

**AGREEMENT
BY AND BETWEEN THE
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
TESTAMERICA LABORATORIES, INC.**

THIS AGREEMENT, made this 27th day of January, 2011, by and between the PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, hereinafter referred to as "DEPARTMENT" and TESTAMERICA LABORATORIES, INC., 301 Alpha Drive, Pittsburgh PA 15238, hereinafter referred to as "CONTRACTOR."

WHEREAS, the DEPARTMENT is desirous of retaining a contractor to provide laboratory analytical services for organic chemical analyses, inorganic chemical analyses and radiological measurement pursuant to the passage by the Pennsylvania Legislature of the Hazardous Sites Cleanup Act, Act 108 of October 18, 1988, 35 P.S. 6020.101 – 6020.1305, the Land Recycling and Environmental Remediation Standards Act, Act 2 of May 19, 1995, 35 P.S. 6026.101 – 6026.908, and the Storage Tank and Spill Prevention Act, Act 32 of July 6, 1989, 35 P.S. 6021.101 – 6021.2104; and

WHEREAS, the DEPARTMENT issued a Request for Proposal to contract for services to provide the laboratory analytical services as set forth in this Agreement and the attachments hereto; and

WHEREAS, the CONTRACTOR submitted a proposal to provide the aforementioned services.

NOW, THEREFORE, the parties hereto, intending to be legally bound, mutually agree as follows:

1. CONTRACTOR AGREES:

- 1.1 CONTRACTOR shall make its services readily available to the DEPARTMENT on an as-needed basis to provide laboratory analytical services in accordance with this Agreement and the contract documents attached and referenced herein. It is agreed that there will be no minimum or guaranteed amount of work offered as a result of this Agreement.
- 1.2 That the services of the CONTRACTOR shall commence upon the effective date of this Agreement and continue for a period of two (2) years. The effective date shall be fixed by the DEPARTMENT after this Agreement has been fully executed by the CONTRACTOR and by the DEPARTMENT and all approvals required by Commonwealth contracting procedures have been obtained. The CONTRACTOR may be offered options to renew the Agreement upon the terms and conditions set forth herein for up to three (3) additional years. The DEPARTMENT reserves the right, upon notice to the CONTRACTOR, to extend the term of the Agreement for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract.

- 1.3 To perform high quality, complete and accurate laboratory analytical services consistent with high professional standards and in a timely manner in accordance with the directions of the DEPARTMENT, the contract documents attached and referenced herein, and the terms of this Agreement.
- 1.4 To provide laboratory analytical services only after receiving written authorization from the DEPARTMENT through work orders signed by the DEPARTMENT'S Contract Officer. The CONTRACTOR agrees that it is at risk of nonpayment for any work it performs outside the scope of the DEPARTMENT'S work orders.
- 1.5 To immediately report to the DEPARTMENT all samples lost or broken in shipment. In case of breakage, loss of or failure to produce results for any sample after receipt of the sample by the CONTRACTOR, CONTRACTOR agrees to reimburse the DEPARTMENT in the amount of \$500.00 per sample for the cost of re-sampling. In the event that any sample result fails to comply with the Quality Assurance / Quality Control (QA/QC) requirements contained in the Contract Documents attached and referenced herein, CONTRACTOR agrees that it will not be entitled to payment for the sample. If the CONTRACTOR is negligent in conducting laboratory analytical services in that it does not yield valid test results that comply with the QA/QC requirements contained in the Contract Documents attached and referenced herein, CONTRACTOR agrees to reimburse the DEPARTMENT in an amount of \$500.00 per sample for the cost of re-sampling.
- 1.6 To submit to the DEPARTMENT all reports within the time period as required by the Agreement, the contract documents attached and referenced herein, and the DEPARTMENT'S written work orders.
- 1.7 The CONTRACTOR agrees that time is of the essence of this Agreement and agrees to liquidated damages as set forth herein. Liquidated damages may be assessed in an amount of two (2) percent of the unit price per day, up to one hundred (100) percent of the unit price, for each day that the sample data package is submitted after the turnaround time required by the DEPARTMENT in its work order. The liquidated damages may be assessed on the entire sample or on components of the samples analyzed under separate methods and unit prices. The decision to assess liquidated damages is at the sole discretion of the DEPARTMENT.
- 1.8 To provide subcontractor proposals to the DEPARTMENT, for the DEPARTMENT'S review and approval.
- 1.9 The CONTRACTOR agrees to notify the DEPARTMENT of any lack or loss of Accreditation for any parameter, matrix, or method covered by the contract within two (2) working days.
- 1.10 The CONTRACTOR has submitted in its cost and price proposal a list of unit prices to be paid for laboratory analytical services performed under this Agreement. After the initial two (2) year contract term, the CONTRACTOR will be entitled to no more than a ten (10) percent increase in unit prices, which will be effective for the duration of all renewals issued under this Agreement. The escalation of unit prices for the contract

renewal options is not effective until the DEPARTMENT issues a written notice accepting the escalation.

At the request of the DEPARTMENT, the CONTRACTOR may submit proposals for new unit prices, for new analytical methods that may be required under this Agreement. The new unit prices will not be effective until the DEPARTMENT approves the new unit prices under paragraph 4.19, Changes, of this Agreement.

- 1.11 To submit work order specific invoices for services rendered to the DEPARTMENT upon completion of work. The CONTRACTOR shall submit a copy of the invoice to the DEPARTMENT'S designated Regional Project Manager. The original is to be mailed to the person designated by the DEPARTMENT as responsible for processing invoices. The CONTRACTOR agrees to include on all invoices the contract number, vendor number, work order number, sample number, unit price numbers and unit price description.

The CONTRACTOR shall submit final invoices to the DEPARTMENT within ninety (90) days from the date of the expiration of this Agreement. The CONTRACTOR agrees that invoices submitted after this date will not be reimbursed.

2. DEPARTMENT AGREES:

- 2.1 That staff members of the DEPARTMENT will cooperate with the CONTRACTOR on performance of its service under this Agreement and will be available for consultation with the CONTRACTOR at such reasonable periods that will not conflict with their other responsibilities.
- 2.2 To provide work orders in writing. The DEPARTMENT is not obligated to pay the CONTRACTOR for work performed outside the scope of these written orders.
- 2.3 To pay the CONTRACTOR for the services that are satisfactorily performed according to the requirements of this Agreement. The DEPARTMENT shall put forth reasonable effort to make payment within forty five (45) days of receipt of an invoice. Payment may be delayed if the payment amount on the invoice is not based on the unit price as stated in the Agreement, the DEPARTMENT has not accepted the work as satisfactorily performed, the invoice does not contain the required information, or the DEPARTMENT intends to access liquidated damages.

Payment shall not be construed by the CONTRACTOR as acceptance of service performed by the CONTRACTOR. The DEPARTMENT 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 the requirements of this Agreement.

- 2.4 To pay the CONTRACTOR for work performed under this Agreement up to a maximum of \$200,000.00 during the Agreement period. The maximum amount may be increased during the term of the Agreement in accordance with procedures as set forth in the Department of General Services Field Procurement Handbook (M215.3).

3. CONTRACT DOCUMENTS

3.1 The following documents are attached hereto, incorporated herein, and made a part of this Agreement:

- (a) Attachment A. Provisions for Commonwealth Contracts
- (b) Attachment B. Nondiscrimination/Sexual Harassment Clause
- (c) Attachment C. Recycled Contents Products Provision

3.2 The following documents are referenced herein, incorporated, and made part of this Agreement.

- (a) The DEPARTMENT'S Request for Proposal RFP-DEP-LAB-8, issued May 4, 2011, as revised by Addendum dated May 27, 2011.
- (b) The CONTRACTOR'S Proposal dated June 29, 2011, including Technical, Cost, Disadvantaged Business submittals and clarifications.

3.3 In the event of a conflict or dispute, unless otherwise specified in this Agreement, the terms and conditions of this Agreement and Attachment A shall take precedence over the terms and conditions of all other Attachments.

4. IT IS MUTUALLY UNDERSTOOD AND AGREED by the parties hereto as follows:

- 4.1 Independent Contractor: In performing the services required by this Agreement, the CONTRACTOR will act as an independent contractor and not as an employee or agent of the Commonwealth.
- 4.2 Compliance with Law: The CONTRACTOR shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of this agreement.
- 4.3 Ownership Rights: The DEPARTMENT shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the DEPARTMENT as part of the performance of the Agreement. The term "data" as used in this paragraph, includes field logs, drawings or other graphic, electronic, chemical or mechanical representations; geologic core samples and work of any similar nature that are developed as part of the performance of the Agreement.
- 4.4 Release and Maintenance of Records: The CONTRACTOR agrees not to divulge or release any information, reports or recommendations developed or obtained in connection with the performance of work under this Agreement, except to DEPARTMENT personnel or upon written approval of the DEPARTMENT'S Contract Officer. The foregoing notwithstanding, CONTRACTOR shall have the right to divulge or release any such information that is required pursuant to a court order or governmental directive. The CONTRACTOR agrees to maintain documents and records developed under this Agreement for a period of three (3) years from the date of final payment.

- 4.5 Patent, Copyright, and Trademark Indemnity: The CONTRACTOR warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of this Agreement which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the DEPARTMENT under this Agreement. The CONTRACTOR shall defend any suit or proceeding brought against the DEPARTMENT on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of this Agreement. This is upon condition that the DEPARTMENT shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the DEPARTMENT may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the DEPARTMENT at the CONTRACTOR'S written request, it shall be at the CONTRACTOR'S expense, but the responsibility for such expense shall be only that within the CONTRACTOR'S written authorization. The CONTRACTOR shall indemnify and hold the DEPARTMENT harmless from all damages, costs, and expenses, including attorney's fees that the CONTRACTOR or the DEPARTMENT may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of this Agreement. If any of the products provided by the CONTRACTOR in such suit or proceeding are held to constitute infringement, the CONTRACTOR shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so they are no longer infringing. If the CONTRACTOR is unable to do any of the preceding, the CONTRACTOR agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the DEPARTMENT, only those items of equipment or software which are held to be infringing, and to pay the DEPARTMENT: 1) any amounts paid by the DEPARTMENT towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the DEPARTMENT for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the CONTRACTOR under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the CONTRACTOR without its written consent.
- 4.6 Assignment of Antitrust Claims: The CONTRACTOR and the DEPARTMENT recognize that in actual economic practice, overcharges by the CONTRACTOR'S suppliers resulting from violations of state or federal antitrust laws are in fact borne by the DEPARTMENT. As part of the consideration for the award of the Agreement, and intending to be legally bound, the CONTRACTOR assigns to the DEPARTMENT all right, title and interest in and to any claims the CONTRACTOR now has, or may acquire under state or federal antitrust laws relating to the products and services which are the subject of this Agreement.

- 4.7 Audit Provisions: The DEPARTMENT shall have the right, at reasonable times and at a site designated by the DEPARTMENT, to audit the books, documents and records of the CONTRACTOR to the extent that the books, documents and records relate to costs or pricing data for this Agreement. The CONTRACTOR agrees to maintain books, documents, and records that relate to costs or pricing data for this Agreement for a period of three (3) years from the date of final payment. The CONTRACTOR shall give full and free access to all records to the DEPARTMENT and/or their authorized representatives.
- 4.8 Suspension: When the terms and conditions of this Agreement are not materially being met, the DEPARTMENT may, upon written notice to the CONTRACTOR, suspend the Agreement until corrective action has been taken to the satisfaction of the DEPARTMENT, or until the Agreement is terminated.
- 4.9 Default: The DEPARTMENT may, subject to the provisions of paragraph 4.10, Force Majeure, and in addition to its other rights under this Agreement, declare the CONTRACTOR in default by written notice thereof to the CONTRACTOR, and terminate (as provided in paragraph 4.11, Termination Provisions) the whole or any part of this Agreement for any of the following reasons:
- a. Failure to begin work within the time specified in the Agreement or as otherwise specified;
 - b. Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the terms of this Agreement;
 - c. Unsatisfactory performance of the work;
 - d. Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - e. Discontinuance of work without approval;
 - f. Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - g. Insolvency or bankruptcy;
 - h. Assignment made for the benefit of creditors;
 - i. Failure or refusal within 10 days after written notice by the Contract Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - j. Failure to protect, to repair, or to make good any damage or injury to property; or
 - k. Breach of any provision of this Agreement.

In the event that the DEPARTMENT terminates this Agreement in whole or in part as provided above, the DEPARTMENT may procure, upon terms and in such manner as it determines, services similar or identical to those so terminated, and the CONTRACTOR shall be liable to the DEPARTMENT for any reasonable excess costs for such similar or identical services included within the terminated part of the Agreement.

If the Agreement is terminated as provided above, the DEPARTMENT, in addition to any other rights provided in this paragraph, may require the CONTRACTOR to transfer title and deliver immediately to the DEPARTMENT in the manner and to the extent

directed by the Contract Officer, such partially completed work, including, where applicable, reports, working papers and other documentation, as the CONTRACTOR has specifically produced or specifically acquired for the performance of such part of the Agreement as has been terminated. Except as provided below, payment for completed work and partially completed work accepted by the DEPARTMENT shall be made according to the terms of this Agreement. The DEPARTMENT may withhold from amounts otherwise due the CONTRACTOR for such completed or partially completed works, such sum as the Contract Officer determines to be necessary to protect the DEPARTMENT against loss.

The rights and remedies of the DEPARTMENT provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

The DEPARTMENT'S failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the DEPARTMENT of its rights and remedies in regard to the event of default or any succeeding event of default.

Following exhaustion of the CONTRACTOR'S administrative remedies as set forth in paragraph 4.12, the CONTRACTOR'S exclusive remedy shall be to seek damages in the Board of Claims.

- 4.10 Force Majeure: Neither party will incur liability to the other if its performance of any obligation under this Agreement is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The CONTRACTOR shall notify the DEPARTMENT orally within five (5) days and in writing within ten (10) days of the date on which the CONTRACTOR becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Agreement is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The CONTRACTOR shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the DEPARTMENT may reasonably request. After receipt of such notification, the DEPARTMENT may elect either to cancel the Agreement or to extend the time for performance as reasonably necessary to compensate the CONTRACTOR'S delay.

In the event of a declared emergency by competent governmental authorities, the DEPARTMENT by notice to the CONTRACTOR, may suspend all or a portion of the Agreement.

4.11 Termination Provisions: The DEPARTMENT has the right to terminate this Agreement for any of the following reasons. Termination shall be effective upon written notice to the CONTRACTOR.

- a. Termination for Convenience: The DEPARTMENT shall have the right to terminate the Agreement for its convenience if the DEPARTMENT determines termination to be in its best interest. The CONTRACTOR shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the CONTRACTOR be entitled to recover loss of profits.
- b. Non-Appropriation: The DEPARTMENT'S obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the DEPARTMENT shall have the right to terminate the Agreement. The CONTRACTOR shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Agreement. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from many appropriations available for that purpose.
- c. Termination For Cause: The DEPARTMENT shall have the right to terminate the Agreement for CONTRACTOR default under paragraph 4.9, Default, upon written notice to the CONTRACTOR. The DEPARTMENT shall also have the right, upon written notice to the CONTRACTOR, to terminate the Agreement for other cause as specified in the Agreement or by law. If it is later determined that the DEPARTMENT erred in terminating the Agreement for cause, then, at the DEPARTMENT'S discretion, the Agreement shall be deemed to have been terminated for convenience under the subparagraph 4.11.a.

4.12 Controversies: In the event of a controversy or claim arising from the Agreement, the CONTRACTOR must, within six months after the cause of action accrues, file a written notice of controversy or claim with the Contract Officer for a determination according to this paragraph or in accordance with applicable law.

The DEPARTMENT shall review the claim and issue a final written determination regarding the claim within 120 days of the receipt of the claim unless extended by mutual written consent of the DEPARTMENT and the CONTRACTOR. If the DEPARTMENT fails to issue a final determination within the 120 days unless extended by consent of the parties, the claim shall be deemed denied. The determination of the DEPARTMENT shall be the final order of the DEPARTMENT, unless the CONTRACTOR files a claim with the Commonwealth Board of Claims.

Claims filed with the Board of Claims must be filed either (1) within fifteen (15) days of the mailing date of a final determination denying the claim or (2) within 135 days of filing a claim, if no extension is agreed to by the parties, whichever occurs first. Pending a final resolution of a controversy or claim, the CONTRACTOR shall proceed diligently

with the performance of the Agreement in a manner consistent with the interpretation of the Contract Officer and the DEPARTMENT shall compensate the CONTRACTOR pursuant to the terms of the Agreement.

4.13 Assignability and Subcontracting:

- a. Subject to the terms and conditions of this paragraph, this Agreement shall be binding upon the parties and their respective successors and assigns.
- b. The CONTRACTOR shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Agreement without the prior written consent of the Contract Officer, which consent may be withheld at the sole and absolute discretion of the Contract Officer.
- c. The CONTRACTOR may not assign, in whole or in part, this Agreement or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contract Officer, which consent may be withheld at the sole and absolute discretion of the Contract Officer.
- d. Notwithstanding the foregoing, the CONTRACTOR may, without the consent of the Contract Officer, assign its rights to payment to be received under the Agreement, provided that the CONTRACTOR provides written notice of such assignment to the Contract Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Agreement.
- e. For the purposes of this Agreement, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the CONTRACTOR provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Contract Officer shall be evidenced by a written assignment agreement executed by the CONTRACTOR and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Agreement and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the CONTRACTOR, following which the CONTRACTOR'S federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The CONTRACTOR shall give the Contract Officer written notice of any such change of name.

4.14 Conflict of Interest: The CONTRACTOR shall not engage the services of any persons now employed by the Commonwealth for work on this contract, except with the DEPARTMENT'S approval. In addition, if the CONTRACTOR is aware of any conflict, the CONTRACTOR shall promptly advise the DEPARTMENT of the concern to mutually agree on a course of action.

4.15 Insurance: The CONTRACTOR shall procure and maintain during the life of the Agreement all insurance required below, in a form that will protect the CONTRACTOR and the DEPARTMENT from claims and liability for injury to persons and for damages

to property occurring during the course of the Agreement. The CONTRACTOR shall either require each of its subcontractors to procure and maintain, during the life of its subcontract, adequate insurance or insure the activity of its subcontractors in its own policies. Adequate insurance for subcontractors shall be of the types and in the amounts specified below, unless otherwise approved by the DEPARTMENT'S Contract Officer.

- a. Workmen's Compensation and Employee's Liability Insurance. The CONTRACTOR shall provide this insurance coverage in the amounts required by law to cover all the CONTRACTOR'S personnel employed for work under the Agreement. In the event that any of the work is sublet, the CONTRACTOR shall require the subcontractor to provide Workmen's Compensation and Employer's Liability Insurance for all its employees that are employed for work under the subcontract, unless the subcontractor's employees are covered under the CONTRACTOR'S policy.

The CONTRACTOR shall accept, insofar as work covered by this Agreement is concerned, the provisions of the Act dated June 2, 1915 (P.L. 736), as reenacted and amended, known as "The Workers' Compensation Act" (77 P.S. 1 et seq.).

- b. Comprehensive General Liability Insurance. The CONTRACTOR and subcontractor shall provide such insurance for claims of damages or personal injury, including accidental death, as well as property damage which may arise in the execution of the Agreement, whether such be by the CONTRACTOR or by the subcontractor(s) or by anyone directly or indirectly employed by either. The amount of public liability bodily injury shall be not less than \$500,000.00 per occurrence and the amount of Property Damage shall be not less than \$500,000.00 per occurrence. If the policy is issued for bodily injury and property damage combined, the amount shall be not less than \$1,000,000.00 per occurrence. The policy shall provide the following coverage and endorsements:

1. Premises and Operations hazards
2. Products and Operations hazards
3. Contract Insurance
4. Broad Form Property Damage

The CONTRACTOR shall submit certificates from its insurance carriers and its subcontractor's insurance carriers to the DEPARTMENT'S Contract Officer for approval, before work on the Agreement or subcontract commences. The CONTRACTOR shall submit insurance renewal certificates to the DEPARTMENT at least thirty (30) days prior to the expiration date of any of the insurance policies. All policies shall be written so that the DEPARTMENT will be notified, in writing, of their cancellation or modification at least ten (10) days prior to the effective date of such cancellation or modification.

The CONTRACTOR shall obtain all insurance from companies licensed to write such insurance under the laws of the Commonwealth of Pennsylvania.

All policies with the exception of the Worker's Compensation/Employers Liability Insurance shall name the DEPARTMENT as an additional insured. The insurance shall

not contain any endorsements or other form designed to limit and restrict any action by the DEPARTMENT, as an additional insured, against the insurance coverage in regard to the work performed for the DEPARTMENT.

None of the insurance required by the Agreement or Subcontract shall in any way relieve the CONTRACTOR or Subcontractor of, or diminish any of its obligations and liabilities under the Agreement or Subcontract. During any period that the CONTRACTOR fails to comply with the insurance requirements of this Agreement, the DEPARTMENT may suspend or terminate the Agreement for Cause.

- 4.16 Covenant Against Contingent Fees: The CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, the DEPARTMENT shall have the right to terminate the Agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
- 4.17 Applicable Law: This Agreement 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.
- 4.18 Integration: This Agreement, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the DEPARTMENT or the CONTRACTOR has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Agreement, which in any way can be deemed to modify, add to, or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, not any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Agreement. No modification, alterations, changes, or waiver to the Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments will be made using the appropriate DEPARTMENT form.
- 4.19 Changes: The DEPARTMENT reserves the right to issue contract change orders at any time during the term of the Agreement or any renewals or extensions thereof: 1) to increase or decrease quantities resulting from variations between estimated quantities in the Agreement and actual quantities; 2) to make changes to the services within the scope of the Agreement; 3) to notify the CONTRACTOR that the DEPARTMENT is exercising any renewal option provided in paragraph 1.2, hereof; or 4) to modify the time of performance that does not alter the scope of the Agreement to extend the completion date beyond the termination date of the Agreement or any renewals or extensions thereof.

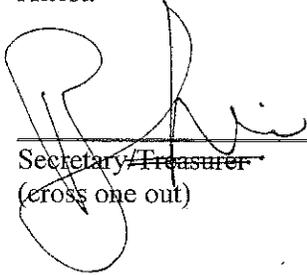
Any such contract change order shall be in writing, signed by the Chief of the Remediation Contract Section. The contract change order shall be effective as of the date appearing on the contract change order unless the contract change order specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Agreement. The CONTRACTOR agrees to provide service in accordance with the contract change order. Any dispute by the CONTRACTOR in regard to performance required under any contract change order shall be handled through paragraph 4.12, "Controversies". Any other changes to this Agreement shall, however, require a formally executed amendment.

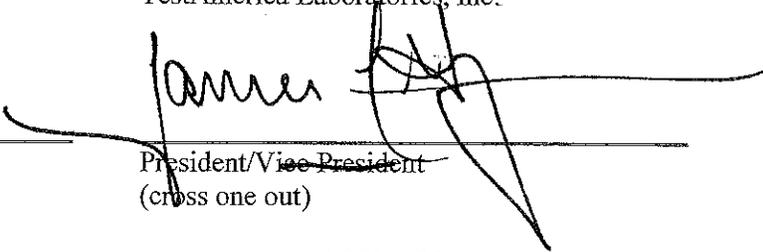
For purposes of this Agreement, "contract change order" is defined as a written order signed by the Chief, Remediation Contract Section, directing the CONTRACTOR to make changes authorized under this clause.

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

Attest:

TestAmerica Laboratories, Inc.


Secretary/Treasurer
(cross one out)


President/Vice President
(cross one out)

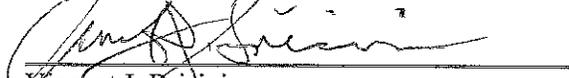
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Federal Identification Number

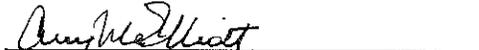
Attest:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION


James S. Adams


Vincent J. Brisini
Acting Deputy Secretary for
Waste, Air, Radiation and Remediation

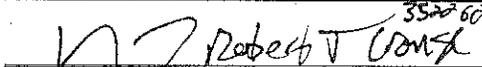
Approved as to Legality and Form:

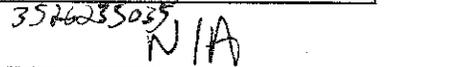

Office of Attorney General


Chief Counsel
Department of Environmental Protection

I hereby certify that funds in the amount of \$200,000.00 are available under

SAP Fund	General Ledger	Cost Center	Internal Order	Amount
2007011000	6343117	3522620000	3526235035	\$ 50,000.00
2007012000	6343117	3522620000	3526235035	\$ 100,000.00
2007013000	6343117	3522620000	3526235035	\$ 50,000.00


Comptroller


Office of the Budget

Date

1/07/10

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