

AGREEMENT NO.: _____

COMMONWEALTH AND MUNICIPAL TRAFFIC SIGNAL MAINTENANCE AGREEMENT

This Commonwealth and municipal traffic signal maintenance agreement is between the Commonwealth of Pennsylvania, Department of Transportation and _____, a political subdivision in the County of _____, Pennsylvania, acting through its proper officials.

This agreement is entered pursuant to 74 Pa. C.S. Chapter 92 (relating to traffic signals) and 75 Pa. C.S. § 6122 (relating to authority to erect traffic control devices) to define maintenance requirements for all traffic signals within the Municipality.

Local authorities are required to obtain the approval of PennDOT prior to erecting any traffic signal pursuant to 75 Pa. C.S. § 6122(a)(2). Local authorities are responsible for the installation, revision, maintenance, operation, and removal of traffic signals on highways under their jurisdiction with written PennDOT approval pursuant to 67 Pa. Code § 212.5(c)(1). The Municipality is a local authority having the authority to enact laws relating to traffic pursuant to the definition in 75 Pa. C.S. § 102.

The Municipality is required to enter into an agreement with PennDOT to properly maintain and time traffic signals for critical corridors pursuant to 74 Pa. C.S. § 9202(b). The Municipality may enter into an agreement with PennDOT to properly maintain and time traffic signals for designated corridors pursuant to 74 Pa. C.S. § 9202(a). An agreement is required as a condition of eligibility for financial assistance from the Motor License Fund to replace, synchronize, time, operate, and maintain traffic signals pursuant to 75 Pa. C.S. § 9511(e.1)(5).

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

1. **Defined Terms.** The terms as used in this agreement, are defined as follows:

“Commonwealth” means the Commonwealth of Pennsylvania.

“Effective Date” means the date this agreement is fully executed by the parties and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature.

“Maintenance” means preventative, periodic, and emergency work, including by contract, as described in this agreement. The definition includes all word forms and tenses of the word maintain.

“Motor License Fund” means the fund created under the Pennsylvania Constitution, Article VIII, §11, that collects revenue from transportation user fees, including taxes on liquid fuels, license and registration fees.

“Municipality” means _____.

“Publication” means a document produced by PennDOT, assigned a publication number by the Bureau of Office Services, and available electronically on the PennDOT website (www.pa.gov/pennDOT). A list of publications and the version applicable to this agreement is attached as Exhibit E.

“Traffic Control Devices” means geometric features, signs, signals, pavement markings, pedestrian accommodations, and other items associated with traffic control devices.

“Traffic Signal” means an electronically operated traffic control device that facilitates the orderly movement of traffic including, without limitation, traffic control signals, pedestrian signals, flashing beacons, emergency vehicle access signals, lane-use control signals, ramp metering signals, school warning systems, and in-roadway lights.

“Traffic Signal Permit” means a document issued by PennDOT that approves installation of the Traffic Signal, captures some basic information such as who the permit is issued to, the hours that the Traffic Signal will be on flash, the type of controller mounting, and the permittee’s responsibilities, and contains information about the operation of the Traffic Signal, the placement of signal equipment, signing, and markings, and a signal plan sheet showing a scaled drawing of the intersection with the approved Traffic Signal and other associated traffic control devices, such as signal structures, vehicular and pedestrian signal heads, controller, traffic detectors, traffic signs and any sign structures, pavement markings, and pedestrian curb ramps.

“TSAMS” means PennDOT’s Traffic Signal Asset Management System, an internet-based database that captures and maintains traffic signal asset related data for all traffic signals in the Commonwealth.

“Virtual Private Network” or “VPN” means PennDOT’s virtual private network.

2. **Applicability.** This agreement applies to all traffic signals in the Municipality for which a Traffic Signal Permit has been issued by PennDOT to the Municipality. Traffic Signals remain subject to this agreement in perpetuity unless and until the Traffic Signal Permit is cancelled by PennDOT. PennDOT maintains a record of Traffic Signal Permits electronically and the Municipality may access the record at any time.
3. **Ownership of Traffic Signals and Maintenance Requirements.**
 - a. **Ownership.**
 - i. If PennDOT issues a Traffic Signal Permit to the Municipality, title to Traffic Signal installations within the Municipality will vest in the Municipality.

- ii. PennDOT shall own a new Traffic Signal for a 30-day test period. PennDOT shall then confirm the end of the 30-day test period in writing to the Municipality, which confirmation will serve as PennDOT's transfer of ownership of a new traffic signal constructed within the Municipality to the Municipality.
- iii. When a Traffic Signal subject to this agreement per section 2 is modified, PennDOT shall take ownership of the modified elements of the Traffic Signal for a 30-day test period. PennDOT shall confirm the end of the 30-day test period in writing, which confirmation will serve as PennDOT's transfer of ownership of the modified elements of the Traffic Signal to the Municipality. Traffic Signal appurtenances that are not modified as part of the work remain under ownership of the Municipality.
- iv. The Municipality shall maintain responsibility for all items associated with the Traffic Control Device, as documented on the Traffic Signal Permit issued by PennDOT. PennDOT shall maintain Longitudinal pavement markings on state highways.
- v. The Municipality shall operate the Traffic Signals in accordance with the permits issued by PennDOT.

b. Preventative and Response Maintenance.

- i. The Municipality shall provide preventative and response Maintenance for all Traffic Signals owned by the Municipality to provide the Maintenance program described in this agreement.
- ii. The Municipality shall provide the required preventative and response Maintenance functions in the manner indicated in Exhibit A, attached to this agreement, and in accordance with Publication 191. Publication 191 may be accessed through the hyperlink in Exhibit E, attached to this agreement.

- iii. If either Maintenance function is performed using municipal personnel, the provisions of Exhibit B, attached to this agreement, apply.
- iv. If the Municipality employs a contractor to perform either Maintenance function, the Municipality shall submit the name and contact information of the contractor to PennDOT using the form in Exhibit C, attached to this agreement, and a copy of the agreement between the contractor and the Municipality. The Municipality shall submit a revised municipal contact form within 30 days of any changes to the information contained on the form. The Municipality shall submit the form to the attention of the District Traffic Engineer within the PennDOT Engineering District encompassing the Municipality, or in such other format as prescribed by PennDOT. The use of a contractor does not relieve the Municipality of any obligations of this agreement.

c. Maintenance Records.

- i. The Municipality shall prepare and retain an accurate record of the Maintenance activities performed on the Municipality's Traffic Signals subject to this agreement in accordance with the provisions of Exhibit D, attached to this agreement.
- ii. The Municipality shall make Maintenance records available during regular business hours for inspection by PennDOT.

- 4. Failure to Perform Maintenance.** If the Municipality fails to fulfill its responsibilities as described in this agreement, PennDOT shall provide written notice pursuant to 74 Pa. C.S. § 9202(e). If the Municipality fails to meet the requirements of the written notice, PennDOT may take action to correct the deficiencies and may deduct the actual costs of correcting the deficiencies from the Municipality's liquid fuels payments pursuant to 74 Pa. C.S. § 9202(g). PennDOT's

performance of the Maintenance services in the Municipality's stead does not relieve the Municipality of its responsibility for continued Maintenance of Traffic Signals. If the Traffic Signal was installed or improved using state or federal funds, federal- or state-aid participation, or both, may be withheld on all future projects until the Municipality demonstrates to PennDOT and the Federal Highway Administration that all required Maintenance and operation services are being provided by the Municipality without the necessity of PennDOT performing duties described in this agreement as the responsibility of the Municipality.

Application for Traffic Signal Permits. The Municipality shall ensure that applications for installing, revising, or removing traffic signals follow the process as specified in Publication 46, which may be found through the hyperlink in Exhibit E. As part of this process, the Municipality shall submit a signed Traffic Signal Application Form TE-160, available on the PennDOT website, along with all supporting studies and documentation for PennDOT review and approval. The Municipality shall not begin work on any new Traffic Signal or modification to an existing Traffic Signal until PennDOT issues a Traffic Signal Permit. If PennDOT approves a new Traffic Signal after a traffic engineering study and engineering judgment indicates the need, the Municipality shall install, own, operate, and maintain the Traffic Signal in accordance with this agreement. PennDOT may direct appropriate alterations to the design or operation including, hours of operation of the Traffic Signal, or may require removal of the Traffic Signal, if traffic conditions or other considerations necessitate alteration or removal. The Municipality shall obtain approval for installation of Traffic Signal appurtenances outside highway right-of-way. The Municipality shall ensure that Traffic Signals installed using Liquid Fuels Tax funds conform to PennDOT specifications as set forth in PennDOT Publication 408, and its supplements, and standard drawings, which may be found through the hyperlink in Exhibit E.

5. **Highway Occupancy Permits.** Section 441.3 of Title 67 of the Pennsylvania Code (67 Pa. Code, Chapter 441) mandates that a highway occupancy permit is required from PennDOT prior to the construction or alteration of any driveway, local road, drainage facility, or structure within state highway right-of-way; or connection to or alteration of a PennDOT drainage facility. The Municipality shall apply for a highway occupancy permit whenever embankment removal, curbing, sidewalk, drainage structures, changes in highway geometry, pavement widening, or installation of additional lanes are performed by the Municipality within the right-of-way of any state highway. Additional requirements and guidance are defined within Publication 282, available through the hyperlink in Exhibit E.

6. **Remote Communications and Operations.**

- a. **Virtual Private Network.** If remote communication is provided to any Traffic Signals subject to this agreement, including field-to-field and field-to-network, the remote communication must use the Commonwealth network or another method approved by the Office of Administration. Remote access for the Municipality will be provided through the VPN. The Municipality may request user credentials, which PennDOT may provide on a case-by-case basis at PennDOT's discretion.
- b. **System Equipment Cabinet.** PennDOT may restrict access to the on-site equipment cabinet housing connections to the VPN by key, access badge, or otherwise. The Municipality may request access, which may be provided at PennDOT's discretion. PennDOT may establish minimum qualifications for Traffic Signal technicians to have access.
- c. **Traffic Signal System Monitoring.** PennDOT may monitor traffic conditions using Traffic Signal equipment within the boundaries of the Municipality during times of normal traffic flow and during an incident. During signal monitoring, PennDOT may suggest traffic signal timing adjustments to the Municipality to improve normal traffic flow. Traffic

signal timing adjustments suggested to improve normal traffic flow can be implemented remotely by either PennDOT or the Municipality upon mutual acceptance of new timings.

- d. **Incident Management.** In the event of an incident, PennDOT may implement revised traffic signal timing and phasing plans at any Traffic Signal subject to this agreement. PennDOT shall contact the Municipality prior to the implementation of revised traffic signal timing and phasing plans. Upon clearance of the incident, PennDOT shall return affected Traffic Signals to operate as reflected on the approved Traffic Signal Permit. Upon resumption of normal operations, PennDOT shall notify the Municipality. PennDOT shall provide notification under this section to the emergency contact identified in Exhibit C.
7. **Data Ownership.** All data generated by the Traffic Signal equipment will be jointly owned by PennDOT and the Municipality. PennDOT or the Municipality may share data with third parties for the purpose of providing traveler information, upon written notice to the other party. PennDOT and the Municipality shall protect any personally identifiable information collected, in accordance with applicable law and regulation.
8. **Engineering Studies and Ordinances.** The Municipality shall comply with the study and ordinance requirements of 75 Pa. C.S. § 6109.
9. **Standard Commonwealth Provisions.** The Municipality shall comply with the Commonwealth Provisions attached as Exhibit F to this agreement. As used in Exhibit F, the term “Contractor” refers to the Municipality.
10. **Updates to PennDOT Publication hyperlinks.** PennDOT may update Exhibit E to address any broken or changed hyperlinks to the publications listed in this

agreement and to update the publication version applicable to this agreement by written notice to the Municipality.

11. **Severability.** The provisions of this agreement are severable. If any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth and its applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and its applicability to any government, agency, person or circumstance will not be affected.
12. **No Waiver.** Either party may elect not to enforce its rights and remedies under this agreement in the event of a breach by other parties of any term or condition of this agreement. In any event, the failure by either party to enforce its rights and remedies under this agreement may not be construed as a waiver of any subsequent breach of the same or any other term or condition of this agreement.
13. **Independence of the Parties.** Nothing contained in this agreement is intended or may be construed to, in any respect, create or establish, the relationship of partners between the Municipality and PennDOT, or as constituting PennDOT as the representative or general agent of the Municipality.
14. **Assignment.** This agreement may not be assigned, either in whole or in part, without PennDOT's written consent.
15. **No Third Party Beneficiary Rights.** This agreement does not create or confer any rights in or on persons or entities not a party to this agreement.
16. **Notices.** All notices and reports required under this agreement must be in writing and given to the parties by regular mail, e-mail, or delivery in person:

If to PennDOT:
 Manager -Traffic Signals Unit
 Bureau of Operations
 400 North Street, 6th Floor
 Harrisburg, PA 17120
 RA-PDSignals@pa.gov

If to the Municipality:

the nonemergency contact listed in Exhibit C.

Either party may update this contact information without the need for formal amendment by providing the other party notice.

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

18. **Integration and Merger.** The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. It is the sole expression of their agreement, and they are not bound by any other agreements of whatsoever kind or nature. The parties also intend that this agreement may not be supplemented, explained, or interpreted by any

evidence of trade usage or course of dealing. In entering this agreement, the parties did not rely upon oral or written statements or representations not contained within the document itself.

19. **Counterparts.** The parties may execute this agreement in counterparts, each of which is deemed an original and has the full force and effect as an original but all of which constitute one and the same instrument.

20. **Electronic Signatures.** The parties may sign this agreement electronically signed in accordance with the Electronic Transactions Act, 73 P.S. § 2260.301, *et seq.*

[REMAINDER OF PAGE INTENTIONALLY BLANK]

The parties, through their authorized representatives, have signed this agreement below.

Attest:

Municipality

Signature

Date

Signature

Date

Printed Name

Printed Name

Title

Title

Please attach a resolution providing proof of signature authority for the signer to sign on behalf of the Municipality, Authority, or other governmental entity. Signers must indicate titles and date signatures. An attest signature is required only when directed by the Municipality's resolution.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

Deputy Secretary or Designee

Date

APPROVED AS TO FORM AND LEGALITY:

BY _____

Office of Chief Counsel

Date

By _____ 18-FA-81.1

Office of General Counsel

Preapproved Form: OGC No. 18-FA-81.1
OAG Approved 12/3/25

By _____ 18-FA-81.1

Office of Attorney General

PREVENTATIVE AND RESPONSE MAINTENANCE REQUIREMENTS

PREVENTATIVE MAINTENANCE

The Municipality shall provide, or shall ensure that its contractor provides, preventative maintenance for individual components of each traffic signal installation covered by this agreement. PennDOT Publication 191, which may be accessed through the link in Exhibit E, identifies the required preventative maintenance activities/scheduling intervals for each of the various traffic signal components. The Municipality shall provide preventative maintenance as specified in Publication 191 to keep the intersection control equipment and signals in mechanically, structurally and aesthetically good condition.

RESPONSE MAINTENANCE

The Municipality shall provide, or shall ensure that its contractor provides, response maintenance for individual components of each traffic signal installation covered by this agreement. PennDOT Publication 191 identifies the required response intervals and repair intervals for each of the various traffic signal components. The Municipality shall provide response maintenance as specified in Publication 191 to restore a traffic signal system to proper and safe operation. This includes Emergency (Temporary) Repair and Final Repair as defined in Section 6.1 of Publication 191.

FINAL REPAIR:

The Municipality shall repair or replace failed equipment to restore system to proper and safe operation in accordance with permit and within response intervals and repair intervals as specified in Publication 191.

EMERGENCY (TEMPORARY) REPAIR:

The Municipality shall use alternative means or mode to temporarily restore system to safe operation within response intervals and repair intervals as specified in Publication 191. The Municipality shall complete final repairs within time intervals specified in Publication 191.

SIGNAL MAINTENANCE ORGANIZATION

PERSONNEL CLASSIFICATIONS

In order to properly maintain the traffic signal equipment covered by this agreement, the Municipality shall provide the following staff throughout the useful life of the equipment if either preventative or response maintenance is performed using municipal personnel. The useful life of traffic signal equipment is the time from installation until it either removed or replaced with signal equipment or other traffic control devices which better serves the need of the intersection. Municipality shall abide by all guidance provided in PennDOT Publication 191, which may be accessed through the hyperlink in Exhibit E, related to minimum requirements for each position as follows:

Traffic Engineer – An administrative position with prime responsibility for proper operation of traffic signal equipment. Supervises and plans activities of Signal Technicians and Signal Specialists to ensure adequate preventative and response maintenance programs.

Signal Specialist – A position responsible for the diagnostics and repair of all traffic signal equipment including solid state equipment.

Signal Technician – A position responsible for the operation and maintenance of traffic signals and all associated equipment.

TRAINING

Municipality shall secure training to upgrade the ability of its present staff to properly perform the required maintenance functions. Municipality shall abide by all guidance provided in PennDOT Publication 191.

BUDGET REQUIREMENTS

The Municipality shall provide, in its annual operating budget, dedicated funds which are sufficient to cover the cost of the personnel, training, contractors (if utilized) and specialized maintenance equipment that are required under this agreement. The Municipality shall abide by all guidance provided in PennDOT Publication 191.

MUNICIPAL CONTACT INFORMATION

Non – Emergency Municipal Contact Information

Name of Municipality: _____

Municipal Address: _____

Municipal Phone Number: _____ Alternate Phone Number: _____

Municipal Contact Person: _____ Title: _____

E-mail Address: _____

Municipal Hours of Operation: _____

Preferred Method of Contact: ☐ Phone ☐ E-Mail

Emergency Municipal Contact Information

Emergency Contact Person: _____ Title: _____

Municipal Phone Number: _____ Alternate Phone Number: _____

E-mail Address: _____

Preferred Method of Contact: ☐ Phone ☐ E-Mail

Maintenance and Operation Information

Preventative Maintenance performed by:

☐ Municipal Personnel ☐ Municipal Contractor ☐ Municipal Personnel & Contractor

Response Maintenance performed by:

☐ Municipal Personnel ☐ Municipal Contractor ☐ Municipal Personnel & Contractor

Maintenance and Operations Contractor Contact Name: _____

Company/Organization: _____

Phone #: _____ Alt Phone #: _____

E-mail: _____

RECORDKEEPING

Accurate and up-to-date recordkeeping is an essential component of a good traffic signal maintenance program. The Municipality shall prepare, retain, and make available to PennDOT, on request, a record of all preventive and response maintenance activities performed on the traffic signal equipment covered by this agreement.

The Municipality shall establish a separate file for each traffic signal installation and keep its records in TSAMS or on other forms prescribed by PennDOT in Publication 191.

The Municipality shall keep, or shall ensure that its contractor keeps, the following records for each intersection.

Master Intersection Record

A list of all maintenance functions performed at the intersection, which should be updated within one day of the activity but no more than one week later.

Response Maintenance Record

A log recording the location, date, time, caller, receiver and complaint received, maintenance personnel, time dispatched, trouble found, and time cleared.

Preventive Maintenance Record

A log for each preventative maintenance service that includes the date, tasks performed, and signatures of personnel performing the work.

Exhibit E

Applicable PennDOT Publications with Hyperlinks

Publication Number	Title	Date
46	<i>Traffic Engineering Manual</i>	February 2012 Change #1: March 3, 2014
	https://www.pa.gov/content/dam/copapwp-pagov/en/pennidot/documents/public/pubsforms/publications/pub%2046.pdf	
191	<i>Traffic Signal Maintenance Manual</i>	December 2020
	https://www.pa.gov/content/dam/copapwp-pagov/en/pennidot/documents/public/pubsforms/publications/pub%20191.pdf	
282	<i>Highway Occupancy Permit Operations Manual</i>	September 2022 Change #1: February 28, 2024
	https://www.pa.gov/content/dam/copapwp-pagov/en/pennidot/documents/public/pubsforms/publications/pub-282/pub%20282.pdf	
408	<i>Specifications</i>	See Note 1
	https://www.pa.gov/content/dam/copapwp-pagov/en/pennidot/documents/public/pubsforms/publications/pub_408/pub%20408.pdf	

Publications are available electronically at

<https://docs.penndot.pa.gov/Public/Bureaus/BOO/TSPortal/PUBS.html>

Note 1: Publication 408 is updated semi-annually with effective dates typically in April and October each year. Traffic signal installation and modification must conform to the version of Publication 408 which is effective as of the date when work is bid, or when work begins if not contracted.

Commonwealth Standard Terms and Conditions (Revised - 10/1/2023)

1. DEFINITIONS.

Capitalized terms used in these Commonwealth standard terms and conditions that are not otherwise defined in these provisions have the meanings specified in the contract to which it is attached.

2. ENHANCED MINIMUM WAGE.

- a. **Enhanced Minimum Wage.** Contractor shall pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this contract/lease, and for an employee's hours performing ancillary services necessary for the performance of the services or lease when the employee spends at least 20% of their time performing ancillary services in a given work week.
- b. **Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate will be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The Commonwealth will publish applicable adjusted amount in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- c. **Exceptions.** These Enhanced Minimum Wage Provisions do not apply to employees
 - i. Exempt from minimum wage under the Minimum Wage Act of 1968;
 - ii. covered by a collective bargaining agreement;
 - iii. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - iv. required to be paid a higher wage under any state or local policy or ordinance.
- d. **Notice.** The Contractor shall: (1) post this Enhanced Minimum Wage Provision for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) for the entire period of the contract, provide electronic notice of this clause to its employees not less than annually.
- e. **Records.** Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, provide to the Commonwealth all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- f. **Sanctions.** Contractor's failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but are not limited to, termination of the contract or lease, nonpayment, debarment, or referral to the Office of General Counsel for appropriate civil or criminal referral.

- g. **Subcontractors.** The Contractor shall include these Enhanced Minimum Wage Provisions in its subcontracts under this contract or lease to ensure that these provisions are binding on its subcontractors.

3. INDEMNIFICATION.

- a. **Contractor Obligations.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with any activities performed by the Contractor or its employees and agents that are related to this contract, as determined by the Commonwealth in its sole discretion.
- b. **Commonwealth Attorneys Act.** The Commonwealth shall provide the Contractor with prompt notice of any claim or suit of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under any terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- c. **Settlement.** Notwithstanding the above, neither party may enter into a settlement of any claim or suit without the other party's written consent, which will not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

4. NONDISCRIMINATION/SEXUAL HARASSMENT.

- a. **Representations.** The Contractor represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination and sexual harassment for the term of the contract. The Contractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to its books, records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- b. **Nondiscrimination/Sexual Harassment Obligations.** The Contractor shall not:
 - i. in any manner discriminate in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this contract or any subcontract, by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act ("PHRA") and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

- ii. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this contract.
 - iii. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under this contract.
 - iv. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which this contract relates.
 - v. in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- c. **Establishment of Contractor Policy.** The Contractor shall establish and maintain a written nondiscrimination and sexual harassment policy that complies with the applicable law and these Nondiscrimination/Sexual Harassment provisions and shall inform its employees in writing of the policy. The policy must contain a provision that states that sexual harassment will not be tolerated and employees who practice it will be disciplined. For the entire period of the contract, the Contractor shall: (1) post its written nondiscrimination and sexual harassment policy or these Nondiscrimination/Sexual Harassment provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) provide electronic notice of the policy or this clause to its employees not less than annually.
- d. **Notification of Violations.** The Contractor's obligations pursuant to these provisions are ongoing from the effective date and through the termination date of the contract. Accordingly, the Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- e. **Cancellation or Termination of Contract.** The Commonwealth may cancel or terminate this contract and all money due or to become due under this contract may be forfeited for a violation of the terms and conditions of these Nondiscrimination/Sexual Harassment provisions. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.
- f. **Subcontracts.** The Contractor shall include these Nondiscrimination/Sexual Harassment provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of these provisions in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no

third-party beneficiaries are created by those provisions. If the Contractor becomes aware of a subcontractor's violation of this clause, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

5. CONTRACTOR INTEGRITY.

- a. **Definitions.** For purposes of these Contractor Integrity Provisions, the following definitions apply:

- i. "Affiliate" means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- ii. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.
- iii. "Contractor Related Parties" means any Affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.
- iv. "Financial Interest" means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- v. "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](#), as may be amended, 4 Pa. Code §7.153(b), apply.
- vi. "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.

b. **Representations and Warranties.**

- i. **Contractor Representation and Warranties.** The Contractor represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Contractor nor Contractor Related Parties have:
 1. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 2. been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
 3. had any business license or professional license suspended or revoked;
 4. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

5. been, and are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.
 - ii. **Contractor Explanation.** If the Contractor cannot make the representations and warranties set forth above at the time of its submission of its bid or proposal or if this contract is awarded on a non-bid basis at the time of the execution of the contract, the Contractor shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth's best interest to execute the contract.
 - iii. **Further Representations.** By submitting any bills, invoices, or requests for payment pursuant to this contract, the Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of the contract.
 - iv. **Notice.** The Contractor shall immediately notify the Commonwealth, in writing, if at any time during the term of the contract it becomes aware of any event that would cause the Contractor's certification or explanation to change. The Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made in these provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the contract.
- c. **Contractor Responsibilities.** During the term of this contract, the Contractor shall:
- i. maintain the highest standards of honesty and integrity.
 - ii. take no action in violation of any applicable laws, regulations, or other requirements applicable to the Contractor that govern Commonwealth contracting and procurement.
 - iii. establish and implement a written business integrity policy that includes, at a minimum, the requirements of these provisions as they relate to the Contractor's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
 - iv. not accept, agree to give, offer, confer, agree to confer, or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order, statement of policy, management directive, or bulletin applicable to the provision of goods or services under this contract.
 - v. not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest. The Contractor must 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 the date the Contractor signs the contract. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.

- vi. comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award.
- vii. comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a) if this contract was awarded on a Non-bid Basis.
- viii. immediately notify the Commonwealth contracting officer or the Office of the State Inspector General, in writing, when the Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including, but not limited to, contact by a Commonwealth officer or employee, which, if acted upon, would violate the ethical standards.

d. **Investigations.** If a State Inspector General investigation is initiated, the Contractor shall:

- i. reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- ii. cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions and make identified Contractor employees available for interviews at reasonable times and places.
- iii. upon the inquiry or request of an Inspector General, provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. This information may include, but is not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract.

e. **Termination.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Contractor Integrity provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one does 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 contract.

- f. **Subcontracts.** The Contractor shall include these Contractor Integrity Provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of this provision in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If the Contractor becomes aware of a subcontractor's violation of these provisions, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

6. CONTRACTOR RESPONSIBILITY.

- a. **Definition.** For the purpose of these provisions, the term "Contractor" means as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth. The term also includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.
- b. **Contractor Representations.**
- i. The Contractor represents for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot make this representation, the Contractor shall submit, along with its contract, a written explanation of why such certification cannot be made.
 - ii. The Contractor represents that as of the date of its execution of this contract it 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.
- c. **Notification.** The Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best of its knowledge, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. The Contractor shall provide this notification within 15 days of the date of suspension or debarment.
- d. **Default.** The Contractor's failure to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government constitutes an event of default of the contract with the Commonwealth.
- e. **Reimbursement.** The Contractor shall reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this contract or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. These costs include, but are not limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and

documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- f. **Suspension and Debarment List.** The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment list tab.

7. AMERICANS WITH DISABILITIES ACT.

- a. **No Exclusion.** Pursuant to the Americans with Disabilities Act, 42 U.S. Code § 12101, et seq., no qualified individual with a disability may, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract.
- b. **Compliance.** For all goods and services provided pursuant to this contract, the Contractor shall comply with Title II of the Americans with Disabilities Act, the "General Prohibitions Against Discrimination" set forth in 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that apply to state and local governments.
- c. **Indemnification.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with the Contractor's failure or its employee's or agent's failure to comply with the provisions of paragraph a, as determined by the Commonwealth in its sole discretion.

8. APPLICABLE LAW AND FORUM.

This contract is governed by and must be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, and waives any claim or defense that such forum is not convenient or proper. Any Pennsylvania court or tribunal has in personam jurisdiction over the Contractor, and the Contractor consents to service of process in any manner authorized by Pennsylvania law. This provision may not be interpreted as a waiver or limitation of the Commonwealth's rights or defenses.

9. RIGHT TO KNOW LAW.

- a. **Applicability.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this contract.
- b. **Contractor Assistance.** If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this contract, the Commonwealth shall notify the Contractor that it requires the Contractor's assistance, and the Contractor shall provide to the Commonwealth:
 - i. access to, and copies of, any document or information in the Contractor's possession (Requested Information) arising out of this contract that the

Commonwealth reasonably believes is a public record under the RTKL, within ten calendar days after receipt of written notification; and

- ii. any other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this contract.
- c. **Trade Secret or Confidential Proprietary Information.** If the Contractor considers the Requested Information to include a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor shall notify the Commonwealth and provide, within seven calendar days of receipt of the written notice a written statement, signed by a representative of the Contractor, that explains why the requested material is exempt from public disclosure under the RTKL. If the Commonwealth determines that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information to the Commonwealth within five business days of receipt of written notice of the Commonwealth's determination.
- d. **Reimbursement.**
 - i. **Commonwealth Reimbursement.** If the Contractor fails to provide the Requested Information and the Commonwealth is ordered to produce the Requested Information, the Contractor shall reimburse the Commonwealth for any damages, penalties, or costs that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
 - ii. **Contractor Reimbursement.** The Commonwealth will reimburse the Contractor for any costs that the Contractor incurs as a direct result of complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL.
- e. **Challenges of Commonwealth Release.** The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall reimburse the Commonwealth for any legal expenses incurred by the Commonwealth as a result of the challenge, including any damages, penalties or costs that the Commonwealth may incur as a result of the Contractor's legal challenge, regardless of the outcome.
- f. **Waiver.** As between the parties, the Contractor waives all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- g. **Survival.** The Contractor's obligations contained in this Section survive the termination or expiration of this contract.

10. OFFSET.

Intentionally omitted.

11. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS.

Intentionally omitted.

12. WORKER PROTECTION AND INVESTMENT.

The Contractor shall comply with all applicable Pennsylvania state labor laws and worker safety laws including, but not limited to, the following:

- a. Construction Workplace Misclassification Act;
- b. Employment of Minors Child Labor Act;
- c. Minimum Wage Act;
- d. Prevailing Wage Act;
- e. Equal Pay Law;
- f. Employer to Pay Employment Medical Examination Fee Act;
- g. Seasonal Farm Labor Act;
- h. Wage Payment and Collection Law;
- i. Industrial Homework Law;
- j. Construction Industry Employee Verification Act;
- k. Act 102: Prohibition on Excessive Overtime in Healthcare;
- l. Apprenticeship and Training Act; and
- m. Inspection of Employment Records Law.