

**EASTERN PENNSYLVANIA FREIGHT ALLIANCE - MULTI-REGIONAL FREIGHT
PLAN PARTNER AGREEMENT**

THIS AGREEMENT (“**AGREEMENT**”) made on this ___ day of _____, 2021, is by and between: **THE LEHIGH VALLEY PLANNING COMMISSION/LEHIGH VALLEY TRANSPORTATION STUDY**, with offices located at 961 Marcon Boulevard, Suite 310, Allentown, PA 18109 (“**LVPC/LVTS**”), **THE BERKS COUNTY PLANNING COMMISSION / READING AREA TRANSPORTATION STUDY**, with offices located at 633 Court Street, 14th Floor, Reading, PA 19601 (“**BCPC/RATS**”), **THE LACKAWANNA/LUZERNE TRANSPORTATION STUDY METROPOLITAN PLANNING ORGANIZATION**, with offices located at 123 Wyoming Avenue, Scranton, PA 18503 (“**LLTS**”), **THE LEBANON COUNTY PLANNING DEPARTMENT/LEBANON COUNTY METROPOLITAN PLANNING ORGANIZATION**, with offices located at 400 South 8th Street, Room 206, Lebanon, PA 17042 (“**LEBCO MPO**”), and **THE NORTHEASTERN PENNSYLVANIA ALLIANCE** , with offices located at 1151 Oak Street, Pittston, PA 18640 (“**NEPA** ”) (collectively, the **EASTERN PENNSYLVANIA FREIGHT ALLIANCE “EPFA**”, and each, a “**PARTNER**”) for the undertaking of developing a multi-regional freight mobility plan (the “**PLAN**”).

WHEREAS, the EPFA has agreed to develop the PLAN for the 10-county area comprised of Berks, Carbon, Lebanon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, and Schuylkill Counties.

WHEREAS, the PLAN will coordinate all modes for freight travel to create a robust mega-regional transportation network that includes key access points and corridors along Interstate 76, 78, 80, 81, 84, 380 and 476 highway networks, US 6 and 11 as well as the key state roads such as Routes 6, 22, 33, 61, 72, 209, 222, 309, 315, 322, 422, 443, 501,611, 934 and 924, and many

other local and lower order roads, bridges, the freight rail and air cargo systems, transit and associated multimodal routes.

WHEREAS, funding for the PLAN totals Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00). Eighty percent (80%) of the funding is comprised of Grant money (“GRANT”) from the Commonwealth of Pennsylvania Department of Transportation (“PENNDOT”) and twenty percent (20%) of the funding is comprised of required Match contributions from each of the Partners (“MATCH”).

WHEREAS, PENNDOT has provided a Grant for the PLAN in the amount of Two Hundred Eighty Thousand and 00/100 Dollars (\$280,000.00).

WHEREAS, the intention of the Partners under this Agreement is to have a Partner adopted EPFA PLAN completed on or before June 30, 2023, and

NOW, THEREFORE, it is agreed among the parties hereto that:

1. The above purpose clauses are hereby made a part of this agreement by this reference.

2. The Partners agree to contribute a total amount of Seventy Thousand and 00/100 Dollars (\$70,000.00) towards the PLAN.

3. The agreed upon individual Partner Match fund payments, which are based on their respective populations, will be made in accordance with the table set forth in Paragraph (3a) below.

3a. The Partners shall share in the cost of the PLAN according to the following table:

PLAN Partners and Match Funding	
Lehigh Valley Planning Commission/Transportation Study (“LVPC/LVTS”)	\$ 21,463.88
Berks County Planning Commission / Reading Area Transportation Study (“BCPC/RATS”)	\$ 13,401.70
Lackawanna/Luzerne Metropolitan Planning Organization (“LLTS”)	\$ 16,855.76
Lebanon County Metropolitan Planning Organization (“LEBCO”)	\$ 4,507.53
Northeastern Pennsylvania Alliance (“NEPA ”)	\$ 13,771.13
Total Match Amount	\$ 70,000.00

3b. Any Partner that withdraws from this Agreement shall nonetheless be liable and responsible for the payment of such Partner’s respective Match funds in full as listed in the table set forth above in Paragraph 3a.

4. The BCPC/RATS, LLTS, LEBCO MPO, and NEPA each agree to provide LVPC/LVTS with their respective Match funds in the amounts set forth in the table in Paragraph (3a) above, in one of the following manners: 1) in full at the time of the execution of this Agreement; or 2) in three (3) equal installments, with the first installment payable during the period of January 2022 to June 2022, the second installment payable during the period of July 2022 to December 2022, and the third installment payable during the period of January 2023 to June 2023, such that each Partners’ respective Match funding amount shall be paid in full on or before June 30, 2023.

5. The LVPC/LVTS is the funding recipient responsible for the PLAN management on behalf of the EPFA Partners and agrees to accept responsibility for the administering of the PENNDOT Grant funds as well as the collection and administering of the Partners’ Match funds in carrying out the PLAN activities in accordance with the Partners’ communications during the funding application process.

6. The LVPC/LVTS shall:

6a. Designate Tracy Oscavich, LVPC Director of Development, Lehigh Valley Planning Commission, 961 Marcon Blvd, Suite 310, Allentown, PA 18109, Email: toscavich@lvpc.org, Telephone: 610-264-4544, as the primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the "**LVPC/LVTS CONTRACT MANAGER**");

6b. Maintain complete and accurate records relating to the administering of any Grant or Match funds under this Agreement and/or in carrying out the PLAN activities. During the Term, upon a Partner's written request, LVPC/LVTS shall allow the other Partners, or their representatives to inspect and make copies of such records; provided that any such Partner provides LVPC/LVTS with at least ten (10) business days' advance written notice of the planned inspection and any such inspection shall occur no more than once per year.

7. The BCPC/RATS, LLTS, LEBCO MPO, and NEPA shall:

7a. Designate one of its employees to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the "**BCPC/RATS, LLTS, LEBCO MPO, and NEPA CONTRACT MANAGER**", respectively), with such designation to remain in force unless and until a successor BCPC/RATS, LLTS, LEBCO MPO, and NEPA Contract Manager is appointed;

**BERKS COUNTY PLANNING COMMISSION / READING AREA
TRANSPORTATION STUDY CONTRACT MANAGER**

Devon Hain, Berks County Planning Commission Transportation Planner 633 Court Street, 14th Floor Reading, PA 19601

dhain@countyofberks.com (610) 478-6300

**LACKAWANNA/LUZERNE TRANSPORTATION STUDY
METROPOLITAN PLANNING ORGANIZATION CONTRACT
MANAGER**

**Steve Pitoniak, Lackawanna County Planning Department Manager
123 Wyoming Avenue, Scranton, PA 18503**

Pitchiaks@lackawannacounty.org

(570) 963-6400

Chris Chapman, Luzerne County Transportation Planner

20 North Pennsylvania Ave., Suite 208

Wilkes-Barre, PA 18701

Christopher.chapman@luzernecounty.org

**LEBANON COUNTY PLANNING DEPARTMENT/LEBANON COUNTY
METROPOLITAN PLANNING ORGANIZATION**

CONTRACT MANAGER

Jonathan W. Fitzkee, Assistant Director/Senior Transportation Planner

400 South 8th Street, Room 206 , Lebanon, PA 17042

Jfitzkee@lebcnty.org

(717) 228-4444, ext. 2339

NORTHEASTERN PENNSYLVANIA ALLIANCE e Alan S. Baranski, Vice

President

1151 Oak Street, Pittston, PA 18640

abaranski@nepa-alliance.org

570-655-5581, ext. 256

7b. Require that the BCPC/RATS, LLTS, LEBCO MPO, and NEPA Contract Manager respond promptly to any reasonable requests from LVPC/LVTS for instructions, information, or approvals required by LVPC/LVTS to administer the Grant funds and Match funds necessary to complete the PLAN. If LVPC/LVTS's performance of its obligations under this Agreement is prevented or delayed by any act or omission of RATS, LLTS, LEBCO MPO, or NEPA or its agents, subcontractors, consultants or employees, then LVPC/LVTS shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by BCPC/RATS, LLTS, LEBCO MPO, or NEPA , in each case, to the extent arising, directly or indirectly, from such prevention or delay.

7c. Cooperate in full with LVPC/LVTS in the completion of the PLAN and provide access to BCPC/RATS's, LLTS's, LEBCO MPO's, and NEPA's premises, employees, contractors, and equipment as required to enable LVPC/LVTS to complete the PLAN.

8. All non-public, confidential or proprietary information related to the PLAN, ("**Confidential Information**"), including, but not limited to, specifications, samples, designs, plans, drawings, documents, data, operational intervention or other information disclosed by any Partner pursuant to this Agreement, is confidential, solely for EPFA's use in performing this Agreement and may not be disclosed or copied, subject to disclosure requirements under all applicable laws, including, but not limited to, Pennsylvania Right-to-Know Law and the Sunshine Act, unless authorized by all parties in writing. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of a Partner's breach of this Agreement; (b) is obtained by a Partner on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; or (c) a Partner establishes by documentary evidence, was in Partner's possession prior to Partner's disclosure hereunder. Upon LVPC/LVTS's or the EPFA's request, a Partner, shall promptly return all documents and other materials received from the EPFA. The EPFA shall be entitled to injunctive relief for any violation of this Section.

9. Each Partner shall indemnify, and hold harmless the remaining Partners, each Department and their respective officers, directors, affiliates, employees, agents, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement, and the cost of

pursuing any insurance providers, to the extent arising out of or resulting from a Partner's: (i) negligence or willful misconduct; or (ii) breach of this Agreement. A Partner shall not enter into any settlement without the remaining Partners' prior written consent.

10. Changes to this Agreement must be mutually agreed to by the Partners hereto and confirmed in writing prior to performance of said changes.

11. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

12. The Partners hereto acknowledge that this Agreement contains the implied covenant of good faith and fair dealings in the performance under this Agreement. The Partners hereto covenant, warrant and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the parties pursuant to this Agreement. All promises and covenants are mutual and dependent.

13. This Agreement is subject to, and the Partners shall comply with, all applicable laws and/or regulations.

14. This Agreement shall be governed by, and construed in accordance with, the internal Laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania, or any other jurisdiction).

15. Each Partner irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments,

and appendices attached to this Agreement, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the courts of the State of Pennsylvania sitting in Lehigh or Northampton Counties, and any appellate court from any thereof. Each Partner irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in such courts. Each Partner agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

16. No waiver by any Partner of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Partner so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

17. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**", and with the correlative meaning "**Notify**") must be in writing and addressed to the other Partner at its address set forth below (or to such other address that the receiving Partner may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving Partner; and (b) if the Partner giving the Notice has complied with the requirements of this Section.

18. The Partners represent and warrant to each other that they have the full right, power, capacity and authority to execute and deliver this Agreement, and that they have duly and properly performed all acts required to authorize them to carry out this Agreement and the actions and transactions contemplated by it.

Notice to LVPC/LVTS:

**THE LEHIGH VALLEY PLANNING
COMMISSION/LEHIGH VALLEY
TRANSPORTATION STUDY**
961 Marcon Boulevard, Suite 310,
Allentown, PA 18109

Attn: Becky A. Bradley, Executive Director

Notice to RATS:

**THE BERKS COUNTY PLANNING
COMMISSION/READING AREA
TRANSPORTATION STUDY**
633 Court Street, 14th Floor,
Reading, PA 19601

Attn: David N. Hunter, Executive Director

Notice to LLTS:

**THE LACKAWANNA/LUZERNE
TRANSPORTATION STUDY
METROPOLITAN PLANNING
ORGANIZATION**
123 Wyoming Avenue
Scranton, PA 18503

Attn: Steve Pitoniak, Technical Committee
Chair

Notice to LEBCO

**THE LEBANON COUNTY PLANNING
DEPARTMENT/LEBANON COUNTY
METROPOLITAN PLANNING
ORGANIZATION**
400 South 8th Street,
Lebanon, PA 17042

Attn: Jonathan Fitzkee__, Assistant
Director/Senior Transportation Planner

Notice to NEPA MPO

**THE NORTHEASTERN
PENNSYLVANIA ALLIANCE
METROPOLITAN PLANNING
ORGANIZATION**

1151 Oak Street,
Pittston, PA 18640

Attn: Alan S. Baranski, Vice President

[Signature Page Follows]

IN WITNESS WHEREOF and intending to be legally bound hereby, the parties hereto have set their hands and seals as indicated below.

ATTEST:

**THE LEHIGH VALLEY PLANNING COMMISSION/LEHIGH VALLEY
TRANSPORTATION STUDY**

Name: Becky A. Bradley
Title: Executive Director

Date: _____

**THE BERKS COUNTY PLANNING COMMISSION/READING AREA
TRANSPORTATION STUDY**

Name: David N. Hunter
Title: Executive Director

Date: _____

**THE LACKAWANNA/LUZERNE TRANSPORTATION STUDY METROPOLITAN
PLANNING ORGANIZATION**

Name: Robert Fiume
Title: Coordinating Committee Chair

Date: _____

**THE LEBANON PLANNING DEPARTMENT/LEBANON COUNTY METROPOLITAN
PLANNING ORGANIZATION**

Name: Jonathan W. Fitzkee
Title: Assistant Director/Senior Transportation Planner

Date: _____

THE NORTHEASTERN PENNSYLVANIA ALLIANCE

Name: Jeffrey K. Box
Title: President & CEO

Date: _____