

AGREEMENT NO. 118849
COUNTY ALLEGHENY
MUNICIPALITY CITY OF PITTSBURGH
FEDERAL ID NO. SEA: 25-6007504
PAR: 26-1106604
SAP VENDOR NO. _____

LICENSE AGREEMENT

9th THIS LICENSE AGREEMENT (this "Agreement") is made and entered into as of this day of January, 2014 by and among the **COMMONWEALTH OF PENNSYLVANIA**, acting through the Pennsylvania Department of Transportation (the "Commonwealth") and the **URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH**, a body corporate and a redevelopment authority established and existing under the Urban Redevelopment Law of the Commonwealth of Pennsylvania ("URA"; each of the Commonwealth and URA may be referred to herein individually as a "Licensor" and collectively as "Licensors"); and the **SPORTS & EXHIBITION AUTHORITY OF PITTSBURGH AND ALLEGHENY COUNTY**, a public body, corporate and politic, organized and existing under the laws of the Commonwealth of Pennsylvania (the "SEA") and **PITTSBURGH ARENA REAL ESTATE REDEVELOPMENT LP**, a Pennsylvania limited partnership ("PAR"); each of the SEA and PAR may be referred to herein individually as a "Licensee" and collectively as "Licensees"; the Licensors and the Licensees may be referred to herein collectively as the "Parties".

RECITALS:

A. The Commonwealth has under its jurisdiction State Route (SR) 579 (a/k/a Interstate 579), Segment 0002/0780, Segment 0003/0675 (Centre Avenue Bridge) to Segment 0002/1172 and Segment 0003/1060 (Webster Avenue Bridge), located in the City of Pittsburgh, Allegheny County, Pennsylvania, and commonly known as the "Crosstown Expressway" (the "Expressway Property");

B. The URA owns an unimproved parcel of real property, located adjacent to the Expressway Property in the City of Pittsburgh, Allegheny County, Pennsylvania and designated as Block and Lot Number 2-B-257 in the Deed Registry Office of Allegheny County, Pennsylvania (the "URA Property"; the Expressway Property and the URA Property may be referred to herein collectively as the "Property"),

C. Licensees desire to undertake a redevelopment of certain parcels of real property located adjacent to the Property by, among other things, creating a specially planned zoning district (the "SP District") that would include such adjacent property and the Property;

D. In connection with Licensees' proposed redevelopment and the creation of the SP District, Licensees contemplate constructing a cover over a depressed section of the Expressway Property between Centre Avenue and Bigelow Boulevard and open green space and certain other

improvements over such cover and over a portion of the URA Property, in such manner as may be contemplated by an approved Master Redevelopment Plan proposed by PAR, the SEA and the URA and adopted and approved by the City of Pittsburgh (the "**Project**");

E. Licensees understand they will need approval of the Commonwealth to implement the Project; and

F. Licensees need to evaluate the feasibility of the Project and, in connection therewith, Licensees desire to conduct certain due diligence with respect to the Property, and Licensors are willing to permit Licensees to do so, upon and subject to the terms set forth below.

NOW, THEREFORE, in reliance upon the above Recitals which are incorporated by reference herein and made a part hereof, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the Parties hereby agree as follows:

1. **Grant of License.** Licensors hereby grant to Licensees, acting individually or in concert with one another, and their respective employees, agents, representatives, consultants and contractors (collectively, "**Licensee Representatives**"), the right and license (including the right to access the Property or portions thereof from time to time) to conduct such financial, legal, economic and other analyses, studies, and tests as are reasonably necessary to determine whether the Property is suitable for the Project, including but not limited to the right to access the Property or portions thereof to perform survey work and geotechnical and environmental assessments (collectively, the "**Activities**"). The Activities shall be carried out at Licensees' sole cost and expense. This Agreement represents a license that is limited in purpose and scope to the least amount of access which is reasonably required to undertake and complete the Activities and does not represent a lease to or create any interest in the Property or any other property owned by either Licensors or to create a partnership, joint venture or any association or relationship between Licensors and Licensees, or any of them. The applicable Licensee(s) shall provide the applicable Licensors with at least three (3) business days' prior notice of any visit to the Property. Prior to performing any environmental, geotechnical or other intrusive Activities on the Property beyond the scope of work generally performed in a Phase I environmental site assessment study, the applicable Licensee(s) shall obtain the applicable Licensors' written approval, which approval shall not be unreasonably withheld, conditioned or delayed, with respect to the scope of work intended to be performed. It is the applicable Licensee's responsibility to notify One Call and perform utility investigation in advance of exploratory work which may impact existing utility facilities. Licensees and their respective Licensee Representatives shall use reasonable efforts to minimize disruption to current activities on the Property, and to prevent damage to any personal property and structures of, Licensors and any persons utilizing the Property (including, without limitation, motorists or pedestrians utilizing the Property). Any damages by the Licensee(s) will be remedied to the Licensors' satisfaction. Roadway Notification and Approval (RNA) forms shall be prepared and sent via email to District 11 Press Office and Traffic Unit three days in advance of activities which will impact traffic. Once the RNA is approved, a press release should be written and issued to the media and other pertinent officials. Any full road closures will be submitted at least 10 days in advance of the closure, stating that traffic control measures and devices will be in accordance with all PennDOT standards and manuals. A separate traffic control plan will be submitted a minimum of two weeks in advance for review and approval. The proposed plan will include

dates, times, and durations of the traffic restrictions. The expectation is that traffic impacts will be limited to off peak hours and/or non-event weekends. Once approved, proposed changes to an approved traffic control plan will be submitted to the District Traffic Engineer. Non-compliance with an approved traffic control plan will result in removal from the highway.

2. **Term; Termination.**

(a) The term of this Agreement and the right and license granted hereunder shall commence on the date of this Agreement and shall continue for a period of twenty four (24) calendar months thereafter (the “**Initial Term**”). Following the expiration of such Initial Term, this Agreement shall thereafter automatically renew for additional consecutive terms of twelve (12) calendar months each (each, a “**Renewal Term**”), unless Licensees shall notify Licensors in writing at least thirty (30) days prior to the scheduled expiration date of the Initial Term or any Renewal Term, as applicable. Notwithstanding the foregoing, this Agreement shall terminate upon the sooner to occur of (i) the entry of the Parties and the City of Pittsburgh into a definitive Cooperation and License Agreement or Federal Aid Reimbursement Agreement or other similar agreement with respect to the Project and the development of the Property, on such terms and conditions as may be agreed upon by the Parties and the City of Pittsburgh in their sole discretion (the “**Cooperation Agreement**”) or (ii) the expiration or sooner termination of PAR’s redevelopment rights set forth in that certain Option Agreement dated September 18, 2007 by and among Lemieux Group LP, the SEA and the URA, as assigned to PAR pursuant to that certain Assignment and Assumption Agreement dated October 17, 2007, as amended by that certain Amendment of Option Agreement and Partial Release of Property dated as of October 19, 2009 (as such Option Agreement may be further amended, restated or supplemented from time to time).

(b) Notwithstanding anything herein contained to the contrary, this Agreement and the Licensees’ rights hereunder may be terminated by the Commonwealth at any time during the Initial Term or any Renewal Term, solely with respect to the Expressway Property, upon ninety (90) days’ prior notice in writing to Licensees, if (i) the Commonwealth determines, in its sole discretion, that the State Highway System of the Commonwealth requires the Expressway Property to be used in connection with the operation of a public highway in a manner that is not compatible with the Licensees’ proposed redevelopment thereof, as provided in this Agreement, (ii) if the Expressway Property ceases to be used, or is abandoned by, the State Highway System of the Commonwealth or (iii) Licensees default in the performance of any of their material obligations under this Agreement with respect to the Expressway Property and such default is not substantially cured by Licensees within sixty (60) days after written notice thereof from the Commonwealth; provided, however, if such default cannot be substantially cured within such 60-day period using commercially reasonable efforts, Licensees shall not be in default if Licensees shall have commenced such cure within such 60-day period and shall thereafter diligently proceed to complete such cure within a commercially reasonable time period thereafter.

(c) Notwithstanding anything herein to the contrary, the termination of this Agreement and Licensees’ rights hereunder with respect to the Expressway Property pursuant to Section 2(b) above shall not affect or impair this Agreement and Licensees’ rights hereunder with respect to the URA Property, and such rights shall remain in full force and effect notwithstanding any such termination for the remaining term of this Agreement.

3. **Laws; Permits.** Licensees and their respective Licensee Representatives shall comply with all applicable environmental laws and all lawful orders of any governmental authority or agency. Licensees shall, at their sole cost and expense, obtain all permits, consents, approvals and/or licenses (if any) required for the performance of the Activities undertaken pursuant to this Agreement.

4. **Indemnification.** To the extent permitted by law, Licensees hereby jointly and severally assume any and all risks associated with the Activities to be conducted by Licensees or their respective Representatives on the Property. Licensees hereby agree to indemnify, defend and hold Licensors harmless from and against any and all claims, demands, damages, expenses, losses, fees, liabilities and/or suits or other actions arising from or relating to the activities of Licensees and their respective Representatives in exercising their rights under this Agreement with respect to the Property (collectively, the “**Indemnity Events**”); provided, however, that the foregoing indemnity shall not apply to Indemnity Events that are caused by the negligence or willful misconduct of any Licensors or its respective agents, employees, or representatives.

5. **Restoration.** In the event that the Parties fail to enter into the Cooperation Agreement, Licensees shall repair and restore those portions of the Property which are in any way affected, damaged or disturbed due to the performance of the Activities to a condition which is, to the extent practical, identical to the condition that existed before the commencement of the Activities.

6. **No Liens.** Licensees shall not suffer or permit any lien to be filed against the Property for any labor or materials in connection with work of any character performed or claimed to have been performed on the Property at the direction or sufferance of Licensees, or for any violation of Laws. In the event any such lien is filed, or threatened to be filed, against the Property, the applicable Licensors shall have the right, but not the obligation, to cause such lien to be released and Licensees shall pay, on demand, all of Licensors’ costs in connection therewith, including, without limitation, reasonable attorneys’ fees. The provisions of this Section 7 shall survive the termination or expiration of this Agreement and the License created hereby.

7. **Insurance.** Licensees shall carry, and shall cause all Licensee Representatives engaged in any of the Activities which require physical access to the Property to carry, insurance throughout the term of this Agreement, at their respective sole cost and expense, with terms, coverages and companies reasonably satisfactory to Licensors and with such increases in limits as Licensors may reasonably request from time to time, but initially Licensees shall cause the Licensee Representatives to maintain the following coverages in the following amounts:

(a) Worker’s compensation insurance in amounts required by applicable law, covering all persons employed in connection with any work done on or about the Property with respect to which claims for death or bodily injury could be asserted against the applicable Licensee Representative, Licensors, Licensee or the Property;

(b) Employer’s liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence; and

(c) Occurrence-based comprehensive general liability insurance and property damage insurance with minimum coverage of \$250,000.00 per person and \$1,000,000 per occurrence for bodily injury, including personal injury, sickness, disease or death of any of such Licensee Representative's employees or of any person, and for damages because of injury to or destruction of tangible property including loss of use resulting therefrom, and for damages because of injury to or destruction of tangible property including loss of use resulting from owned, scheduled, hired and non-owned automobiles;

The foregoing insurance shall cover each of the Licensees as a named insured and Licensors as additional insureds and shall contain a waiver of subrogation clause in favor of the Parties. Certificates evidencing such insurance shall be furnished to the applicable Licensor prior to the commencement of any Activities on the Property. Such policy or policies shall provide that termination or cancellation will not occur without at least thirty (30) days' prior written notice to Licensors.

8. **Cooperation.**

(a) To the extent permitted by law, Licensors shall cooperate with Licensees and their respective Licensee Representatives in the conduct of the Activities contemplated by this Agreement and, upon Licensees' reasonable written request, shall provide Licensees with copies of any prior studies, surveys, geotechnical information or environmental reports in Licensors' possession, and shall provide Licensees with copies of all information requests from or notices of violation by any governmental agency (that remain uncorrected) concerning the Property.

(b) Licensors shall also provide Licensees with copies of any existing abstracts of title or commitments for or policies of title insurance with respect to the Property that are in Licensors' possession or under Licensors' control.

9. **Relationship of Parties.** Nothing contained herein shall be deemed or construed by the Parties, nor by any third party, as creating the relationship of principal and agent or of landlord and tenant or of partnership or of joint venture between the Parties, or any of them.

10. **No Assignment.** The Licensees shall not transfer or assign this license or any part thereof without the prior written consent of the Licensors; provided, however, that URA shall have the right to refuse such consent in its sole discretion.

11. **Severability.** If any term, covenant, or condition of this Agreement, or the application thereof to any party or circumstance, is held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to parties or circumstances other than those to which the Agreement was held invalid or unenforceable, shall not be affected by the holding of invalidity or unenforceability. Each remaining term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

12. **Clauses Independent.** Performance of all the terms, covenants, and conditions of this Agreement shall be independent of the performance of all and every other term, covenant, and condition of this Agreement.

13. **Integration Clause.** Upon execution, the document, together with all exhibits and attachments annexed to and referenced in it, constitutes the entire agreement between the parties. All prior or contemporaneous agreements are hereby merged into this document. No amendment or modification of this Agreement shall be valid unless it is in writing and duly executed and approved by the parties.

14. **No Implied Waiver.** No obligation of any party under this Agreement shall be deemed waived, and no breach excused, unless such waiver or consent shall be in writing and signed by the authorized official. Any consent to, or waiver of a breach under this Agreement, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

15. **Rights Cumulative.** The rights and remedies provided by this Agreement are cumulative, and the use or non-use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

16. **Commonwealth Standard Clauses.** The Licensees shall comply, and shall cause their consultant(s) and contractor(s) to comply, with the current versions of the Contractor Integrity Provisions, Nondiscrimination/Sexual Harassment Clause, Provisions Concerning the Americans with Disabilities Act, Contractor Responsibility Provisions, and Contract Provisions – Right to Know Law 8-K-1532, attached hereto and incorporated herein as Exhibits “A” through “E”. As used in these Exhibits, the term “Contractor” refers to the Licensees, their consultant(s), and their contractor(s).

17. **Offset Provision.** The Licensees agree that the Commonwealth may set off the amount of any state tax liability or other obligation of the Licensees or its subsidiaries to the Commonwealth against any payments due the Licensees under any contract with the Commonwealth.

18. **Counterpart Originals.** This Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together as a single instrument.

19. **Authority.** Licensors and Licensees each hereby represent and warrant to the other that each has the requisite authority to enter into this Agreement and perform each party’s respective obligations hereunder. Without limitation of the foregoing, the Commonwealth hereby represents and warrants to Licensees that Licensees and their respective Licensee Representatives shall be permitted to conduct the Activities on and about the Commonwealth Property without the separate approval of the United States Department of Transportation or any other Federal agency or department.

20. **Notices.** All notices must be in writing and are effective only when deposited in the U.S. mail, certified and postage prepaid, or when sent via overnight delivery. Notices shall be addressed as follows:

If to Licensors:

Commonwealth of Pennsylvania
Department of Transportation
District 11-0
45 Thoms Run Road
Bridgeville, PA 15107
Attn: H. Daniel Cessna, District Executive

Urban Redevelopment Authority of
Pittsburgh
200 Ross Street, 12th Floor
Pittsburgh, PA 15219
Attn: Executive Director

with a copy to:

Urban Redevelopment Authority of
Pittsburgh
200 Ross Street, 12th Floor
Pittsburgh, PA 15219
Attn: General Counsel

If to Licensees:

Sports & Exhibition Authority of Pittsburgh
and Allegheny County
171 Tenth Street, 2nd Floor
Pittsburgh, PA 15222
Attn: Executive Director

Pittsburgh Arena Real Estate
Redevelopment LP
1001 Fifth Avenue
Pittsburgh, PA 15219
Attn: Travis E. Williams, Esq.
Chief Operating Officer/General Counsel

with a copy to:

Reed Smith LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222-2716
Attn: Dusty Elias Kirk, Esq.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

LICENSORS:

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

By: _____
Its: Deputy Secretary of Transportation

**URBAN REDEVELOPMENT AUTHORITY OF
PITTSBURGH**

By:  _____
Its: Acting Executive Director

LICENSEES:

**SPORTS & EXHIBITION AUTHORITY OF
PITTSBURGH AND ALLEGHENY COUNTY**

By: _____
Its: _____

**PITTSBURGH ARENA REAL ESTATE
REDEVELOPMENT LP**

By: Pittsburgh Arena Real Estate Redevelopment LLC, its
sole General Partner

By:  _____
Its: COO

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

LICENSORS:

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

By: 
Its: Deputy Secretary of Transportation

**URBAN REDEVELOPMENT AUTHORITY OF
PITTSBURGH**

By: 
Its: Acting Executive Director

LICENSEES:

**SPORTS & EXHIBITION AUTHORITY OF
PITTSBURGH AND ALLEGHENY COUNTY**

By: 
Its: Executive Director

**PITTSBURGH ARENA REAL ESTATE
REDEVELOPMENT LP**

By: Pittsburgh Arena Real Estate Redevelopment LLC, its
sole General Partner

By: _____
Its: _____

APPROVED AS TO LEGALITY
AND FORM

FUNDS COMMITMENT DOC. NO. _____

CERTIFIED FUNDS AVAILABLE UNDER

SAP NO. _____

SAP COST CENTER _____

GL ACCOUNT _____

AMOUNT _____

BY

for Chief Counsel

Date

BY

Deputy General Counsel

Date

BY

for Comptroller

Date

BY

Deputy Attorney General

Date

JOINDER BY CITY OF PITTSBURGH:

The City of Pittsburgh, a city of the second class and a political subdivision of the Commonwealth, joins into this Agreement for the purpose of affirming its obligation to enter into the Cooperation Agreement in accordance with the terms and conditions set forth in Section 2(a) of this Agreement, and for such other purposes as may be required by applicable law or regulations of the Commonwealth.

CITY OF PITTSBURGH

By: _____

10/01/13

Its: _____

Director of Public Works

APPROVED AS TO FORM:

By: _____

City Solicitor

Reviewed by: _____

Assistant City Solicitor

CONTRACTOR INTEGRITY PROVISIONS

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

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

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act*, 65 Pa.C.S. §§1101 et seq.; the *State Adverse Interest Act*, 71 P.S. §776.1 et seq.; and the *Governor's Code of Conduct, Executive Order 1980-18*, 4 Pa. Code §7.151 et seq., or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18*, 4 Pa. Code §7.151 et seq. or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not

accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.

8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law*, 65 P.S. §§ 67.101-3104, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
 - a. Approved in writing by the Commonwealth prior to its disclosure; or
 - b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
 - c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
 - d. Necessary for purposes of Contractor's internal assessment and review; or
 - e. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
 - f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
 - g. Otherwise required by law.
10. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has 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

EXHIBIT "A"

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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.

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

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.

PROVISIONS CONCERNING THE *AMERICANS WITH DISABILITIES ACT*

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth of Pennsylvania (Commonwealth).

During the term of this agreement, the contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of the *Americans with Disabilities Act*, 28 C. F. R. § 35.101 et seq., the contractor understands and agrees that 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 through contracts with outside contractors.
2. The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of paragraph 1.

EXHIBIT "C"

October 25, 2010

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.

1. 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.
2. 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.
3. 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.
4. 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.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other 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.
6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

Contract Provisions – Right to Know Law 8-K-1532

- 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.

Revised February 1, 2010

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.