

CITY OF WILLIAMSPORT, PA RESOLUTION

RESOLUTION # 9744

DATE 2/29/24

TITLE

A RESOLUTION AUTHORIZING THE EXECUTION OF A MUNICIPAL SERVICES AGREEMENT BETWEEN THE CITY OF WILLIAMSPORT AND THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, FOR MAINTENANCE OF SLOPES ALONG MILLER'S RUN

BE IT HEREBY RESOLVED by the authority of the City Council of the City of Williamsport, Lycoming County, and it is hereby resolved by the authority of the same, that the Mayor and City Controller of said municipality be authorized and directed to sign the attached Agreement on its behalf.

I, Janice M. Frank, City Clerk of the City of Williamsport, do hereby certify that the foregoing is a true and correct copy of the Resolution adopted at a regular meeting of the Williamsport City Council, held the 29th day of Feb, 2024.

ATTEST:

CITY OF WILLIAMSPORT

By: Janice M. Frank
City Clerk

By: _____
Mayor

DATE: 2-29-24

By: _____
City Controller

Approved

Janice M. Frank
City Clerk

Adam Yoder
President

Agreement No. 3900040158
FID No. 24-6000719
SAP Vendor No. 141723

Comprehensive Maintenance Services

This Comprehensive Maintenance Services Agreement is between the Commonwealth of Pennsylvania ("Commonwealth"), acting through the Department of Transportation ("PennDOT") and The City of Williamsport, ("Provider").

Certain public highways, including bridges and approaches, have been adopted and taken over as part of the State Highway System, to be constructed, improved and maintained by PennDOT, upon the terms and conditions and subject to the limitations contained in the Limited Access Highway Law (Act of May 29, 1945, P.L. 1108), State Highway Law (Act of June 1, 1945, P.L. 1242), and the County and Municipal State Highway Law (Act of September 18, 1961, P.L. 1389), all as supplemented and amended.

PennDOT and the Provider are both public procurement units under Chapter 19 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1901 *et seq.*, and are authorized to enter into agreements related to the cooperative use of supplies and services pursuant to Section 1904 of the Procurement Code, 62 Pa.C.S. § 1904.

PennDOT desires to obtain the assistance of the Provider to perform minor routine maintenance work on the State Highways. The Provider has equipment, materials, and personnel available to perform activities of repair and maintenance within the Provider, for payment by PennDOT, in accordance with the terms, conditions, and provisions set forth below.

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

1. **General Provisions.** The Provider shall, in a good and workmanlike manner, perform the minor routine maintenance work at the amounts set forth in Exhibit A, attached to this agreement, on the State Highways located within the boundaries as listed on Exhibit B, attached to this agreement. The Provider shall use equipment owned or leased by it and its own materials and personnel to perform the work. The Provider shall be responsible for maintenance and protection of traffic at all times during the performance of its responsibilities under this agreement. All work shall be completed in accordance with all applicable PennDOT policies and publications, which includes, but is not limited to, Publication 408 (Highway Construction Specifications), Publication 113 (Highway Foreman Manual), and Publication 213 (Temporary Traffic Control Guidelines).

2. **Payment.** PennDOT shall pay the Provider for all authorized work performed on the items and for the prices as listed on Exhibit A, as follows:
 - a) lump sum items shall be paid on a quarterly basis; and
 - b) items performed on a unit price basis shall be paid in accordance with Section 3, below.

3. **Invoices.** The Provider may submit invoices at various intervals, but in no event shall invoices be submitted more frequently than on a monthly basis. Invoices shall be accompanied by a written statement certifying that the work listed in the invoice was performed properly, specifically in accordance with the specifications, policies, and procedures set forth in this agreement.

4. **Adjusted Base Payment Rates for Subsequent Years.** For each year following the first year of the initial term, all the rates will annually be increased by two percent, as reflected in Exhibit A.

5. **Maximum Payment.** The maximum amount payable under this agreement by PennDOT to the Provider shall not exceed the sum of \$3,690.00 for year 1 and the subsequent years shall not exceed the sum of \$36,714.47 for years 2 through 10 with the two percent increase, without a written supplemental agreement signed by both parties.
6. **Independent Contractor.** The Provider undertakes the maintenance and repair responsibilities as an independent contractor, and its employees or lessors are not considered employees of PennDOT or the Commonwealth for any purposes. PennDOT or the Commonwealth shall not be liable, nor shall they indemnify, defend, or save harmless the Provider for the negligent acts of the Provider's employees, or lessors during the performance of or resulting from the performance under this agreement.
7. **Inspection of Work.** Within 60 days of completion of the work, the work performed by the Provider under this agreement shall be subject to inspection by the Secretary of PennDOT, a District Engineer for PennDOT, or a duly authorized representative of PennDOT. If, upon inspection, certain work is found not to be in conformance with the specifications, policies, and procedures of PennDOT, or is not performed in a good and workmanlike manner, the work shall be corrected or re-performed as necessary, by the Provider, at no cost to PennDOT. PennDOT shall not be obligated to conduct an inspection program; spot inspections or inspection of a particular project shall be conducted at the sole discretion of PennDOT.
8. **Commonwealth Standard Provisions.** The Provider agrees to comply with the Commonwealth provisions attached as Exhibit C.
9. **Resolutions and Ordinances.** The Provider shall enact or adopt such ordinances or resolutions as may be necessary to affect the purposes of this agreement.

10. **Effective Date.** The Effective Date is the date that this agreement is fully executed by the Provider and PennDOT and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature.

11. **Term and Termination of Agreement.** The term of this agreement will commence on the Effective Date (as defined above) and remain in effect until 4/1/2034, unless terminated earlier for cause or convenience, upon 30 days' written notice by either party to the other. Upon termination for cause or convenience, all obligations, except liability for claims arising from the Provider's performance and damages incurred by PennDOT shall cease. In the event of termination, the Provider shall be paid for the work performed prior to the date of termination, to the extent such work has been performed in accordance with the requirements of this agreement.

12. **Start Date.** The Provider shall either start to perform work on the date five business days after submission of its proposed work plan, in accordance with this Section, or another date agreed to by both the Provider and PennDOT, whichever is later. The Provider shall not start work until notified by PennDOT that the agreement is fully executed and approved.

a) **Work Program.** Within ten days after the start date for work to be performed in accordance with this Section, and every 90 days thereafter, the Provider shall submit a proposed work program to PennDOT, addressed to PennDOT's local County Maintenance Manager. The proposed work program must include language that the Provider will put PennDOT on notice when work under this agreement is being performed. The Provider

may proceed to work five working days after submitting its proposed work program to PennDOT, unless notified to the contrary

- b) **Amended Work Program.** The Provider may, at any time during the progress of a quarterly work program, submit a supplemental or amended work program and may proceed to work five working days after submitting such amended work program, unless notified to the contrary.
- c) **Emergency Work.** If an emergency situation arises, PennDOT's local County Maintenance Manager, who shall be responsible for declaring such an emergency situation, may give verbal authorization to the Provider to perform necessary additional work. The Provider shall promptly confirm any emergency authorization in writing. Any emergency work authorized pursuant to this Section shall be limited to the categories of work for which the Provider has assumed responsibility under this agreement.

13. **Amendments and Modifications.** No alterations or variations to this agreement will be valid unless made in writing and signed by the parties. Amendments to this agreement must be accomplished through a formal written document signed by the parties with the same formality as the original agreement.

14. **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.

15. **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.

16. **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 Provider and PennDOT, or as constituting PennDOT as the representative or general agent of the Provider.
17. **Assignment.** This agreement may not be assigned, either in whole or in part, without PennDOT's written consent.
18. **No Third-Party Beneficiary Rights.** This agreement does not create or intend to confer any rights in or on persons or entities not a party to this agreement.
19. **Notices.** All notices and reports arising out of, or from, the provisions of this agreement must be in writing and given to the parties at the address provided under this agreement, either by regular mail, e-mail, or delivery in person:

If to PennDOT:

Address: 715 Jordan Ave
Montoursville PA 17754
Email: mkiessling@pa.gov

If to the Provider:

Address: 245 West Fourth Street
Williamsport PA 17701
Email: Cityclerk@cityofwilliamsport.org

or to such other person or address as the parties may provide to each other in writing.

20. **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.

21. **Integration and Merger.** The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, 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.

22. **Counterparts.** This agreement may be executed 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.

[The remainder of this page is intentionally left blank.]

The parties have executed this agreement to be effective as of the date of the last signature affixed below.

Provider

BY Dick Sleight 2/13/24
Signature DATE

Mayor
Title

**DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

BY _____
District Executive DATE

APPROVED AS TO LEGALITY
AND FORM

BY _____
for Chief Counsel Date

FUNDS COMMITMENT DOCUMENT
NO.

BY _____
Deputy General Counsel Date

BY _____
Deputy Attorney General Date

BY _____
for Comptroller Operations Date

Agreement No. 3900040158 split 0%, expenditure amount of \$0.00, for federal funds and 100%, expenditure amount of \$40,404.47, for state funds. The related federal assistance program name and number is N/A; N/A. The state program name and SAP fund is Highway Maintenance; 714.

AT-94.3

ATTACHMENT "A"
Municipal Services Comprehensive Maintenance Agreement Rate Schedule
For Use During the 2024 - 25 Season

CATEGORY	ITEM	RATE	UNIT
Unpaved Roads	Shaping	\$940.84	Mile
	Dust Pallative	\$0.67	Square Yard
Unpaved Shoulders	Grading	\$1,036.49	Mile
	Dust Pallative	\$0.65	Square Yard
	Cutting	\$1,436.96	Mile
	Side Dozing	\$1.12	Foot
Pavement	Manual Patching	\$418.80	Ton
	Mechanized Patching	\$114.64	Ton
	Base Repair	\$108.00	Ton
	Skin Patching	\$5.90	Gallon
	Single Seal Coat	\$2.84	Gallon
	Crack Sealing Bituminous Surface	\$2,217.48	Lane Mile
	Crack and Joint Sealing Concrete	\$2,653.37	Lane Mile
Paved Shoulders	Manual Patching	\$341.08	Ton
	Mechanized Patching	\$89.57	Ton
	Base Repair	\$149.48	Ton
	Skin Patching	\$5.67	Gallon
Drainage/Cleaning	Clean Inlets	\$52.38	Each
	Clean Ditches	\$2.46	Foot
	Clean Pipes <36"	\$6.76	Foot
	Clean pipes >=36"	Negotiable	Foot
	Repair/Replace End Wall	\$636.87	Each
	Inlet Repair/Replace (Pre-Cast)	\$3,207.54	Each
	Repair/Replace Pipe and Culverts <36"	\$78.95	Foot
Repair/Replace Pipe and Culverts >=36"	Negotiable	Foot	
Miscellaneous	All Signs	\$46.29	Hour (1)
	Guiderail Repair	\$49.69	Hour (1)
	Mowing	\$110.32	Acre
	Mowing	\$108.21	Lane Mile
	Sweeping	\$149.45	Hour
	U-Drain	\$20.96	Linear Foot
	Concrete repair (labor, materials, equipment)	\$290.72	Square Yard
	Gabion Basket (includes everything)	\$462.77	Cubic Yard
	Austrian Pine 8' high - balled and burlaped	\$489.96	Each
	Velvet Pillar Crabtree	\$544.43	Each
Shade Master Honey Locust Tree	\$680.53	Each	

(1) Plus materials if the Department does not supply them

EXHIBIT B

County: Lycoming

SAP Vendor No. 141723

FID No. 24-6000719

Provider: City of Williamsport

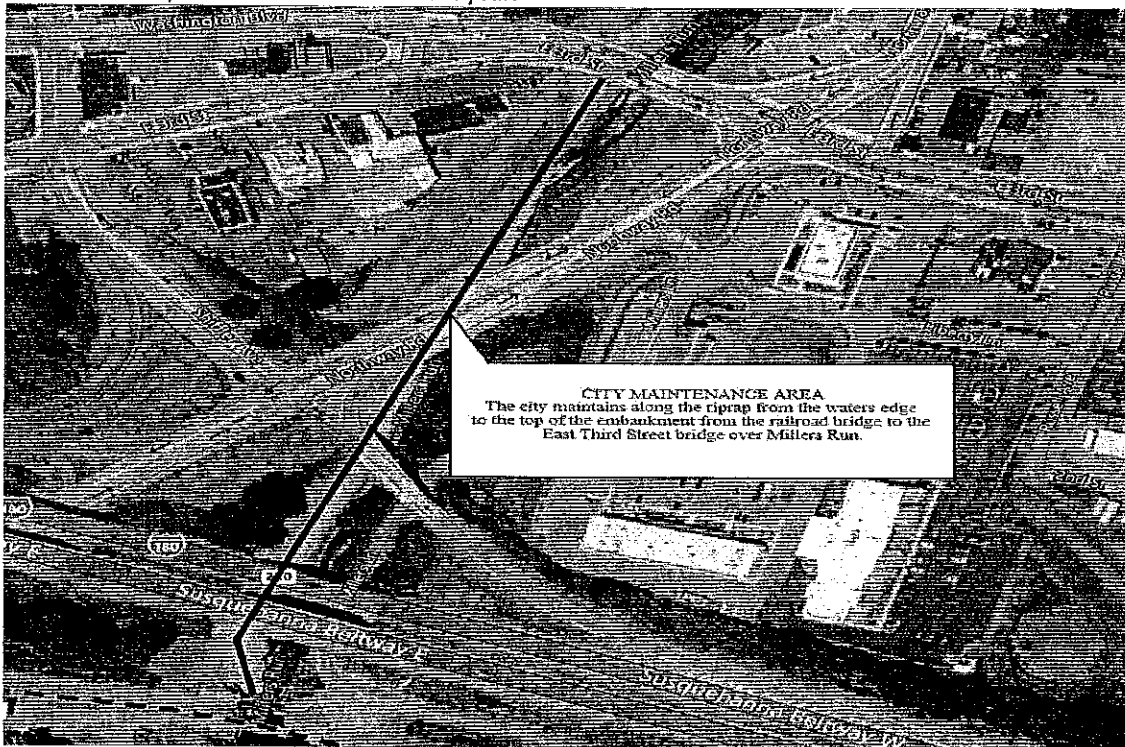
Agreement No. 3900040158

Agreement Term: 10 years

Maintenance Activity	Length in Feet	Fiscal Year	Rate/Foot*	Total
Clean Ditches	1500	2024	\$ 2.46	\$ 3,690.00
		2025	\$ 2.51	\$ 3,763.80
		2026	\$ 2.56	\$ 3,839.08
		2027	\$ 2.61	\$ 3,915.86
		2028	\$ 2.66	\$ 3,994.17
		2029	\$ 2.72	\$ 4,074.06
		2030	\$ 2.77	\$ 4,155.54
		2031	\$ 2.83	\$ 4,238.65
		2032	\$ 2.88	\$ 4,323.42
		2033	\$ 2.94	\$ 4,409.89
Ten Year Total:				\$ 40,404.47

Scope of work: To utilize sufficient labor, materials, and equipment to maintain the slopes of Miller's Run free it of woody growth. The area is adjacent to the Williamsport levee system at the Faxon Interchange on I-180.

*Rates are based on Attachment "A" Municipal Services Comprehensive Maintenance Agreement Rate Schedule. They include a 2% increase each year.



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. [Intentionally Omitted]

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 personal 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.

The Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor, or its subsidiaries, owed to the Commonwealth against any payments due the Contractor under any contract between the Commonwealth and Contractor.

11. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS.

- a. **Payment Method.** The Commonwealth shall make contract payments through the Automated Clearing House (ACH). Within 10 days of award of the contract or purchase order, the Contractor must submit or must have submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).
- b. **Unique Identifier.** The Contractor must submit a unique invoice number with each invoice submitted. The Commonwealth shall list the Contractor's unique invoice number on its ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.
- c. **ACH Information in SRM.** The Contractor shall ensure that the ACH information contained in SRM is accurate and complete. The Contractor's failure to maintain accurate and complete information may result in delays in payments.

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.