Commonwealth of Pennsylvania
Department of Conservation and Natural Resources
Bureau of Forestry, Minerals Division
P.O. Box 8552
Harrisburg, PA 17105-8552

**STREAMBED TRACT NO. 2023**

CONTRACT NO.
M-2102023-04

# OIL AND GAS LEASE FOR PUBLICLY-OWNED STREAMBEDS

THIS AGREEMENT made effective this 10th day of October, 2014 (the "Effective Date"), by and between the COMMONWEALTH OF PENNSYLVANIA (the "Commonwealth"), acting through the **DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES** (the "Department" or "Lessor") and **TENMILE CREEK OIL & GAS LLC**, with its principal place of business at 500 West Wall, Suite 300, Midland, TX 79701 and authorized to do business within the Commonwealth of Pennsylvania (the "Lessee").

## WITNESSETH:

**WHEREAS,** Lessor is authorized pursuant to the Section 302(a)(13) of the Conservation and Natural Resources Act ("CNRA"), Act of June 28, 1995, P.L. 89, No. 18 (71 P.S. § 1340.302(a)(13)), to enter into agreements with owners or lessees of property or property rights located in the same area as land owned or leased by the Commonwealth for the protection, preservation or recover of fuel, oil, natural gas or any other mineral deposits owned by the Commonwealth underlying those lands; and

**WHEREAS,** Lessee has entered into oil and gas leases on lands adjacent to and in the same area as TRACT NO. 2023, which is described below in Section 1 of this lease; and

**WHEREAS,** in order to properly develop and produce the oil and gas beneath, adjacent to, and near TRACT NO. 2023, the Department has determined that leasing this tract to allow oil and gas development in accordance with the provision of this lease is in the best interests of the Commonwealth and has authorized this lease.

**NOW THEREFORE,** in consideration of the foregoing and the mutual promises contained herein, and intending to be legally bound, the parties agree as follows:

## 1. LEASED PREMISES

**1.01** The Department hereby leases to Lessee all that certain tract of land known as **TRACT NO. 2023** containing approximately **19.2 acres**, as approximately shown on the map in "**Exhibit A**" and more particularly described in "**Exhibit B**", both of which are attached hereto and made a part hereof, and referred to hereinafter as the "leased premises," for the sole purposes of directionally drilling wells for the production and removal of oil, gas and liquid hydrocarbons beneath the leased premises. This lease does not grant any right to withdraw water from or otherwise use the surface of the leased premises; nor does this lease grant any natural gas storage rights, or rights to minerals other than the oil, gas and liquid hydrocarbons encountered.

## 2. LEASE TERM

**2.01** This lease shall remain in force for a primary term of five (5) years from the Effective Date, subject to the conditions hereinafter set forth, and shall continue from year-to-year thereafter so long as oil or gas is produced in paying quantities from the leased premises in accordance with the terms of this lease, or as long as Lessee demonstrates to the Department's satisfaction bona fide attempts to secure or restore the production of gas by conducting drilling, or reworking operations which include the leased premises.

**2.02** In the event that oil or gas is not being produced in paying quantities after the primary term of five (5) years from the Effective Date, this lease shall automatically terminate in its entirety. Lessee may seek a one-year extension of the Lease term by submitting a written request for an extension to the Department at least 180 days prior to the fifth anniversary date of this Lease. The Lease term will only be extended if the Department provides Lessee with written notice of an extension prior to the fifth anniversary date of this Lease. An extension shall be granted only when the Department considers it to be in the best interests of the Commonwealth.

**2.03** For purposes of this lease, the term "paying quantities" shall be defined as a well associated with the leased premises which produces an annual average of at least one (1) thousand cubic feet per day (Mcf/day), which shall be calculated by dividing the well's total annual calendar year production in Mcf by 365 days. The term shall not apply within the same calendar year during which a well first begins producing after being completed and turned-to-line if that production does not average one Mcf/day. The term shall be satisfied as long as a minimum of one well associated with the leased premises meets the average production of one Mcf/day criteria.

## 3. LEASE RECORDING AND PUBLIC NOTICE

**3.01** Within ninety (90) days following the receipt by Lessee of a fully executed copy of this lease, Lessee shall record the Lease or Memorandum of Lease in the county or counties in which the leased premises lie, and also provide a copy of the recorded Lease or Memorandum to the Department which clearly shows the recorded reference data. Thereafter, Department shall publish at least the following information in the *Pennsylvania Bulletin*:

(a) Subject of this lease;
(b) General location of the leased premises;
(c) Names of the Department and Lessee; and
(d) Recording reference data for this lease.

## 4. RENTAL

**4.01** Lessee shall pay to the Department a bonus rental payment of FOUR THOUSAND DOLLARS ($4,000.00) per acre for the leased premises for the primary five-year term, for a total payment of **SEVENTY SIX THOUSAND EIGHT HUNDRED DOLLARS ($76,800.00).** Lessee shall provide this payment at the time Lessee delivers to the Department signature pages of this lease duly executed by Lessee. The Department shall not deposit this payment until the lease has been fully executed.

**4.02** The bonus payment provided to the Commonwealth as the consideration to obtain this lease agreement is considered the full and complete payment for rentals due on the leased premises for the term of the lease.

## 5. GAS ROYALTY

**5.01** Lessee shall install at the wellhead of each well directionally drilled on the leased premises a discrete well meter to measure all the gas produced from that well. Lessee shall ensure that all meters are maintained according to industry standards.

**5.02** For purposes of this lease, the term "fair market value" shall be defined as the first point of sale where the natural gas is transferred from the Lessee to a nonaffiliated third-party purchaser in an arms-length transaction.

**5.03** Lessee shall pay to the Department, as royalty, THIRTY FIVE CENTS ($0.35) per thousand cubic feet (Mcf) based on the volume measured at the wellhead, or TWENTY PERCENT (20%) of the fair market value multiplied by the Commonwealth's fractional interest, whichever is higher, for all marketable natural gas, marketable casinghead gas, or other marketable gaseous substances, referred to collectively for purposes of this lease as natural gas, produced and measured at the wellhead from each natural gas well drilled on the leased premises, free of all expenses of production and post-production expenses and deductions.

**5.04** There shall be no deductions from any royalty payment for any costs of post production handling, processing or conditioning that may be necessary to deliver a marketable product, between the wellhead and the point of sale where "fair market value" is received.

**5.05** In the event that gas is sold at less than "fair market value" to an affiliated party of the Lessee, or used by the Lessee on or in connection with the leased premises, then the royalty due shall be paid to the Department based upon a price that could have otherwise been obtained in an arms-length sale by Lessee to a nonaffiliated third-party purchaser during the month in which such sale or use occurred.

**5.06** The Department may, at its option, however, demand that Lessee deliver to the credit of Department, as royalty, free of cost, in the pipeline to which Lessee may connect its wells, the equal 20% part of all marketable gas and other marketable gaseous substances produced and saved from the leased premises; the amount to be delivered to the Department will be the equal TWENTY PERCENT (20%) part of the gas produced multiplied by the fractional interest held by the Department in the oil and gas rights. Lessee shall calculate and deliver a gas balancing statement on a quarterly basis to the Department in order to ensure that the Department receives its equal TWENTY PERCENT (20%) share of the marketable gas production. Adjustments for overage or underage delivery of the Department's TWENTY PERCENT (20%) royalty share shall be made by reducing or increasing future delivery gas volumes to the Department's account.

**5.07** Lessee shall pay the Department for any natural gas which is flared from a well which is planned to produce gas from the leased premises. Payment shall be made for any gas flared beyond the initial twenty-four (24) hour period of flaring following well completion, and during any other time periods, unless the gas is flared in the case of an emergency. Gas volume shall be metered or

determined by a method acceptable to the Department. The gas price to be used for the flaring royalty payment shall be based on the average NYMEX (New York Mercantile Exchange) price for natural gas for the month and year in which the well is flared.

## 6. ROYALTY ON OTHER WELL PRODUCTS

**6.01** If oil, condensate, natural gas liquids or other liquid hydrocarbons (referred to collectively, for purposes of this lease, as liquid products), each in paying quantities, should be produced from any natural gas well drilled on the leased premises, then said liquid products shall be saved, and royalty shall be paid on said products, as described below.

**6.02** Lessee shall provide tanks for accurately measuring and storing any liquid products produced from the leased premises. Lessee shall gauge, measure, sample, and test all petroleum and petroleum products in accordance with API Standard 2500, "Measuring, sampling, and testing crude oil," Second Edition, March 1961, as amended or updated, or another method consistent with industry standards prescribed, or approved, in writing by the Department. Observed gravity at the observed temperature shall be corrected to (API) gravity and volume at sixty degrees Fahrenheit (60° F) as per the American Society for Testing Materials and the Institute of Petroleum, "ASTM-IP petroleum measurement tables" (ASTM designation No. 1250; IP designation 200), as amended or updated, or another method consistent with industry standards prescribed, or approved, in writing by the Department.

**6.03** Lessee shall pay to the Department, as royalty, TWENTY PERCENT (20%) of the field price per barrel (42 U.S. Gallons) at 60° F, produced and saved from the leased premises for all liquid products of like grade and gravity which prevails in that area on the day such liquid products are run into the pipeline or into storage tanks; the amount to be paid to the Department will be the TWENTY PERCENT (20%) royalty multiplied by the fractional interest held by the Department, free of all expenses of production and post-production expenses and deductions.

**6.04** The Department may, at its option, however, demand that Lessee deliver to the credit of the Department, as royalty, free of cost, in the pipeline to which Lessee may connect its wells, the equal TWENTY PERCENT (20%) part of all liquid products produced and saved from the leased premises; the amount to be delivered to Department will be the TWENTY PERCENT (20%) part of the liquid products produced multiplied by the fractional interest held by Department.

## 7. PAYMENTS

**7.01** Lessee shall be held responsible for the payment of all rentals and royalties. Payments shall be mailed to:

Commonwealth of Pennsylvania
Department of Conservation and Natural Resources
Bureau of Forestry - Minerals Section
P.O. Box 8552
Harrisburg, PA 17105-8552

All checks shall be made payable to the Commonwealth of Pennsylvania. Payments of royalties shall be made monthly within ninety (90) days after the end of each monthly sales period. An alternate form of payment such as a wire transfer may be acceptable, but only in accordance with procedures pre-approved in writing by the Department.

**7.02** Within ninety (90) calendar days after the end of each monthly sales period, the Lessee shall submit a statement to the Department detailing the production and sale of gas and liquid products for each individual well associated with the leased premises. Such statements shall include, for each well, the gross wellhead volume as metered at the wellhead, the net royalty interest in the gas or liquid product attributable from the leased premises or any unit which includes a part of the leased premises, the average monthly sales price received for the gas and liquid products produced, the applicable royalty (*i.e.,* royalty rate or minimum price per Mcf) as established by this lease, and the net royalty amount paid on each well.

**7.03** When the Lessee has failed to make any payment due under this lease within thirty (30) calendar days after the Lessee's receipt of such written notice by the Department, Lessee shall pay an additional twelve percent (12%) annual interest on the overdue amount calculated from the time payment was originally due. Payment of such interest shall not waive Lessee's duty to make timely payments under this lease or limit the Department's remedies for Lessee's failure to pay on time.

**7.04** Notwithstanding any joint venture or other similar type of agreement that Lessee may have with third parties for the exploration and development of gas and liquid products, including the gas and liquid products granted under this lease, Lessee shall remain solely responsible for submitting payment to the Department pursuant to this lease. Fractional payment by multiple parties shall not occur unless the Department, in its sole discretion, determines that such payment is in the best interest of the Commonwealth and approves such payment in writing prior to the submission of any fractional payment.

## 8. INTERPRETATION

**8.01** In case of ambiguity, the lease shall always be construed in favor of the Lessor and against the Lessee.

## 9. GAS MEASUREMENT

**9.01** The volume of gas produced, saved, and marketed shall be measured according to American Gas Association (AGA) standards, Boyle's Law for the measurement of gas under varying pressures, and meeting the following requirements approved, in writing, by the Department:

(a) The unit of volume for the purpose of measurement shall be one (1) cubic foot of gas at a temperature of sixty degrees Fahrenheit (60° F) and an absolute pressure of 14.73 pounds per square inch.

(b) The average absolute atmospheric pressure shall be assumed to be 14.4 pounds to the square inch, regardless of actual elevation or location of Point of Delivery above sea level or variations in such atmospheric pressure from time to time.

(c) The temperature of the gas passing the meters shall be determined by the continuous use of a recording thermometer so installed that it may properly record the temperature of the gas flowing through the meters. The arithmetic average of the temperature recorded each 24-hour day shall be used in computing gas volumes. If a recording thermometer is not installed, or if installed and not operating properly, an average flowing temperature of sixty degrees Fahrenheit (60° F) shall be used in computing gas volume.

(d) The specific gravity of the gas shall be determined by tests made by the use of an Edwards or Acme gravity balance, annually, or at such intervals as are found necessary in practice. Specific gravity so determined shall be used in computing gas volumes.

(e) The deviation of the natural gas from Boyle's Law shall be determined by tests annually or at such other shorter intervals as are found necessary in practice. The apparatus and the method to be used in making said test shall be in accordance with recommendations of the Natural Bureau of Standards of the Department of Commerce, or Report No. 3 of the Gas Measurement Committee of the American Gas Association, or any amendments thereof, or any other mutually agreed upon method. The results of such tests shall be used in computing the volume of gas delivered hereunder.

(f) Gas compositional analyses by chromatograph or other approved methods shall be completed as necessary or upon written request and within a timeframe specified by the Department, for the determination of gas composition, specific gravity and BTU content. A copy of the results of all such analyses shall be provided by the Lessee to the Department for its records upon the Department's written request for such.

(g) The following factors used in the calculation of produced gas volumes shall be provided to the Department, upon its request, if the information isn't otherwise specified on the meter statements:

Basic orifice factor ($F_b$)
Reynolds number factor ($F_r$)
Expansion factor (Y)
Pressure base factor ($F_{pb}$)
Temperature base factor ($F_{tb}$)
Flowing Temperature factor ($F_{tf}$)
Specific gravity factor ($F_g$)
Supercompressibility factor ($F_{pv}$)

## 10. AUDITS

**10.01** Lessee shall furnish to Department, at its request, the meter charts or other equivalent recordings of the production of each well associated with the leased premises. The Department may keep such charts or records for examination for a period not to exceed one-hundred and eighty (180) days unless otherwise agreed to in writing by all parties. Lessee shall promptly furnish or secure

for the Department any statements furnished to Lessee by any person or corporation to whom Lessee delivers for sale or transport any gas or other hydrocarbon products produced from the leased premises.

**10.02** Lessee further authorizes and directs any person, association, company, partnership, corporation, or other entity to whom it sells or furnishes gas or liquid products produced from any well covered by this lease to disclose and exhibit accounts and other instruments to representatives of Department at Department's request having to do with the transactions involving payment to Lessee, its heirs, administrators, executors, successors, and assigns gas or liquid products from wells covered by this lease.

**10.03** Lessee further grants to the Department or the Department's designated representative the right, at any time, to examine, audit, or inspect books, records, and accounts of Lessee pertinent to the purpose of verifying the accuracy of the reports and statements furnished to the Department, and for checking the amount of payments due under the terms of this lease. Lessee agrees to allow the Department or the Department's designated representative the right to make copies of any of the aforementioned records for the Department's own use. Lessee agrees to provide every aid or facility to enable such audit to be made by Department. If the audit finds a royalty underpayment of three percent (3%) or greater, or fraud by Lessee, then Lessee shall pay the cost and expense of the audit together with the deficiency. In the case of fraud by Lessee, such payments shall not preclude Department in its discretion from terminating this lease upon delivery to Lessee of written notice of the Department's intention, or pursuing any other appropriate remedy.

## 11. RELATED AGREEMENTS

**11.01** Upon request by the Department, Lessee shall furnish a copy of all agreements made, contracts entered into, and all letters or other memoranda made by or provided to the Lessee which in any way concern the development, operation, or sale of products related to this lease. Any documents provided under this provision shall be deemed to be confidential for the life of this lease unless the Department is directed to disclose these records by court order.

## 12. LIMITATION ON WARRANTY OF TITLE

**12.01** The Commonwealth is considered to be the owner of the leased premises, which consists of the streambed to the low water mark and the subsurface estate, including gas liquid products. The Commonwealth's ownership derives from the historical use of the waterway in its ordinary condition as a highway for commerce over which trade and travel were conducted in the modes customary to the time of use. The Commonwealth makes no warranty as to the presence of oil and gas, nor as to its ownership thereof. In the event of a determination by compromise or by a final judgment of a court of competent jurisdiction that the Commonwealth does not have title to all or a portion of the leased premises, any sums of money previously paid pursuant to the terms of the lease shall not be reimbursable to Lessee, except as hereinafter provided in this paragraph. In the event of an adverse claim affecting title to all or a portion of the oil and gas rights under the leased premises, notice of such claim will be given to the Department which may, with the approval of the Attorney General, enter into an escrow arrangement for future royalties accruing to such disputed portion under terms and conditions proper to safeguard the rights and interests of the Commonwealth. In the event an adverse claimant files suit against the Commonwealth or against Lessee claiming title to all or a portion of the oil and gas rights under the leased premises, or if the Lessee, after receiving notice of an adverse claim, institutes

litigation in a court of competent jurisdiction to secure an adjudication of the validity of the claim, the royalties accruing to the litigated portion shall be placed in an escrow account until such time as the ownership of the disputed interest shall be determined by a court of competent jurisdiction. The royalties placed in escrow shall be refunded at the direction of the court in an amount proportionate to the outstanding title if it is finally determined by compromise or by a court of competent jurisdiction that all or part of such rights are not owned by the Commonwealth.

**12.02** This proportionate reduction clause shall not apply to and shall not reduce the bonus payments or rents payable under Section 4 of this lease.

## 13. LESSEE REPRESENTATIONS AND WARRANTIES

Lessee hereby represents and warrants as follows:

**13.01** The Lessee is duly organized and existing under the laws of the Commonwealth of Pennsylvania or is duly authorized to do business in the Commonwealth of Pennsylvania and has the power and authority to carry on its business as now conducted.

**13.02** The Lessee has the full power, authority and legal right to execute, deliver and comply with this lease and has taken all actions necessary or appropriate for the execution and delivery of and compliance with this lease. This lease constitutes valid and legally binding obligations of the Lessee enforceable against the Lessee in accordance with its respective terms.

**13.03** The Lessee has not applied for or consented to the appointment of a receiver, conservator, trustee or liquidator for itself or any of its property; admitted in writing its inability to pay its depts. As they mature; made a general assignment for the benefit of creditors; been adjudicated a bankrupt or insolvent or filed a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegation of a petition files against it in any proceeding under any such law; and no action has been taken by it for the purpose of effecting any of the foregoing. No order, judgment or decree has been entered by any court of competent jurisdiction approving a petition seeking reorganization of the Funding Recipient or all or a substantial part of the assets of the Lessee, or appointing a receiver, conservator, sequestrator, trustee or liquidator of it or any of its property.

## 14. INDEMNITY AND HOLD HARMLESS

**14.01** Lessee shall, at all times hereinafter, indemnify and save harmless Department from and against all detriment, damage, loss claims, demands, suits, or expenses of any kind which the Department may sustain, suffer, or be subject to directly or indirectly by reason of the location, obstruction, presence, maintenance, renewal, or removal of the operations permitted by this lease or resulting therefrom.

**14.02** No provision of this Lease shall be construed to be a waiver by the Department of its right to assert a defense of sovereign immunity to any claim for damages, pursuant to the authority contained in the JARA Continuation Act of 1980, Act of October 5, 1980, Public Law 693, No. 142, as

amended, or any other legal authority established in the Commonwealth which permits use by the Commonwealth of a sovereign immunity defense.

## 15. FINANCIAL SECURITY

**15.01** Upon execution of this lease, Lessee shall provide the Department with financial security in a form acceptable to the Department (*i.e.,* surety bond, irrevocable letter of credit with evergreen provision, bank certificate of deposit, *etc.*) for the principal sum of **TWENTY FIVE THOUSAND DOLLARS ($25,000.00)** to assure faithful performance by Lessee of the covenants of this lease.

**15.02** Lessee shall advise the Department of the proposed cancellation of any financial security required by this lease immediately upon receipt of notice by Lessee of the proposed cancellation.

## 16. LESSEE LIABILITY

**16.01** Lessee shall be fully liable and responsible for any pollution or other damage to any portion of the environment in or adjacent to the leased premises which occurs as a result or consequence of Lessee's occupation and use of the leased premises, regardless of whether or not such pollution or damage is due to negligence or to the inherent nature of Lessee's operations, unless an independent intervening cause is found to be the sole proximate cause of the pollution or damage. Any action for civil damages on account of such pollution brought by Department against Lessee shall not bar Department from bringing other actions under State or federal laws, rules, or regulations.

**16.02** Department shall not be liable to Lessee for any time during which the leased premises cannot be used.

## 17. POLLUTION LIABILITY INSURANCE

**17.01** Lessee shall, at its sole expense, provide and maintain in full force and effect during the term of this lease such pollution liability insurance as shall protect the Commonwealth, the Lessee and its contractors, if any, from claims of environmental impairment and pollution that may arise during the execution of this lease. The amount of pollution liability insurance shall be consistent with industry standards, but not be less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate.

**17.02** Lessee or its insurer shall be liable to the Department for any damage done to Commonwealth property as a result of Lessee's operations.

**17.03** Lessee shall provide the Department with a certificate of insurance for its pollution liability insurance demonstrating the above coverage prior to beginning its operations beneath the leased premises.

**17.04** Lessee shall advise the Department of the cancellation of any insurance policy required by this lease immediately upon receipt of notice by Lessee of the cancellation and in no event later than the effective date of the cancellation.

## 18. NOTIFICATION

**18.01** Oral and written communications with the Department shall be made to the Minerals Division within the Bureau of Forestry, unless otherwise indicated by the Department. Written communications shall be sent to the following address:

Chief, Minerals Division
DCNR Bureau of Forestry
P.O. Box 8552
400 Market Street
Harrisburg, PA 17105-8552

## 19. UNITIZATION AND UNIT AGREEMENTS

**19.01** The Department and Lessee acknowledge that the intent of this Lease is to allow for development, production and marketing of oil, natural gas and other liquid products underlying the Leased Premises from wells having surface locations on adjacent or nearby lands. Lessee shall have the right to pool and consolidate this Lease, in whole or in part, or as to any subsurface geologic horizon, with lands or leases located adjacent to or in the immediate vicinity of the Leased Premises, provided that the Lessee obtains prior written approval of the unit from the Department.

**19.02** Prior to producing from any well associated with the Leased Premises, the Lessee shall submit to the Department for its review and approval the following items:

(a) a declaration and notice of unit agreement;

(b) a plat identifying the name of the unit, the boundaries of the unit, the well or wells planned to be included in the unit including a depiction of any horizontal laterals, the API number of each well in the unit, and the boundaries of ownership for all other parties included in the unit agreement;

(c) a division of interest table which includes the name of the unit, the total number of acres in the unit, the lease number, lessor name, lessee name (correlated to the ownership parcels shown on the plat), lease date, number of acres for each lessee in the unit, percentage of each lessee's acreage based on the total unit acreage, tax parcel identification number, deed recording information for each lease which is a part of the unit;

(d) the county(ies) and township(s) within which the unit is located;

(e) the producing zone(s) covered by the unit;

(f) a calculation showing the Commonwealth of Pennsylvania's net royalty interest for each well in the unit, based on the royalty provision section(s) specified in this Lease; and

(g) a GIS shape file or equivalent of the unit.

**19.03** Upon approval of the items listed in Section 7.2, above, the Department shall execute a ratification, which Lessee shall record along with the entire declaration and notice of unit agreement at the applicable county courthouse prior to the commencement of production from any well within the unit. Within 30 days after recording, Lessee shall provide to the Department a complete, recorded copy of the ratification and declaration and notice of unit agreement for its records.

**19.04** Any subsequent amendment by Lessee to the declaration and notice of unit agreement ratified by the Department shall be submitted to the Department for its review and approval, in accordance with the above paragraphs, prior to the recording of the amended declaration and notice of unit agreement.

**19.05** Upon production from any part of any unit involving the Leased Premises, the Department shall be entitled to, and the Lessee shall pay, royalties calculated as follows: the number of acres involving the Leased Premises shall be divided by the total number of acres within the unit, multiplied by the payment provision section(s) of this Lease as described in Paragraphs 5 (Gas Royalty) and 6 (Royalty on Other Well Products) above. Provided, however, that if State or Federal regulatory authorities shall prescribe a different method of allocation, the method so prescribed shall prevail.

**19.06** The Lessee's drilling or reworking operations upon a unit approved by the Department, or production of oil, natural gas or other liquid products from any part of a unit approved by the Department, shall be treated, for all purposes as operations upon or production from the Leased Premises, provided that the Lessee is the owner/operator of the unit.

**19.07** Should a unit be established pursuant to a valid spacing or integration order issued by DEP or any other jurisdictional agency having such authority, the Department's approval shall not be required.

## 20. ASSIGNMENT OF LEASE

**20.01** Lessee shall not assign, farm out, sublet, sell, mortgage or otherwise transfer any interest or partial interest in this Lease without the prior written consent of the Department. The term "transfer" shall also be deemed to include: (1) the placing of any lien, pledge, security interest or encumbrance of any kind whatsoever on Lessee's interest or partial interest in this Lease; (2) any transfer by Lessee which is deemed to occur by operation of law as a result of a merger or reorganization involving Lessee; and (3) any sale of Lessee's assets which includes a sale of Lessee's interest or partial interest in this Lease. Lessee shall make written application to the Department to obtain consent to a proposed assignment. The request shall include sufficient detail to allow the Department to evaluate the viability of any party seeking to obtain an interest in the Lease, the interest to be transferred, and the relationship among the parties if more than one party will hold an interest in the Lease. If Lessee assigns any interest or partial interest in this Lease without obtaining the prior written consent of the Department, the Department terminate this Lease in its entirety at the Department's sole discretion.

**20.02** The Department's approval of a request for assignment shall be contingent upon satisfying the conditions set forth in this Paragraph and any additional conditions necessary to ensure that the assignment is in the best interest of the Commonwealth.

**20.03** A party seeking to obtain an interest in this Lease must agree in writing to be bound by all the terms and provision of this Lease, as well as any additional requirements identified by the Department to ensure the assignment is in the best interest of the Commonwealth. This written Agreement may require a three-party document wherein the third-party interest holder verifies that its interest will be subordinate to any public interest the Department maintains in its real property.

**20.04** When an assignment will result in multiple parties holding an interest in this Lease, all parties must agree in writing to be jointly and severally liable for compliance with the terms and provisions of this Lease and any additional requirements identified by the Department to ensure the assignment is in the best interest of the Commonwealth. The parties also must identify the party that will be responsible for operational activities on the Leased Premises (the "Operator Lessee"). The Operator Lessee shall be the point of contact with the Department for the purposes of notification and communication pursuant to this Lease. The Operator Lessee shall communicate with the other parties holding an interest in this Lease regarding any compliance matter raised by the Department.

**20.05** All Lessees of record holding an interest in this Lease shall be responsible for providing the full performance security required by Paragraph 15 (Financial Security) of this Lease for the principal sum of Twenty-five Thousand Dollars ($25,000).

**20.06** In the event more than one party holds an interest in this Lease and a party defaults on any of the covenants, conditions, or obligations of this Lease, as modified by the Department's consent to assignment, the Department, in its sole discretion, may hold all parties jointly liable for the default and may take action pursuant to this Lease, including termination, against all parties. In the alternative, the Department, may hold one party severally liable and take action against that party while allowing the other parties to continue to operate under the Lease, if it is in the best interest of the Commonwealth to do so.

**20.07** The Department will release a Lessee from responsibility and liability under this Lease upon the completion of the following: (1) approval by the Department of the assignment of all of the Lessee's interest in the Lease, (2) verification by the Department that the Lessee has fully complied with the Lease as of the date of release; and (3) assumption by the assignee(s) of responsibility for all the covenants, conditions, and obligations of this Lease, as modified by the Department's consent to assignment.

## 21. LAWS, RULES AND REGULATIONS

**21.01** Nothing in this Lease shall be construed as impairing the powers, privileges or duties of the Commonwealth, or its representatives, in the execution of the laws of the Commonwealth or the United States or the applicable rules and regulations promulgated thereunder, now in force or hereafter enacted or adopted.

**21.02** The Lessee is solely responsible for complying with any and all local, State or Federal requirements applicable to its activities, including obtaining permits or other approvals necessary for and associated with any of the operations related to this lease, and shall be held liable by the Commonwealth, any agency of the Commonwealth, or any other local or Federal authority for the violation or non-compliance of any relevant laws, rules, and regulations.

**21.03** This lease does not provide any authority to withdraw surface or ground waters from the leased premises. To the extent Lessee seeks to withdraw surface or ground waters from or in the vicinity of the leased premises, Lessee shall strictly adhere to all rules, regulations and requirements governing the withdrawal and use of surface and ground waters, including but not limited to, those administered by the river basin commission, department or authority having designated jurisdiction over such withdrawal of the waters of the Commonwealth.

**21.04** This lease does not constitute an estate or interest in submerged lands pursuant to Section 15 of the Dam Safety and Encroachment Act, act of November 26, 1978, P.L. 1375, No. 325, as amended, 32 P.S. § 693.15.

## 22. OPERATIONS

**22.01** Lessee shall carry on all operations under this lease with all due diligence and in a good and workmanlike manner, in accordance with the best and most up-to-date gas field practices.

**22.02** The Department shall hold the Lessee liable for enforcing all the provisions of this lease, regardless of whether any of the operations authorized by this lease are conducted by the Lessee or the Lessee's contractors, subcontractors, consultants, or other agents or representatives.

## 23. WELL RECORDS, LOGS AND REPORTS

**23.01** Lessee shall keep a daily drilling record which describes the formations penetrated, and the depth and volumes of water, gas, and liquid products found while drilling each well on the leased premises. An accurate well location plat and any other data that are acquired during the drilling and completion operations for each well, including but not limited to those items listed in Section 24 (Confidentiality), shall be provided to the Department within ninety (90) days of the data's collection, or upon oral or written request by the Department and within a timeframe specified by the Department. All above-described data shall be submitted in both hard-copy and digital forms. Digital well logs shall be submitted in .LAS format, or in another format requested or approved by the Department.

**23.02** Upon the Department's request, samples of all formations penetrated and parts of cores taken, accurately labeled with the API number of the well and depth interval of collection, shall be furnished to Department at Lessee's expense within one (1) year after completion of each well.

**23.03** If the Lessee collects rock samples including but not limited to whole rock core, parts of core, and cuttings from any well borehole(s) on the leased premises and no longer plans to retain the samples at its own or contracted storage facility, Lessee must first offer said rock samples to the Department before their disposal or sale. The rock samples shall be accurately labeled with the API

number of the well and depth interval of collection. The Department shall make arrangements for the collection and transport of the rock samples at its own expense.

**23.04** Upon written request and within a timeframe specified by the Department, Lessee shall provide the Department with production and pressure test data, production and pressure decline curves, gas analysis data including BTU value determinations, gas gravity, water and waste disposal records, well stimulation and treatment records, maintenance records and reports, and/or any other data or records for any well(s) which the Department deems necessary to protect its interests.

## 24. CONFIDENTIALITY

**24.01** Records that Lessee provides to the Department may be subject to public disclosure under the Pennsylvania Right-To-Know Law, act of February 14, 2008, P.L. 6, No. 3, 65 P.S. § 67.101 *et seq.* Lessee shall advise the Department in writing of any records submitted pursuant to this lease that contain trade secrets or confidential proprietary information. The Department shall maintain such records solely for use by the Commonwealth as provided below and shall not disclose such records to any third party unless Lessee consents or the Department is directed to do so pursuant to a court order. The Department shall notify Lessee of any request received for such records.

**24.02** The Department shall maintain the following well-related documents solely for use by the Commonwealth for a period of three years from the date the well is spud unless (1) Lessee does not advise the Department that such records contain trade secrets or confidential proprietary information, (2) Lessee does so advise the Department, but nevertheless consents to disclosure of the records, or (3) the Department is directed to disclose these records by court order:

(a) all drill time logs
(b) all electric well logs
(c) all nuclear well logs
(d) all acoustic or sonic well logs
(e) all caliper or hole diameter measurement logs
(f) all cement bond or integrity logs
(g) all mud or geologic well logs
(h) all dip measurement well logs
(i) all well flow or production test data
(j) all well completion data
(k) all well fracturing and stimulation data
(l) all well pressure tests or pressure data
(m) all record of lost circulation zones and caving strata
(n) all well casing records
(o) all core analysis, mud log analysis
(p) all well perforation records
(q) all lithologic well logs
(r) all written well history
(s) all well cutting samples requested by the Department
(t) drill stem tests and charts
(u) formation water analysis
(v) all wellbore diagrams

(w) and any other geophysical well data not specifically named.

**24.03** The Department shall maintain the following well related documents solely for use by the Commonwealth for as long as such documents are useful to the Commonwealth unless (1) Lessee does not advise the Department that such records contain trade secrets or confidential proprietary information, (2) Lessee does so advise the Department, but nevertheless consents to disclosure of the records, or (3) the Department is directed to disclose these records by court order:

(a) all raw preprocessed data on tapes, discs, or other storage devices
(b) all processed data on tapes, discs, or other storage devices
(c) all paper or reproducible copies of stacked seismic data presentations
(d) all paper or reproducible copies of migrated seismic data presentations
(e) all paper or reproducible copies of relative amplitude seismic data presentations
(f) all paper or reproducible copies of premigrated stacked seismic data presentations
(g) all paper or reproducible copies of depth conversion seismic data presentations
(h) all paper or reproducible copies of amplitude versus offset seismic data presentations
(i) all paper or reproducible copies of any attribute seismic data presentations
(j) all post plot shot point and receiver location maps
(k) all time-depth conversion charts or calculations
(l) all velocity charts and calculations
(m) all sonic/acoustic well charts and data calculated from well logs
(n) all synthetic seismograms
(o) all seismic models for tuning and velocity variation
(p) and all other incidental or miscellaneous seismic related data or presentations.

**24.04** The Department shall maintain the following well related documents solely for use by the Commonwealth for the life of the lease unless (1) Lessee does not advise the Department that such records contain trade secrets or confidential proprietary information, (2) Lessee does so advise the Department, but nevertheless consents to disclosure of the records, or (3) the Department is directed to disclose these records by court order:

(a) meter charts
(b) all third party statements related to Commonwealth's royalty volumes and payments
(c) all internal account statements of Lessee or third party related to Commonwealth's royalty volumes and payments
(d) all business books of the Lessee or third parties provided to the Commonwealth to substantiate Commonwealth's royalty volumes and payments
(e) all Lessee and third party contracts related to the Commonwealth's royalty volumes and payments
(f) all production agreements between Lessee and third parties related to Commonwealth's royalty volumes and payments
(g) all farmout agreements between Lessee and third parties related to Commonwealth's royalty volumes and payments
(h) all purchase and sale agreements between Lessee and potential purchaser of the leased premises
(i) all agreements providing for areas of mutual interest between Lessee and third parties

(j) and all other business documents and agreements provided to the Commonwealth that Lessee or a third party consider confidential trade secrets.

## 25. PLUGGING

**25.01** Lessee shall properly and effectively plug all wells associated with the leased premises before abandoning, in accordance with the Pennsylvania Department of Environmental Protection ("DEP") requirements and all applicable state and federal laws, rules and regulations.

**25.02** A copy of the Certificate of Well Plugging showing the plugging procedure used and submitted to DEP shall be supplied to the Minerals Division, Bureau of Forestry, for each well which is plugged and abandoned which is associated with the leased premises.

## 26. RELEASE

**26.01** Lessee shall not be granted a final release from the terms of this lease until all records and reports and other data described above have been provided to the Department, all wells required by the Pennsylvania Department of Environmental Protection to be plugged have been plugged and plugging certificates provided, and all other terms of this lease have been met.

## 27. FORCE MAJEURE

**27.01** In the event that the Lessee is prevented from complying in a timely manner with any time limit imposed in this lease solely because of a strike, fire, flood, act of God, or other circumstances beyond Lessee's control and which Lessee, by the exercise of all reasonable diligence, is unable to prevent, then the Lessee may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this lease shall not constitute circumstances beyond the Lessee's control. Lessee's financial inability to comply with any of the obligations of this lease shall not be grounds for any extension of time.

**27.02** Lessee shall notify the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the force majeure event impeding performance. The Lessee shall forfeit the right to obtain an extension of time for performance under this section if such notice is not provided. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized representative of Lessee specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by the Lessee to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission.

**27.03** The Department, in its sole discretion, shall decide whether to grant all or part of the extension requested on the basis of all documentation submitted by the Lessee and other information available to the Department. In the event of litigation related to the Lessee's failure to perform within the timeframe established by this lease, the Lessee shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

## 28. DISPUTE RESOLUTION

**28.01** In the event that Lessee wishes to dispute a decision made by Department, the following procedure shall be used:

(a) Lessee shall notify the Department in writing of the decision in dispute and provide Department with Lessee's position on the issue, along with all appropriate supporting documentation.

(b) Within ten (10) business days from the date of the Department's receipt of the Lessee's written notice of the dispute, Department shall fix a time and place for a conference with Lessee to discuss the disputed decision.

(c) The conference shall be held within thirty (30) days of the Department's receipt of the Lessee's written notice of the dispute, unless Department and Lessee agree to an extension of time for the conference.

(d) At such conference, the Director of the Bureau of Forestry or his/her representative shall represent Department.

(e) Department may continue the conference if supplemental data, maps or other information are required to evaluate the basis for Lessee's objections, if further review is needed to ascertain whether a mutually agreed upon settlement is consistent with the terms of the lease agreement, or if all parties to the conference agree that a continuance is beneficial to the resolution of the objection.

(f) Any agreement(s) reached at the conclusion of the conference or follow-up discussions shall be consistent with the provisions of this lease. A record of such agreement(s) shall be documented in writing by the Department, copies of which shall be provided to the Lessee, the appropriate District Forester, and all other parties involved.

**28.02** In the event that a party is dissatisfied with the decision(s) made as a result of the dispute resolution conference, it may submit the dispute to an appropriate forum, including a court, for further consideration or review. Any judicial review or court action shall be de novo.

## 29. DEPARTMENT'S TERMINATION

**29.01** If Lessee fails or refuses to pay any rental or royalty due under the terms of this lease, or violates or fails to perform any other term or condition of this lease within thirty (30) calendar days after Lessee's receipt of written notification from Department of such refusal, violation or failure, the Department shall have the right to terminate the lease. Upon termination, Lessee shall immediately cease all activity on the leased premises, including any further removal of natural gas or liquid products from any completed wells associated with the leased premises, regardless of whether the wellhead is physically located off the leased premises.

## 30. LESSEE'S TERMINATION

**30.01** Lessee may terminate this lease provided that the Lessee has properly plugged all wells associated with the leased premises and is not in default of any other obligations under this lease. The Lessee shall submit written notice of the Lessee's intent to terminate the lease to the Department at least thirty (30) calendar days prior to the intended date of termination, and shall certify that the Lessee has plugged all wells associated with the leased premises and performed all other obligations required pursuant to the lease. The annual rental payment made for the current year shall not be prorated or subject to claim by the Lessee for return to Lessee as a result of the Lessee's early termination.

## 31. CONTRACTOR INTEGRITY PROVISIONS

**31.01** Lessee agrees to comply with the CONTRACTOR INTEGRITY PROVISIONS FOR COMMONWEALTH CONTRACTS, attached hereto as **"EXHIBIT C"**, and made a part hereof.

## 32. NONDISCRIMINATION CLAUSE

**32.01** Lessee agrees to comply with the NONDISCRIMINATION CLAUSE, attached hereto as **"EXHIBIT D"**, and made a part hereof.

## 33. HEADINGS

**33.01** The paragraph headings herein are for reference only and are not intended to have any legal force or effect.

## 34. SUCCESSORS AND ASSIGNS

**34.01** This lease shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns, provided the assignment has been approved in accordance with this lease.

## 35. SHUT-IN ROYALTY

**35.01** Lessee shall have the right to interrupt or not market, produce, or sell the production from any well that is capable of producing oil, gas, and/or other liquid products in commercial quantities on any pool/unit containing all or portions of the Leased Premises, only when the following conditions apply: whenever the valves are closed and production at a well capable of producing in commercial quantities is temporarily halted (a) to repair or clean the well, (b) to allow repairs and maintenance to occur to facilities directly supporting the production from the well, (c) to allow reservoir pressure to build, or (d) for lack of a satisfactory market, provided Lessee exercises all reasonable diligence to obtain a market for such production. (Referred to as "Shut-In").

**35.02** If a Shut-In occurs, any Shut-In well shall nonetheless be deemed a commercially producing well and shall serve to maintain this Lease in full force and effect. If a well is Shut-In, as specifically defined above, a Shut-In Royalty of Ten Dollars ($10.00) per acre per year for the Leased

Premises shall be paid in advance at the time the well is declared to be Shut-In by the Lessee. The Shut-In Royalty shall be paid in full for the first year at the time the well is declared to be Shut-In and shall not be prorated or refunded to the Lessee if a Shut-In period for the well is less than one year. All subsequent Shut-In royalty payments shall be paid one year in advance, in full year increments, until the Lessee declares to the Department that the status has changed and a well is no longer Shut-In.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

**IN WITNESS WHEREOF**, Department and Lessee have caused this lease to be duly executed by their proper officers, all hereunto duly authorized, on the date first above written.

**TENMILE CREEK OIL & GAS LLC**

Federal Identification No.: 30-0826971

M. Scott Wilshusen
Attorney-in-Fact

**COMMONWEALTH OF PENNSYLVANIA**
**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

Daniel A. Devlin
Deputy Secretary for Parks and Forestry

APPROVED AS TO LEGALITY AND FORM:

Chief/Assistant Counsel
Department of Conservation and Natural Resources

Office of General Counsel

Office of Attorney General

APPROVED:

GOVERNOR OF PENNSYLVANIA

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA, :
: ss.
COUNTY OF DAUPHIN :

On this the 22nd day of September, 2014 before me, the undersigned officer, personally appeared Daniel A. Devlin, Deputy Secretary for Parks and Forestry, Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, known to me to be the person described in the foregoing instrument, and acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARIAL SEAL
LENNIE C LEWIS
Notary Public
HARRISBURG CITY, DAUPHIN COUNTY
My Commission Expires May 15, 2016

Notary Public
Lennie Lewis
Expiration - May 15, 2016

**ACKNOWLEDGMENT**

STATE OF TEXAS, :
: ss.
COUNTY OF MIDLAND :

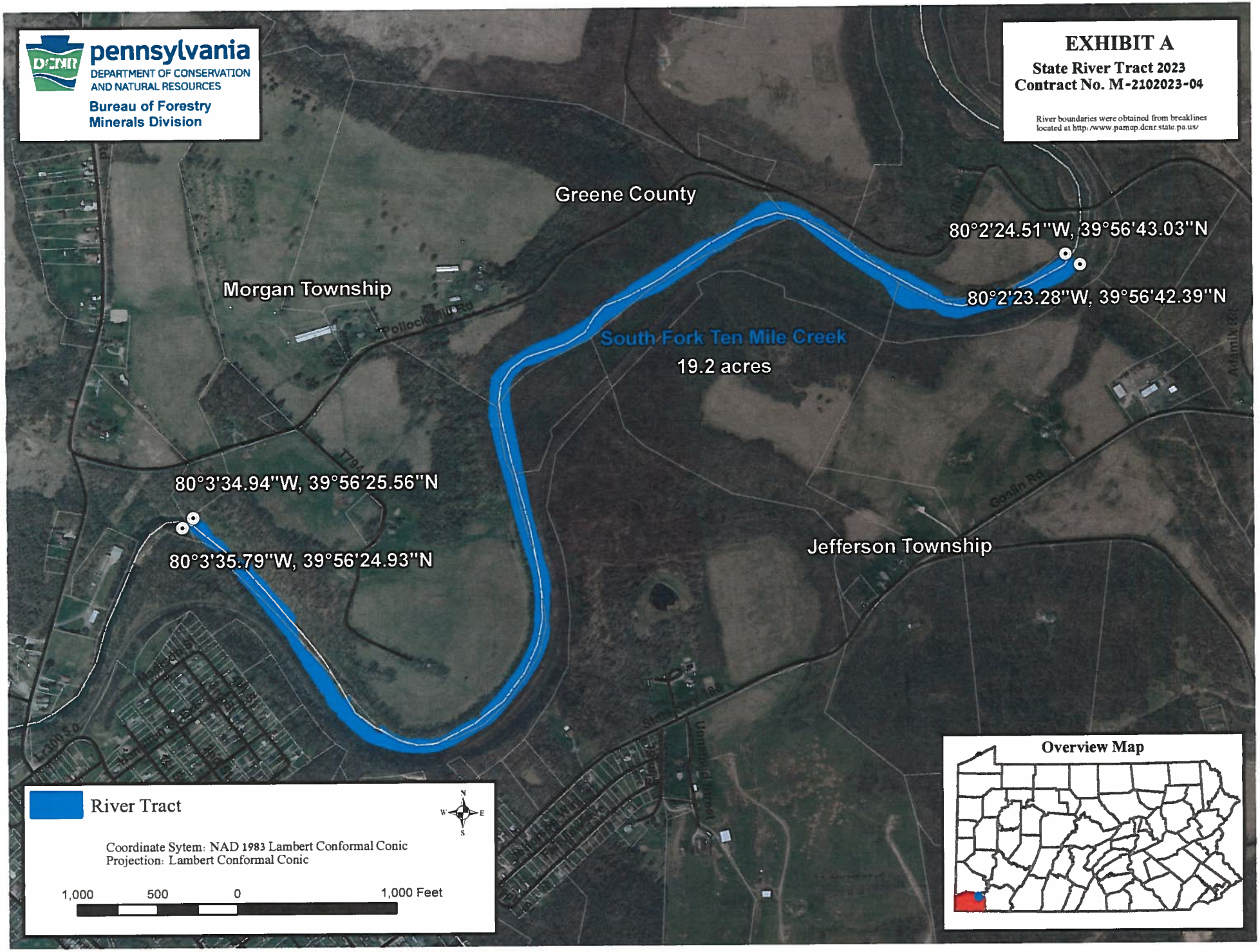
On this the 11th day of September, 2014, before me, the undersigned, personally appeared M. SCOTT WILSHUSEN, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and said person acknowledged that he executed this instrument in his capacity as Attorney-in-Fact for TENMILE CREEK OIL & GAS LLC, a Texas limited liability company, and that the same was executed for the purposes contained therein as the act and deed of said company.

My Commission Expires:

CECILE N WIGINTON
Notary Public
STATE OF TEXAS
My Comm. Exp. Nov 29, 2016

Cecile N. Wiginton

Notary Public


pennsylvania
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
Bureau of Forestry
Minerals Division
EXHIBIT A
State River Tract 2023
Contract No. M-2102023-04
River boundaries were obtained from breaklines located at http:/www.pamap.dcnr.state.pa.us/
Greene County
Morgan Township
Jefferson Township
South Fork Ten Mile Creek
19.2 acres
80°2'24.51"W, 39°56'43.03"N
80°2'23.28"W, 39°56'42.39"N
80°3'34.94"W, 39°56'25.56"N
80°3'35.79"W, 39°56'24.93"N
Pollock Mill Rd
Gastin Rd
Adamik Rd
Overview Map
River Tract
N
W
E
S
Coordinate Sytem: NAD 1983 Lambert Conformal Conic
Projection: Lambert Conformal Conic
1,000
500
0
1,000 Feet

**COMMONWEALTH OF PENNSYLVANIA**
**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**OIL AND GAS LEASE FOR PUBLICLY-OWNED STREAMBEDS**

**EXHIBIT "B"**

**DESCRIPTION OF LEASED PREMISES FOR TRACT 2023**

Attached to and made a part of that certain Oil and Gas Lease, Streambed Tract 2023, Contract No. M-2102023-04, by and between: **COMMONWEALTH OF PENNSYLVANIA,** Lessor, and **TENMILE CREEK OIL & GAS LLC,** Lessee.

The following parcel containing approximately 19.2 acres of all submerged lands lying within the bed of the South Fork Tenmile Creek between the ordinary low water marks in Greene County, Pennsylvania:

**Tract 2023 River Parcel:**

Starting at a point on the north bank of the South Fork Tennmile Creek at Latitude: 39°56'25.56" N, Longitude: -80°03'34.94" W, located north of the town of Jefferson in Morgan Township, Greene County, PA and following the South Fork Tenmile Creek downstream and in a general northeasterly direction, coming to the point at Latitude: 39°56'43.03" N, Longitude: -80°02'24.51" W in Morgan Township, Greene County, then crossing to a point on the south bank of the creek in Jefferson Township, Greene County at Latitude: 39°56'42.39" N, Longitude: -80°02'23.28" W, and following the South Fork Tenmile Creek upstream and in a general southwesterly direction to a point at Latitude: 39°56'24.93" N, Longitude: -80°03'35.79" W, then crossing to the point on the north bank to the place of the beginning, containing approximately 19.2 acres.

All latitude and longitude coordinates cited above are in NAD 1983 Lambert Conformal Conic projection.

**COMMONWEALTH OF PENNSYLVANIA**
**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**EXHIBIT "C"**

**CONTRACTOR INTEGRITY PROVISIONS FOR COMMONWEALTH CONTRACTS**

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.

**COMMONWEALTH OF PENNSYLVANIA**
**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**EXHIBIT "D"**

**NONDISCRIMINATION/SEXUAL HARASSMENT PROVISIONS FOR COMMONWEALTH CONTRACTS**

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, 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 the 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. The Contractor and each subcontractor 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. The Contractor and each subcontractor 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. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.