Year-round maintenance and repair of the Landscaping, which includes, but is not limited to, generally maintaining the number and condition of the landscape plantings, and maintaining growth so that required sight distance is not obstructed;
- b. **Sidewalk Maintenance.** Sidewalk maintenance, which includes, but is not limited to, generally maintaining the condition of the sidewalk as well as clearing and removal of snow and ice and application of anti-skid or de-icing materials. Pedestrian facilities within the splitter islands and adjacent curb ramps are considered part of the sidewalks that require the same maintenance by the Municipality. Furthermore, the Municipality, at its sole cost and expense, shall be responsible for all future construction or alterations to the sidewalk necessary to ensure continuing compliance with the Americans with Disabilities Act ("ADA") and the federal regulations promulgated under its authority. The Municipality shall diligently and strictly enforce its applicable sidewalk ordinances;
- c. **Signage Maintenance.** All signing associated with the Roundabout, which includes, but is not limited to, yield, roundabout ahead, pedestrian crossing, road name, and chevron signs;
- d. **Pavement Marking Maintenance.** All pavement markings associated with the Roundabout, which includes, but is not limited to, yield lines, pavement markings along the splitter islands and within the circulating roadway, and crosswalk pavement markings; and
- e. **Lighting System Maintenance.** Lighting System maintenance as set forth in Section 8 below.

5. **Failure to Maintain.** If PennDOT determines that any of the Roundabout Components are not in a state of good condition, including, but not limited to, maintaining

lighting and sidewalk in accordance with approved plans, and vegetated or non-vegetated Landscaping components that obstruct sight distance, PennDOT will provide written notice of any perceived deficiency. Upon receipt of such written notice, the Municipality shall promptly complete the necessary work on any items that it does not dispute and notify PennDOT in writing of any items it does dispute. The parties will promptly communicate and meet to resolve any disputed items. The Municipality shall be responsible for the cost and implementation of any maintenance or repair of damages to the Components listed above, deemed necessary by PennDOT, to ensure the safety and efficient function of the Roundabout after it has been opened to traffic. The Municipality will diligently pursue completion of the undisputed work as promptly as reasonably possible but in no event later than 45 days after written notice is received by the Municipality. PennDOT may itself undertake to complete the work and bill the Municipality for the actual cost of doing so. The Municipality may request an additional cure period to address any deficiencies identified by PennDOT. Approval of a cure period request, including any extensions, is at PennDOT's discretion and will not be unreasonably withheld.

6. **Roadway Maintenance.** PennDOT will, with its own forces or by contract, be responsible for clearing and removal of snow and ice and application of anti-skid or de-icing materials within the paved roadway including the truck apron and shoulders.

7. **Pavement Maintenance.** PennDOT will, with its own forces or by contract, be responsible for maintenance and future replacement of the bituminous or cement concrete pavement structure of the roadway including the truck apron and shoulders.

8. **Lighting System.** PennDOT, by contract and with federal aid, if applicable, and without cost to the Municipality, shall furnish and install the Lighting System for the Project, at the places and positions and in the intensities shown on the Lighting Plan. Upon receipt of the notice of completion, all PennDOT's right, title and interest in and to the Lighting System, at the places and positions and in the intensities shown on the Lighting Plan, shall transfer to the Municipality. The Municipality shall assume ownership, custody, and control of it, as authorized in the resolution attached as Exhibit A, subject to the following terms and conditions:

- a. **Municipality's Responsibility.** The Municipality, at its sole cost and expense, shall energize, operate, and maintain the Lighting System, in a good state of repair, satisfactory to PennDOT so as not to constitute an impediment, either horizontally or vertically, to the vehicular use of the entire traveled width of the roadway. The Municipality shall also provide such safeguards, at the site of any maintenance or repair work undertaken under this agreement, as needed to protect the safety of the traveling public during the performance of such work.
- b. **Extended Maintenance.** Upon expiration of the guarantee to be furnished by PennDOT's contractor in accordance with Publication 408, the Municipality, at its cost and expense, shall replace all defective units, junction boxes, wire, cables, conduit, luminaires, controls, poles, arms, bases, and other components of the Lighting System, in accordance with Publication 408. The Municipality shall not make any replacement without first securing PennDOT approval, which shall not be unreasonably withheld.
- c. **Failure to Maintain.** If after notice to the Municipality as stated above the Municipality fails to maintain or repair the Lighting System, PennDOT reserves the right, and the Municipality gives to PennDOT the right, to repair, subject to reimbursement by the Municipality of the actual cost, all of the parts of the Lighting System not maintained in a condition reasonably satisfactory to PennDOT.
- d. **Responsibility for Contracts.** After assumption of the Lighting System, the Municipality is solely responsible for making all contractual arrangements with the electric utility(ies) and (if involved) the maintenance contractor(s), to make certain the performance of all services and supply of all materials as required.
- e. **Contract Provisions.** Any or all agreements into which the Municipality enters with the electrical utility(ies) and (if involved) the maintenance contractor(s) shall contain a clause prohibiting the use of the Lighting System for any purpose other than highway lighting.

9. **Insurance.** The Municipality shall name PennDOT as an additional insured on its general public liability insurance policies to provide insurance coverage to the Commonwealth as stated in said policies.

10. **Default.** PennDOT, if after notice as provided within this agreement and the failure of the Municipality to comply with its obligations within this agreement regarding any undisputed maintenance or repair items, PennDOT may withhold so much of the Municipality's Liquid Fuels Tax Fund Allocation as may be needed to complete any necessary work and to reimburse PennDOT in full for actual costs due, and the Municipality does authorize PennDOT to withhold such amount and to apply such funds, or portion of such funds, to remedy the default. Notwithstanding anything to the contrary in this agreement, no such setoff shall be permitted for any items under dispute until the dispute is resolved. Both parties acknowledge and agree that they have an affirmative obligation to meet, discuss, and resolve any and all disputes and seek compromise in good faith.

11. **Ordinances and Resolutions.** The Municipality shall enact or adopt such ordinances or resolutions as may be necessary to affect the purposes of this agreement.

12. **Commonwealth Standard Provisions.** The Municipality agrees to comply with the Commonwealth provisions attached as Exhibit B.

13. **Term and Termination.**

- a. **Term.** This agreement shall continue in full force and effect indefinitely, unless terminated as provided in this agreement. The Effective Date of this agreement shall be the date this agreement is fully executed by the Municipality and PennDOT and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature.
- b. **Termination for Cause.** This agreement shall not terminate for cause unless the cause renders it void or otherwise unenforceable. If one party alleges an event of default has occurred resulting in termination, and the other party disputes whether

a breach has occurred, then this agreement shall not terminate until and unless the dispute is resolved and this agreement is determined to be void or otherwise unenforceable.

- c. **Accrued Rights and Obligations.** Termination of this agreement for any reason shall not release either party from any liability which, at the time of termination, has already accrued to the other party or which is attributable to a period prior to termination, nor preclude either party from pursuing any rights and remedies it may have with respect to any breach of this agreement.

14. **Notices.** All notices and reports arising out of, or from, the provisions of this agreement must be in writing and given to the parties at the address provided under this agreement, either by regular mail, e-mail, or delivery in person:

To PennDOT:

Title: Maintenance Services Executive

Address: 2140 Herr Street, Harrisburg PA 17103-1699

To the Municipality:

Title: Washington Township, Township Manager

Address: 11798 Buchanan Trail East, Waynesboro PA 17268

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

15. **Amendments and Modifications.** No alterations or variations to this agreement will be valid unless made in writing and signed by the parties. Amendments to this agreement must be accomplished through a formal written document signed by the parties with the same formality as this agreement, except as set forth in Section 14 above.

16. **Severability.** The provisions of this agreement are 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 its applicability to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and its applicability to any government, agency, person or circumstance will not be affected.

17. **No Waiver.** Either party may elect not to enforce its rights and remedies under this agreement in the event of a breach by other parties 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 may not be construed as a waiver of any subsequent breach of the same or any other term or condition of this agreement.

18. **Independence of the Parties.** Nothing contained in this agreement is intended or may be construed to, in any respect, create or establish the relationship of partners between the Municipality and PennDOT, or as constituting PennDOT as the representative or general agent of the Municipality.

19. **Assignment.** This agreement may not be assigned, either in whole or in part, without PennDOT's written consent.

20. **No Third-Party Beneficiary Rights.** This agreement does not create or intend to confer any rights in or on persons or entities not a party to this agreement.

21. **Force Majeure.** Neither party will be liable for failure to perform under this agreement if a failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision will become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

This provision will not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

22. **Integration and Merger.** The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole expression of their agreement, and they are not bound by any other agreements of whatsoever kind or nature. The parties also intend that this agreement may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing. In entering this agreement, the parties did not rely upon oral or written statements or representations not contained within the document itself.

23. **Counterparts.** This agreement may be executed in counterparts, each of which is deemed an original and has the full force and effect as an original but all of which constitute one and the same instrument.

[The remainder of this page is intentionally left blank.]

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

ATTEST

WASHINGTON TOWNSHIP

Karen S. Hanger
Title: Township Secretary Date 4-1-24

BY [Signature]
Title: Township Manager Date 4-1-24

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

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
Deputy Secretary or Designee Date

APPROVED AS TO LEGALITY
AND FORM

BY _____
for Chief Counsel Date

BY _____
Deputy General Counsel Date

BY _____
Deputy Attorney General Date

*As applicable, the Municipality's resolution authorizing execution and attestation must accompany this agreement.

AT-53.4