MEMORANDUM OF UNDERSTANDING
Coordination of the Transportation Planning Processes
Between
Harrisburg Metropolitan Planning Organization
and
Lebanon County Metropolitan Planning Organization

I. Background and Purpose

A. The Harrisburg Metropolitan Planning Organization (HMPO) and the Lebanon County Metropolitan Planning Organization (LEBCO MPO) recognize that the Harrisburg, Pennsylvania, Urbanized Boundary extends into Lebanon County, Pennsylvania. The purpose of this agreement is to define the roles and responsibilities of the Metropolitan Planning Organizations (MPOs).

B. This agreement provides the framework for the responsibilities of the LEBCO MPO and HMPO in regard to the federally mandated transportation planning, programming and funding for the Harrisburg Urbanized Area within Lebanon County. Each MPO will coordinate with the other on planning and programming of studies and projects that will impact the economy, environment, transportation systems and quality of life for the citizens within their respective planning areas.

II. General Points of Understanding and Agreement

A. We agree to collaborate in the planning, conduct and reporting of transportation related information at the state and regional levels. We agree to share information and plans in order to achieve the goals of state and regional transportation plans, and to assist, where appropriate, in the joint selection of projects, and improve the coordination of investment across borders.

B. We agree to work together to achieve compliance with all federal planning regulations and guidance. We will work collaboratively to address the certification reviews that take place every four years, as scheduled by the U.S. Department of Transportation - Federal Highway Administration and Federal Transit Administration - Region 3, in order to continually improve upon our transportation planning processes.

C. We agree that staffs of both MPOs will meet as needed to review progress of cooperative efforts, to discuss key findings from program activities, and to discuss the scope, plans and implementation of activities under consideration for the next planning cycle.

D. This agreement will be reviewed when either agency identifies the need for a review.

III. Specific Points of Understanding and Agreement

A. MPO Boundary

1. We recognize the LEBCO MPO Boundary is the entire County of Lebanon.

B. Long Range Transportation Plans (LRTPs)

1. We recognize the currently adopted Lebanon County Metropolitan Planning Organization Long Range Transportation Plan is the transportation plan for Lebanon County, Pennsylvania. This includes the portion of the Harrisburg Urbanized Area in Lebanon County.

2. We agree the LEBCO MPO should address planning/programming needs of the Harrisburg Urbanized Area within Lebanon County. Findings of the LEBCO MPO concerning its portion of the Harrisburg Urbanized Area will be incorporated in the Long Range Transportation Plans for both MPOs.

C. Transportation Improvement Program (TIP)

1. We agree to work together on planning and programming transportation projects for the Harrisburg Urbanized Area within Lebanon County and assure that applicable funds are spent on projects and programs that improve the transportation system.

2. To help ensure continuity of federal funds and help support project delivery, both HMPO and LEBCO MPO agree to abide by the methodology and process used to allocate federal funds to the respective MPOs. The federal and state formulas will continue to follow county boundaries and not the Urbanized Area Boundary. Effective October 1, 2009, Surface Transportation Program Urban (STU) funds will be divided between the Lebanon County MPO and Harrisburg MPO based on the percentage of the Harrisburg Urbanized Area population within Lebanon County and the entire Harrisburg Urbanized Area population. Such funds will be used for projects in the Harrisburg Urbanized Area of Lebanon County.

3. MPMS project #66649 (US Route 422 / Lingle Avenue intersection improvement project) currently identified on the HMPO TIP will remain in the HMPO TIP, as will MPMS project #65967 (Campbelltown Connector project) and MPMS project #85988 (Campbelltown Connector Roundabout).

D. Unified Planning Work Program (UPWP)

1. The LEBCO MPO will develop and submit a work plan for all work in the Harrisburg Urbanized Area within Lebanon County.

2. To help ensure the continuity of federal funds and help support the planning process within the two existing MPO planning area boundaries, each agency agrees to abide by the methodology and process currently used to allocate planning funds to the respective MPOs.

E. Other Planning Activities

1. We agree to work together to identify the need for corridor projects that cross the MPO boundary.

2. We agree the LEBCO MPO will address urban area boundary issues and review the functional classification of all public roads and streets within Lebanon County on a periodic basis. This review will be completed using the National Functional Classification System guidelines.

3. We agree to cooperate with planning and implementation of our respective management and monitoring systems, especially the congestion management processes (CMP) system.

4. We agree to coordinate air quality maintenance and conformity issues as they affect the regional attainment status and conformity of each MPO's Long Range Transportation Plan and Transportation Improvement Program.

Agreed to this 24th day of April, 2009 by:

Mark K. Keller
Chairman
Harrisburg MPO

William G. Carpenter
Chairman
Lebanon County MPO

MEMORANDUM OF UNDERSTANDING (MOU)
MPO Boundaries and Coordination of Transportation Planning and Programming
Between
Harrisburg Area Transportation Study (HATS) and
York Area Metropolitan Planning Organization (YAMPO)

Background and Purpose

A. The Year 2010 Census defined Urbanized Area (UA) for Harrisburg extends into York County as shown on the attached map. By federal statute, Metropolitan Planning Organization's (MPO's), or coverage by adjacent MPO's, are required where there is an UA.

B. By virtue of the UA populations, HATS and YAMPO are now Transportation Management Areas (TMA's). With TMA status comes additional planning requirements and Surface Transportation Urban (STU) funding which is based on the UA population.

C. The Harrisburg Area (composed of Cumberland, Dauphin and Perry counties) and York County MPO boundaries have been coincident with their common county boundaries.

D. The purpose of this MOU is to establish the MPO boundaries and transportation planning and programming responsibilities as they relate to the portions of the Harrisburg UA that extends into York County.

General

A. We agree to carry out the transportation planning and programming processes in a cooperative and coordinated fashion, and in compliance with federal planning regulations, including quadrennial certification reviews by USDOT.

B. Staff from both MPO's will communicate regularly, share information, and meet as needed to achieve the needed level of cooperation and coordination.

C. This agreement will be reviewed when either one of the entities identify the need for a review, but no later than 2023 or when the 2020 UA's are defined.

Specific

A. The MPO boundary between HATS and YAMPO will remain at the Cumberland and York county boundary.

B. YAMPO will assume primary planning and programming responsibility for the portion of the Harrisburg UA in its county, including:

- UPWP development and accomplishment
- Update of the Long Range Transportation Plan
- Biennial update of the Transportation Improvement Program
- Traffic and HPMS data collection
- Travel demand modeling (external station traffic volume projections should be coordinated and reasonably consistent where there are common external stations)
- Air quality modeling
- Special and corridor studies

- CMP planning and implementation
- Highway functional classification updates

C. Long Range Transportation Plans and Transportation Improvement Programs will continue to be developed for the respective MPOs.

D. To help ensure continuity of federal funds and help support project delivery, both HMPO and YAMPO agree to abide by the methodology and process used to allocate federal funds to the respective MPOs. The federal and state formulas will continue to follow county boundaries and not the Urbanized Area Boundary. Surface Transportation Program Urban (STU) funds will be divided between the York MPO and Harrisburg MPO based on the percentage of the Harrisburg Urbanized Area population within York County and the entire Harrisburg Urbanized Area population. Such funds will be used for projects in the Harrisburg Urbanized Area of York County.

Adopted by the York Area Metropolitan Planning Organization (YAMPO) this 25th day of April, 2013

Michael Keiser
Chairman, YAMPO Coordinating Committee

Adopted by Harrisburg Area Transportation Study (HATS) this 26th day of April, 2013

Jeffrey T. Haste
Chairman, HATS Coordinating Committee

MEMORANDUM OF UNDERSTANDING (MOU)

MPO Boundaries and Coordination of Transportation Planning and Programming
Between
Lancaster County Transportation Coordinating Committee (LCTCC) and
Harrisburg Area Transportation Study (HATS)

Background and Purpose

A. The Year 2010 Census defined Urbanized Area (UA) for Lancaster County extends into Dauphin County as shown on the attached map. By federal statute, Metropolitan Planning Organization's (MPO's), or coverage by adjacent MPO's, are required where there is an UA.

B. By virtue of the UA populations, the HATS Area and Lancaster County are now Transportation Management Areas (TMA's). With TMA status comes additional planning requirements and Surface Transportation Urban (STU) funding which is based on the UA population.

C. The HATS Area and Lancaster County MPO boundaries have been coincident with their common county boundaries.

D. The purpose of this MOU is to establish the MPO boundaries and transportation planning and programming responsibilities as they relate to the portions of the HATS Area and Lancaster UA's that extend into the adjoining county.

General

A. We agree to carry out the transportation planning and programming processes in a cooperative and coordinated fashion, and in compliance with federal planning regulations, including quadrennial certification reviews by USDOT.

B. Staff from both MPO's will communicate regularly, share information, and meet as needed to achieve the needed level of cooperation and coordination.

C. This agreement will be reviewed when either one of the entities identify the need for a review, but no later than 2023 or when the 2020 UA's are defined.

Specific

A. The MPO boundary between the HATS Area and Lancaster County will remain at the common county boundary between Lancaster and Dauphin Counties.

B. Each MPO will assume primary planning and programming responsibility for the portion of the adjoining county's UA in its county, including:

- UPWP development and accomplishment
- Update of the Long Range Transportation Plan
- Biennial update of the Transportation Improvement Program
- Traffic and HPMS data collection
- Travel demand modeling (external station traffic volume projections should be coordinated and reasonably consistent where there are common external stations)
- Air quality modeling
- Special and corridor studies

- CMP planning and implementation
- Highway functional classification updates

C. Long Range Transportation Plans and Transportation Improvement Programs will continue to be developed for the respective counties/areas.

D. There will be no sharing of STU funds by the two MPO's.

Adopted by the LCTCC this 25th day of February, 2013

Scott Martin, Chairman
LCTCC

Adopted by HATS this 26th day of April, 2013

Jeffrey Haste, Chairman
Harrisburg Area Transportation Study

INTERGOVERNMENTALAGREEMENT TO SPECIFY
COOPERATIVE PROCEDURES
FOR CARRYING OUT TRANSPORTATION PLANNING AND PROGRAMMING

THIS AGREEMENT, made and entered into this 28th day of November, 2012 by and between Cumberland-Dauphin-Harrisburg Transportation Authority d/b/a Capital Area Transit ("CAT"), , and the Harrisburg Area Transportation Study ("HATS"), and the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT"), hereafter called PennDOT.

WITNESSETH

WHEREAS, HATS was designated as the designated Metropolitan Planning Organization (MPO) for the Harrisburg Metropolitan Area in accordance with Section 134 of 23 U.S.C, and Section 4(a) of the Urban Mass Transportation Act of 1964; and

WHEREAS, the Statewide and Metropolitan Planning Regulations (23 CFR 450) were promulgated jointly by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) and became effective on November 29, 1993, to implement provisions of the Intermodal Surface Transportation Efficiency Act of 1991; and

WHEREAS, 23 CFR Part 450.312 Subpart (a) of said Federal Regulations requires that the MPO in cooperation with the State and with operators of publicly provided transit service shall be responsible for carrying out the metropolitan transportation planning process; and the MPO, the State and transit operators shall cooperatively determine their mutual responsibilities in the conduct of the planning process, including corridor refinement studies; and that they shall cooperatively develop the Unified Planning Work Program (UPWP), Transportation Plan, and Transportation Improvement Program (TIP); and

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a final rule (40 CFR 51 and 93) which required MPOs and the United States Department of Transportation (DOT) to make conformity determinations for metropolitan transportation plans and Transportation Improvement Programs (TIPs) before they are adopted, approved, or accepted; and

WHEREAS, pursuant to 71 P.S. §512(a), PennDOT has the duty to develop programs designed to foster efficient and economical public transportation services in the State; and,

WHEREAS, HATS has entered into an agreement with PennDOT, for the Conformity State Implementation Plan; and

WHEREAS, nothing in the agreement hereto will alter the provisions of the Conformity State Implementation Plan; and

WHEREAS, Tri-County Regional Planning Commission provides the lead staff planning support for HATS; and

WHEREAS, the parties hereto desire to organize and conduct a continuing, comprehensive, coordinated transportation planning process for the Tri County Region consistent with said Federal Regulations, and with the policies of the Federal Government, the State of Pennsylvania and HATS established pursuant thereto.

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual promises set forth below, the Parties agree, with the intention of being legally bound, as follows:

(1) HATS shall be the forum for cooperative decision-making by principal elected officials of general purpose local government. HATS shall be responsible for ensuring the maintenance of planning eligibility for state and federal transportation grants and the maintenance of adequate transportation plans and programs including the development of the Unified Planning Work Program (UPWP), Regional Transportation Plan and Transportation Improvement Program (TIP) specified in the aforementioned 23 CFR Part 450, in cooperation with the State and CAT.

(2) CAT and PennDOT will continue as members of HATS or any forums or committees that may be created for the purpose of regional transit planning decision-making. Mass transportation related plans, programs and reviews will be considered by CAT and PennDOT prior to any action being taken by HATS's standing committees. All meeting notices and agendas for HATS's standing committees will be prepared by TCRPC staff and sent to CAT and PennDOT.

(3) CAT shall compile records and maintain adequate operating data concerning all aspects of the transit system and market in accordance with PennDOT's " Operating Guidelines and Standards for Mass Transportation Assistance Programs" as well as FTA's National Transit Database (Section 5336) Reporting Systems guidelines and shall make such data available to HATS and PennDOT upon request.

(4) CAT shall provide HATS and PennDOT with copies of federal and state grant applications and grant approvals upon request.

(5) CAT shall be responsible for the planning and implementation of its own program administration, contract activities and engineering for capital projects. HATS and PennDOT may provide technical and other assistance in these activities, within budget constraints, upon request.

(6) TCRPC staff, in compliance with the approved UPWP, shall be responsible for the completion of an annual Short Range Transit Plan, indicating recommendations consistent with locally adopted transit goals and objectives.

(7) CAT and HATS shall comply with the Commonwealth's Contractor Responsibility Provisions; Contractor Integrity Provisions; Offset Provision; Commonwealth Nondiscrimination/Sexual Harassment Clause (or Federal Nondiscrimination Clause, where federal funds are utilized); the Provisions Concerning the Americans with Disabilities Act, and Right-to-Know-Law Provisions, all of which are incorporated herein by reference.

(8) This **AGREEMENT** shall remain in full force and effect, so long as the parties hereto shall not mutually terminate it. In the case of mutual termination or individual withdrawal, a requirement thereof shall be six (6) months notice in writing, stating reason(s) for withdrawal of termination by the terminator or withdrawer, delivered by registered mail to the other parties, hereto; such notice to be accompanied by a certified and attested proof of due and proper action authorizing such notice of termination or withdrawal.

(9) Any changes, corrections, or additions to the IGA shall be in writing in the form of a letter amendment signed by all parties, setting forth the proposed change, correction, or addition. The letter amendment shall be considered fully executed when signed by all parties and representatives of PennDOT's Office of Chief Counsel and the Office of Comptroller Operations.

(10) Each of the parties whose signature appear below, and their respective agencies, agree to make every effort to fulfill the stipulations contained herein.

(11) In the event of a dispute, controversy or claim arising out of or relating to this IGA, or the breach, termination or invalidity thereof (a "claim"), the Parties will use their best efforts to settle promptly such dispute through direct negotiation.

THE PARTIES HEREBY ACKNOWLEDGE the foregoing as the terms and conditions of their agreement. HATS-Metropolitan Planning Organization: Chairman/Secretary

9-28-12
Jeff Haste, Chairman

9-28-12
Jim Hertzler, Secretary

CAT: Chair/General Manager

9-28-12
Eric Bugaile, Chairman

9-28-12
William Jones, General Manager

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

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

James Ritzman, Deputy Secretary

10/15/2012
Adam Grimes, MPO Representative

APPROVED AS TO LEGALITY AND FORM

FUNDS COMMITMENT DOC. NO._____
CERTIFIED FUNDS AVAILABLUNDER
SAP NO. _____
NON-ENCUMBERED
SAP COST CENTER_____
GL ACCOUNT_____
AMOUNT_____

11/13/12
BY _____
for Chief Counsel
11/1/12
Date

BY _____
Deputy General Counsel
11/13/12
Date

BY Richard C. Lepley II
for Comptroller Operations
11/28/12
Date

BY _____
Deputy Attorney General
11/20/12
Date

RECEIVED
NOV 27 2012

pennsylvania

CRP CHECK CERTIFICATION FORM

Contractor TIN :	*****2331
Contractor Name :	Tri-County Regional Planning Commission
User Performing CRP Check :	cwopa\cwooding
Results:	No Record(s) Found

CONTRACTOR RESPONSIBILITY CERTIFICATION

I, the undersigned individual, hereby certify the above-referenced contractor has been determined to be a responsible contractor in accordance with the policies and procedures set forth in *Management Directive 215.9, Contractor Responsibility Program.*

I also certify that the contractor has certified in writing that:

a. neither the contractor nor any subcontractors as defined in Management Directive 215.9, Contractor Responsibility Program are under suspension or debarment by the Commonwealth, the federal government, or any governmental entity, instrumentality, or authority or, if the contractor cannot so certify, it has instead provided a written explanation of why such certification cannot be made; and

b. the contractor has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

Christine Wooding

Authorizing Signature

10/25/2012

Generated Date

CONTRACTOR INTEGRITY PROVISIONS

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

In furtherance of this policy, Contractor agrees to the following:

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.

2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.

3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.

4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.

5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.

6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.

7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.

8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:

   a. Approved in writing by the Commonwealth prior to its disclosure; or

   b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or

   c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or

   d. Necessary for purposes of Contractor's internal assessment and review; or

   e. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or

   f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or

   g. Otherwise required by law.

10. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:

(1) obtaining;

(2) attempting to obtain; or

(3) performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

c. Violation of federal or state antitrust statutes.

d. Violation of any federal or state law regulating campaign contributions.

e. Violation of any federal or state environmental law.

f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.

g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act,* 77 P.S. 1 *et seq.*

h. Violation of any federal or state law prohibiting discrimination in employment.

i. Debarment by any agency or department of the federal government or by any other state.

j. Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.

11. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions

known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars ($1,000) by any individual during the preceding year; or

b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars ($1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

12. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.

13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.

14. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.

15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.

16. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an

amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

17. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.

a. "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.

b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.

c. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.

d. "Financial interest" means:

(1) Ownership of more than a five percent interest in any business; or

(2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

e. "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor's Code of Conduct, Executive Order 1980-18*, the *4 Pa. Code §7.153(b)*, shall apply.

f. "Immediate family" means a spouse and any unemancipated child.

g. "Non-bid basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

h. "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

OFFSET PROVISION

The contractor agrees that the Commonwealth may offset the amount of any state tax or Commonwealth liability of the contractor or its affiliates and subsidiaries that is owed to the Commonwealth against any payments due the contractor under this or any contract with the Commonwealth.

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Contracts]

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

3. The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

4. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.

5. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.

6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

7. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Grants]

The Grantee agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the grant agreement or any subgrant agreement, contract, or subcontract, the Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate against or intimidate any of its employees on account of gender, race, creed, or color.
3. The Grantee, any subgrantee, contractor or any subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Grantee, any subgrantee, contractor or any subcontractor shall not discriminate by reason of gender, race, creed, or color against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the contracts relates.
5. The Grantee, any subgrantee, any contractor or any subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the granting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within thirty (30) days after award of any grant, the Grantee shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. Grantees who have fewer than five employees or whose employees are all from the same family or who have completed the STD-21 form within the past 12 months may, within the 15 days, request an exemption from the STD-21 form from the granting agency.
6. The Grantee, any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.
7. The Commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

FEDERAL NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY CLAUSES (All Federal Aid Contracts)* (1-76)

1. **Selection of Labor:** During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. **Employment Practices:** During the performance of this contract, the contractor agrees as follows:

   a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

   b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

   c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractors commitments under section 2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

   d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

   e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

   f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

   g. The contractor will include the provisions of Section 2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. **Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:** During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, 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.

b. Nondiscrimination: The contractor, with regard to the 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, including employment practices when the contract covers a program set forth in the Regulations.

c. 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 subcontract, including procurements of materials or leases of equipment, each potential subcontract or supplier shall be notified by the contract of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

d. Information and 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 State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(1) withholding of payments to the contractor under the contract until the contractor complies, and/or
(2) cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The contractor shall include the provisions of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless except by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration my direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department or enter into such litigation to protect the interest of the State, and , in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Wherever hereinabove the word "contractor" is used, it shall also include the word engineer, consultant, researcher, or other entity (governmental, corporate, or otherwise), its successors and assigns as may be appropriate.

*Not to be used if otherwise included in Construction or Appalachian Contract Provisions.

MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE

205.26
Number

Subject: The Americans With Disabilities Act of 1990, Title II, Subtitle A, Nondiscrimination in State and Local Government Services

By Direction of: Pat Halpin-Murphy
Pat Halpin-Murphy, Governor's Office ADA Director

Date: July 22, 1992

1. PURPOSE. To provide policies, procedures, and responsibilities for implementing provisions of Title II, Subtitle A of *The Americans With Disabilities Act* of 1990 *(ADA), P.L.101-336,* which prohibits Commonwealth agencies from discriminating against qualified individuals with disabilities on the basis of their disabilities in the provision of agency services, programs, and activities.

2. SCOPE. This directive applies to all agencies, independent boards, and commissions under the Governor's jurisdiction (hereinafter referred to as "agencies").

3. DEFINITIONS. All of the definitions contained in Management Directive 205.25, *The Americans With Disabilities Act of 1990, Title I, Employment, P.L.101-336,* also apply to this directive. The following definitions apply specifically to this directive.

a. Auxiliary aides and services.

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videotext displays, or other effective methods for making aurally delivered materials available to individuals with hearing impairments.

(2) Qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods foi making visually delivered materials available to individuals with visual impairments.

(3) Acquisition or modification of equipment or devices.

(4) Other similar services and actions.

b. Facility. All or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property structure, or equipment is located.

c. Historic preservation program. Programs whose primary purpose is **to** preserve historic properties.

d. Historic properties. Properties that are listed on or that are eligible to be listed in the *National Register of Historic Places* or properties designated as historic under Pennsylvania or local law.

e. Structural change. All physical changes to a facility, including but not limited to removal of or alteration to a loadbearing structural member.

f. Transition plan. An agency-developed plan that identifies structural changes which must be made to agency facilities in order to make the agency's services, programs, and activities, when viewed in their entirety, accessible to and usable by individuals with disabilities.

g. Qualified individual with a disability. An individual with a disability who meets the essential eligibility requirements for receipt of services or participation in an agency's programs, activities, or services with or without:

(1) reasonable modifications to the agency's rules, policies, or practices;

(2) removal of architectural, communications, or transportation barriers; or

(3) the provision of auxiliary aids and services.

4. OBJECTIVES.

a. To establish policies which provide to individuals with disabilities access to services, programs, and activities offered by agencies under the Governor's jurisdiction.

b. To establish procedures, priorities, and responsibilities for implementing corrective action, where necessary, to make agency services, programs, and facilities, when viewed in their entirety, accessible to and usable by individuals with disabilities.

5. POLICY.

a. Executive Order 1992-3 establishes the Commonwealth's basic policy for implementing the ADA, including implementation of Title II, Subtitle A, Nondiscrimination in State and Local Government Services.

b. General statement of principles. Title II, Subtitle A of the ADA and the policy of this Commonwealth make it unlawful for an agency, on the basis of a person's disability to:

(1) Discriminate against a qualified person with a disability in the provision of the agency's services, programs, and activities;

(2) Exclude that person from participating in the agency's services, programs, or activities; or

(3) Deny that person the benefits of the agency's services, programs, or activities.

c. **Policy concerning denials of equal treatment.** The ADA provides for equality of opportunity, but does not guarantee equality of results. Thus, in providing any aid, benefit, or service, an agency may not, on the basis of disability:

(1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the agency's services, programs, or activities.

(2) Afford a qualified individual with a disability an opportunity to participate in or benefit from the agency's aid, benefit, or service which is less than equal to the opportunity which the agency affords to others,

(3) Provide a qualified individual with a disability an aid, benefit, or service that is not as effective as the aid, benefit, or service which the agency provides to others in affording an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement.

(4) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than the agency provides to others, unless that action is necessary to provide such individuals with aids, benefits, or services that are as effective as those provided to others.

(5) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to another agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of a Commonwealth agency's program.

(6) Deny a qualified individual with a disability the opportunity to participate as a member of the agency's planning or advisory boards.

(7) Limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the agency's aid, benefit, or service.

d. Discriminatory effects of policies and practices. Agencies may not have policies or practices which have the effect of discriminating against qualified individuals with disabilities because of their disabilities. Thus, an agency may not, directly or through contractual or other arrangements, use official written policies or practices that have:

(1) the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; or

(2) the purpose or effect of defeating or substantially impairing accomplishment of the agency's program objectives with respect to individuals with disabilities.

e. Selecting **sites.** In selecting sites for the construction of new facilities or in selecting existing facilities for an agency's services, programs, or activities, an agency may not make selections which have:

(1) the effect of excluding individuals with disabilities from participation in or denying them the benefits of the agency's service, program, or activity; or

(2) the purpose or effect of defeating or substantially impairing the accomplishment of the agency's service, program, or activity with respect to individuals with disabilities.

f. Procurement. In the selection of procurement contractors, an agency may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

g. Licensure. An agency may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability. An agency also may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. Under the law, a person is a qualified individual with a disability with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification. Whether a specific requirement is "essential" will depend on the facts of the particular case.

The programs or activities of licensed or certified entities are not, themselves, covered by Title II of the ADA or by this directive.

h. Exceptions. Every agency covered by this directive should modify its policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the agency can demonstrate that making the modification would fundamentally alter the nature of the service, program, or activity.

i. Eligibility criteria. The law and policies of this Commonwealth also prohibit agencies from imposing eligibility criteria that screen out or tend to screen out an individual with a disability or a class of such individuals from enjoying fully and equally the services, programs, or activities of an agency, unless the agency can show that such criteria are necessary for the provision of the service, program, or activity.

j. Integration and segregation.

(1) The law and the policies of this Commonwealth require agencies to administer their services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This means that agencies must administer their services, programs, and activities in settings that enable individuals with disabilities to interact with nondisabled persons to the fullest extent possible. It also means that even when separate or different aids, benefits, or services would be more effective in providing persons with disabilities an equal opportunity **to** participate in or benefit from an agency's programs or activities, persons with disabilities must be provided the option of declining to accept that particular accommodation. For example, a person who is blind may wish to decline participating in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his or her own pace with the museum's recorded tour. Modified participation for persons with disabilities must be a choice, not a requirement.

(2) Issues of integration and segregation must be assessed on a case by case basis. The starting point is to question whether the separate program created for a person with a disability is in fact necessary or appropriate for the particular individual. Assuming the separate program would be appropriate for the individual, the extent to which that individual must be provided with modifications in the integrated program will depend not only on the individual's needs but also on the limitations and defenses described elsewhere in this directive and in the ADA. For example, it may constitute an undue burden for an agency which provides a full-time interpreter in its special guided tour for individuals with hearing impairments to hire an additional interpreter for those individuals who choose to attend the integrated program.

k. Surcharges. An agency may not place a surcharge on a particular individual with a disability or upon any group of such individuals to cover the cost of measures that the law may require, such as the furnishing of a necessary auxiliary aid.

l. Associational discrimination. An agency may not exclude or otherwise deny equal access to its services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

m. Illegal use of drugs. Except as provided in paragraph n., below, nothing contained in Title II of the ADA or in this directive prevents an agency from denying access to its set-vices, programs, or activities, when such denial of access is based on that individual's current illegal use of drugs. An agency, however, may not discriminate on the basis of illegal use of drugs where the individual is not engaging in the **current** illegal use of drugs and he or she:

(1) has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(2) is participating in a supervised rehabilitation program; or

(3) is erroneously regarded as engaging in such use.

n. Health and drug rehabilitation services. An agency may not deny health services or services provided in connection with drug rehabilitation to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services. A drug rehabilitation or treatment program may, however, deny participation to individuals who engage in illegal use of drugs while they are in the program.

o. Drug testing. Nothing in Title II of the ADA or in this directive prohibits an agency from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in the current illegal use of drugs.

p. Accessibility to agency facilities. Except as provided in paragraph q., below, no qualified individual may be excluded from participating in an agency's services, programs, or activities or be denied the benefit of such services, programs, or activities because its facilities are inaccessible to or unusable by individuals with disabilities.

q. Existing facilities. An agency shall operate each service, program, or activity so that the service, program, or activity, **when viewed in its entirety, is** readily accessible to and usable by individuals with disabilities. In doing so, an agency does not:

(1) have to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) have to take any action that would threaten or destroy the historic significance of historic property; or

(3) take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. If an action would result in such an alteration or in such burdens, an agency must take any other action that would not result in such an alteration or in such burdens but which would nevertheless provide individuals with disabilities with the agency's benefits or services.

In determining whether financial and administrative burdens are undue, all resources of an agency that are available for use in the funding and operation of the service, program, or activity should be considered.

The decision not to make a particular service, program, or activity accessible because it would result in a fundamental alteration of the service, program, or activity or because it would result in an undue administrative or financial burden must:

(a) be made by the agency head or a designee who has budgetary authority and responsibility for making spending decisions for the agency; and

(b) be accompanied by a written statement of the reasons supporting that conclusion.

r. Methods for making existing facilities accessible and usable. There is no single method for making existing facilities readily accessible to and usable by individuals with disabilities. The redesign

of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities, and construction of new facilities are all methods which may be used in appropriate circumstances. In choosing among available methods, an agency must give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. Also, an agency is not required to make structural changes in existing facilities where other methods are effective in meeting accessibility requirements of the ADA.

s. The historic property exception. An agency may avail itself of the historic property exception to program accessibility described in section 5.q.(2), above, only if a principal purpose of the program in question is to preserve historic property. Thus, for example, a government program whose primary purpose is not the preservation of historic property but which happens to be located in an historic building, such as the state capitol building, cannot take advantage of the ADA's historic property exception; it must make its program accessible through methods such as those described in section 5.r., above.

If an agency cannot feasibly provide physical access to an historic property because a primary purpose of its program is historic preservation and because providing such access would threaten or destroy the historic significance of the building or facility in question, an agency must then consider alternative methods of achieving accessibility to its historic preservation program. Those methods might include the following:

(1) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible; or

(2) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible.

t. Maintenance of accessible features. Except for isolated or temporary interruptions in service or access because of the need to repair or maintain facilities and equipment, agencies must maintain in operable working condition those features of facilities and equipment required to be readily accessible to and usable by persons with disabilities.

u. New construction and alterations. For construction commenced after January 26, 1992, each facility or part of a facility constructed by, on behalf of, or for the use of an agency shall be readily accessible to and usable by individuals with disabilities. Alterations to a facility which are commenced after January 26, 1992, and which affect or potentially affect usability of the facility shall, to the maximum extent feasible, be made in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities.

The design, construction, or alteration of an agency facility shall be deemed to meet the requirements of this subsection if such design, construction, or alteration conforms to the Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) and state law. Alterations to historic properties shall comply, to the maximum extent feasible, with Section 4.1.7 of the ADAAG. This means that if an agency wishes to make structural alterations to what it believes may be an historic property, it must first consult with the Executive Director of the Pennsylvania Historical and Museum Commission to determine if the resource is an historic property. If it is, the agency must further consult with the Commission to determine if compliance with ADAAG and state law would threaten or destroy the historic characteristics or qualities of the building in question. If it would, the agency must then consult with the Commission to consider alternative designs or technologies that may be used. **Agencies** must follow these same procedures when making structural changes to potentially historic propertiesunder their transition plans.

Departures from particular requirements of ADAAG by the use of other methods shall be permitted only when it is clearly evident to the agency head and the Governor's ADA Director that the agency is providing equivalent access to the facility or part thereof.

v. Communications. Except as provided in w, below, each agency must:

(1) Take steps to see that its communications with applicants, participants, and members of the public with disabilities are effective.

(2) Furnish appropriate auxiliary aids and services, when necessary, to afford an individual with a disability equal opportunity to participate in, and enjoy the benefits of, the agency's service, program, or activity.

(3) Use TDDs or equally effective telecommunication systems where the agency communicates by telephone with applicants and beneficiaries who have hearing or speech impairments.

(4) Take steps to see that interested persons, including persons with impaired vision and hearing, can obtain information as to the existence and location of accessible services, activities, and facilities of the agency.

(5) Provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities, The international symbol for accessibility shall be used at each accessible entrance of a facility.

w. Exceptions to telecommunications requirements. An agency need not comply with any action otherwise required by v., above, if it can demonstrate that such action would result in a fundamental alteration of its service, program, or activity or in undue financial or administrative burdens. That decision must:

(1) Be made by the agency head or designee who has budgetary authority and responsibility for making agency spending decisions.

(2) Be made after considering all resources available for use in the funding and operation of the service, program, or activity.

(3) Be accompanied by a written statement of the reasons supporting that conclusion.

x. Personal devices and services. An agency is not required to provide to individuals with disabilities:

(1) personal devices, such as wheelchairs;

(2) individually prescribed devices, such as prescription eyeglasses or hearing aids;

(3) readers for personal use or study; or

(4) services of a personal nature, such as assistance in eating, in toileting, or dressing.

If personal services or devices are customarily provided to individuals served by an agency, such as a Commonwealth health care or correctional facility, then these same personal services should be provided to individuals with disabilities.

y. Retaliation and coercion. An agency may not discriminate against any individual because that individual has opposed any act or practice made unlawful by Title II, Subtitle A of the ADA or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act.

An agency also may not coerce, intimidate, threaten, or interfere with any individual who exercises his or her rights under the ADA or who encourages any other individual to exercise such rights.

6. RESPONSIBILITIES.

a. The Governor's Office ADA Director shall:

(1) Communicate overall ADA policy to agency heads and agency ADA Coordinators and provide information to such agency heads and ADA Coordinators to enable them to perform their responsibilities under Title II, Subtitle A of the ADA.

(2) Coordinate and provide training and information for agency ADA Coordinators and ADA support staff on their roles and responsibilities under Title II, Subtitle A of the ADA.

(3) Coordinate and oversee the ADA self-evaluation process.

(4) With the appropriate agency heads, coordinate and oversee the development and implementation of agency transition plans.

(5) Collect all requests for accommodations/access from the public which are disapproved at the agency level.

(6) Act as the final step in the internal ADA grievance process for all grievances which concern access to Commonwealth services, programs, and activities and which are denied at the agency level and then appealed.

b. The Secretary of General Services shall:

(1) In accordance with the procedure set forth in this part and in 7.d., below, direct the Department of General Services (DGS) to oversee the renovation of existing facilities owned and managed by DGS where such changes are consistent with:

(a) approved agency transition plans; and/or

(b) approved requests for reasonable accommodation/access.

(2) Ensure that the Bureau of Buildings and Grounds shall take steps to see that common areas of Commonwealth-owned and DGS managed facilities are accessible.

(3) Develop for inclusion in leases which become effective after January 26, 1992, such language as needed to enable Commonwealth agency/tenants to meet their responsibilities under Title II, Subtitle A of the ADA.

(4) Pursuant to approved transition plans and/or approved requests for reasonable accommodation/access, work with lessors and agency/tenants to make structural changes to leased premises where the agency or the ADA Director have determined that no other method is effective for making the agency's service, program, or activity, when viewed in its entirety, readily accessible to and usable by individuals with disabilities.

(5) For construction commenced under DGS authority after January 26, 1992, direct DGS to design and construct (or oversee the design and construction of) Commonwealth-owned facilities or parts thereof so that those facilities or their newly constructed parts are readily accessible to and usable by individuals with disabilities.

(6) For alterations to existing facilities commenced under DGS authority after January 26, 1992, direct DGS to design and construct (or oversee the design and construction of) such alterations so that, to the maximum extent feasible, the altered portion of the facility is readily accessible to and usable by individuals with disabilities.

(7) With the assistance of the Bureau of Occupational and Industrial Safety and other appropriate Commonwealth agencies, provide appropriate Title II, Subtitle A technical assistance to agency heads, agency ADA Coordinators, and agency facility managers.

(8) Provide technical assistance and advice to agencies and the ADA Director concerning accessibility standards and other methods for making agency services, programs, and activities accessible to individuals with disabilities.

c. The Secretary of the Budget shall:

(1) Participate in the review and approval of agency transition plans.

(2) Assist the Governor's ADA Director and agency heads in determining the most appropriate method for agencies to finance structural changes required by the ADA.

d. The Department of Labor and Industry, Office of Vocational Rehabilitation and Bureau of Occupational and Industrial Safety shall provide technical assistance and advice within their spheres of expertise to agencies and the ADA Director concerning accessibility standards, adaptive devices, and other methods for making agency programs, services, and activities accessible to individuals with disabilities.

e. The Governor's Office of Policy shall:

(1) Provide to the Governor's ADA Director technical support regarding program access.

(2) Assist the Governor's ADA Director in developing and carrying out an overall strategy for implementing and monitoring all titles of the ADA.

f. The Governor's Office of General Counsel shall provide legal advice and assistance to the Governor's ADA Director and to Agency Chief

Counsel. Legal issues relating to provisions of Title II, Subtitle A and how they relate to the accessibility of agency programs, services, and activities will be reviewed in the first instance by agency legal offices, with assistance from the Office of Chief Counsel in the Department of General Services to the extent such issues relate to structural changes, lease modifications, and similar matters arising under approved agency transition plans. The Office of General Counsel shall also review all agency-produced ADA-related materials intended for public dissemination.

g. The Governor's Deputy Chief of Staff for Communications shall:

(1) Make available to interested members of the public information regarding the provisions of Title II, Subtitle A of the ADA; and

(2) Oversee and approve the dissemination of public information about the ADA from agencies.

h. Each agency head shall:

(1) Designate the Deputy Secretary for Administration or equivalent as a single contact person to serve as the agency ADA Coordinator and to make available to all interested individuals the name, office address, and telephone number of that individual.

(2) Consistent with the size and need of the agency, identify ADA deputy coordinators for regional facilities.

(3) Direct his or her agency to:

(a) perform and maintain on file a self-evaluation of the agency's services, policies, and practices; and

(b) make any necessary modifications to those services, policies, and practices to the extent required by Title II, Subtitle A of the ADA.

(4) Subject to coordination with the ADA Director, direct his or her agency to develop and make available to the public information about Title II, Subtitle A of the ADA and how it relates to the provision of the agency's services, programs, or activities.

(5) Direct his or her agency to implement all non-structural modifications to services, programs, and activities which can be made immediately in order to make that service, program, or activity accessible to and usable by individuals with disabilities.

(6) Direct his or her agency to develop a transition plan, as described in section 7.c., below.

(7) Direct his or her agency to submit the transition plan to the Governor's ADA Director for review and approval.

(8) Upon review and approval, direct his or her agency to submit the transition plan to the Department of General Services in accordance with the procedures set fort in section 7.d., below.

(9) Consider, and, where appropriate, honor request for accommodation/access from otherwise qualified individuals with disabilities or classes of such individuals seeking access to the services, programs, or activities of the agency.

(10) Require that his or her agency comply with all provisions of Title II, Subtitle A of the ADA and this directive.

i. Agency ADA Coordinators shall:

(1) Oversee and direct their agencies' compliance with the provisions of Title II, Subtitle A of the ADA and this directive.

(2) Establish and coordinate an agency ADA internal work team where appropriate.

(3) Provide technical assistance and training to agency managers and supervisors on the ADA, with help from their support staff.

(4) Provide advice and assistance to supervisors and managers who, as a result of the self-evaluation or other internal review process, seek to modify agency policies, practices, or procedures in order to make agency services, programs, or activities readily accessible to and usable by individuals with disabilities,

(5) Provide advice and assistance to supervisors and managers who are addressing requests for reasonable accommodation/access from members of the public.

(6) Forward to the Governor's ADA Director a copy of all agency approved requests for reasonable accommodation/access costing $500.00 or more, or for which the agency will need to request additional funding.

(7) Forward to the Governor's ADA Director all requests for reasonable accommodation/access that the agency head has disapproved.

(8) Receive, investigate, and attempt to resolve grievances from members of the public as outlined in section 8.

(9) Submit for review to the Governor's ADA Director, the Governor's Office of Communication, and Governor's Office of General Counsel all materials on the ADA intended for public dissemination.

7. PROCEDURES.

a. Establishing the ADA team.

(1) At the discretion of the agency Deputy Secretary for Administration or equivalent, agencies may establish an ADA work team to provide support and assistance to the agency ADA Coordinator in carrying out his or her responsibilities. This ADA work team may include the agency Affirmative Action Officer, a representative of the agency's legal office, budget and procurement staff, facilities management and any other representatives which the agency deems appropriate.

(2) In each agency, the Deputy Secretary for Administration or equivalent will be designated as the agency ADA Coordinator. This person will coordinate the agency's compliance efforts with all titles of the ADA, including Title II, Subtitle A. This position will also serve as the focal point for analysis and determination of ADA-related grievances and requests for reasonable accommodation/access at the agency level and for recommending approval or disapproval of such grievances and requests to the agency head.

(3) The ADA Coordinator or team shall establish and maintain contact with staff in the Department of General Services and the agency's Budget Office, where appropriate, for purposes of analyzing and acting upon grievances and requests for reasonable accommodation/access which impact upon building access, facilities management, lease agreements, and volume purchases of equipment.

(4) Advice and assistance on available and appropriate accommodations are available through a number of state agencies, including but not limited to:

(a) the Department of Labor and Industry, Office of Vocational Rehabilitation, Office of Deafness and Hearing Impaired, and Bureau of Occupational and Industrial Safety; and

(b) the Department of Public Welfare, Office of Mental Retardation, Office of Mental Health, and Bureau of Blindness and Visual Services.

b. Performing a self-evaluation.

(1) Except as provided in subsection b.(7) below, each agency shall perform a self-evaluation of its services, programs, and activities to determine if they meet the requirements of Title II, Subtitle A of the ADA.

(2) In the self-evaluation process, each agency shall distinguish between and identify all services, programs, or activities which appear to be inaccessible because of physical barriers (structural barriers) and those which appear inaccessible because of existing policies and practices (non-structural barriers). Structural barriers might include, but are not limited to, inaccessible doors, common areas, restroom facilities, elevators, work stations, or parking facilities. Non-structural barriers might include an agency's lack of policies or practices for providing telecommunication devices to the public, qualified interpreters at public meetings, or information in braille needed to make a service, program, or activity accessible to and usable by individuals with disabilities.

(3) All barriers identified in the self-evaluation survey which can be removed or modified immediately and with available funding, with the exception of barriers that may hold historical significance, shall be removed or modified as expeditiously as possible.

(4) During the course of the self-evaluation process, each agency shall have interested persons participate in the process. Such persons shall include individuals with disabilities or organizations representing such individuals.

(5) All agencies shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(a) a list of interested persons consulted;

(b) a description of areas examined and problems identified; and

(c) a description of modifications made.

(6) Each agency shall periodically, but no less frequently then every two years, review any policies or practices instituted after January 26, 1993, to determine if those new policies or practices have a potential adverse effect on the abilitiy of individuals with disabilities to gain or retain access to the agency's services, programs, and activities.

(7) Agencies that performed a self-evaluation analysis and developed a transition plan under the Rehabilitation Act of 1973 may limit any new self-evaluation to policies and practices that were not evaluated in the prior analysis,

c. Programmatic accessibility - drafting a transition plan for structural modifications. Consistent with the ADA, the policy objectives set forth in section 5, and the procedures set forth in section 7, each agency ADA Coordinator or agency ADA work group shall use the agency's self-evaluation results to identify all existing structural barriers to program accessibility and, by July 26, 1992, develop a transition plan setting forth the steps necessary to make all necessary structural modifications. The plan shall, at a minimum:

(1) identify physical obstacles in the agency's facilities that must be corrected in order to make the agency's programs or activities accessible to qualified individuals with disabilities.

(2) Describe in detail the methods that will be used to make the facilities accessible.

(3) Identify all funding sources for making such structural changes,

(4) Specify the schedule for taking the steps necessary to achieve accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period.

(5) Identify the official responsible for implementation of the plan.

Each agency shall provide interested persons, including individuals with disabilities and organizations representing them, an opportunity to participate in the development of the transition plan by submitting comments.

All structural modifications identified in the agency's transition plan shall be completed as soon as is practicable, but in no event later than January 26, 1995.

d. Implementation of transition plans and/or approved requests for accommodation/access. Agencies shall use the following procedure to make structural changes pursuant to their approved transition plans and/or approved requests for accommodation/access:

(1) Agencies shall submit to DGS, Bureau of Buildings and Grounds requests for renovations to facilities owned and managed by DGS which are estimated to cost less than $25,000.

(2) Agencies shall submit for approval to DGS, Bureau of Engineering and Architecture all plans to renovate Commonwealth-owned but agency managed facilities when such renovation is estimated to cost less than $25,000. Upon approval, agencies shall complete the work under their work authority.

(3) Agencies shall submit to DGS, Deputy Secretary for Public Works, along with a commitment of funding, all requests for renovations to Commonwealth-owned facilities which are estimated to cost more than $25,000.

8. GRIEVANCE PROCEDURE.

a. The procedures below are to be followed by agency ADA Coordinators and all agency personnel responsible for investigating and resolving grievances arising under Title II of the ADA.

b. Grievances pertaining to allegedly inaccessible common areas of buildings owned and managed by DGS should be referred to DGS for processing under the action steps below.

c. All other grievances under TItle II should be processed through the agency which received the grievance initially. This includes, but is not limited to, grievances concerning non-common areas of DGS-owned and managed facilities which are allegedly inaccessible, grievances pertaining to the alleged inaccessibility of facilities not owned and managed by DGS, and grievances concerning policies and procedures which allegedly fail to comply with Title II of the ADA.

Action By	Step	Action
Grievant.	1.	Files grievance with responsible agency ADA Coordinator, relevant program officer, or facility manager, within 45 calendar days of alleged violation. If grievance is lodged with program officer or facility manager, grievance must be forwarded immediately to agency's ADA Coordinator.
Agency ADA Coordinator or Designee.	2.	Conducts an investigation of the alleged violation within 30 calendar days. The investigation shall include contact with the grievant and other concerned parties.
	3.	Discusses findings and recommendations for resolution of grievance and determines course of action.
Agency ADA Coordinator.	4.	Notifies grievant of determination. If resolution is not found, the agency ADA Coordinator advises the grievant of his/her right to forward the grievance to the Governor's ADA Director. If the grievance is resolved, the agency ADA Coordinator notifies the ADA Director of the final status.
Governor's ADA Director.	5.	Logs receipt of grievance and convenes the ADA Interagency Committee. Committee reviews the grievance and makes a recommendation to the ADA Director for disposition,
Governor's ADA Director.	6.	Reviews Committee's recommendation and makes final decision concerning the grievance. Forwards the decision to the agency ADA Coordinator.
Agency ADA Coordinator.	7.	Notifies the grievant in writing of the final decision.

MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania
Governor's Office

Subject: *Right-to-Know Law* Compliance	**Number:** 205.36 Amended
Date: March 18, 2010	**By Direction of:** Barbara Adams, General Counsel

Contact Agency:
Governor's Office of General Counsel, Telephone 717-783-6563

This directive establishes policy, responsibilities, and procedures for agency compliance with the *Right-to-Know Law, 65 P.S. §§ 67.101-67.3104*. This amendment updates policy, responsibilities, and procedures. Marginal dots are excluded due to major changes.

1. **PURPOSE.** To establish policy, responsibilities, and procedures for agency compliance with the *Right-to-Know Law, 65 P.S. §§ 67.101-67.3104 (RTKL)*, enacted on February 14, 2008, effective for records requests filed on or after January 1, 2009.

2. **SCOPE.** This directive applies to any and all departments, boards, commissions, and councils (hereinafter referred to as "agency" or "agencies") under the Governor's jurisdiction.

3. **OBJECTIVE.** To ensure that all agencies within the scope of this directive are uniformly complying in a timely and appropriate manner to records requests made under the RTKL. This directive does not apply to policies developed by individual agencies relating to release of records that are not required to be released pursuant to the RTKL.

4. **DEFINITIONS.** When used in this directive, the terms defined in the RTKL shall have the meanings given to them in the RTKL. Other terms used in this directive shall have the following meanings:

   a. **Agency Open Records Officer (AORO).** The official or employee designated by the agency head to receive and respond to RTKL requests.

   b. **Agency Records Coordinator.** The employee appointed by the agency head to have agency-wide responsibility for managing and coordinating the agency's records management program. See *Manual 210.7, State Records Management Manual*.

c. **Agency Web Site.** The agency's publicly accessible Web site where each agency publishes its RTKL policy and procedures.

d. **Appeals Officer.** An attorney from the Office of Open Records (OOR) who decides an appeal following an agency's denial of a written RTKL request.

e. **Business Day.** Any day other than a Saturday or Sunday, except those days when the offices of the agency are closed for all or part of a day:

(1) due to a state holiday;

(2) pursuant to *Management Directive 530.17, Partial and Full Day Closings of State Offices* and *Management Directive 505.7, Personnel Rules, Section 8.7;*

(3) due to a natural or other disaster;

(4) due to the request or direction of local, state, or federal law enforcement agencies or officials.

f. **Deemed Denied.** The denial of a RTKL request by means other than a verbal or written response. A request is deemed denied if one of the following conditions occurs:

(1) The agency receiving a written RTKL request fails to make an interim or final response within the initial five business day period specified in the RTKL for response to RTKL requests; or

(2) The agency extends the five business day period, as permitted by the RTKL, but then fails to make a final response by the end of that extended period and any required prepayment has been made on time.

g. **E-Mail Inbox.** The agency-designated electronic inbox that receives e-mail sent to an agency's e-mail address for RTKL requests.

h. **Final Response.** A written response from an agency to a requester that grants, denies, or grants in part and denies in part, a RTKL request.

i. **Interim Response.** A written response from an agency to a requester indicating that more than five business days will be required for a final response, due to specified circumstances.

j. **Office of Open Records (OOR).** The Office of Open Records is established in the Department of Community and Economic Development (DCED), under the *Section 1310* of the RTKL.

k. **Records Custodian.** Any person having custody, possession or control of a record.

l. **Records Legal Liaison (RLL).** The agency attorney designated by the agency Chief Counsel to provide legal guidance to the AORO and Agency Records Coordinator on the agency's response to a RTKL request.

m. Redaction. The eradication of a portion of a record while retaining the remainder.

n. RTKL. *Act 2008-03 P. L. 6, 65 P.S. §§ 67.101-67.3104,* enacted on February 14, 2008, effective for record requests filed on or after January 1, 2009.

o. RTKL Request. A written or verbal request for a record that is submitted to the AORO, by position, by name or by mailing to the agency RTKL e-mail inbox and that indicates that it is being made pursuant to the RTKL.

p. Sensitive Security Information. Information exempt from disclosure pursuant to *Section 708 (b) (1), (2), (3)* and *(4)* of the RTKL; and information related to the expenditure of funds from the U.S. Department of Homeland Security, the U.S. Department of Defense or other federal or state funds expended for homeland security, national defense, law enforcement or other public safety activities, including public health preparedness; or information related to the expenditure of funds to ensure the security of public utilities, infrastructure or other essential public resources.

q. Standard RTKL Form. The RTKL request form published by the OOR, which all agencies must accept or the form made available by an agency for use in RTKL requests to that agency. See the OOR Web site at: http://openrecords.state.pa.us.

r. Written RTKL Request or Written Agency Response. A written RTKL request or a written agency response is one that is made: on paper and submitted in person or by mail; by e-mail; by facsimile; or by any other electronic means that an agency may designate.

5. POLICY.

a. The RTKL repealed the *Act of June 21, 1957 (P. L. 390, No. 212),* which was the previous *"Right-to-Know Law," 65 P. S. §§ 66.1-66.9.* The current law (RTKL) is significantly different from the previous one in many respects, including: expanding the definition of a "public record"; shortening the time limits for agency response to written requests; placing the burden of proving that a record is exempt on the agency; specifically permitting requests by e-mail; establishing an Office of Open Records; and adding specific exemptions.

b. It is essential that all agencies under the Governor's jurisdiction respond to RTKL requests in a timely, efficient and legally appropriate manner in order to assure the ability of Pennsylvania residents to exercise their right of access to public records under the RTKL. Agency responses to RTKL requests should be uniform and consistent with direction from the Office of General Counsel regarding RTKL responses. The RTKL provides for the imposition of civil penalties against agencies and public officials who do not comply with the RTKL and are found to have acted in bad faith. In addition, if a requester prevails in an appeal to the Commonwealth Court, the RTKL permits the court in certain instances to award attorney fees to the requester, to be paid by the agency.

6. RESPONSIBILITIES.

a. Agency.

(1) Establish appropriate procedures to ensure compliance with this directive.

(2) Designate a management level employee of the agency to be the AORO and designate a Deputy AORO, if appropriate, to perform the duties of the AORO in the absence of, or as directed by, the AORO. For an agency with multiple RTKL offices, each RTKL office should have a designated Deputy AORO, who reports to the AORO.

(3) Advise agency employees to promptly forward RTKL requests to the AORO.

(4) Establish at least one RTKL office. If an agency establishes more than one RTKL office, the agency shall establish written policies governing the respective powers and responsibilities of one or more agency RTKL offices. Each agency shall staff and equip each RTKL office in such a manner as to assure the prompt and efficient handling of RTKL requests.

(5) Post the following information at the agency and on the agency's Web site:

(a) Contact information for the AORO;

(b) The address to which RTKL requests should be mailed or delivered;

(c) The RTKL facsimile number and e-mail inbox address for submission of RTKL requests;

(d) The OOR RTKL Form and any agency form for submission of a RTKL request;

(e) Any policies, procedures and regulations of the agency relating to the RTKL;

(f) Applicable duplication fees established by the OOR posted on its Web site at http://openrecords.state.pa.us and postage fees;

(g) Other fees established by the agency as permitted, including:

1 Reasonable and Necessarily Incurred Costs. An agency may impose a reasonable fee for costs necessarily incurred in the production of the public records. However, no charge may be made for an agency or legal review of the record to determine whether the record is a public record that is subject to production.

2 Certified Copies. An agency may assess a reasonable fee for providing certified copies in response to a request for certified copies.

3 Transcripts of administrative proceedings.

a Prior to adjudication becoming final, binding and non-appealable, transcripts shall be provided to the requester by the agency stenographer or a court reporter, in accordance with the published procedure of the agency or an applicable contract.

b Following an adjudication becoming final, binding and non-appealable, a transcript of an administrative proceeding shall be provided in accordance with the RTKL duplication fees set by the OOR.

4 Enhanced Electronic Access. With the approval of the OOR, an agency may establish user fees if the agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester.

b. **Agency Open Records Officer.** Working with the Agency Records Coordinator and RLL, receive RTKL requests submitted to the agency; direct RTKL requests to other appropriate persons, including parties with whom the agency has contracted to perform a governmental function; track the agency's progress in responding to RTKL requests; redirect a RTKL request to another agency when appropriate and be responsible for the issuance of interim and final responses to RTKL requests. Responses to RTKL requests by the AORO shall constitute an action of the agency.

c. **Chief Counsel.** Designate a RLL to provide legal guidance to the AORO and Agency Records Coordinator on the agency's response to a RTKL request.

d. **Office of General Counsel (OGC).** Provide direction to agency Chief Counsel, AOROs and RLLs on RTKL matters. Any agency wishing to submit a request for an advisory opinion to the OOR must have that request approved in advance by OGC.

e. **Office of Open Records.** The responsibilities of the OOR are set forth in the RTKL and include:

(1) Hearing appeals of denials or deemed denials of a RTKL request by commonwealth agencies.

(2) Developing a RTKL request form to be accepted by all commonwealth agencies. See the OOR Web site at: http://openrecords.state.pa.us.

(3) Setting fees for duplication, printing and other costs for commonwealth agencies responding to requests, and conducting biannual reviews of the fees being charged.

(4) Providing information relating to the implementation and enforcement of the RTKL.

(5) Issuing advisory opinions to agencies and requesters.

NOTE: Any agency wishing to submit a request for an advisory opinion to the OOR must have that request approved in advance by OGC.

(6) Providing training courses to agencies and employees regarding the RTKL and the commonwealth's *Sunshine Act*.

(7) Establishing a mediation program.

(8) Maintaining an internet Web site that includes information relating to fees, advisory opinions, and decisions rendered, and the contact information for all AOROs.

(9) Reporting annually to the General Assembly and the Governor on the activities of the office.

f. Records Legal Liaison. Work with the AORO on responses to RTKL requests; review all interim and final responses; and coordinate with OGC, as appropriate.

7. PROCEDURES.

a. RTKL Requests.

(1) Verbal and Anonymous RTKL Requests. Agencies may fulfill verbal requests made under the RTKL, including anonymous requests, but the requester cannot appeal a denial unless the request is a written RTKL request.

(2) Submittal of a Written RTKL Request. An agency shall accept written RTKL requests submitted in person, by mail, facsimile, e-mail, or to the extent provided by agency rules, any other electronic means. However, electronic requests must be addressed to the agency's published facsimile number, e-mailed to the agency's e-mail inbox for RTKL purposes or to the AORO. Written requests must be addressed to the AORO, by name, RTKL e-mail address or by position title. Each agency shall advise its employees to promptly forward RTKL requests to the AORO.

NOTE: If an agency elects to have more than one RTKL office and/or AORO, the agency shall include in its written policies and public notices a statement and explanation of which types of RTKL requests are to be directed to which RTKL office and to which AORO. If an agency establishes more than one RTKL office and/or AORO, the agency shall have the discretion to establish written policies to regulate the types of RTKL requests that may be submitted to them. In the absence of such policies, a RTKL request may be submitted to any AORO of the agency, if addressed to the AORO by name, by RTKL e-mail address or by position title.

(3) **Contents of a Written RTKL Request.** A written RTKL request must include the name and the address to which the agency should address its response; identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested; include an indication that the request is being made pursuant to the RTKL; and be addressed to the AORO, by name, by RTKL e-mail address or by position title.

(4) **Reason for a RTKL Request.** A written RTKL request need not include any explanation of the requester's reason for making the request or the intended use of the records unless otherwise required by law. However, an agency may ask the requester to disclose that reason, in relation to the calculation of fees under *Section 1307(b)(4)(ii)* of the RTKL, which contains fee provisions that relate to the intended use of the records; but the reason or the failure to provide a reason is not a basis for denial of a RTKL request.

(5) **Forms.** An agency must post the RTKL request form developed by the OOR on its Web site and must accept requests made on that form. An agency may also create or adopt its own forms for use by requesters in preparing written RTKL requests and such forms must be posted on its Web site. There is no requirement that a RTKL request be made on a specified form.

b. Processing of RTKL Requests.

(1) Upon receiving a written RTKL request at the appropriate RTKL office, the AORO at that office must ensure completion of the following:

(a) Record receipt of an electronic request (e-mail or facsimile) or date-stamp non-electronic written requests.

(b) Assign a tracking number to the RTKL request.

(c) Record the RTKL request in the system used by the agency for tracking RTKL requests and their final disposition.

(d) Compute the day on which the five business day period will expire and note the same on the written request.

(e) Keep an electronic or paper copy of the written RTKL request, including all documents submitted with it and the envelope (if any) in which it came.

(f) Create a file for the retention of the original RTKL request, a copy of the response provided, a record of verbal or written communications with the requester and a copy of other communications.

(2) Calculating the five business day period:

(a) The five business day period does not begin to run until a RTKL request is received by the AORO.

(b) Each agency shall, in its written policies, specify the regular business hours of its RTKL office(s). Any RTKL request received by a RTKL office after the close of those regular business hours shall be deemed to have been received by that office on the following business day.

(c) For purposes of determining the end of the five business day period, the day that a RTKL request is received (or deemed to be received) is not counted. The first day of the five business day period is the agency's next business day.

(3) Because of the strict time limits for an agency response to a RTKL request, an AORO shall promptly process each request and complete intake procedures.

c. Initial Review by the AORO.

(1) Upon receiving a RTKL request, the AORO shall promptly review it and consult with the RLL. The purpose of this review is to make a good faith effort to determine whether: the record requested is a public record; the agency has possession, custody or control of the requested record; and the agency will require more than five business days to respond. The initial review by the AORO and the RLL shall determine the following:

(a) Whether the RTKL request must be granted, in whole or in part, without further consideration. For example, if the initial review determines that the requested records are public records, are in the possession and control of the agency, and are immediately accessible, no further analysis is necessary.

(b) Whether a basis exists for rejecting the RTKL request, in whole or in part, without further consideration. Such bases include the following:

1 The records sought by the requester are not identified with sufficient specificity.

2 The requester is not a legal U.S. resident.

3 The requested record does not exist.

4 While the agency possesses the requested document, it is not a "record" pursuant to the RTKL. The requested information must have a clear nexus to the agency's activities or transactions to be a "record" as defined by the RTKL. If the requested information does not document a transaction or activity of an agency or it was not created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency, it is not a record.

5 The agency does not possess the document and does not have an affirmative obligation to obtain the document from a third party.

6 The AORO has been advised by agency counsel that the requested record is not a public record under the RTKL.

(c) Whether the record requested is maintained by another agency. In that case, the RTKL request should be directed to the AORO of that agency, although no rights accrue to the requester until such time as a RTKL request is made by the requester to the other agency.

(2) In conducting this initial review, the AORO may contact the requester in order to obtain clarification or additional information. However, such contact or request for clarification, alone, does not alter the time limits for response under the RTKL. If, as a part of any such contact, the AORO concludes that the requester has changed or rescinded the RTKL request, the AORO shall seek the requester's verbal or written confirmation and shall record and retain in the file any confirmation that is given. A copy of any writing to or from the requester shall become a part of the file. If contact is verbal (in person or by telephone) the AORO shall immediately document the conversation and include that documentation as a part of the file. If the result of the communication with the requester is a more specific explanation of the original RTKL request or a reduction of that RTKL request, the modification shall not be considered a new RTKL request. If, however, the communication with the requester results in a RTKL request for different or additional records, it shall be treated as a new RTKL request as to those records.

(3) If, after the AORO completes this initial review, the RTKL request is not rejected in whole, the AORO shall make appropriate inquiry of potential records custodians. Each potential records custodian contacted by the AORO shall promptly review records under the custodian's control and advise the AORO as to any records that are responsive to the request that they may have and identify any other potential record custodians who may have such records. If a records custodian has a concern about whether the requester should receive access to or copies of a record, such records custodian shall promptly notify the AORO. Upon receiving such notice, the AORO shall take such steps as the AORO deems appropriate, including review by the RLL, or other agency attorney(s), as designated by the agency Chief Counsel. The agency or the AORO may establish such procedures as are deemed desirable to effectively record actions taken, to apprise agency officials of RTKL requests and issues related thereto and to assure timely and accurate responses.

(4) The AORO also shall review the request in order to determine whether the estimated fees required to fulfill the RTKL request exceed $100, pursuant to *Section 1307* of the RTKL. If they do, the AORO shall present the requester with a demand for prepayment. The demand for prepayment may specify a reasonable period of time, such as 15 business days from the mailing date of the interim response, within which the requester must make such prepayment. An agency may require that such prepayment be made by certified check or that an ordinary check must clear before being considered as received by the agency. If the requester fails to make prepayment within the specified time and does not appeal, the agency is not required to produce the records requested and may deem the request withdrawn.

d. Interim Response.

(1) An agency must provide a final response to a RTKL request within five business days unless one or more specific conditions are satisfied and the AORO gives the requester written notice that additional time will be required. That notice is referred to as an "interim response". The requester's written agreement is required if an extension for a final response will be over 30 days. Otherwise, the RTKL request is deemed denied. The RLL shall review the interim response before it is sent out by the AORO and agencies should refer to the sample letters and templates provided by OGC in constructing their responses.

(2) The AORO may send an interim response if any of the following apply:

(a) The RTKL request requires redaction of a public record.

(b) The RTKL request requires retrieval of a record stored at a remote location.

(c) A response within the five business day period cannot be accomplished due to bona fide staffing limitations, which limitations must be specified in the interim response.

(d) A legal review is necessary to determine whether the record requested is subject to access under the RTKL.

(e) The requester has not complied with the agency's policies regarding access to public records.

(f) The requester is required to prepay fees that are estimated to exceed $100. When such prepayment is required, the time period for the agency final response shall restart as of when the payment has been received. If the payment is not received by the date indicated by the agency for payment and the requester does not appeal, the request shall be deemed withdrawn.

(g) The extent or nature of the request precludes a response within the required time period.

(3) An interim response must meet the following criteria:

(a) It must be sent to the requester on or before the last day of the five business day period.

(b) It must include a statement notifying the requester of the reason for a delay in providing the final response.

(c) It must state a reasonable date that the final response is expected to be provided. If the date is more than 30 calendar days from the end of the five business day period, and the agency does not provide a response within 30 calendar days, the RTKL request will be deemed denied unless the requester agrees in writing to a longer extension and the response is made within that time.

e. Final Response.

(1) The AORO has the duty to prepare and send written final responses, with appropriate assistance from the RLL, who shall review the final response before it is sent. Agencies should refer to the sample letters and templates provided by OGC in constructing their responses.

(2) The final response shall grant, deny, or partially grant or deny the request.

(3) A request may be granted by providing a requester with access to inspect a record electronically or as otherwise maintained by the agency, either: by providing access in the offices of the agency, if agreed to by the requester; by sending a copy to the requester, upon payment for duplication, mailing and/or other permissible fees; or by notifying the requester that the record is available through publicly accessible electronic means. In the latter case, if the requester writes to the agency within 30 days stating that the requester is unable or unwilling to access the information electronically, the agency shall provide the records in paper format, upon payment of all applicable fees.

(4) If a written RTKL request is denied in whole or in part, a final written response must be issued, which must include the following:

(a) A description of the record requested.

(b) The specific reasons for the denial, including a citation of supporting legal authority. If the denial is the result of a determination that the record requested is not a public record, the specific reasons for the agency's determination that the record is not a public record shall be included.

(c) The typed or printed name, title, business address, business telephone number and signature of the AORO on whose authority the denial is issued.

(d) Date of response.

(e) The procedure to appeal the denial of access under the RTKL.

(5) An agency may send written responses to requesters by United States mail, by hand (in person or by delivery service), by facsimile or by e-mail.

(6) Deemed Denials. The failure of an agency to make a timely written final response is a deemed denial under the RTKL.

f. Redaction. If only portions of a public record are subject to public access under the RTKL, the agency shall not deny access to the record based upon the fact that portions are not subject to public access. Rather, the agency shall redact the portions that are not subject to public access under the RTKL, produce the portions that are subject to public access and state the basis for redaction.

g. Agency Discretion. An agency may provide a requester access to a record that is exempt from public disclosure under the RTKL if all of the following apply: disclosure is not prohibited by federal or state law or regulation or court order; the record is not protected by privilege; and the agency head determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access. This determination must be made by the agency head, and not the AORO or the RLL. If the agency head determines that a non-public record should be provided in response to a RTKL request, the agency shall notify any third party that provided the information, the person that is the subject of the record and the requester.

h. Duplication of and Physical Access to Public Records.

(1) Unless otherwise provided by law, the public records of an agency shall be available for access during the regular business hours of the agency and shall be available for access and duplication in accordance with the RTKL. In the case of a public record that is available only through electronic means, the agency may either provide paper copies of the record or provide access (under supervision, as deemed appropriate, to prevent access to information that is not a public record of the agency) at a computer or computer terminal located in a public records access room. However, the RTKL does not require an agency to provide access to any computer either of an agency or individual employee of an agency. In making any records electronically available, agencies shall exercise care not to disclose information protected by the RTKL.

(2) Public Records Access Room. An agency may, in its discretion, establish one or more public records access rooms, as it deems appropriate, in order to provide a specific, established site for public access to certain public records of an agency. While the RTKL does not require an agency to provide access to any computer either of an agency or individual employee of an agency, an agency may place one or more computers or computer terminals in its public access room, in order to provide access to electronic records. An agency that establishes a public records access room has the discretion to establish policies governing the use of that room including, but not limited to, the hours of access, restrictions or prohibitions on the removal of records, the ability of a requester to bring duplication or other equipment into the room, and limitations on use of computers and computer terminals (including limiting to use under supervision to prevent access to information which is not a public record of the agency). If an agency has more than one public records access room, the agency has the discretion to establish different policies for each such room. If an agency elects not to establish such a room, the agency's AORO shall determine on an *ad hoc* basis the building and room where records will be made available to a requester and the hours of availability.

(3) Each agency has the discretion to establish its own policies regarding how records are duplicated. For example, an agency may make its duplication equipment available to a requester but require that the requester operate the equipment or the agency may assign its own staff to make the duplications requested by the requester.

(4) A public record must be provided to a requester in the medium requested if the record exists in that medium. Otherwise, the public record must be provided in the medium in which it exists. If a public record only exists in one medium, the agency is not required to convert it to another medium, except that if the public record is only available in an electronic form, the agency must print it out on paper, if the requester so requests.

(5) An agency is not required to create a public record that does not already exist, nor is an agency required to compile, maintain, format, or organize a public record in a manner in which the agency does not currently do so.

i. Requests for Certain Records.

(1) Trade Secrets or Confidential Proprietary Information. Trade secrets and confidential proprietary information are covered by exemptions from production under the RTKL. In addition, special notification rules apply to information that included a written statement, when first provided to the commonwealth, that the information was a trade secret or confidential proprietary information. When an AORO receives a request for such records, the following steps shall be followed:

(a) Before the last day of the five business day period, the AORO shall:

1 send an interim response to the requester stating that extra time will be required in order to conduct a legal review as to whether the requested records are protected from disclosure under the exemption for trade secrets and confidential proprietary information.

2 notify the third party that a RTKL request has been made, and that the third party has five business days to provide input to the agency.

(b) After ten business days have passed from the time notice was sent to the third party, the AORO shall deny the request unless the third party has consented to the record being produced.

(2) Sensitive Security Information. When an AORO receives a RTKL request for a record that may contain sensitive security information, the following steps shall be followed:

(a) Before the last day of the five business day period, the AORO shall send an interim response to the requester stating that extra time will be required in order to conduct a legal review as to whether the requested records are protected from disclosure under the applicable security exemption.

(b) The AORO shall immediately forward the request to the RLL, who will alert the OGC RTKL Coordinator for such requests.

(c) The AORO shall collect all records responsive to the request and forward them to the OGC designate for review prior to the final agency response.

(3) **Requests for Messages in Electronic Storage.** E-mail, voicemail and text messages all involve recorded information in electronic storage. The AORO should follow the same steps to determine whether the requested messages are public records as with any other requested information.

(a) If the content of the message is related to the business of the agency, the message is a record. If the requested information does not document a transaction or activity of an agency or it was not created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency, it is not a record. Under the commonwealth's records management policy, a non-record is to be deleted or disposed of immediately and a transitory record is to be disposed of once its short-term administrative value is completed.

(b) If the record requested is in electronic form, the determination of whether it is a public record must be made on a case-by-case basis. The AORO shall not assume the fact that an e-mail has a confidentiality or privilege disclaimer at the bottom means that it is exempt under the RTKL.

j. **Appeal Process.** Appeals of a commonwealth agency denial for access to a document will go first to the OOR, after which they may be appealed to Commonwealth Court.

(1) When a request is denied or deemed denied, whether in whole or in part, the requester may file an appeal with the OOR within 15 business days of the mailing date of the agency response or of the deemed denial.

(2) The appeal shall state the grounds for the requester's assertion that the record requested is a public record and shall address any grounds stated by the agency for delaying or denying the request.

(3) A person other than the agency or the requester with a direct interest in the record subject to an appeal has 15 days following actual knowledge of the appeal, but no later than the date the Appeals Officer issues an order, to file a written request to provide information or to appear before the Appeals Officer in support of the requester's or the agency's position in the appeal. The Appeals Officer may, but need not, grant the request.

(4) The RLL or other attorney assigned by agency Chief Counsel shall represent the AORO on appeal.

(a) The RLL or other attorney assigned by agency Chief Counsel is responsible for promptly compiling the record on appeal and transmitting the record to the OOR.

(b) Under the RTKL, one of the duties of the Appeals Officer is to "consult with agency counsel as appropriate". To avoid any due process issues, the RLL should not participate in any off-the-record or *ex parte* discussions with the Appeals Officer.

(c) The RLL or other attorney assigned by agency Chief Counsel shall make a determination, independent from the determination of the Appeals Officer, as to whether any person other than agency personnel should be advised of the appeal and offered the opportunity to provide information or to appear at a hearing on behalf of the agency, if one is conducted.

(5) The Appeals Officer may, but is not required to, hold a hearing on the appeal.

(6) The Appeals Officer shall make a final determination regarding the agency's response within 30 calendar days of the receipt of the appeal, unless the requester agrees to an extension of time. If a final determination is not made within 30 calendar days, or within the extension of time agreed upon by the requester, the appeal is deemed denied.

k. Judicial Review

(1) The requester or an agency may file a petition for review with Commonwealth Court within 30 days of the mailing date of the final determination of the Appeals Officer or within 30 days of the date the request for access was denied or deemed denied.

(2) A petition for review filed with the Commonwealth Court will stay the release of the records until a decision is rendered.

This directive replaces, in its entirety, *Management Directive 205.36* dated November 20, 2008.

Acknowledgement of Cooperative Development and Sharing of Public Transportation Performance Data Between Harrisburg Area Transportation Study (HATS) and Cumberland-Dauphin-Harrisburg Transit Authority (CAT)

September 21, 2018

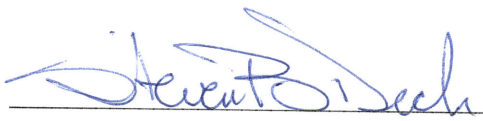
On May 27, 2016, the United States Department of Transportation (USDOT) published in the Federal Register a final rule on metropolitan and statewide planning. This final rule requires Metropolitan Planning Organizations (MPOs) to practice Performance Based Planning and Programming (PBPP). As part of the PBPP requirements, States, MPOs, and public transportation agencies must agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, including the selection of performance targets and reporting on progress related to these performance targets. These targets must be identified in a Transit Asset Management (TAM) Plan completed no later than October 1, 2018 in adherence with Federal Transit Administration (FTA) regulations.

The Pennsylvania Department of Transportation (PennDOT) has developed a TAM Group Plan for all sub recipients operating public transportation receiving funding through FTA §5310 and/or §5311. In addition, FTA permits recipients of §5307 funding to elect to participating in a group plan if they are a Tier II TAM organization.

The Pennsylvania TAM Group Plan fulfills the PBPP requirement and encourages communication between transit agencies and their respective MPOs and RPOs. In accordance with the plan, the following actions take place that fulfill the PBPP requirement:

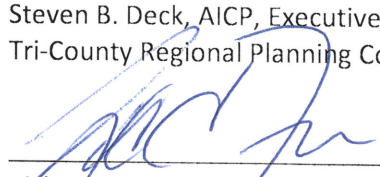
- PennDOT will provide asset performance reports to transit agencies by August 31 of each year that measure performance against established targets for the previous fiscal year.
- Transit agencies will review content for accuracy and confirm with PennDOT that information related to transportation asset performance has been received and is accurate.
- Transit agencies will share performance data with their respective planning partner by the end of each calendar year, or earlier as decided between the partners.
- New performance goals for the upcoming fiscal year will be established no later than September 15 of each year and communicated to transit agencies covered under the group plan.
- Transit agencies will continue regular coordination regarding the local Transportation Improvement Plan (TIP) and other planning initiatives of the local planning partner.

The above process is hereby acknowledged by HATS and CAT, through respective accountable executives.



Date: 9/21/18

Steven B. Deck, AICP, Executive Director
Tri-County Regional Planning Commission



Date: 9/21/18

Rich Farr, Executive Director
Capital Area Transit Authority