

PFBC 2011-0907.01
4100057346

Grant Agreement
between the
Commonwealth of Pennsylvania,
Pennsylvania Fish and Boat Commission
and
Toby Creek Watershed Association

THIS AGREEMENT is made and entered into this 3rd day of November, 2011, by and between the Commonwealth of Pennsylvania, Pennsylvania Fish and Boat Commission (PFBC) and Toby Creek Watershed Association (Grantee).

Parties:

1. The PFBC is an independent administrative commission of the Commonwealth of Pennsylvania with principal offices located at 1601 Elmerton Avenue, Harrisburg, Pennsylvania and a mailing address of P.O. Box 67000, Harrisburg, PA 17106-7000. The PFBC's contact person for this grant agreement is Earl M. Myers, Cooperative Nursery Unit, 1735 Shiloh Road, State College, PA 16801.
2. Grantee is a nonprofit organization with a mailing address of PO Box 247, Brockway, PA 15824. Grantee's contact person for this grant agreement is Bill Sabatose.

Background:

3. More than 150 sportsmen's clubs and conservation organizations participate in the PFBC's cooperative nursery program. Through this partnership effort, just over one million trout are stocked each year in waters of the Commonwealth that are open to free public fishing.
4. Cooperative nurseries are volunteer efforts. However, the cooperative nurseries occasionally want to embark on projects that are beyond their fiscal means. Accordingly, the Commission approved the establishment of the Cooperative Nursery Grant Program (Program) to assist the cooperative nurseries. At its meeting on April 28, 2003, the Commission modified the Program's parameters and increased its funding. At its meeting on April 21, 2009, the Commission increased the per-sponsor project limit. A copy of the relevant portions of the minutes from those meetings is attached hereto as Exhibit A.
5. The Program provides for grants to be used for new construction, major additions or improvements at the nursery facility, the addition of facilities to improve water quality or water quality monitoring, the construction of aquatic habitat structures to enhance the facility and the purchase of equipment for the nursery. Grants cannot be used for fish food; payments to individuals; political activities; loans; endowment purposes; trips, tours, tickets or advertising; or salaries, stipends or day-to-day operating expenses, including utilities.
6. Grantee submitted an application to the Program, a copy of which is attached hereto as Exhibit B.

7. A PFBC staff committee reviewed Grantee's application and recommended that the Executive Director approve the grant.

Agreement:

8. The PFBC will pay \$5000.00 in advance to Grantee for the sole purpose of **collecting fish manure waste stream from normal discharge and manage it to minimize solids release.**
9. Upon receipt of the advanced funds from the PFBC, Grantee will promptly deposit them in a separate interest-bearing account in a bank or other financial institution insured by the FDIC, FSLIC or equivalent insurer. Grantee may expend the advanced payment and any interest earned thereon for the purposes described herein. If, upon termination of this agreement, the total allowable expenditures are less than the advanced payment and interest earnings, Grantee will promptly return the unused funds and interest to the PFBC. In addition, funds for any purchases that were not made in accordance with the budget or with the PFBC's approval must be returned to the PFBC.
10. Grantee agrees to the estimated budget costs as contained in Grantee's application attached hereto as Exhibit B. The PFBC will allow for adjustments of up to 10% per budget category as outlined on the attached estimated budget. If an adjustment to a budget category exceeds 10% of the total budget or if Grantee wishes to include a new item for which it did not previously budget, Grantee must obtain the prior written approval of the PFBC. Grantee agrees to use the money granted hereunder only for the purposes stated herein.
11. The PFBC reserves the right to approve all equipment and all other program related parameters.
12. Grantee will complete the project by no later than June 30, 2013.
13. Within 90 days of the completion of the project but no later October 1, 2013, Grantee will provide the PFBC with a report summarizing project expenditures with receipts attached in a format provided by the PFBC. This requirement survives the termination of the agreement.
14. Grantee agrees to indemnify, save harmless and defend, the Commonwealth of Pennsylvania, the PFBC and their members, officers, employees, successors, or assigns from and against any claims, demands, liabilities, damages, losses, expenses, including attorneys' fees, and lawsuits, which may be asserted against the PFBC or their members, officers, employees, successors or assigns arising out of or related to this agreement, including the operation of any equipment purchased with money granted hereunder.
15. This agreement is subject to audit by the PFBC, the Auditor General, other Commonwealth agencies and their authorized representatives.
16. Grantee will comply with all local, state and federal laws, regulations and ordinances.

17. Grantee will not assign, sublet, or transfer or subcontract any services or rights or interests under this agreement without the prior written approval of the PFBC.
18. In the event that a dispute arises as to any provision of this agreement, its implementation or rights and obligations of the parties, it will be submitted to the Executive Director of the PFBC who will issue the final agency decision on the dispute. If Grantee is not satisfied with the final agency decision, it may seek such review as authorized by law.
19. Grantee will maintain full and accurate records with regard to all matters covered by this agreement at its principal office or place of business, and the PFBC will be permitted, during regular business hours and at all reasonable times during the term of this agreement and for two years thereafter to have free access to original instruments, including records or copies thereof, in possession or control of Grantee, to examine and audit the same, including the right to make and carry away copies of transcripts therefrom and to inspect all data, documents, proceedings, records and notes accumulated, created or related to the project under this agreement.
20. The PFBC may terminate this agreement immediately for nonperformance or inadequate performance of any of the responsibilities or obligations of Grantee, breach by Grantee of any of the provisions of this agreement or non-availability of funds. In the event the PFBC terminates the agreement for these reasons, Grantee will immediately return to the PFBC all money granted hereunder plus interest.
21. The PFBC may terminate this agreement for any reason, including convenience, upon 30 days' written notice to Grantee. If the PFBC terminates the agreement without cause, Grantee will return to the PFBC all grant money and earned interest that Grantee has not expended or obligated as of the date of termination.
22. Grantee may terminate this agreement without cause upon 30 days' written notice to the PFBC. In the event Grantee terminates the agreement without cause, Grantee will return to the PFBC all grant money and earned interest that Grantee has not expended as of the date of termination.
23. The following provisions set forth at Exhibit C are made part of this agreement:
 - a. Contractor Integrity Provisions
 - b. Contractor Offset Provision
 - c. Contractor Responsibility Provisions
 - d. Americans with Disabilities Act Compliance
 - e. Nondiscrimination/Sexual Harassment Clause
24. The Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101-3104, applies to this agreement. The Grantee shall provide the PFBC, in writing, with the name and contact information of a Grantee representative in the event that the PFBC needs the Grantee's assistance in any matter arising out of the RTKL. The Grantee shall notify the PFBC in writing of any change in the name or the contact

information within a reasonable time prior to the change. Upon notification to the Grantee that the Commonwealth has received a request for records under the RTKL, the Grantee shall fully assist the Commonwealth in responding to the request. Such assistance shall include providing the Commonwealth within three (3) days, access to, and copies of, any document or information arising out of the agreement in the Grantee's possession that the Commonwealth deems a Public Record ("Requested Information") and providing such other assistance as the Commonwealth may request in order to comply with the RTKL. If the Grantee is unable to provide the Requested Information within three (3) days for one of the reasons specified in the RTKL, the Grantee must immediately notify the Commonwealth that it will need up to an additional twenty-five (25) days, and must provide in writing the reason the additional time is needed. If the Grantee fails to provide the Requested Information to the Commonwealth within the period specified in this provision, the failure shall be considered an event of default and the Grantee shall pay, indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the Grantee's failure. If the Office of Open Records or the Pennsylvania Courts determines that a record in the possession of the Grantee is a public record, liquidated damages of \$500 per day will be assessed for each calendar day beyond the date the Grantee was required to provide the record. The Commonwealth's determination as to whether the Requested Information is a public record is dispositive of the question as between the parties. Grantee agrees not to challenge the Commonwealth's decision to deem the Requested Information a Public Record. If the Grantee considers the Requested Information to be a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, the Grantee will immediately notify the Commonwealth and will provide a written statement signed by a representative of the Grantee explaining why the requested material is exempt from public disclosure under the RTKL within five (5) days. If, upon review of the Grantee's written statement, the Commonwealth still decides to provide the Requested Information, Grantee will not challenge or in any way hold liable the Commonwealth for such a decision. The Commonwealth will reimburse the Grantee for any costs associated with complying with this provision only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable. Grantee agrees to abide by any decision to release a record to the public made by the Office of Open Records or by the Pennsylvania Courts. The Grantee agrees to waive 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. Grantee's duties relating to the RTKL are continuing duties that survive the expiration of this agreement and shall continue as long as the Grantee has Requested Information in its possession.

25. The terms of this agreement may be changed at any time by a duly executed amendment.
26. This agreement will terminate on June 30, 2013.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year above written:

ATTEST:

Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Bernard M. Metzger 9/21/11
Administrative Secretary (Date)

Eric Beem 9/20/11
Executive Director (Date)

ATTEST:

Toby Creek Watershed Association

Sandra Surajin 8-30-11
Secretary/Treasurer (Date)
Circle One

William Jabator 8-30-11
President/Vice President (Date)
Circle One
Federal I.D. No. 25-1852391
SAP Vendor No. 157984

APPROVED AS TO LEGALITY AND FORM:

Wayne Metrick 9/15/11
Authorized Agency Attorney (Date)

Russell 9/29/11
Office of Attorney General (Date)

APPROVED:

I hereby certify that funds in the amount of \$5000.00
are available under the following account codes:

2003311000-2250732100-6600801-\$5000.00

[Signature] 11/3/11
Comptroller (Date)
GR # 4100057346

Jef 9/20/11

Commissioner Huhn and seconded by Commissioner Czop to direct staff to distribute a copy of this policy statement to all Commission personnel. Motion carried.

The Committee also discussed the agenda items. Director Colangelo provided a presentation on the Allegheny National Fish Hatchery partnership. Rick Hoopes provided an update on the commercial acquisition Invitation to Bid (ITB). Dan Tredinnick provided an update on outreach/marketing efforts. Those efforts included a billboard campaign and the Recreational Boating and Fishing Foundation cooperative outreach grant proposal. Dennis Guise and Laurie Shepler briefed Commissioners and staff on issues on the Little Juniata River and public rights in Pennsylvania waters.

Administration (Commissioner Concilla) -

The Administration Committee met on Sunday, April 27, at 2:30 p.m. Reports on fishing license sales, Internet license sales and boat registration sales were provided. General operation items also were discussed. Details were provided regarding the upcoming House Game and Fisheries Committee hearing scheduled for May 1. This hearing pertains to House Resolution 15.

Education and Publications (Commissioner Keir) -

The Education and Publications Committee met on Monday, April 28, at 9:00 a.m. Updates on boating safety education and education media were provided. Carl Richardson reported on the alignment of the Commission's educational programs with the Pennsylvania Department of Education's regulations.

Law Enforcement (Commissioner Stidd) -

The Law Enforcement Committee met at 10:45 a.m. on Monday, April 28. Tom Kamerzel provided an update on the work force status. Agenda items were discussed, and the Committee approved all items for consideration by the full Commission.

The Committee acted upon proposed revocations and suspensions. The Committee revoked the fishing privileges of two individuals for two years. The Committee revoked the boating privileges of one individual for two years with a reduction to one year upon successful completion of a safe boating course. The Committee revoked the rattlesnake hunting permit of one individual for two years.

Fisheries (Commissioner Huhn) -

At the Fisheries Committee meeting on April 27, 2003, the Committee discussed the Cooperative Nursery Grant Program.

Commentary:

At the fall 1996 meeting, the Commission approved a new Cooperative Nursery Grant Program with the amount of funding set at \$15,000. The Commission, at its October 1998 meeting, approved the continuation of the grant program and increased the level of funding to \$25,000 (plus the amount of donations received by the Commission that were specifically earmarked for this purpose). At the April 2000 meeting, the amount of funding was increased to \$30,000. From the program's inception through 2001,

individual grants were limited to \$1,000 per cooperative nursery per year unless specifically approved by a vote of the Commission.

At the April 2002 meeting, the Commission modified the grant program to increase the level of funding to \$60,000 and to include fish feed as an item for which grants can be approved under certain well-defined circumstances. Individual grants, under the modified program, ordinarily will not exceed \$3,000 per cooperative nursery per year. Grants that exceed \$3,000 per sponsor require approval by a majority vote of the Commission.

The following conditions applied to grants for fish food purchases:

- The application will specifically indicate the portion of the grant request that will be used for fish feed.
- For each \$200 of the grant that is allocated to fish feed, the cooperative nursery will agree to stock 1000 trout, 9 to 11 inches in length (or 500 pounds of steelhead or other fish) into a waterway of the Commonwealth at a time mutually agreed upon by the cooperative nursery and the Commission's Area Fisheries Managers.
- For cooperative trout nurseries, the water so stocked will be recognized by the Commission as contributing to the annual trout allocation and may be considered for designation as an approved trout water in appropriate circumstances.

Eleven cooperative nurseries originally applied for fish food grants, but five of these withdrew their applications or returned their checks. Of the remaining six, three ran into problems with poaching and disease.

After evaluating the feed grant component of the cooperative nursery grant program and discussing it with many cooperative nursery sponsors, staff have concluded that, although it was a worthwhile effort to try on a pilot basis, it did not fit in well with the philosophy and production capabilities of most of the cooperatives. Accordingly, staff propose to discontinue feed grants for the 2003 - 04 fiscal year and devote up to \$70,000 for cooperative nursery grants under the guidelines for the grant program that provide that grants will be provided for the following purposes:

- New construction
- Major additions/improvements at the nursery facility
- Addition of facilities to improve water quality or water quality monitoring
- Construction of aquatic habitat structures to enhance the facility
- Purchase of equipment for the nursery

Grants will not be provided for:

- Fish Food
- Payments to individuals
- Political activities
- Loans
- Endowment purposes

- Trips, tours, tickets or advertising
- Salaries, stipends or day-to-day operating expenses, including utilities

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to discontinue the feed grant component of the Cooperative Nursery Grant Program and otherwise continue the Program as described in the Commentary, with total grants not to exceed \$70,000 for FY 03-04. Motion carried.

In addition to this matter, all agenda items were discussed.

Boating (Commissioner Anderson) -

The Boating Committee met on Monday, April 28, at 8:30 a.m. Agenda items for final rulemaking and proposed rulemaking were discussed. Consideration of a request by the Coast Guard Auxiliary for reinstatement of grant funding was also discussed. The Committee determined that it would not recommend this item to the full Commission for consideration. Dan Martin provided a report on fatal boating accidents for this year. A special recognition ceremony will take place on April 29 at the Capitol to honor Senator Richard Kasunic for his efforts in spearheading legislation for new requirements for boating education.

Legislation (Commissioner Pflugfelder) -

The Legislation Committee met on Monday, April 28, at 8:00 a.m. Gary Moore reported on enacted legislation and pending items. No action was taken.

Engineering and Development (Commissioner Reed) -

The Engineering and Development Committee met on Sunday, April 27, at 3:45 p.m. An agenda item on Beechwood Lake in Tioga County was discussed. Jim Young and Dick Mulfinger provided updates on hatcheries, lakes, access areas and real estate.

Marina Workgroup (Commissioner Concilla) -

Commissioner Concilla reported that the Marina Workgroup had not met, and therefore, he did not have anything new to report since the last Commission meeting. The Workgroup, however, does anticipate scheduling a meeting within the next six weeks. A report will be provided following that meeting.

Public Comment and Open Questions to Commissioners and Staff

There were no comments or questions from the public.

OTHER MATTERS

F. Funding Increase for Cooperative Nursery Grant Program.

Commentary:

The Cooperative Nursery Program is the largest volunteer organization officially affiliated with the Commission. Annually, over 1 million trout, steelhead and warmwater/coolwater species are reared and stocked into Commonwealth waters by nursery sponsors. Support for these volunteers comes in the form of three full-time and one part time Commission employee(s) and funding through Commission grants.

At the fall 1996 meeting, the Commission approved the Cooperative Nursery Grant Program with the amount of funding set at \$15,000. The Commission, at its October 1998 meeting, approved the continuation of the grant program and increased the level of funding to \$25,000 (plus the amount of donations received by the Commission that were specifically earmarked for this purpose). At the April 2000 meeting, the amount of funding was increased to \$30,000. From the program's inception through 2001, individual grants were limited to \$1,000 per cooperative nursery per year unless specifically approved by a vote of the Commission.

At the April 2002 meeting, the Commission modified the grant program to increase the level of funding to \$60,000 and to include fish feed as an item for which grants could be approved under certain well-defined circumstances. Individual grants were increased from \$1,000 to \$3,000 per cooperative nursery per year. Grants exceeding \$3,000 per sponsor have required Commission approval. At the April 2003 meeting, the Commission discontinued the feed grant component of the program and otherwise continued the program with total grants not to exceed \$70,000. That level of funding has remained constant since FY 03-04. In FY09-10, the level of funding will increase to \$80,000.

Grants may be used to construct new facilities, add to existing facilities and make upgrades to infrastructure, water quality enhancement or equipment. Grants cannot be used for political activities or to purchase fish feed. Prospective recipients complete an application and submit it to the Cooperative Nursery Unit for consideration, and Unit staff award and administer the grants. Since 1997, approximately \$515,266 has been awarded to various organizations through this program resulting in the development of 354 projects. Projects range from raceway construction to back-up generators and security fencing. Funds have been spent as follows: 48% for infrastructure needs such as raceways, buildings, covers, screens, protection from predation, and general nursery improvements; 29% for equipment such as stocking tanks, dip nets, belt feeders, cleaning equipment, and dissolved oxygen meters; and 22% for fish life support equipment such as air blowers, systems aerators, diffuser stones, valves, and PVC piping. One percent was spent on fish food during a trial period in 2002 by those clubs who were willing to stock fish in waters selected by Fisheries Management as part of the Commission's normal allocation.

This program has been very effective in putting funds directly into the hands of the sponsors. Additional scrutiny is being focused on water quality issues related to fish hatcheries of all types by regulatory agencies. Presently, Cooperative Nursery Unit staff are reviewing the effluent treatment capabilities of the nurseries and expect to recommend improvements at a number of them. The Cooperative Nursery Unit intends to allocate grant funding for facility upgrades directly related to waste handling and effluent treatment. These funds will allow the nurseries to address staff recommendations. In light of increasing costs due to inflation and so that sponsors can tackle somewhat larger projects, staff recommend that the Commission increase the current per-sponsor project limit from \$3,000 to \$5,000 per year.

Briefer:

Leroy M. Young, Jr., Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission authorize the Executive Director to approve individual grants of \$5,000 or less per project sponsor per year. For grants in excess of \$5,000, staff will seek separate Commission approval.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Gavlick to authorize the Executive Director to approve individual grants of \$5,000 or less per project sponsor per year. For grants in excess of \$5,000, staff will seek separate Commission approval. Motion carried.
(Commissioner Sabatose indicated for the record that he abstained).

C

APPLICATION FOR FINANCIAL SUPPORT

PROJECT TITLE: Blue Valley Acid Mine Drainage Treatment System - Fish Manure Handling System
Location: Brandy Camp, PA
Completion Date: 9/30/11

APPLICANT (Organizations legal name):

Sponsor: Toby Creek Watershed Association
Address: PO Box 247
City: Brockway **State** PA **Zip** 15824
Telephone No.: (814) 265-8749
Contact Individual: Bill Sabatose
Title: President **Level of Support Desired:** \$5,000.00

Matching Funds:

Organization: TCWA **Amount:** \$4,986.00

BRIEF OUTLINE OF PROPOSED PROJECT

Objective: To collect fish manure waste stream from normal discharge and manage it to minimize solids release.

Expected Results: Minimize the amount of suspended solids released in the discharge from the fish grow out tanks.

Additional Comments: With collection of the solids, we will minimize the environmental impact and develop uses for this waste stream.

Exhibit B

BUDGET

Equipment purchase grants are one year only. Construction grants are for two years. If work is to continue beyond, indicate how long and why in this proposal. The total funding of all sources must be shown.

Please give an itemized account of all proposed expenditures.

ITEMS/DESCRIPTION	AMOUNT
Fish manure waste collection system equipment (Includes pump, piping, and concrete retaining walls)	4,000.00
Installation of pump, piping and concrete retaining walls	5,986.00
Total Cost of Project: \$ 9,986.00	

AMOUNT REQUESTED FOR THIS PROJECT

	PFBC	MATCH FUNDS	AMOUNT
a) Equipment costs	5,000.00	4,986.00	9,986.00
b) Materials, supplies			
c) Payment for services			
d) Miscellaneous (list)			
e)			
TOTAL	5,000.00	4,986.00	9,986.00

*Make sure figures for Itemized Description (at top of page) & Amount Requested for Project (just above) equal each other!!!

Signature of Preparer & Title William DeBorja

Date 5-13-11 Sponsor Federal ID# (REQUIRED) 251852391

SAP # (REQUIRED) 157984

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 procurement process.

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

1. 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 with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, 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.
9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
 - a. Approved in writing by the Commonwealth prior to its disclosure; or
 - b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
 - c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or

- d. Necessary for purposes of Contractor's internal assessment and review; or
 - e. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
 - f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
 - g. Otherwise required by law.
10. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
- a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
 - b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
 - (1) obtaining;
 - (2) attempting to obtain; or
 - (3) performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.
 - c. Violation of federal or state antitrust statutes.
 - d. Violation of any federal or state law regulating campaign contributions.
 - e. Violation of any federal or state environmental law.
 - f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
 - g. Violation of the *Act of June 2, 1915 (P.L. 736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
 - h. Violation of any federal or state law prohibiting discrimination in employment.
 - i. Debarment by any agency or department of the federal government or by any other state.
 - j. Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.
11. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641 of the Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
- a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
 - b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.
- To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.
12. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.

13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these 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 Commonwealth Inspector General in writing.
14. 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.
15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of 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 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 refers to or concern this contract.
16. 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.
17. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.
 - a. "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.
 - 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 pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
 - c. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
 - d. "Financial interest" means:
 - (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.
 - e. "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.
 - f. "Immediate family" means a spouse and any unemancipated child.
 - 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.

h. "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

CONTRACTOR OFFSET PROVISION

The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other debt of the Contractor or its subsidiaries that is owed to the Commonwealth and not being contested on appeal against payments due the Contractor under this or any other contract with the Commonwealth.

CONTRACTOR RESPONSIBILITY PROVISIONS

For purposes of this paragraph, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant or subgrant with the Commonwealth, or with a person under contract, subcontract, grant or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The contractor hereby certifies that neither the contractor nor any subcontractors nor any suppliers are currently under suspension or debarment by the Commonwealth or any governmental entity, instrumentality or authority.
2. The contractor hereby certifies that contractor has no tax liabilities or other Commonwealth obligations.
3. The contractor's obligations pursuant to this paragraph are ongoing from and after the effective date of this Contract through the termination date hereof. Accordingly, the contractor shall have an obligation to inform the PFBC if, at any time during the term of the Contract, the contractor becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if the contractor or any subcontractors are suspended or debarred by the Commonwealth, the federal government or 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 contracting agency of a suspension or debarment by the Commonwealth, or any other state of 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 contract between the contractor and the Commonwealth, which results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of the 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:

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

AMERICANS WITH DISABILITIES ACT

1. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. §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. §35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from 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 paragraph 1 above.

NON-DISCRIMINATION/SEXUAL HARASSMENT

1. 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, Contractor, subcontractor, or any person acting on behalf of Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
3. Contractor and its subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.
5. Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, Contractor or subcontractor shall furnish such information on reporting forms supplied by the PFBC or the Bureau of Contract Administration and Business Development.
6. Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
7. 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 PFBC may proceed with debarment or suspension and may place the contractor in the Contractor Responsibility File.

(New Exhibit Standard Contract Clauses.doc)