

**ORDINANCE NO. 02-2016**

**AN ORDINANCE OF THE COUNTY OF BERKS, PENNSYLVANIA AUTHORIZING BERKS COUNTY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT (“IGT”) BETWEEN THE COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA STATE POLICE (“PSP”) AND THE COUNTY OF BERKS (“COUNTY”) TO PROVIDE FOR PARTICIPATION BY THE COUNTY IN THE MUNICIPAL AUTOMOBILE THEFT/MOTOR VEHICLE INSURANCE FRAUD TASK FORCE PROGRAM (“TASK FORCE”), AND THE REIMBURSEMENT OF CERTAIN COUNTY EXPENSES BY THE PSP FROM THE AUTOMOBILE THEFT PREVENTION TRUST FUND (“FUND”) (AUTOMOBILE THEFT PREVENTION ACT; 40 P.S. 3261.1).**

**WHEREAS**, the Pennsylvania State Police (“PSP”) has established a municipal automobile theft/motor vehicle insurance fraud task force program (“Task Force”) throughout Pennsylvania to coordinate automobile theft and motor vehicle insurance fraud prevention, investigation and enforcement activities; and

**WHEREAS**, the County intends to participate in and is a necessary part of these Task Force activities; and

**WHEREAS**, the Automobile Theft Prevention Act, 40 P.S. 326.1, provides for the funding of the Automobile Theft Prevention Trust Fund to provide, inter alia, financial support to law enforcement, correctional agencies, prosecutors and other governmental agencies, for programs designed to reduce automobile theft and to improve the administration of automobile theft laws; and

**WHEREAS**, the PSP is the recipient of grant monies from the Automobile Theft Prevention Trust Fund which it intends to use, in part, to reimburse certain expenses incurred by the County associated with participation in the Task Force activities; and

**WHEREAS**, PSP and the County wish to establish the administrative framework for the reimbursement of certain County expenses by the PSP from grant monies when sufficient grant monies are available; and

**WHEREAS**, the County desires to enter into an IGT with PSP for receipt of funds from PSP to the County, in exchange for its participation in the Task Force activities, set forth in the IGT attached hereto as Exhibit “A”.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the Board of Commissioners of the County of Berks, Pennsylvania as follows:

1. The Title and Background of this Ordinance set forth above are incorporated herein by reference.
2. The Board of Commissioners of the County of Berks (“Commissioners”) hereby approve entering into the IGT, a copy of which is attached hereto and incorporated

herein as Exhibit "A", with the intent and effect that the County of Berks ("County") shall be bound by the Agreement.

3. The Commissioners hereby authorize and direct on behalf of the County (i) the Berks County District Attorney to execute and deliver the Agreement; and to execute and deliver such additional instruments, and to take such further actions, as may be necessary or appropriate to carry forth the Agreement and the transactions to be effected under the Agreement, including acceptance of payment as may be due the County to administer the terms of the Agreement.
4. The Board of Commissioners, and any agent authorized by the Board of Commissioners are hereby directed to take any such other action as may be necessary or appropriate to carry out the purposes of this Ordinance and of the Agreement.
5. Nothing contained in this Ordinance shall be construed to affect any suit or proceeding in any court, or any rights acquired or liability incurred, or any cause of action existing prior to the enactment of this Ordinance.
6. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Commissioners that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.
7. Any ordinance, parts of ordinances, resolutions or parts of resolutions conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance's provisions.
8. This Ordinance shall become effective at the earliest date provided by law.

ENACTED AND ORDAINED as an Ordinance by the Board of Commissioners of the County of Berks, in lawful session duly assembled, this 2nd day of June, 2016.

COUNTY OF BERKS

By: Christian Y. Leinbach  
Christian Y. Leinbach, Chairman

By: Kevin S. Barnhardt  
Kevin S. Barnhardt, Commissioner

By: Mark C. Scott  
Mark C. Scott, Esq., Commissioner

Attest:

Maryjo Gibson  
Maryjo Gibson, Chief Clerk

EXHIBIT "A"

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
MUNICIPAL  
AUTOMOBILE THEFT/MOTOR VEHICLE INSURANCE FRAUD  
INTERGOVERNMENTAL AGREEMENT**

**THIS INTERGOVERNMENTAL AGREEMENT**, made this 1st day of July, 2016 by and between the Commonwealth of Pennsylvania, Pennsylvania State Police and the County of Berks (hereinafter referred to as County).

**WITNESSETH** that:

**WHEREAS**, the Pennsylvania State Police has established a municipal automobile theft/motor vehicle insurance fraud task force program (Task Force) throughout Pennsylvania to coordinate automobile theft and motor vehicle insurance fraud prevention, investigation and enforcement activities; and

**WHEREAS**, the County intends to participate in and is a necessary part of these Task Force activities; and

**WHEREAS**, the Automobile Theft Prevention Act, **40 P.S. 326.1**, provides for the funding of the Automobile Theft Prevention Trust Fund to provide, inter alia, financial support to law enforcement, correctional agencies, prosecutors, and other governmental agencies, for programs designed to reduce automobile theft and to improve the administration of automobile theft laws; and

**WHEREAS**, the Pennsylvania State Police is the recipient of grant monies from the Automobile Theft Prevention Trust Fund which it intends to use, in part, to reimburse certain expenses incurred by the County associated with participation in Task Force activities; and

**WHEREAS**, the parties wish to establish the administrative framework for the reimbursement of certain County expenses by the Pennsylvania State Police from grant monies, when sufficient grant monies are available;

**NOW**, therefore, the parties hereby agree as follows:

1. The County will assign a dedicated officer to the Task Force, whose sole responsibility shall be activities undertaken in support of, and at the direction of, the Task Force. Within 10 days of the effective date of this agreement, the County shall provide to the Pennsylvania State Police the name, title, badge or ID number of the officer assigned to the Task Force along with the hourly wage and hourly overtime wage rate for the officer.

2. **The County may request reimbursement for the payment of salary (to include cost of benefits) overtime, vehicle leasing, cellular telephone, gasoline and vehicle expense, training related expenses and pre-appropriated miscellaneous expenses directly related to work performed by its officer assigned as a member of the Task Force.**

A. The County shall provide to the Pennsylvania State Police within 10 days of the signing of this agreement, the name, title, telephone number and address of the contact person for the County to whom payments for salary, overtime, vehicle leasing cellular telephone, gasoline and vehicle expense, training related expenses and pre-appropriated miscellaneous expenses reimbursement should be made.

1. Participation in the Pennsylvania Electronic Payment Program (PEPP) is required to receive payment. Enrollment information for PEPP can be obtained and completed online at

[www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf](http://www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf).

Waivers to this provision can be issued on a case-by-case basis, only when strong justification exists for such waiver.

2. The Commonwealth will make payments to the recipient through the Automated Clearing House Network (ACH). Within 10 days of the grant award, the recipient must submit or must have already submitted its ACH and electronic addenda information, if desired, to the Commonwealth's Payable Service Center, Vendor Data Management Unit at 717-214-0140 (FAX) or by mail to the Office of Comptroller Operations, Bureau of Payable Services, Payable Service Center, Vendor Data Management Unit, 555 Walnut Street-9th Floor, Harrisburg, PA 17101.

3. The recipient must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the recipient to properly apply the state agency's payment to the respective invoice or program.

4. It is the responsibility of the recipient to ensure that the ACH information contained in the Commonwealth's Central Vendor Master File is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

B. Invoices for the payment of expenses shall be submitted to the Pennsylvania State Police **to arrive no later than 30 days following the reimbursable calendar quarter. Invoices received after this period will not be reimbursed. Non-reimbursed costs shall be borne by the County.** All

expenses shall be certified by an authorized representative of the County as accurate and reflecting only amounts for reimbursable expenses incurred in support of Task Force Activities.

**C. All reimbursable expenses incurred and reported to the Pennsylvania State Police during the first quarter shall not exceed the following maximum. Any expenses reported for the first quarter, which are greater than the maximum, shall be borne by the County. During the term of this agreement, any remaining balance from a prior quarter shall be rolled and added to the following quarter. Any expense reported, which is greater than the cumulative total, shall be borne by the County.**

|                       |                     |
|-----------------------|---------------------|
| <b>First Quarter</b>  | <b>\$ 30,468.00</b> |
| <b>Second Quarter</b> | <b>\$ 30,465.00</b> |
| <b>Third Quarter</b>  | <b>\$ 30,465.00</b> |
| <b>Fourth Quarter</b> | <b>\$ 30,465.00</b> |

D. The County acknowledges that it remains fully responsible for its obligations as the employer of the officer assigned to the Task Force and is responsible for the payment of salary, overtime earnings, withholdings, insurance coverage and all other requirements by law, regulations, ordinance or contract regardless of the reimbursable expenses incurred.

E. All requests for reimbursement incurred by the County must be approved and certified by the Pennsylvania State Police. Further no requests for payment of overtime expenditures shall be paid unless the request is approved in advance.

F. The maximum reimbursement entitlement for salary, overtime, vehicle leasing and pre-appropriated miscellaneous expenses is **\$121,863.00** which is contingent upon the receipt of sufficient grant monies from the Automobile Theft Prevention Trust Fund to satisfy the requests for reimbursement.

G. This agreement and its procedures are subject to audit by the Automobile Theft Prevention Trust Fund Authority, the Pennsylvania State Police and any other governmental body duly authorized by law. The County agrees to permit such audits and agrees to maintain all records relating to any reimbursed expense for a period of not less than three (3) years; and in the event of an audit, until such audit is completed.

3. Each party shall be an independent contractor and responsible for its own employees and for the acts of its employees under this Agreement pursuant to law. Each party shall provide such public liability and other insurance as appropriate to protect against any claims arising out of that party's performance under this Agreement and not otherwise provided. Nothing in this Agreement shall be construed to limit the Commonwealth's rights, claims or defenses that arise as a matter of law or pursuant to any provision of this Agreement. Nothing in this Agreement shall be construed to limit the sovereign immunity of the Commonwealth.

4. No changes or modifications to the terms of this Intergovernmental Agreement shall be valid unless made in writing, agreed to, and signed by all parties.

5. This is an Intergovernmental Agreement between the Pennsylvania State Police and the County, and is not intended to confer any right or benefit to any private person or party.



6. Any dispute regarding its interpretation or application shall be submitted to the Office of General Counsel for resolution.

7. This agreement remains in effect from **July 1, 2016 to June 30, 2017** and may be renewed upon agreement, subject to availability of necessary funding. This agreement may be terminated at any time by any of the participating agencies contingent upon a 30 day written notice of their intent to terminate.

8. Commonwealth Held Harmless: The County agrees to hold the Commonwealth Harmless as Provided in Appendix A. The term contractor shall refer to the County.

9. Contractor Integrity Provisions: The County agrees to conduct itself in accordance with Appendix B. The term contractor shall refer to the County.

10. Contractor Responsibility Provisions: The County agrees to be bound by Appendix C. For the purpose of Appendix C, the term contractor is defined as the County.

11. Nondiscrimination/Sexual Harassment Provisions: The County agrees to conduct itself in accordance with Appendix D. The term contractor shall refer to the County.

12. The Americans With Disabilities Act Provision: During the term of this Agreement, the County agrees to be bound by Appendix E. For the purpose of Appendix E, the term contractor is defined as the County.

13. The Pennsylvania Right-to-Know Law applies to this agreement. The County agrees to conduct itself in accordance with Appendix F. The term contractor shall refer to the County.

14. The County also agrees that the Commonwealth may set off the amount

of any state tax liability or other debt of the County or its subsidiaries that is owed to the Commonwealth and is not being contested on appeal, against any payments due to the County under this or any other grant or contract with the Commonwealth.

15. The County agrees to be bound by Appendix G.

16. This Agreement will be construed in accordance with applicable Pennsylvania law Appendix H.

**17. This Agreement, together with Appendices A through H, and attachment form approval, constitutes the entire agreement of the parties hereto and shall supersede all prior offers, negotiations and agreements. Previous provisions, understandings and terms will no longer be honored by the PSP after the effective date of this Agreement.**

**IN WITNESS WHEREOF**, the parties have executed this Intergovernmental Agreement as of the date first above written.

Signature Page Follows

\_\_\_\_\_  
Commissioner  
Pennsylvania State Police

\_\_\_\_\_  
District Attorney, Berks County

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Office of Chief Counsel  
Pennsylvania State Police

\_\_\_\_\_  
Attorney for County

\_\_\_\_\_  
Office of General Counsel

\_\_\_\_\_  
Office of Attorney General

Approved as to fiscal responsibility, budgetary appropriateness & availability of funds in the amount of \$121,863.00 under Appropriate Symbol 6016000001 2042021241 6343117 Contract # \_\_\_\_\_ Local Municipal Resources & Development 100% Commonwealth Funds.

\_\_\_\_\_  
Comptroller PSP

Distribution Schedule (Maximum Amounts Anticipated)

|               |               |               |                |
|---------------|---------------|---------------|----------------|
| Jul - Sep '16 | Oct - Dec '16 | Jan - Mar '17 | Apr - June '17 |
| \$30,468.00   | \$30,465.00   | \$30,465.00   | \$30,465.00    |

Berks County: Vendor # 139092-002  
Berks County Commissioners  
District Attorney  
633 Court Street  
Reading, PA 19601-4302

## Appendix A

### Commonwealth Held Harmless

- a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim 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 such 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.
- b. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

## Appendix B

### CONTRACTOR INTEGRITY PROVISIONS

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

**1. DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

- a. **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- b. **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
- c. **"Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.
- d. **"Contractor Related Parties"** means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
- e. **"Financial Interest"** means either:
  - (1) Ownership of more than a five percent interest in any business; or
  - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- f. **"Gratuity"** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
- g. **"Non-bid Basis"** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

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

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

- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or 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 of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- d. Contractor shall 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 prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

  - (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 is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- g. When 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 such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to 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. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- i. Contractor shall 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. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

## Appendix C

### Contractor Responsibility Provisions

For the purpose of these provisions, the term contractor is defined 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 of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/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 so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/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.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to 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 or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be 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.
6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472  
FAX No: (717) 787-9138



## Appendix D

### **NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Contracts]**

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate 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.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate 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 the contract.
3. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
4. The Contractor and each subcontractor shall not discriminate in violation of PHRA and applicable federal laws against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers subject to *Title VII* of the *Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor 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 their books, records, and accounts by the contracting agency and the Bureau of Small Business Opportunities (BSBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

- 7.** The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
  
- 8.** The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## Appendix E

### Americans With Disabilities Act

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. Section 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Section 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of Subparagraph a above.

## Appendix F

### Contract Provisions – Right to Know Law 8-K-1532

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for 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 must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.

Revised February 1, 2010

## Appendix G

### Payment

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. **The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.**
  
- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

## Appendix H

### Applicable Law

This Contract shall be governed by and 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, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.