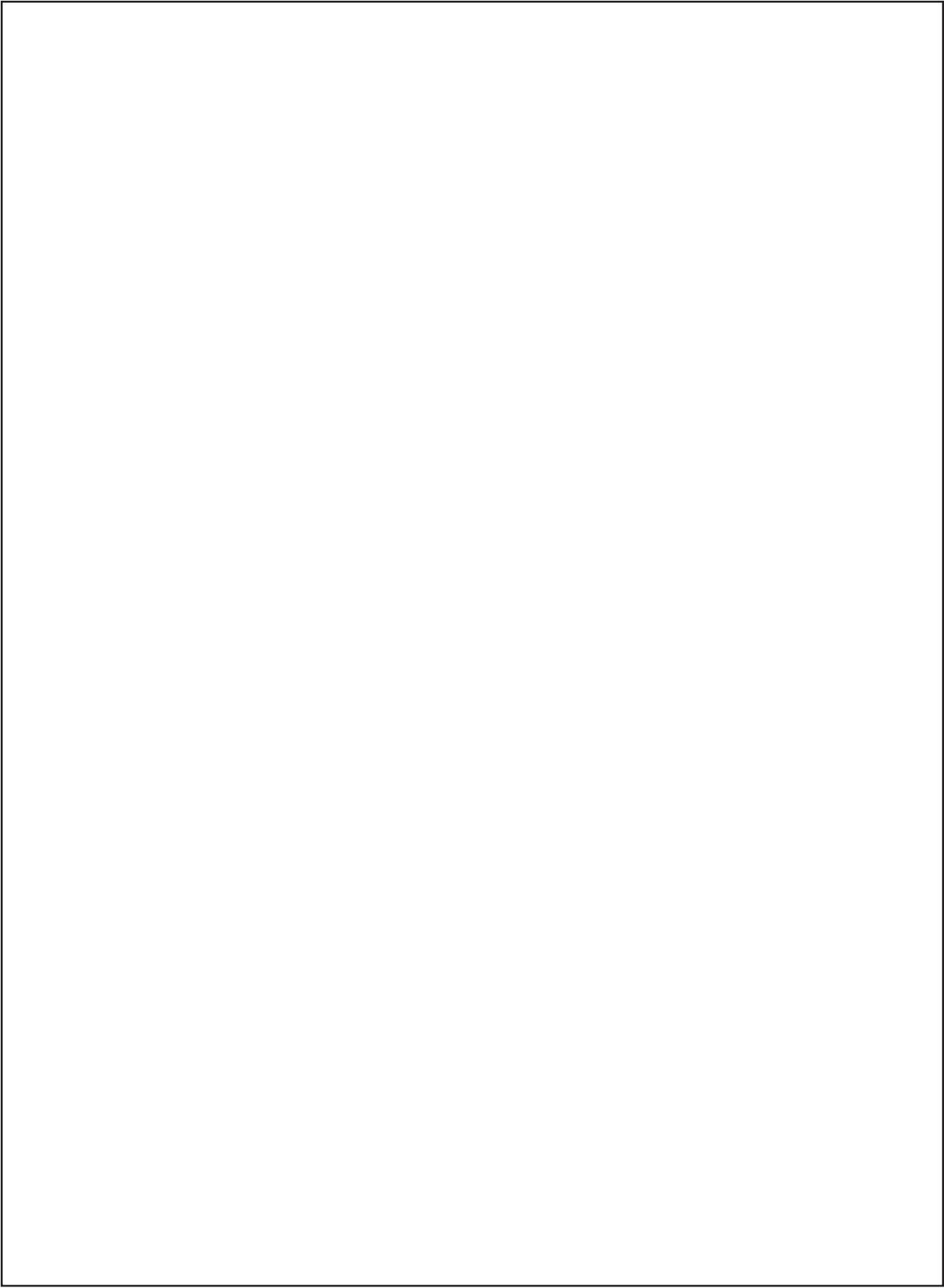


## CHAPTER 23

### AGILITY

#### TABLE OF CONTENTS

23.1	Agility Overview .....	23-1
23.2	Purpose of this Agility Chapter is To .....	23-1
23.3	Theory of Agility.....	23-2
23.4	Applying Agility at Work .....	23-2
23.5	When to Enter into an Agility Partnership .....	23-3
23.6	What Services Exchanges are Not .....	23-3
23.7	Many Benefits of Service Exchanges .....	23-4
23.8	Roles and Responsibilities .....	23-4
23.9	Legal Foundations of the Agility Program .....	23-5
23.10	Legal Issues and Policies.....	23-5
23.11	Eligible Partners .....	23-6
23.12	Processing Agility Agreements and Work Plans .....	23-6
23.13	Agility Agreements .....	23-7
23.14	Agility Agreement Terms and Conditions.....	23-9
23.15	Letter of Understanding .....	23-10
23.16	Agility Work Plans .....	23-10
23.17	Financial Matters .....	23-12
23.18	Monitoring Agility Activities.....	23-14
23.19	Related Activities .....	23-14



## 23.1 AGILITY OVERVIEW

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### INTRODUCTION

Agility is a “way of doing business” that enables PennDOT and eligible partners to exchange services, equipment and staff instead of money. By doing this, PennDOT and the partner make the most of their limited resources; while developing strong and rewarding relationships. One of the biggest advantages of the Agility Program is the long-term relationships developed between PennDOT and partners.

Presently, municipalities represent the majority of partners in the program, but others are eligible including: water, sewer, housing and municipal authorities, council of governments, metropolitan and rural planning organizations, public school districts and state universities, community colleges and vocational technical schools, volunteer fire and rescue companies, volunteer emergency medical transport companies, state and federal government agencies, and charitable hospitals. The Agility Program is available in all eleven engineering districts, which cover 67 counties in Pennsylvania.

Service exchanges must be reasonably equal in amount between the Department and its partner. To avoid the exchange of service that may have a negative effect on the workforce, PennDOT enters into [Agility Work Plans](#) in cooperation with the American Federation of State, County and Municipal Employees (AFSCME). In this way, the Department, AFSCME, and the eligible partner provide services that benefit everyone without the need to pay each other cash for the services rendered. A [Work Plan](#) can be implemented after a fully executed [Agility Agreement](#) is in place.

The County Agility Coordinator (CAC) is responsible for the proper completion and implementation of an [Agility Agreement](#) and [Work Plan](#). The [Work Plan](#) can be developed for services that are specified and approved in [Attachment B of the Agility Agreement](#). Each [Work Plan](#) contains PennDOT’s management, AFSCME’s and the partner’s signatures. [Agility Agreements](#) are valid for five years with one renewal period of three additional years for a total of eight years, but can be cancelled after the terms of the agreement and [Work Plan](#) have been met. A new [Agility Agreement](#) can also be executed if the partner and PennDOT want to exchange services beyond the eight years.

## 23.2 PURPOSE OF THIS AGILITY CHAPTER IS TO

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- Provide broad and consistent direction to the District Agility Coordinators (DACs), CACs, County Managers, Assistant County Managers and others who engage in service exchanges with eligible partners.
- Ensure that the field staff and Agility personnel in PennDOT Central Office are working from the same information.
- Present factors to consider in making Agility business decisions as they relate to the exchange of services with eligible partners.

The guidelines are not intended to address every issue that may arise, nor are they intended to stifle creativity or new ideas. The chapter is made up of two kinds of information:

1. Requirements which must be followed and implemented in every service exchange.
2. Suggestions, which may be implemented by the District and County Maintenance Offices.

Finally, this document is a “work in progress” and will be continuously changed to show the evolution of the program and relationships between PennDOT and its eligible partners, lessons learned from the field staff and AFSCME and our customers’ changing expectations. Updates will be provided to the field staff through such sources as conference calls, in person meetings, email, training sessions, etc.

### 23.3 THEORY OF “AGILITY”

Agility is an organizational strategy or a “way of doing business” that enables PennDOT to respond quickly to its customers, partners and continuously changing environment.

Some people define “Agility” as an attitude that shows PennDOT’s and AFSCME’s joint interest in building and maintaining relationships with internal and external customers. These relationships position PennDOT to make positive differences in a wide variety of situations.

Most agile relationships involve at least one or more of the following four principles:

1. **Emphasizing People and Information** - People and information determine the success of an organization, not technology, facilities, or equipment.
2. **Organizing to Master Change and Uncertainty** - Create a flexible organization that can quickly adapt its human and physical resources to a rapidly changing environment.
3. **Enriching Customers** - Involve customers in developing products and services, which are customized by them to meet their needs.
4. **Cooperating to Enhance Competitiveness** - Identify win-win relationships as the strategic justification for internal and external organizational cooperative ventures.

To varying degrees throughout PennDOT, employees at all levels are encouraged to apply these four principles at work.

### 23.4 APPLYING AGILITY AT WORK

The Agility Program is an innovative approach to conducting business that can greatly enhance efficiencies for PennDOT and its local communities. Given the rapid changes in our operating environment and the many diverse demands on our organization, PennDOT must be increasingly more innovative and proactive. Below are some examples of how to apply Agility at work.

#### MAINTENANCE

1. Consider Agility service exchanges first, before contracting out for services.
2. DACs and CACs are responsible for entering in to [Agility Agreements](#) and [Work Plans](#) so long as these transactions make good business sense. When needed, the CAC should refer to their district management for review and guidance when trying to develop agility partnerships.

#### BRIDGES

When performing preventive maintenance on bridges, such as flushing activities, consider the use of Agility with local volunteer fire departments based on the availability of the volunteer fire departments.

#### TRANSPORTATION SYSTEMS OPERATIONS AND EMERGENCY RESPONSES

Where practical, use the Agility Program to formalize [Agility Agreements](#) and [Work Plans](#) as “insurance policies” to access back-up crews, facilities, knowledge resources and equipment at the local level and across state-borders. The types of emergencies in which these service exchanges may be used include, but are not limited to: electrical outages, downed power lines, snow plowing, flooding, traffic control, etc.

## SAFETY

Use Agility service exchanges as a way of meeting local governments' needs for low-cost safety services. This could help reduce fatalities and crashes. For example, a local government could cut tree limbs and brush along our rights-of-way and in return, the Department could install rumble strips along dangerous curves on local roads.

## RELATIONSHIPS

The Bureau of Innovations may survey AFSCME Council Directors, staff and local representatives using a standard survey to determine their level of satisfaction with the Agility Program. The survey results will be quantified and given to the Assistant District Executives for Maintenance and others to use in strengthening relationships and to make further improvements in the program.

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### 23.5 WHEN TO ENTER INTO AN AGILITY PARTNERSHIP

Establishing an Agility partnership for the purpose of exchanging services between PennDOT and a partner is voluntary and optional for both parties. Each party must believe that it makes good business sense for their organization to be involved in a service exchange. The exchange of services is a good deal if: more work gets done quicker, more work gets done within the same time frame, the exchange allows PennDOT to keep cash in its budget for other needed projects, as well as retains work in PennDOT instead of contracting out services, etc.

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### 23.6 WHAT SERVICE EXCHANGES ARE NOT

Service exchanges should not be confused with "giving away" services. The receiving partner must provide PennDOT with a reasonably equal amount of services.

PennDOT is required by law to preserve the allocations that are distributed from the Motor License Fund (MLF). These allocations are determined on a county-by-county basis through a formal legislative process, which can only be altered by additional legislation. Furthermore, PennDOT is statutorily prohibited from diverting Motor License Funds for proposals and activities that are contrary to Article VIII, Section 11 of the [Pennsylvania Constitution of 1968](#) (relating to the use of proceeds from gasoline and other motor fuel excise taxes and motor vehicle registration and license fees). Reference to this anti-diversion requirement can be found at Section 2001.2 of the [Administrative Code of 1929](#). Any "consideration," such as services or materials, funded from the MLF that is given to an Agility partner may result in offsetting the original formula allocations, which have been carefully established through legislation, or in diverting the funds contrary to the constitutional and statutory mandates. Therefore, when PennDOT uses its field staff, equipment and related materials to benefit a partner as part of a service exchange, PennDOT must receive a reasonably equal service back from that partner. Moreover, to ensure that the MLF is restored, the service or activity performed for PennDOT must be something on which it is permissible to spend MLF in the first place. To maintain the integrity of the MLF, the partner and PennDOT have up to eight years, or by the expiration date of the [Agility Agreement](#), to complete one or more [Work Plans](#) to validate that the services received by PennDOT are reasonably equal in amount to the services provided to the partner, thereby ensuring the integrity of the MLF.

Service exchanges are not good business decisions if the County Maintenance Office fails to factor in the costs associated with using equipment beyond the planned time frame to "extend" a service to complete a project. For example, if the field staff must borrow equipment from an adjoining district to perform a task for its partner, the field staff should factor in the "extended cost" of mobilizing the borrowed equipment. If, after considering this cost factor, it is still feasible to complete the project, then the field staff should proceed to do so.

Service exchanges are not good business decisions if the CAC fails to coordinate with their county on the shared use of purchased and/or rented equipment for service exchanges. For example, if the county rents equipment for 20 days and it is left idle for five of those days, the CAC could have used that rented equipment for the five days to perform a service exchange if proper planning and scheduling occurred.

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## 23.7 MANY BENEFITS OF SERVICE EXCHANGES

The most significant benefit of an Agility partnership is that it helps PennDOT build relationships with its local communities. Sharing information enables all parties to understand why decisions are made and brings to light factors which may influence those decisions as well.

Other benefits include, but are not limited to:

- Enabling PennDOT and partners to use funds more efficiently and effectively.
- Enabling PennDOT and its partners to provide smoother and safer roads by reducing the number of outstanding maintenance needs.
- Improving PennDOT's and its partner's response time on fixing road problems, preventing crashes, etc.
- Completing work that otherwise may not have been done.
- Enabling PennDOT to receive more timely and accurate information from its partners. This is because relationships formed under the Agility Program usually become strong relationships. In strong relationships, the quantity and quality of information communicated between both partners is greatly improved.
- Strengthening relationships between PennDOT and AFSCME union leaders at all levels.
- Strengthening relationships between PennDOT, other state agencies and local governments.
- Increasing government's image with the public.

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## 23.8 ROLES AND RESPONSIBILITIES

### ADMINISTRATION DEPUTATE

Agility is located in the Bureau of Innovations.

Agility personnel are support and program specialists who provide technical guidance to field staff that work in the Highway Administration depute.

The Bureau of Innovation's key products and services that support field implementation include:

- Executing [Agility Agreement](#) that allow [Work Plans](#) to be developed between PennDOT and its partners,
- Assisting with outreach efforts by conducting on-site training for potential and current partners as well as training for AFSCME employees,
- Assisting the DAC in reviewing Agility files at the county maintenance office, when requested,
- Maintaining an Agility Agreement database,
- Preparing Agility Reports and Statistical Analysis, as requested,
- Developing training documents, sessions and tools for PennDOT staff,
- Maintaining this chapter,
- Maintaining an [Agility website](#), and
- Provide guidance to the DACs and CACs on a requested basis.

## HIGHWAY ADMINISTRATION DEPUTATE

The Highway Administration's field staff works daily to maintain our highway and bridge systems. Typically, each engineering district selects a DAC to be a liaison between the PennDOT Central Office and the County Maintenance Office staff. Some of the responsibilities of the DAC include serving as a single point of contact for the Bureau of Innovations,, communicating information on Agility from any source to the Assistant District Executive for Maintenance, County Managers, CAC, and others, performing quality assurance reviews on [Agility Agreements](#) and [Work Plans](#), conducting and/or coordinating training on the Agility Program, assisting with identifying marketing opportunities for the Agility Program, serving as requested an Agility Committee, attending meetings as requested by the Bureau of Innovations, coordinating the collection of data requested by the Bureau of Innovations, and assisting with the resolution of Agility issues.

Some of the CAC's responsibilities include serving as the single point of county contact for the DAC, communicating information on Agility to the County Manager and the entire organization, performing quality assurance reviews on [Agility Agreements](#) prior to their submission to the DAC, participating in the development, review, and implementation of [Work Plans](#), conducting training at the county level and/or coordinating training on the Agility Program for others, identifying, developing and implementing marketing strategies for the county to current and potential partners, attending meetings as requested on the Agility Program, completing data requests on the Agility Program, ensuring [Work Plan](#) activities are accurately tracked and reported, maintaining accurate and auditable records on the Agility Program, soliciting input from and providing information to customers, and encouraging their employees' participation in the program.

The District Municipal Services staff are also located in the Highway Administration deputate and have frequent contact with local governments who are current and potential Agility partners. This staff serves as a referral source for local governments who are interested in learning more about the Agility Program.

## 23.9 LEGAL FOUNDATION OF THE AGILITY PROGRAM

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Chapter 19 of the [Procurement Code](#) (also referred to as Act 57 of 1998) provides PennDOT with the statutory basis to enter into [Agility Agreements](#). Although Chapter 19 does not specifically cite the word "Agility," it enables PennDOT to engage in intergovernmental contracts with various levels and types of governmental bodies, as well as particular non-profit entities. [Agility Agreements](#) are one type of an intergovernmental contract.

Prior to Act 57 of 1998, the Department's statutory authority for [Agility Agreements](#) was Section 561 of the State Highway Law of 1945, relating to minor routine maintenance by municipalities. When the [Procurement Code](#) took effect, it gave PennDOT further authority for the Agility Program and broadened the types of services that the partners could provide to PennDOT.

The Agility Program can "respond quickly" to its partners because these intergovernmental agreements involve less paperwork and shorter processing times. Traditional contracts, which take longer, are not necessary because PennDOT and its partners exchange services, not money.

## 23.10 LEGAL ISSUES AND POLICIES

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Throughout the Agility process, from drafting [Agility Agreements](#) to executing service exchanges, several legal issues may arise. One purpose of this chapter is to minimize the need to consult the Office of Chief Counsel and thus increase efficiency by providing accurate and coherent legal policies for the Agility Program.

Before specific legal and policy issues are discussed, it is important to state the five legal requirements that serve as the foundation of the Agility Program's operations:

### REQUIREMENTS OF THE AGILITY PROGRAM

There are five legal requirements that must be followed in the Agility Program.

1. First, PennDOT must enter into a formal, written agreement with each partner. A letter of cooperation is not acceptable because it is not a formal agreement.



2. *Second, to be a partner in the Agility Program, the partner must be a public entity that conforms to the definition of a "local public procurement unit." Partners must meet this definition because it is required by law (i.e., Act 57 of 1998).*
3. *Third, no money can be exchanged between PennDOT and its partner. If money were involved in the Agility Program, then PennDOT would have to follow Procurement Code requirements which apply to traditional contracts.*
4. *The MLF cannot operate in the red or incur a deficit.*
5. *Materials can only be included in an Agility project if they are essential and incidental to performing the service. Materials alone cannot be exchanged between PennDOT and the partner, except for the following items: Road Signs, Salt Brine and Millings (Millings require approval from the Office of Chief Counsel).*

### 23.11 ELIGIBLE PARTNERS

PennDOT can only enter into [Agility Agreements](#) with entities that are classified as "local public procurement units" or others who provide "external procurement activities" (essentially out-of-state government agencies and agencies of the federal government) under the [Procurement Code](#). One preliminary indicator that PennDOT uses to identify a potential Agility partner is whether they secure and spend public funds. Public funds are taxes, fees or government appropriations.

A second preliminary indicator is whether the partner's agency is managed by a Board of Directors and if these directors are publicly elected officials. However, public authorities are eligible, even though their directors are not elected. A third preliminary indicator is that the entity must expend the public funds in accordance with statutory or regulatory provisions that address its functions and activities, including its spending powers.

A "local public procurement unit" is defined in Section 1901 of the [Procurement Code](#) (62 Pa. C.S. Section 1901) as "A political subdivision, public authority, tax-exempt, nonprofit educational or public health institution or organization, nonprofit fire company, nonprofit rescue company, nonprofit ambulance company and, to the extent provided by law, any other entity, including a council of governments or an area government, which expends public funds for the procurement of supplies, services and construction."

PennDOT's Office of Chief Counsel ultimately determines whether the potential partner meets the requirements to be a "local public procurement unit." When in question, potential partners may be asked to submit copies of their articles of incorporation, bylaws, annual audit report or other documentation concerning their organization and operation to the Office of Chief Counsel for review.

### 23.12 PROCESSING AGILITY AGREEMENTS AND WORK PLANS

[Agility Agreements](#) or [Work Plans](#) with errors can cause significant delays in the processing of either of these documents. This section details policies and procedures to follow that helps the CAC and the partner avoid common mistakes.



### 23.13 AGILITY AGREEMENTS

An [Agility Agreement](#) is a contract, which indicates PennDOT's and the partner's intent to exchange services with each other when and if an opportunity arises. Having an agreement in place does not obligate either party to perform a service. It provides the foundation and legal authority for exchanging services. The [Agility Agreement](#) also describes the potential service exchanges, the agreement time frame of up to eight years, and other general terms and conditions of the relationship. The [Agility Agreement](#) submitted to the PennDOT Central Office for processing, must have original signatures. A "copy" of the [Agility Agreement](#) from the CAC cannot be accepted by the PennDOT Central Office.

#### WHO CAN SIGN THE AGILITY AGREEMENT

The [Agility Agreement](#) must contain a valid signature. This means that the signatures on the [Agility Agreement](#) must be from people who have the proper legal authority to sign the document. An executed resolution is necessary to grant someone within the partner's organization or its governing body the proper authority to sign the [Agility Agreement](#). A resolution is a formal statement which allows a governing body to give an individual the authority to sign the [Agility Agreement](#) on behalf of the partner. As a matter of PennDOT policy, [Agility Agreements](#) must have a completed resolution.

If the agreement is with a nonprofit corporation, only one corporate officer needs to sign, provided that officer is a senior officer. Senior officers include:

1. Chairperson
2. President
3. Vice-President
4. Senior Vice-President
5. Executive Vice-President
6. Assistant Vice-President
7. Chief Executive Officer
8. Chief Operations Officer

If a senior officer signs the agreement for the corporation, then a junior officer may attest to the signature of the senior officer. To attest is to affirm the authenticity of the individual who has signed either the [Agility Agreement](#) or the resolution on behalf of the partner. The affirming individual is usually the secretary, treasurer, or other appointed individual.

#### SIGNING AN AGILITY AGREEMENT ON BEHALF OF A FEDERAL AGENCY

Within the partner's organization, for a person to sign an [Agility Agreement](#) on behalf of a federal agency, it has to have a citation to federal regulations, an internal agency memo delegating signature authority, or in the case of a contracting officer, an appointment certification.

#### STAMPED SIGNATURES ON AN AGILITY AGREEMENT

Stamped signatures on [Agility Agreements](#) are only valid in extenuating medical circumstances. For such a signature to be valid, it requires an attached letter from the municipal solicitor with an explanation for the absence of a manual signature.

#### VALID DATES

[Agility Agreements](#) must be submitted to the Office of Chief Counsel within sixty (60) days of the partner's signature date on page 3 of the agreement. If the 60 days are exceeded, the agreement is considered "stale" and will need to be resigned and re-dated, and the signature process will begin again.

The attest date must be either equal to or later than the signed date on the signature page. [Agility Agreements](#) or resolutions will not be accepted if the attest date is earlier than that of the signature.

## OBTAINING APPROVAL

When processing an Agility Agreement with Attachments A, B, C and D, approval is required from the Bureau of Innovations and the Office of Chief Counsel. If activities other than what is listed on Attachment B of the Agility Agreement are added, the Agility Agreement must then be approved by the Office of the Attorney General.

The Office of Chief Counsel will review the Resolution Page and the [Agility Agreement](#) for form and legality, and the reviewing attorney will return the agreement to the Bureau of Innovations if problems exist.

When entering into an [Agility Agreements](#) with a Commonwealth Agency, a Letter of Understanding (LOU) must be used. No resolution is necessary with executive agencies—that is, those under the Governor’s jurisdiction. However, independent agencies, such as the Pennsylvania Game Commission, require an [Agility Agreement](#).

When the Agility partner is an out of state agency, an [Agility Agreement](#) must be used. These [Agility Agreements](#) must be approved by the Office of General Counsel and the Office of the Attorney General.

The Bureau of Innovations is responsible for submitting [Agility Agreements](#) and LOUs to the Office of Chief Counsel as well as for entering all [Agility Agreements](#) and LOUs into the Legal Approved Tracking System (LATS).

## TERMINATION OF AGILITY AGREEMENTS

An [Agility Agreement](#) may be terminated prior to the official termination of the agreement if PennDOT or the partner so desire. The terminating party must submit a letter of intent to this effect to the other party which references the 30 day termination notice.

If an [Agility Agreement](#) expires before work is completed under a [Work Plan](#), the following actions must be taken immediately:

1. All work must cease until a new [Agility Agreement](#) is in place.
2. The new [Agility Agreement](#) must have a new and unique agreement number.
3. Indicate on the old [Work Plan](#) the “Balance still owed by either party at the end of the expired [Agility Agreement](#)” and reference the new [Agility Agreement](#) number.

## LEGALLY BINDING CONTRACT

Signing an [Agility Agreement](#) does not obligate either party to perform any of the services listed on Attachment B of the [Agility Agreement](#). The [Agility Agreement](#) becomes a legally binding contract only after a [Work Plan](#) is completed and signed by all parties: PennDOT, AFSCME, and the partner.

Since the [Work Plan](#) signed by all parties under an [Agility Agreement](#) is a legally binding contract, it would be a breach of contract if the partner or PennDOT did not perform the necessary work to the party’s satisfaction. Should the partner refuse to perform or re-perform the work for PennDOT, the situation should be communicated to the District Office who can ask for assistance, if applicable, from the Bureau of Innovations. The reverse is also true: if PennDOT does not perform work to the partner’s satisfaction, it would be a breach of contract.

## 23.14 AGILITY AGREEMENT TERMS AND CONDITIONS

The following section is a brief description of the Terms and Conditions as listed in the Agility Agreement.

**Part One** describes the partner's responsibilities under the Agility Agreement. As a supplier of personnel and equipment, the activities specified on the individual Work Plan must be reasonably equal in amount to those supplied by PennDOT and meet the guidelines in the appropriate PennDOT publications.

**Part Two** outlines PennDOT's responsibilities under the Agility Agreement. PennDOT's activities specified on individual Work Plans must be reasonably equal in amount to those supplied by the partner and meet the guidelines in the appropriate PennDOT publications. If the partner's organization has stricter policies or standards regarding highway maintenance, PennDOT will perform those services accordingly.

**Part Three** states that the partner's employees and lessors remain in the partner's employ when performing services under this agreement for PennDOT. PennDOT's employees and lessors remain in PennDOT's employ when performing services for the partner's organization. In addition, liability issues are addressed in the event an employee or lessor of either party commits negligent acts.

**Part Four** guarantees the right of inspection and remedies to both parties of the Agility Agreement. Inspections may be made by authorized representatives of either party within 60 days of the completion of work. Spot inspections can be performed at any time when activities are taking place under this agreement.

**Part Five** describes PennDOT's Green Plan Policy to protect the environment, conserve resources and comply with environmental laws and regulations. It addresses the partner's responsibility to ensure its personnel and subcontractors are aware of PennDOT's commitment to protecting the environment and related obligations.

**Part Six** adds the Non-discrimination/Sexual Harassment Clause, Contractor Integrity Provisions, and the Provisions Concerning the Americans with Disabilities Act as attachments to the agreement.

**Part Seven** allows you to sign the different sections of the agreement separately.

**Part Eight** describes the conditions under which PennDOT can receive your services. There are circumstances where you can provide services under the agreement when those services are already under contract with a private vendor. It also addresses training, meals and materials that you use in the performance of a service.

**Part Nine** sets forth the conditions under which PennDOT can provide services to the partner's organization. It addresses the materials used, signs provided and how to handle surplus.

### RECORD RETENTION

All original Agility Agreements are maintained in the Bureau of Innovations and are kept for seven years before they are sent to the State Records Center for archiving. In addition, copies of all agreements are maintained in electronic document databases. The Agility field staff is required to maintain all [Agility Agreement](#) documents which include the agreement, [Work Plans](#) and supporting documents for seven years after the expiration date of the [Agility Agreement](#).

### INFORMATION DISCLOSURE

[Agility Agreements](#), Letters of Understanding and [Work Plans](#) that the Department is a party to are considered public information under the [Right-to-Know Law \(Act 3 of 2008\)](#). Therefore, the Department must provide to the public non-confidential partner information upon request.

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### 23.15 LETTER OF UNDERSTANDING

A LOU is a document used by two state agencies that wish to exchange services, since the Commonwealth cannot formally contract with itself. LOUs are signed by each agency's designated signatory, who is usually located in the Harrisburg area. Once approved, staff from each County Maintenance Office, which includes AFSCME, may develop a [Work Plan](#) with the other agency's field or regional staff and their union representatives to exchange services. Documentation must be maintained to support the [Work Plans](#) that are completed as a result of having LOUs in place.

### GRANTS

Under no circumstances can our Agility partner use grant funds to perform a service exchange for PennDOT.

However, [Work Plans](#) may be entered into with organizations that receive grant funding from PennDOT (such as publicly owned airports), as long as non-grant funding is used to pay for the grantee's performance of a service exchange.

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### 23.16 AGILITY WORK PLANS

A [Work Plan](#) specifically describes the nature of work that PennDOT and the partner will perform for each other under the [Agility Agreement](#). The [Work Plan](#) also indicates the quantity, unit of measure, unit price of the Agility project, estimated and actual completion dates and contains signature lines for PennDOT, AFSCME and the partner, etc. It is important to note that the "cost" of the Agility project is indicated on the [Work Plan](#) not the value. Information related to the value of an Agility project may be kept in PennDOT's files along with supporting rate information.

An unlimited number of [Work Plan](#) may be developed and signed over the life of one [Agility Agreement](#). The quantity is governed by the capacity of either party to perform the work within the life of the agreement.

It is a good practice to expect our partners to complete their work for PennDOT within one or two work seasons from the date that PennDOT finished providing its services to the partner. This increases accountability and lowers the risk of a partner defaulting on a [Work Plan](#). However, in all situations, the partner must provide services to PennDOT on or before the expiration date of the [Agility Agreement](#).

### MANAGING WORK PLAN SERVICE EXCHANGES AND RELATED ACTIVITIES

Work Plan activities must be properly managed, tracked, reported and an accurate and auditable record maintained. At a minimum, the CAC is required to perform the following tasks for each work plan:

1. **Track Work Plans for PennDOT Central Office** for access to records as requested.
2. **Create and Enter Notifications in SAP-Plant Maintenance** for each service shown on the work plan. There are two types of work plan services. One service is the work performed by PennDOT or RP work, which is recorded on the [Partner's Agility Service form \(PAS\)](#) Form. The second service is the work received by PennDOT from the partner or RR work. These transactions must be entered in SAP-Plant Maintenance within 10 business days from the date the work plan was executed. (See the training course entitled "Plant Maintenance & Agility" for details on how to perform these transactions and the required data elements for Agility notifications.) Note that one notification per agility service exchange must be created. That notification is valid for the life of the service even if the exchange continues beyond one fiscal year.
3. **Document the Receipt of Partner or RR Services.** Since the life of an [Agility Agreement](#) (if renewed) can last for eight years, our partners may take up to eight years to complete service exchanges for PennDOT. Therefore it is important to document the partner's return of services as follows:
  - A. Request that the partner complete and return the [Partner's Agility Service form \(PAS\)](#) every two weeks to show the nature of RR work and number of production units provided. There are two exceptions to this requirement. First, no form should be completed if the partner did not perform any work. The second exception is when the partner provides a service to PennDOT that "reoccurs" over a period of months like storage or parking. In these situations and for the

partner's convenience, one PAS form may be completed every six months, so long as the form contains the total amount of services provided for that time frame.

*After the entire service exchange has been completed, the "receiving" party must initial and date the Work Plan column entitled "Completion Date/Initials/Date Work Approved" to signify that the job was accepted.*

4. **Create and Oversee the Processing of ZIPY Partner Payrolls** using appropriate codes and PAS forms, similar to how work is processed by a paid contractor. ZIPY Partner Payroll information must be entered for all partner provided services or RR work twice a year in SAP-Plant Maintenance. Agility work received from the partner between July and December must be entered in Plant Maintenance by the fourth business day in January. Services received from all partners between January and June must be entered in Plant Maintenance by the fourth business day in July.
5. **Ensure a Reasonably Equal Service Exchange Occurs.** One legal premise of the Agility Program is that PennDOT must preserve the allocations that are distributed from the MLF. This means that the actual costs incurred by PennDOT to serve the partner in the Agility Program must be offset by the partner's return of a comparable amount of services to PennDOT.

## USE OF CONTRACTORS AND SUBCONTRACTORS

An Agility partner may repay PennDOT by using contractors or subcontractors to provide the services. However, AFSCME must agree to this arrangement by signing the [Work Plan](#).

## WORK PLANS WITH MULTIPLE PARTNERS

Some municipalities decide not to participate in the Agility Program because they may lack the resources to participate in an Agility exchange. Having multiple partners under an Agility [Work Plan](#) is allowable and may be especially helpful in enabling a group of municipalities to participate in the Agility Program. PennDOT could have three municipalities join together to "give something back" to the Department. Individually the three municipalities may have been excluded from the program due to their inability to compensate the Department for services rendered. For example: three municipalities could provide litter pickup to PennDOT in exchange for line painting on a roadway that runs through the three municipalities. By providing the service to all three municipalities at the same time, the mobilization costs would be reduced making the service more affordable to the municipalities.

## WORK PLANS UNDER A THREE-WAY AGILITY WORK PLAN

A three-way [Work Plan](#) refers to a [Work Plan](#) that contains three parties on the face of the [Work Plan](#) – PennDOT and two eligible partners, whom all must sign a [Work Plan](#) as part of the agreement. In this scenario, PennDOT could complete an Agility project for Partner A but be compensated for doing so by Partner B. Partner B would then receive a service from Partner A so that all three parties benefit in some way from being in the Agility partnership.

## AMENDING WORK PLANS

If after work begins under a [Work Plan](#), PennDOT or the partner wants to change the scope of the project all parties may re-negotiate and amend the costs and work activities in the [Work Plan](#). The amended [Work Plan](#) should be initialed and dated by PennDOT, AFSCME and the partner.

## BANKING

Banking is like a savings account where one party "saves up" dollar values by performing more than one service for their partner over an extended period of time. The cumulative value of these performed services is then paid back by the receiving partner within the time frame of the [Agility Agreement](#). Note that the exchange of services under a banking arrangement must be fully documented and completed before the [Agility Agreement](#) expires between partners. Although permissible, banking should be kept to a minimum and the nature of the service exchanges and estimated dates of completion for each service must be established when the Work Plan is being developed. A "to be determined" designation is not acceptable.



## CLAIMS PROCESS

A dissatisfied partner can sue PennDOT in the Board of Claims, as long as the value of the disputed services is \$300 or more. This is why PennDOT must view [Work Plans](#) signed under an [Agility Agreement](#) as legally binding documents. Conversely, if PennDOT has a claim against a partner, the available forums are either the Commonwealth Court or the Court of Common Pleas for the county where the partner is located (the choice of the forum rests with PennDOT); and there is no minimum dollar value. In the latter situation, the County Maintenance Office staff should first contact the Bureau of Innovations before taking any action.

## LIABILITY

Work performed under an [Agility Agreement](#) should be viewed similar to the way that PennDOT views work performed by a contractor. Under Section 1911 of the [Procurement Code](#), a partner that provides personnel, property, supplies or services to another partner shall be immune from liability for any damages which arise out of the use of such personnel, property, supplies or services. Also, Section 561(b) of the [State Highway Law of 1945](#), 36 P.S. Section 670-561 (b), provides that a municipality which completes minor routine maintenance work on the roadway or shoulders of a state highway for PennDOT under a contract is relieved from any tort liability arising after the completion of the work so long as it conforms to the standards of the contract as agreed to by PennDOT.

Partners sometimes ask whether PennDOT would be liable if the partner's employee was injured while working on an Agility project for PennDOT. The answer to this question is no, because the [Procurement Code](#) provides immunity. The injured person's employer is responsible for providing him or her with worker's compensation and related insurances. The same principle applies to PennDOT employees undertaking projects for partners—PennDOT is responsible for the worker's compensation coverage, and the partner is immune from liability.

Further, Agility partners should be kept to the same safety standards as PennDOT employees. The standards can be found under the Terms and Conditions portion of the [Agility Agreement](#), and are interpreted in an earlier section of the guidelines.

## 23.17 FINANCIAL MATTERS

### "COSTING OUT" AN AGILITY PROJECT THAT WILL BE PROVIDED TO PENNDOT'S PARTNER

"Costing out" an Agility project can be a challenge. This is because the items that go into "making a business offer" to PennDOT's partner often vary from one district to another and sometimes from county to county. There are also times when unforeseen circumstances arise as part of completing a Work Plan activity. For these reasons, costing out an Agility project is not an exact science.

Generally, PennDOT considers two or more items as part of costing out the service it will provide to the partner. These items are:

1. Direct or hourly cost of PennDOT's field staff, who are involved in the Agility project plus the cost of their benefits.
2. Equipment cost.
3. Material cost (that is incidental to the service being provided).
4. Other Costs.

These four categories are defined below along with several places where the cost information can be obtained.

## DIRECT COSTS AND BENEFITS

Direct costs include direct salaries, wages and overtime that are incurred by the Department in implementing the work included in the [Work Plan](#). The direct cost of Central Office staff who works in the Agility Program should not be included in these calculations. The hourly cost of PennDOT's staff to perform a service can be determined by looking at actual payroll costs. Actual payroll costs contain information on salaries, wages and overtime as well as the average, hourly cost of PennDOT's field staff to perform a service, plus the cost of their benefits, payroll additives, etc.

## EQUIPMENT COSTS

Plant Maintenance equipment costs refer to the cost to PennDOT to own, maintain, and operate equipment or the cost to PennDOT to rent and operate equipment. All County Maintenance Office staff maintains a list of these hourly equipment rates. Be sure to include costs for Department forces and equipment to mobilize for the service being provided. Also, the rates to use and operate outside rented equipment are usually maintained at the County Maintenance Office.

## MATERIAL COSTS

Material costs refer to the cost of materials that PennDOT purchases or provides to the partner that are incidental to the service rendered. The word "incidental" means "something that is minor in nature..." when compared to the overall cost of the service. Material costs can be found on the Plant Maintenance system or by calling local suppliers and/or by researching Internet or catalog sources.

PennDOT is prohibited from providing only materials to a partner as part of an Agility project, with the exception of the materials listed on page 23-6. If materials are provided, the materials must be incidental to the service that PennDOT also provides to the partner. In addition, district office staff has the discretion to provide only services to their partner.

## OTHER COSTS

Other costs involved in an Agility project may result in additional expenses due to the local conditions in which the work is to be performed. For example, PennDOT's lack of knowledge of a geographical area where the work is to be done may result in extending the time frames in which the job can be completed. Other costs to consider are the distance to the work site, nature of the work (cutting overgrown shoulder areas instead of regularly maintained areas), differences in the age and condition of equipment, need for flaggers, extensive work zone set-up and administrative costs incurred at the district/county offices.

By adding the costs in two or more of the four categories above, PennDOT arrives at a "business offer" or the amount of resources PennDOT believes it will need to complete an Agility project for its partner.

Some other thoughts to keep in mind when calculating and presenting PennDOT's business offer to the partner are:

1. It is likely that PennDOT's business offer to complete the partner's Agility project may be marginally higher in amount than what PennDOT's actual costs are. This is because PennDOT must factor in other costs that were described earlier.
2. PennDOT may, but is not required to, share its cost calculations with the partner. This is a business offer and PennDOT should keep in mind that had the partner procured a contractor to do the same work, it is unlikely that the contractor would itemize and share its costs with the partner.
3. When developing a Work Plan where a partner is to provide PennDOT with winter services, be sure that a municipal agreement is not already in place with PennDOT for the same areas being described in the [Work Plan](#).



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## 23.18 MONITORING AGILITY ACTIVITIES

Since the life of an [Agility Agreement](#) is usually five years, with an option to renew for three years, our partners may take up to eight years to complete Agility projects for PennDOT. This is subject to arrangements made in the [Work Plan](#). Therefore, it is important to monitor the quality and quantity of the services being provided to PennDOT over a number of years by the partner.

Two ways to do this include producing a written receipt of the quality and quantity of services provided by the partner to PennDOT using the [Partner Agility Services](#) (PAS) Form. The receipt will indicate to the partner what the current balance due to PennDOT is and subsequently be maintained on file in the PennDOT County Maintenance Office. The written receipt can be the [Work Plan](#) if it is initialed and dated by all parties after the work has been performed and officially noted by the receiving party that the job was acceptable.

A second method is to capture this information on a computer system that will enable the CAC to electronically maintain such information. Regardless of the approach taken, the CAC is required to maintain documentation that supports the figures and information cited in the [Work Plan](#) for auditing purposes.

Of equal importance is PennDOT's need to document, in writing, that the partner accepted the Department's work as described in the [Work Plan](#) and the date this acceptance occurred. Likewise, the Department's acceptance of the partner's work and the date of acceptance should also be documented.

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## 23.19 RELATED ACTIVITIES

### AGILITY WORK PLANS WITH PENN STATE UNIVERSITY (PSU)

Developing Work Plans with PSU is a complicated issue, which needs to be considered on a case-by-case basis. Therefore, when completing Work Plans with PSU, there is an additional approval required. After the Work Plan has been signed off by PennDOT, the partner and AFSCME, it must then go to the Bureau of Innovations which will forward the Work Plan to the Office of Chief Counsel for final approval.

### WORK VERSUS VOLUNTEER ACTIVITIES

Sometimes, in promoting the Agility Program and other Department initiatives, union-covered employees are recruited to represent PennDOT at events, speak at meetings or otherwise promote some aspect of the Department in forums with partners, customers, and other employees. In these situations, the union-covered employees who carry out these approved Agility work tasks are to be compensated for their time even if the work is performed outside of their regular work hours.

Other paid work activities may include, but are not limited to, union-covered employees speaking on behalf of the Department at schools or other locations in order to educate people about transportation, or to carry out activities listed in the Department's business plans. In these cases, an employee is not acting as a volunteer: he or she is acting as an employee of the Department.

In contrast and as defined by the U.S. Department of Labor, a volunteer is a person who offers their services "...freely and without pressure or coercion, direct or implied from an employer" (U.S. Department of Labor, 29 CFR 555.103).

Three examples in which an employee is acting as a volunteer and not entitled to compensation while performing activities associated with the Department are the following:

1. An employee who is a member of a volunteer fire company requests and is granted permission to drive a piece of Department equipment in a parade. In this case, while the Department may get some publicity by showcasing the equipment in the parade, the employee has requested to use the equipment in their role as a volunteer firefighter.
2. The Department sponsors a sports team for youth and an employee volunteers to be a coach for the sports team. In this case the employee is acting as a volunteer.

3. As a union representative, an employee attends an evening meeting to develop and sign an Agility Work Plan.

For assistance and clarification on these matters, please contact your Labor Relations Officer.

### **GENERAL COMMONWEALTH INFORMATION REQUIREMENT**

No PennDOT employee can use the information contained in this chapter for the purpose of superceding any Commonwealth or Department policy or procedure. Purchasing and contracting activities involving Commonwealth funds and all expenditures and practices must adhere to Commonwealth policies or procedures. Where applicable, this chapter incorporates such policies and procedures. Questions about the use of the Agility concept for activities that are not covered in this chapter should be directed to the Bureau of Innovations, the district office, or the responsible program area.

### **MARKETING THE AGILITY PROGRAM**

Marketing Agility is a process that involves sound planning and execution. This process creates exchanges of goods and services that satisfy individual and organizational objectives.

The following activities are just some of the ways that you can market the Agility Program.

1. Personally contact every municipality and promote Agility with ENTHUSIASM.
2. Attend a municipality meeting to explain the concept of Agility.
3. Send a list of all active Agility projects to all municipalities each month.
4. Send Agility newsletters to municipalities.
5. Encourage media coverage where possible.
6. Send invitations to individuals and municipalities inviting them to attend Customer Advisory Board meetings.
7. Use advertising activities for the Agility Program as one immediate way for the partner to compensate PennDOT.
8. Do satisfaction surveys including telephone and person-to-person calls.
9. Communicate the value of the Agility Program to Department employees.
10. Use the [PennDOT Agility website](#) to advertise the program and encourage partners to “visit” the website regularly.

