

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. 2041

CONTRACT NO.
M-2102041-11

**FIRST AMENDMENT TO
OIL AND GAS LEASE FOR PUBLICLY-OWNED STREAMBEDS**

The First Amendment to Oil and Gas Lease for Publicly-Owned Streambeds, is made this 16 day of March, 2022, with an effective date of 26 day of May, 2022 ("Effective Date"), is entered into by and between the Commonwealth of Pennsylvania ("Commonwealth"), acting through the Department of Conservation and Natural Resources ("Department" or "Lessor"), with a business address of 400 Market Street, 6th Floor, Rachel Carson State Office Building, Harrisburg, PA 17105, and SWN Production Company, LLC ("Lessee"), with its principal place of business at 10000 Energy Drive, Spring, Texas, 77389.

WITNESSETH:

WHEREAS, the Department and the Lessee entered into an Oil and Gas Lease for Publicly-Owned Streambeds, made effective on November 24, 2020, for Tract 2041 containing 41 acres along the Susquehanna River, Contract No. M-2102041-11 ("Original Lease"); and

WHEREAS, the Lessee desires to amend the Original Lease to include an additional 135 acres of streambed along the Susquehanna River.

NOW THEREFORE, the Department and the Lessee agree to amend the Original Lease in the following manner:

FIRST, Section 1.01 of the Original Lease and the Exhibits A and B shall be removed and replaced with the following language and updated Exhibits:

1. LEASED PREMISES

1.01 The Department hereby leases to the Lessee all that certain tract of land known as Tract No. 2041 containing approximately 176 acres, as shown on the map in First Amendment Exhibit A and more particularly described in First Amendment 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. The Leased Premises consists of the streambed to the low water mark, which includes oil, gas, and liquid hydrocarbons in the subsurface estate. 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.

SECOND, Section 4.01 of the Original Lease shall be removed and replaced with the following language:

4. RENTAL

4.01 The 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 Seven Hundred Four Thousand Dollars (\$704,000.00). The Department acknowledges receipt of a bonus rental payment of Four Thousand Dollars (\$4,000.00) per acre on the original 41 leased acres, for a total of One Hundred Sixty-Four Thousand Dollars (\$164,000.00). The Lessee shall now pay to the Department a bonus rental payment for the additional 135 acres, a payment of Five Hundred Forty Thousand Dollars (\$540,000.00). The Lessee shall remit the bonus rental payment at the time the Lessee delivers to the Department signature pages of this Lease duly executed by the Lessee. The Department shall not deposit this payment until this Amendment has been fully executed.

THIRD, Section 29 of the Original Lease shall be removed and replaced with the following language:

29. COMMONWEALTH CONTRACT TERMS AND CONDITIONS

29.01 The Lessee agrees to comply with the Commonwealth Contract Terms and Conditions, attached hereto in Exhibit C, and made a part hereof.

FOURTH, Except as explicitly provided by this Amendment, the other provisions of the Original Lease shall remain in full force and effect.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed by their proper officers, all hereunto duly authorized, on the date first above written.

WITNESS:

SWN PRODUCTION COMPANY, LLC

Federal Identification No. 71-0358796

By: Julia Wynne
(Signature)

Name: Julia Wynne
(Print or Typed)

(Principal Name)
By: MKB
(Signature)

Name: Michael K. Bishop
(Print or Typed)

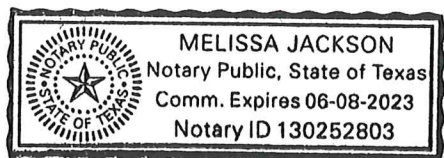
Title: Manager – Northeast Appalachia Division
(Member or Manager)

ACKNOWLEDGMENT

STATE OF Texas, :
COUNTY OF Harris : ss.

On this, the 16th day of March, 2022, before me, the undersigned officer, personally appeared Michael K. Bishop, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, acknowledged that he, being authorized to do so, executed this instrument in his capacity as Manager-Northeast Appalachia Division of SWN Production Company, LLC, and that the same was executed for the purposes contained therein as the act and deed of said company.

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



Melissa Jackson
Notary Public

My Commission Expires: 06-08-2023

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES


JOHN W. NORBECK

Deputy Secretary for Parks and Forests

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF DAUPHIN :

On this, the 26th day of April, 2022, the foregoing instrument was acknowledged before me, the undersigned officer, by John W. Norbeck, who acknowledged himself to be the Deputy Secretary for Parks and Forestry of the Department of Conservation and Natural Resources, in the Commonwealth of Pennsylvania, and being authorized to do so, executed the foregoing instrument, in the capacity therein stated and for the purposes therein contained.

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



Notary Public

My Commission Expires: 8/22/2023

Commonwealth of Pennsylvania - Notary Seal
TERESA MARIE SHEELY - Notary Public
Dauphin County
My Commission Expires Aug 22, 2023
Commission Number 1235839

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

APPROVED AS TO LEGALITY AND FORM:



Chief/Assistant Counsel
Department of Conservation and Natural Resources



2022.05.06 12:16:30
-04'00'

Office of General Counsel



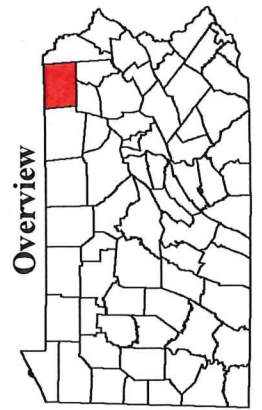
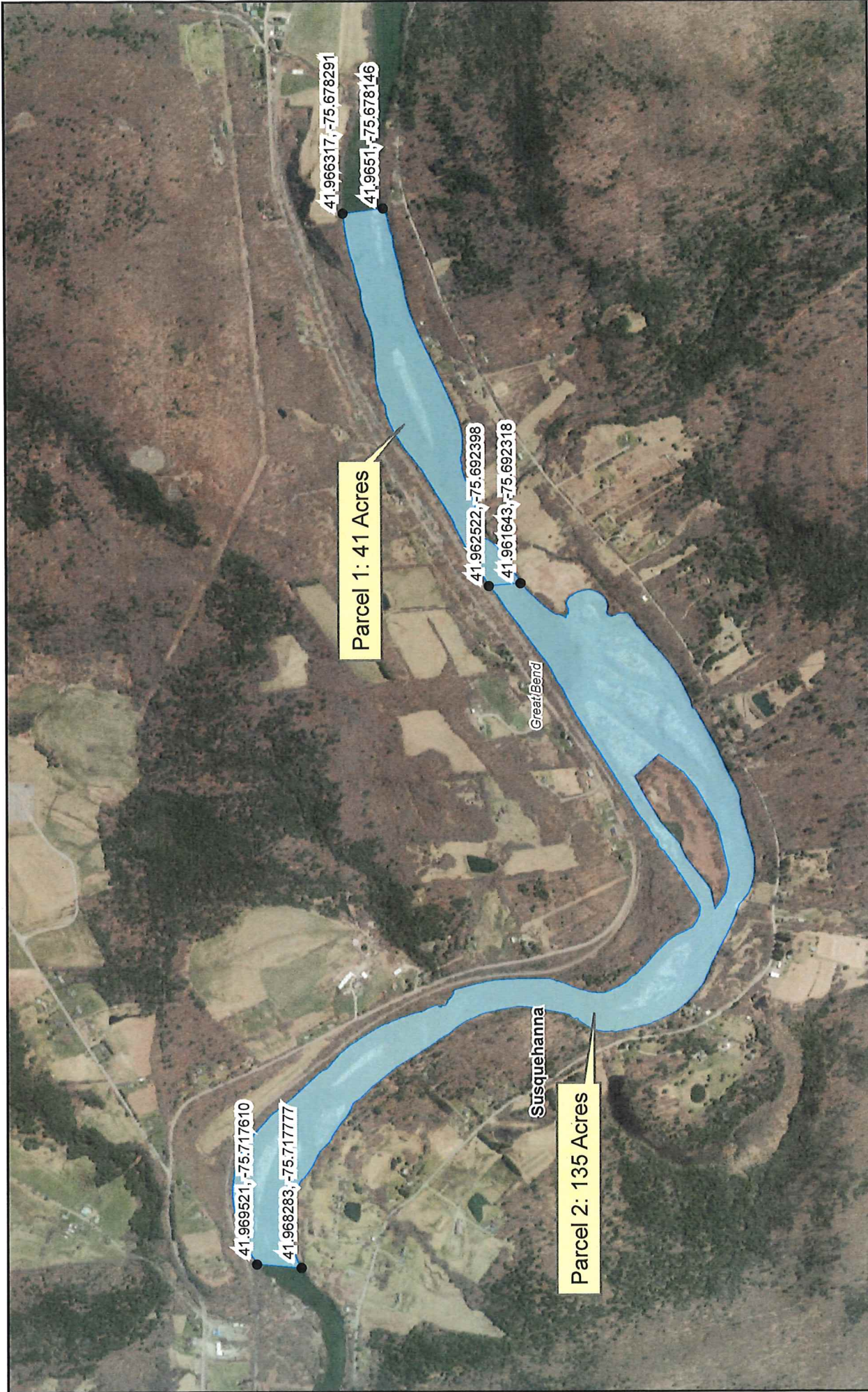
Digitally signed by David E. Stover,
Senior Deputy Attorney General
Date: 2022.05.26 13:53:05 -04'00'

Office of Attorney General

APPROVED:



GOVERNOR OF PENNSYLVANIA



- Overview**
- Bounding Coordinates
 - Leased Segment
 - PA Municipalities
 - PA Counties

pennsylvania
DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES
Bureau of Forestry
Minerals Division

Coordinate System: NAD 1983 Lambert Conformal Conic
Projection: Lambert Conformal Conic

First Amendment Exhibit A
State River Tract 2041
Contract No. M-2102041-11
Susquehanna River
Susquehanna County
Total Lease Area = 176 Acres

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

FIRST AMENDMENT EXHIBIT "B"

DESCRIPTION OF LEASED PREMISES FOR TRACT 2041

Attached to and made a part of that certain Oil and Gas Lease, Streambed Tract 2041, Contract No. M-2102041-11, by and between: **COMMONWEALTH OF PENNSYLVANIA**, Lessor, and **SWN PRODUCTION COMPANY, LLC**, Lessee.

The following parcels contain approximately 176 acres of submerged lands lying within the bed of Susquehanna River between the ordinary low water marks in Susquehanna County, Pennsylvania bounded and described as follows:

Parcel 1:

Beginning at a point on the northern bank of Susquehanna River located in Great Bend Township, Susquehanna County (latitude 41.962522, longitude -75.692398); thence crossing Susquehanna River to a point on the southern bank of Susquehanna River located in Great Bend Township, Susquehanna County (latitude 41.961643, longitude -75.692318); thence continuing eastward along the southern bank to a point in Great Bend Township, Susquehanna County (latitude 41.965100, longitude -75.678146); thence crossing Susquehanna River to a point on the northern bank of Susquehanna River located in Great Bend Township, Susquehanna County (latitude 41.966317, longitude -75.678291); thence continuing westward along the northern bank of Susquehanna River, to the place of beginning, containing approximately 41 acres.

Parcel 2:

Beginning at a point on the northern bank of Susquehanna River located in Great Bend Township, Susquehanna County (latitude 41.962522, longitude -75.692398); thence crossing Susquehanna River to a point on the southern bank of Susquehanna River located in Great Bend Township, Susquehanna County (latitude 41.961643, longitude -75.692318); thence continuing westward along the southern bank to a point in Great Bend Township, Susquehanna County (latitude 41.968283, longitude -75.717777); thence crossing Susquehanna River to a point on the northern bank of Susquehanna River located in Great Bend Township, Susquehanna County (latitude 41.969521, longitude -75.717610); thence continuing eastward along the northern bank of Susquehanna River, to the place of beginning, containing approximately 135 acres. This parcel excludes a certain river island, described as the following: 13.96875 acres, more or less, as vested, located in Great Bend Township, Susquehanna County, Pennsylvania, and being the

same land conveyed by deed dated December 21, 2005, from James R. Beavan and Shirley L. Beavan, husband and wife, and recorded on January 9, 2006, as Instrument No. 200600311 in the Office of the Recorder's Office of Susquehanna County, Pennsylvania.

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

EXHIBIT C

COMMONWEALTH CONTRACT TERMS AND CONDITIONS

1. COMMONWEALTH HELD HARMLESS

- a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- b. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

2. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

- a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- c. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
- d. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain

from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.

- e. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- f. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- g. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- h. 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.
- i. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

- j. 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.

3. CONTRACTOR INTEGRITY PROVISIONS

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

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

- 1) **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- 2) **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
- 3) **"Contractor"** means the individual or entity that has entered into this contract with the Commonwealth.
- 4) **"Contractor Related Parties"** means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
- 5) **"Financial Interest"** means either:
 - a) Ownership of more than a five percent interest in any business; or
 - b) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- 6) **"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.

- 7) **“Non-bid Basis”** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

b. 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 or procurement 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 the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- 3) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- 4) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- 5) Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - a) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - b) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - c) had any business license or professional license suspended or revoked;

- d) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- e) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

- 6) Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- 7) When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- 8) Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- 9) Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- 10) 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.

4. CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- a. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- b. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has

filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

- c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- f. The Contractor may search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

5. AMERICANS WITH DISABILITIES ACT

- a. Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C.F.R. § 35.101 *et seq.*, the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of

Pennsylvania as a result of the Contractor's failure to comply with the provisions of subparagraph a above.

6. APPLICABLE LAW

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

7. RIGHT TO KNOW LAW

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
 - 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

8. OFFSET PROVISION

The Contractor agrees that the Commonwealth of Pennsylvania (Commonwealth) may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.