**AGREEMENT FOR DELEGATION** **OF**

**ADMINISTRATIVE RESPONSIBILITIES**

**FOR** **THE** **PENNSYLVANIA**

**NUTRIENT MANAGEMENT**

**AND**

**MANURE MANAGEMENT PROGRAMS**

THIS DELEGATION AGREEMENT is made this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2\_\_\_, by and between the Commonwealth of Pennsylvania (“Commonwealth”) through its Pennsylvania State Conservation Commission ("Commission") and its Pennsylvania Department of Environmental Protection (“DEP”), and the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County Conservation District ("District").

WITNESSETH:

WHEREAS, the Commonwealth’s Nutrient Management Program (“Act 38 program”) and Odor Management Program implement the Nutrient and Odor Management regulations at 25 Pa. Code, Chapter 83 as authorized by the Nutrient and Odor Management Act, 3 Pa. C.S.A. §§ 501 et seq. (“Act 38”), which includes provisions for nutrient and odor management, the Clean Streams Law, 35 P.S. §§ 691.1 et seq. and the Conservation District Law, 3 P.S. §§ 849 et seq. The District will be the Commission's designee/agent in administering the Act 38 Program and Odor Management Program, as further outlined in this agreement;

WHEREAS, the Commonwealth’s Manure Management Program (“Chapter 91 program”) implements the provisions of 25 Pa. Code § 91.36 of the Clean Streams Law regulations, relating to pollution control and prevention at agricultural operations, as authorized by the Clean Streams Law, 35 P.S. §§ 691.1 et seq. § 1920-A of the Administrative Code of 1929, 71 P.S. § 510-20, and the Conservation District Law, 3 P.S. §§ 849 et seq. The District will be the DEP’s designee/agent in administering Pennsylvania’s Manure Management Program, and the public notice requirements for Concentrated Animal Feeding Operations (“CAFOs”) under the Clean Streams Law;

WHEREAS, the Commonwealth’s Manure Hauler and Broker Program (“Act 49 program”) implements the provisions of the Commercial Manure Hauler and Broker Certification Act, 3 P.S. §§ 2010.1 et seq. (“Act 49”) which establishes a program to certify commercial manure brokers to develop Nutrient Balance Sheets (“NBSs”) related to exporting and importing manure, and requires brokers to submit copies of the NBSs to county conservation districts (“districts”). The District will be the Commission's designee/agent in administering certain duties and responsibilities of Pennsylvania's Commercial Manure Hauler and Broker Program, as further outlined in this agreement;

WHEREAS, § 850 of the Conservation District Law, 3 P.S. § 850, declares the policy of the Commonwealth to provide for the conservation of soil, water, and related resources of the Commonwealth;

WHEREAS, the Commission is authorized to delegate regulatory and enforcement functions to districts pursuant to § 859(2)(b) of the Conservation District Law, 3 P.S. § 859(2)(b);

WHEREAS, the Commission is authorized to delegate administrative or enforcement authority, or both, to districts that have an adequate program and sufficient resources for Act 38 program implementation pursuant to § 504(9) of Act 38, 3 Pa. C.S.A. § 504(9);

WHEREAS, the program and policies of the District are acceptable to the Commission;

WHEREAS, DEP is authorized to delegate regulatory and enforcement functions to districts under the Clean Streams Law and the rules and regulations promulgated thereunder, including the Chapter 91 program, pursuant to § 859(2)(a) of the Conservation District Law, 3 P.S. § 859(2)(a);

WHEREAS, the administration of program funding under this agreement will be consistent with the statement of policy titled, “Nutrient Management Funding Program,” 25 Pa. Code, Chapter 83, Subchapter E; and

WHEREAS, such laws, regulations, programs and policies provide for the execution of this agreement for the delegation by and between the District, DEP and the Commission for the accomplishment of work by conducting District activities and completing required output measures as described in Attachment A attached hereto.

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

1. **GENERAL CONDITIONS:**

**DELEGATION:**

1. The Commission and DEP hereby delegate to the District certain responsibilities of the Act 38 program and Chapter 91 program, and Act 49 program, in the respective county for program implementation in accordance with all applicable state statutes, rules, regulations, and the requirements set forth in Attachment A;

**WORK ELEMENTS:**

b. The District must obtain prior written approval from the Commission and DEP, of changes or additions to the General and Special Conditions of this agreement, including but not limited to the program required output measures contained in Attachment A:

**INDEMNIFICATION:**

c. The Commonwealth will defend and indemnify District directors, associate District directors, and District employees when performing delegated duties or functions to the same extent as it defends and indemnifies Commonwealth employees; and all directors and employees shall have all immunities afforded by law to Commonwealth employees, 3 P.S. § 852(2);

d. At the request of the Commission, the Attorney General and/or Office of General Counsel will provide legal services to districts as required in relation to the duties and functions outlined in the agreement, 3 P.S. § 852(2);

**ADDITIONAL TERMS AND CONDITIONS:**

e. The District shall comply with the terms and conditions of Attachment B, Provisions for Commonwealth Contracts; Attachment C, Staff Resources; Attachment D, Proposal; Attachment E, Federal Requirements, and Attachment F, Worker Protection, all attached to this agreement. For purposes of Attachment B, all references to the “Contractor” or “Grantee” are references to the “District;”

**SUSPENSION OF DELEGATION:**

f. When the terms and conditions of the agreement are not materially being met, the Commission and DEP, whichever is the appropriate delegating agency, may, after a 30-day notice, suspend the District's authority under this agreement until corrective action has been taken to the satisfaction of the Commission or DEP, whichever appropriate, or until the agreement is terminated;

**TERMINATION:**

g. This agreement may be terminated by either the District or the Commission or DEP, whichever agency is appropriate, upon thirty (30) days prior written notice to the other parties. Within 10 days of such termination, the District shall release to the Commission or DEP, whichever agency is appropriate, all files, records, and unspent funds pertaining to this agreement;

**EXAMINATION OF RECORD:**

h. The Commission and DEP, or its agent, shall have access to and the right to examine any pertinent books, documents, letters, and reports or records involving transactions relating to the District's delegated authorities; and

**NO FINANCIAL INTEREST:**

i. No District Director, District employee, Commission member, or staff of the Commission or DEP, is permitted to obtain financial benefits for himself/herself, a member of their family, or a business with which they are associated, through or as a result of, work under this agreement. This shall not preclude the participation of the above individuals in the financial and technical assistance programs developed under Act 38, as long as their participation follows those procedures outlined in the “Pennsylvania Nutrient Management and Manure Management Manual Program, Act 38 and Chapter 91 Administrative Manual” (“Administrative Manual”) and is in accordance with applicable law, including the Public Official and Employee Ethics Act, 65 Pa. C.S. §§ 1101 et seq.

**TERM:**

j. This agreement shall become effective on the date it is fully executed by the Commonwealth. The term of this agreement shall be for five (5) years from the effective date.

2. **SPECIAL CONDITIONS:**

a. Duties and Responsibilities of the District. The District shall:

(1) Employ or retain certified employees as identified in Attachment C that are necessary to carry out the District's responsibilities as specified in this agreement. If a position becomes vacant due to a change in employment status or job responsibilities, the District shall, without delay, take all necessary actions to fill the vacancy;

1. Perform all administrative functionsin conformance with Administrative Manual distributed by the Commission;
2. Approve and implement written polices as directed by the Commission or DEP, whichever agency is appropriate, including those related to public access, public comment, conflict of interest, and administration of the programs. The Commission will provide sample policies for the District to consider in their efforts to develop these guidance documents;
3. Provide consultative assistance to the Commission and DEP, and shall make available to the Commission or DEP, all pertinent files and records pertaining to appeals and enforcement cases that the Commission or DEP is handling within the county; and
4. Follow the guidance of the Commission or DEP on proper biosecurity measures when carrying out their activities under the Act 38, Act 49, or Chapter 91 programs respectively.

b. Duties and Responsibilities of the Commission Relating to the Act 38 and Act 49 Program. The Commission shall:

(1) Provide technical oversight and training to the District on Act 38;

(2) Provide the Administrative Manual to the District, which shall include hard copies of the required reporting forms, and electronic files containing these standardized forms;

(3) Provide financial assistance to the extent funds are available, to the District for execution of the duties and responsibilities described herein, according to the Administrative Manual and the statement of policy titled, “Nutrient Management Funding Program” (25 Pa. Code, Chapter 83, Subchapter E).

(4) Be available to the District for consultation on matters relating to the programs, provide program information regularly and timely through Commission staff, including related correspondence or publications to ensure adequate communications concerning program changes;

(5) Provide for administrative, technical, and appropriate computer training to the District staff, and be available, as resources allow, to attend District meetings and participate in other circumstances as requested by the District;

(6) Ensure an adequate enforcement program is in place to process enforcement actions that the District transmits to the Commission;

(7) Provide to the District informational materials developed for the programs to assist the District in informing the interested public;

(8) Be responsible to perform those duties required by Act 38 that have not been delegated to the District;

(9) Provide technical oversight and training to the District for execution of the duties and responsibilities described in Attachment A for Act 49;

(10) Be available to the District for consultation on matters relating to Act 49; and

(11) Be responsible to perform enforcement under Act 49 for non-compliant haulers or brokers.

c. Duties and Responsibilities of the DEP Relating to the Chapter 91 Program. The DEP shall:

(1) Provide technical oversight and training to the District for execution of the duties and responsibilities described in Attachment A;

(2) Provide financial assistance to the District for execution of the duties and responsibilities described in Attachment A;

(3) When requested by the District, consult with the District on matters relating to the program;

(4) Provide to the District informational materials developed for the program to assist the District in informing the interested public; and

(5) Be responsible to perform enforcement under 25 Pa. Code § 91.36 for non-compliant operations.

d. Project Monitoring.

(1) The District, Commission staff, and DEP staff, whichever agency is appropriate, shall meet at the request of any of the parties to discuss the progress of work under this agreement and any related issues.

(2) The District, Commission staff, and DEP staff, whichever agency is appropriate, shall immediately notify the other parties, in writing, of any unusual development or circumstance which could significantly change or otherwise affect the responsibilities outlined in this agreement.

e. Payment:.

1. Upon full execution of this agreement, delegation work (a) may, at the discretion of the Commission or DEP, be reimbursed from July 1, 2022 through the date of full execution and (b) shall be paid from the date of full execution through June 30, 2027 (the completion date). All work under this agreement shall be completed no later than the completion date. This agreement can be terminated through the arrangement described in Section 1.g.
2. An application for available funds shall be in writing on forms approved by the Commission. The application shall be received by the deadline established by the Commission. The application shall include a budget outlining anticipated expenses.

(3) The approved application and budget for the first agreement year is attached to and made part of this agreement as Attachment D. Applications and budgets for subsequent contract years shall be submitted by the District for the review and approval by the Commission without the need to amend this agreement.

(4) Claims for reimbursement and associated quarterly reports must be submitted to the Commission, or its designated agent, within twenty-five (25) days of the end of each quarter. The submission deadlines for quarterly claims and reports are as follows: April 25, July 25, October 25, and January 25. Reimbursement shall be in accordance with the attached budget. All claims must include all appropriate reports required by the Commission and DEP.

(5) The Commission will suspend claim processing until receipt of required reports or the completion of all conditions of the agreement.

(6) Budget modifications between the categories of an approved budget for up to 10 percent of the total annual budget amount must be approved in writing by the Commission prior to expenses being incurred. All other budget modifications shall require the submission of Attachment D with amendments to the district line items. .

f. Advance Payments

(1) Advance payments may be requested in accordance with procedures set forth in the statement of policy titled, “Nutrient Management Funding Program” (25 Pa. Code, Chapter 83, Subchapter E).

(2) All requests for advance payments shall be made on forms approved by the Commission.

(3) Advance payments to cover expenses for the first quarter of each year may be requested of the Commission. Advance payments will be based on demonstrated need in accordance with the Commission approved District budget submitted with the application.

(4) Advance payments and unspent funds shall be placed in an insured, interest bearing account. To document the amount of interest to be paid or credited to the Nutrient Management Fund, the District may use methods that are equal to the method used by the account holding the unspent program funds that follow generally accepted accounting principles.

(5) Requests for advance payments to cover expenses for the first quarter of each year must be submitted to the Commission by January 15, or as established by the Commission.

(6) Claims may be filed for reimbursement for the first and second quarter. Claims must be submitted to the Commission within fifteen (15) days of the end of the quarter.

(7) Expenses for the third quarter will be submitted, but no payments will be processed until final claims are submitted at the end of the fourth quarter. A final yearly payment will be made after balancing money provided in the initial advanced payment with claims for the third and fourth quarter. No advancement of funds will be made until final approval of the previous quarterly report of expenditures is given by the Commission.

(8) The Commission will suspend advance payment processing until receipt of required reports or the completion of all conditions of the agreement.

g. Miscellaneous

(1) Changes – The parties agree to execute minor adjustments to this agreement through a fully executed letter of mutual consent and significant adjustments to this agreement through a fully executed written amendment. Minor adjustments shall include changes to the Required Output Measures in Attachment A. Significant adjustments shall include:

1. Changes to the scope of work involving the addition of specific work tasks.
2. Changes in payment terms. However, reallocation of budget category dollar amounts to and from other budget categories shall be considered minor adjustments, provided the maximum contract dollar amount payable by the Commission or DEP to the District is not exceeded.
3. Increase in the maximum dollar reimbursement amount to be paid by the Commission or DEP to the District.

(2) This agreement embodies the entire understanding among the parties with respect to the subject matter hereof, and replaces any and all prior understandings, representations, and discussions relating to the subject matter of this agreement.

(3) The parties will receive any notice, in writing, to the following individuals at the following addresses:

Commission: Executive Secretary

State Conservation Commission

2301 N Cameron Street, Room 311

Harrisburg, Pa 17110

DEP: Director, Chesapeake Bay Program Office

Department of Environmental Protection

Rachel Carson State Office Building

400 Market Street

Harrisburg, PA 17105

District: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN WITNESS WHEREOF, the parties herto have caused the agreement to be executed on the effective date as define herein:**

##### State Conservation Commission

X \_\_\_\_\_\_\_\_\_\_

Signature of Executive Secretary Date

State Conservation Commission

##### Department of Environmental Protection

X \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Department of Environmental Protection Date

##### Conservation District

County \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Conservation District Vendor Id. No. Federal ID No.

X \_\_\_\_\_\_ X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_

Signature of the Secretary of the Date Signature of the Chairman of the Date

Conservation District Conservation District

##### State Contractual Approving Authorities

Approved as to legality and form:

X\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_

Signature of Office of Date Signature of Office of Chief Counsel Date

Attorney General Department of Environmental Protection

X \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_

Signature of Office of General Counsel Date

I hereby certify funds in the amount of \_\_\_\_\_\_\_\_\_\_\_\_ are available under appropriation

2009800000 – 2022 - 3533020000 – 3530239001 – 6600400 \_\_\_\_\_\_\_\_\_\_\_\_\_

7025800000 – 2022 - 3533020000 - V24953000000 - 6600300 (CFDA# 66.466) \_\_\_\_\_\_\_\_\_\_\_\_\_

2009800000 – 2022 - 3533020000- V24953000000 – 6600400 \_\_\_\_\_\_\_\_\_\_\_\_\_

X \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Comptroller Date

Doc. No. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**ATTACHMENT A**

**REQUIRED OUTPUT MEASURES**

**PROGRAM EDUCATION AND OUTREACH:**

**A. The conservation district will provide education and outreach on the Nutrient and Odor Management Programs encourage participation from the public and expect participation from agricultural operations** **within their county.**

***REQUIRED OUTPUT MEASURES*:**

1. The District will coordinate nutrient management education and outreach activities with other relevant cooperating agencies and organizations in the county, such as the United States Department of Agriculture’s (USDA) Natural Resources Conservation Service (NRCS) and Farm Service Agency (FSA), Pennsylvania State University. This coordination may take place using a more informal one-on-one or small-group process for discussing education and outreach needs and activities with these parties outside of a formal meeting.
2. The District will participate in a minimum of two informational, educational and/or training programs per calendar year (this could take place through local “crop days,” “dairy days,” etc.). These programs are to provide information on the Nutrient Management Program and incentives provided to support and encourage program participation (both Concentrated Animal Operations (“CAOs”) and Volunteer Animal Operations (“VAOs”). The District may cooperate with other appropriate agencies and/or other conservation districts to sponsor. Joint programs will count as one program for each sponsoring district.
3. Separately or in cooperation with other agencies, the District will develop a minimum of three informal educational efforts per calendar year (e.g. newsletters, newspaper articles, brochures, digital media (social media), presentations, TV and radio public announcements, etc.). These efforts are to provide appropriate information to individuals that operate agricultural operations (“operations”), certified Nutrient Management Specialists (“NMSs”) developing nutrient management plans (“NMPs”) for operations within the county, and the general public.
4. The District will provide information to interested persons on the Nutrient and Odor Management Program’s (Act 38) financial assistance programs supporting NMP development and implementation and advise agricultural operators (“operators”) of alternative funding sources for NMP implementation. If funds become available, the State Conservation Commission (“Commission or SCC”) will provide additional information.
5. The District, consistent with the Nutrient Management Program Compliance Strategy, will identify operations which the District believes may be CAOs, and target program outreach and information to these operators. The District will retain a copy of the animal density status for all of the identified operations . The District will assist these operators, when requested, in determining their animal density status. When a district cannot obtain cooperation from potential CAOs or those determined to be CAOs, the District will carry out the provisions of the Commission’s enforcement strategy contained in the Administrative Manual.
   1. The task of identifying potential CAOs shall be a priority of the District. Districts shall develop a specific county procedure on how they plan to identify existing CAOs that have not yet been identified, as well as, new CAOs resulting from new construction, expansion, or loss of land.
   2. The District shall identify potential CAOs in the non-traditional Act 38 livestock industry activities such as equine, along with the traditional livestock/poultry industry activities, such as dairy, poultry, swine, beef, sheep, goats, etc., on an ongoing basis.
6. The District will provide information on the Odor Management Program to all identified CAOs and Concentrated Animal Feeding Operations (“CAFOs”), on the requirement for an Odor Management Plan for the new or expanded construction of animal housing or manure storage facilities.
   1. This information may be provided through paragraphs 5(a) and (b), above.
   2. The District will notify the SCC regional coordinator, in writing (electronic message is acceptable), when they receive a NMP for a new CAO or CAFO and/or when a CAO or CAFO NMP is amended that shows construction of new or expanded animal housing facilities or manure storage facilities.

**B. The conservation district will assist agricultural operators and Nutrient Management Specialists with implementing the** **provisions of Act 38 Program and corresponding regulations.**

***REQUIRED OUTPUT MEASURES:***

1. The District will provide assistance to agricultural operators within the county and private sector NMSs preparing NMPs for use in the county. This will include providing available preprinted resource materials (e.g. manure management manuals, fact sheets, record keeping forms, etc.) to all persons requesting information to develop a NMP within the county.
2. Districts will provide technical assistance as described in Section E below.
3. The District will assist operators of animal operations in determining if they meet the mandatory provisions of the nutrient management program in Act 38 at 25 Pa. Code, Chapter 83.

**C. The conservation district is to provide the Commission with the appropriate reports to document efforts planned or completed in the Act 38 Program.**

***REQUIRED OUTPUT MEASURES:***

The District will provide the Commission with quarterly reports that list, at a minimum: number of meetings held, number of people trained, number of educational efforts completed, numberof CAO and VAO plans received, number of on-site status reviews completed, and number of complaints received. Reports will be submitted on forms or databases supplied by the Commission.

**PROGRAM COMPLIANCE:**

**D. The conservation district shall provide the lead role in evaluating Nutrient Management Plans to ensure they comply with the Nutrient Management regulations.**

***REQUIRED OUTPUT MEASURES:***

1. The District will review and approve/disapprove submitted NMPs, plan amendments, plan updates, and plan transfers in accordance with those procedures outlined in the Nutrient Management regulations, the Administrative Manual, the “Pennsylvania Technical Guide published by the USDA Natural Resource Conservation Service (“Technical Manual,”)and policies and guidelines established by the Commission.
2. In relation to reviewing owned and rented lands included in a NMP, the District will perform a site visit to all owned and rented land (crop management units (“CMUs”), included in the plan) to determine if the plan includes all the required information and that the information in the plan adequately represents the operation.
3. In relation to Nutrient Balance Sheets (“NBSs”) submitted as part of a NMP, the District will, based on their working knowledge of the importing operation, determine if the NBSs adequately represent the importing lands. If the District does not have a working knowledge of the importing operation, nor other agency staff who can provide this information to the District, the District will perform a site visit to assess the importing site to ensure the accuracy of the NBSs.
4. If NBSs for importing operations span multiple counties, the county that is reviewing the NMP shall ask for, and the importing counties shall assist, with the review and verification of the NBSs’ accuracy.  The county that is reviewing the NMP will take the lead role in the development of technical comments pertaining to the accuracy of the NBSs in accordance with those procedures outlined in paragraph 1, with the importing county providing input.
5. The District NMS will coordinate their NMP review effort with District staff involved with the Chapter 102 program, to verify that the operation under review has a current Agricultural Erosion and Sediment Control Plan under 25 Pa. Code § 102.4(a) in accordance with the Act 38 timeframe provided for this requirement
6. Where a NMP is submitted for Act 38 review and approval, and that plan will also be used to meet the NRCS Comprehensive Nutrient Management Plan (“CNMP”) or 590 standard or the DEP CAFO program requirements, the District will notify the other relevant agencies of their review and coordinate their review with that agency.
7. Where a NMP for an agricultural operation identified as a CAFO is received by the District, the District shall submit the required Pennsylvania Bulletin notices to DEP, following the program guidance contained in the Administrative Manual. The District will communicate and cooperate with the DEP in the review of those plans.
8. NMPs and plan amendments developed by the District’s personnel will be reviewed by a Publicly Certified Nutrient Management Specialist employed by another district. Two or more districts may enter into a reciprocal cooperative agreement whereby they will each review and comment on the other’s plans. The Board of the county where the operation is located will act on the plan for approval or disapproval. Alternatively, the Commission may assist by reviewing plans for those rare instances where the district developing the plan cannot obtain plan review assistance from another district.
9. The District will review all information submitted to implement approved plans, and to assess compliance with approved plans and the regulations. The District shall perform on-site visits at those operations thought to be out of compliance with their approved plan or the regulations based on the review of these submitted materials. Where this visit indicates that the operation is out of compliance with the approved plan or regulations, the District shall attempt to get the operator to voluntarily comply in accordance with the Administrative Manual.
10. The District Board will, based on the District Specialist's recommendation, and in accordance with the Administrative Manual, submit to the Pennsylvania Department of Agriculture (PDA), the names of those NMSs meeting the criteria established for NMS certification revocation. These criteria are contained in the Nutrient Management Certification regulations at 7 Pa. Code Chapter 130b. The District will also submit to the PDA any supporting documentation that verifies the basis for submitting these names.
11. The District will provide the Commission with quarterly reports that summarize those activities performed during the report period. Reports will be submitted on forms or databases supplied by the Commission and according to the schedule approved by the Commission.

**E. The conservation district will provide technical assistance in accordance with Commission guidelines** **and consistent with the Pennsylvania Technical Guide published by the USDA Natural Resource Conservation Service.**

***REQUIRED OUTPUT MEASURES:***

1. In accordance with that section of the Administrative Manual regardingAct 38 NMP development for CAOs and CAFOs and Act 38 NMP development for Voluntary Animal Operations VAOs, the District will, to the extent possible, provide technical direction or assistance to private sector specialists and agricultural operators in the development of NMPs or portions of NMPs.
   1. The Administrative Manual section labeled Act 38 NMP development for CAOs and CAFOs and Act 38 NMP development for VAOs, describes the policy concerning the District's limited involvement in writing NMPs plans, and the Commission’s strong direction to districts to assist operators, their private sector specialists, as well as individually certified agriculture operators in their development of those portions of the plan which the District has expertise. This may include assisting others with developing the Stormwater or Manure Management sections of plans, when requested.

Full plan development by District staff (where the District staff is the person listed in the plan as the planner) is considered a low priority, except for certification purposes. Plan development activities may be provided if the District Board of Directors approves, resources permit and when all other delegated activities, including assistance with plan implementation, are satisfied. Districts are encouraged to enact a technical assistance policy consistent with the duties described in this section.

* 1. The District will complete an animal equivalent unit (“AEU”)/acre calculation sheet for any individual requesting that the District write their NMP. This calculation sheet will be signed by the agricultural operator and retained at the District office to document the CAO status of those individuals requesting plan writing assistance from the District.
  2. The District will provide a letter, within 10 business days, to all applicable agricultural operators who request the District to write their NMP, indicating that the District cannot author NMPs unless extenuating circumstances exist, and recommends utilizing the services of a private sector specialist or becoming certified to develop their own plan. A listing of available certified commercial NMS should be provided with this correspondence.

2. To assist in NMP implementation, the District will provide or facilitate, as resources allow, general technical assistance to program participants with approved NMPs. Technical assistance may include inventory and evaluation; developing or assisting in the development of designs; cost estimates; construction monitoring; and certification of the proposed project(s). District technical assistance must be consistent with authority provided under the USDA NRCS Job Approval Rating System or a Pennsylvania professional engineering certification. Where District staff do not hold appropriate authority for a particular project, the District may assist the appropriate agency staff but may not provide final approval for certification of the project.

3. The District will provide technical assistance, as resources allow, consistent with paragraph 2, above for the Agriculture Linked Investment Program (AgriLink) and the Nutrient Management Plan Implementation Grant Program where funding for implementation of financial assistance programs is available to the Commission. Additional details will be provided if funding becomes available.

**F. The conservation district will perform status reviews on Concentrated Animal Operations, Concentrated Animal Feeding Operations, and Volunteer Animal Operations with approved Nutrient Management Plans to assess plan implementation efforts.**

***REQUIRED OUTPUT MEASURES:***

* 1. The District will assess NMP implementation by performing annual on-site status reviews on all CAOs and CAFOs with approved plans. All CAOs and CAFOs are to be visited each year according to a formalized process for status reviews established by the Commission. Districts unable to meet this delegation requirement must contact the Commission to discuss a possible alternative schedule.
  2. For those operations that are CAFOs, districts are encouraged to coordinate joint inspections with DEP to efficiently utilize program resources.
  3. The District shall assist CAOs and CAFOs determined to be out of compliance based on an on-site status review, with the implementation of Best Management Practices (“BMPs”) identified in their approved plan and to comply with the Nutrient Management regulations. Operations that fail to come into compliance under the District’s efforts shall be referred to the Commission for further action, as directed in the Administrative Manual.
  4. The District shall perform status reviews on VAOs (non-CAO, non-CAFO) with approved NMPs at least once every 3 years. These site visits should be structured as informal education visits to educate the operator on the advantages of implementing the plan.
  5. As part of the status review for an operation the District will assess an operator’s implementation of the Operation and Maintenance Plan (“OMP”) for the BMPs included in the approved NMP. Additionally, the District will assess an operator’s operation and maintenance on existing BMPs that were not contained in the implementation schedule of the NMP.

**G. The conservation district will investigate complaints and other instances of non-compliancesubmitted to the District as they relate to the provisions of the Nutrient Management regulations, and attempt to bring the operation into compliance.**

***REQUIRED OUTPUT MEASURES:***

* 1. Within 7 business days of receipt of a complaint, the District will either refer the complaint to the appropriate agency if it is outside of this delegation, or if it is a complaint dealing with Act 38, the District will schedule and make a site visit to assess the issue in cooperation with other appropriate agencies or organizations. Complaints and site visits will be documented on forms provided by the Commission, with an account of the visit conveyed back to the complainant. The complaint and the site visit forms shall be retained in the District files.
  2. The District will work with those operators found to be in violation of the Nutrient Management regulations to obtain voluntary compliance with these provisions in a timely manner, as specified in the Administrative Manual: SCC Compliance and Enforcement Strategy. The District shall record any contact with these operators to document attempts to bring the areas of the operation into compliance.

1. For sites involving continued violations, the District will use the criteria established by the Commission for documentation and preparation of enforcement actions. If the District is not able to achieve compliance, it should report those instances to the Commission for further action. All actions, reports and other forms of documentation including personal observations may be used as evidence during any subsequent enforcement actions by the Commission.
2. The District will provide the Commission with quarterly reports detailing accomplishments under this agreement that list at a minimum: number of complaints, and the number and status of complaint related site visits. Reports will be submitted on forms or databases supplied by the Commission.
3. The District will conduct follow up activities consistent with the Commission’s compliance and enforcement strategies on operations that the District believes to be CAOs. Activities will include ensuring that the CAO status of the operation has been determined, assisting the operator with program requirements, and referring non-compliant CAOs to the Commission for enforcement action.
4. The District will refer all odor management complaints to the Commission, except for an odor management complaint arising from the spreading of manure.

**H. The conservation district will be the lead agency in reviewing proposed Nutrient Management Plan implementation extensions.**

***REQUIRED OUTPUT MEASURES:***

* 1. The District will acknowledge receipt of proposed extensions to the implementation schedule of approved NMPs through written correspondence to the operator, within 5 business days of receipt.
  2. The District will evaluate the proposed extensions and determine if they are acceptable based on the Nutrient Management regulations and guidance outlined in the Administrative Manual.
  3. The District will correspond with the operator proposing the extension, indicating the findings of the evaluation.
  4. The District will coordinate with or consult with DEP if the operation is a CAFO or coordinate with or consult with the appropriate agency if an enforcement action has been taken or is being considered.

**I. The conservation district will review and approve/disapprove waivers to the manure storage setback requirements in the Nutrient Management regulations.**

***REQUIRED OUTPUT MEASURES:***

1. The District will acknowledge receipt of proposed waivers through written correspondence to the operator requesting the waiver, within 5 business days of receipt of the request.
2. The District will file a copy of the proposed waiver with the operator’s approved plan.
3. The District will provide an on-site evaluation of the proposed waiver, within 20 business days of receipt of the request, utilizing the general criteria outlined in the Administrative Manual.
4. The District will, based on the above evaluation and the guidance provided by the Commission, approve/disapprove the proposed waiver, within 90 calendar days of receipt of the request.
5. The District will inform the operator requesting the waiver, in writing, of its decision to approve/disapprove the request, within 95 calendar days of receipt of the request.

**J. The conservation district will be involved in the monitoring of Nutrient Management Plan implementation in those situations where the emergency criteria are to be used. The district will administer the processing of plan amendments due to unforeseen circumstances.**

***REQUIRED OUTPUT MEASURES:***

* 1. The District will cooperate with the PDA to assure that those operations subject to Act 38 and quarantined by PDA due to a contagious disease, follow those emergency criteria outlined in the Nutrient Management regulations.

1. The District will process and file all NMP amendments developed due to unforeseen circumstances in accordance with the Administrative Manual.

**K.** **The conservation district will assist the Commission in the administration of financial assistance programs developed by the Commission to support Nutrient Management Plan development and implementation where funding for implementation of financial assistance programs is available to the Commission.**

***REQUIRED OUTPUT MEASURES:***

When funding for NMP development and implementation is available to the Commission, additional details will be provided to the District for program implementation and administration.

**L.** **The conservation district will assist the Commission in the implementation of the Act 49 Commercial Manure Hauler and Broker Certification program.**

***REQUIRED OUTPUT MEASURES:***

1. The District will administer the Level 2 Commercial Manure Hauler test to those individuals requesting to take the test at their location. The District will only be expected to provide this service as the request conforms to their District office hours, and only if the District has staff and room availability to provide this service. All testing materials will be provided by the SCC/PDA.
2. When performing periodic status reviews, or site visits relating to complaints, the District will determine from the operator or from records on site if commercial manure haulers or brokers are used at the operation. If commercial haulers or brokers are used, the District will determine based on Act 49 program certification listings, whether the commercial haulers or brokers used are properly certified under Act 49.
   1. Act 38 operations determined by the District to not be following this requirement will be addressed by the District in accordance with the guidance outlined in the Administrative Manual.
   2. Where the District finds a commercial manure hauler or broker who is found to be in violation of certification requirements established under Act 49, the District will contact the SCC/PDA to address the issue.
   3. The District will submit to the SCC/PDA any supporting documentation that verifies the basis for identifying a commercial manure hauler or broker under paragraph b, above.

3. The District will review at a minimum 10% of NBSs that are submitted to the District consistent with the provisions of Act 49.  The District should only be reviewing NBSs submitted for the application of manure imported into their county and not NBSs for the export of manure out of their county.

* 1. The District will work with the manure broker that authored the NBS to correct any identified deficiencies.  Additional information regarding these procedures is found in the Administrative Manual.
  2. Where the District identifies a commercial manure broker who demonstrates activities inconsistent with the provisions of Act 49 (i.e. lack of submission of NBS where appropriate; continued deficiencies in the content of submitted NBS) the District will contact the SCC/PDA to address the issue. The District will submit to the SCC/PDA any supporting documentation that verifies the basis for identifying these individuals.

1. The District will provide the Commission with quarterly reports that summarize the NBSs that were received from manure brokers and the activities related to receipt and review performed by the District during the reporting period. Reports will be submitted on forms or databases supplied by the Commission and according to the schedule approved by the Commission.

**M. The conservation district will assist the Pennsylvania Department of Environmental Protection (DEP) in the implementation of the Manure Management Program under 25 Pa. Code § 91.36 and The Clean Streams Law.**

***REQUIRED OUTPUT MEASURES:***

* + - 1. Overall program development efforts – The District will develop and adopt a strategy to carry out its duties relating to its Manure Management Program outreach, education, training, planning compliance and, if applicable, agricultural operation inspection, which covers the following:

1. Identification of assistance efforts the District can provide to operators. Assistance efforts should include but, are not limited to Manure Management Plan (MMP) development, technical assistance for plan implementation and verification of accuracy of MMPs.
2. Identification and prioritization of types of agricultural operations the District will support with MMP development and implementation assistance efforts and services.
3. A written and District approved fee schedule that will be charged for 25 Pa. Code § 91.36 (Section 91.36) services performed by the District, which are beyond the required minimum outreach, education or training output measures.
4. Coordination of Section 91.36 Manure Management Program and Act 38 Nutrient Management Program outreach and education efforts described in paragraphs A.1 through A.3 as they pertain to overall Manure and Nutrient Management Program compliance strategies in the county.
5. Complaint response and referral activities, consistent with guidance provided by the DEP.
6. Identification of procedures to inspect agricultural operations inspection, if performed by the District, that are consistent with guidelines provide by the DEP.
   * + 1. Outreach – The District will take the lead role in the coordination of outreach activities providing general awareness on Section 91.36 requirements to the agricultural community and the general public.
   1. Activities must include a minimum of 3 outreach activities per calendar year (e.g. farmer meetings, displays at local events, publication mailings, digital media (social media) etc.).
   2. Activities will include distribution of materials developed by the District, the DEP or other cooperating agencies or organizations.
      * 1. Education – The District will take the lead role in the coordination of education activities to provide appropriate information pertaining to manure management planning principles and compliance with the requirements under Section 91.36 to the agriculture community.
7. Activities must include a minimum of 1 education or training activities per calendar year (e.g. farmer meetings or workshops etc.).
8. Activities will include distribution of materials developed by the District, the DEP or other cooperating agencies or organizations.
   * + 1. Training – The District will facilitate workshops for agricultural operations in the development and the implementation of MMPs separately or in cooperation with other districts or agencies.
9. The District will conduct a minimum of 1 technical training program per calendar year for operators to guide operators through the development of a MMP for the operator’s operation. Trainings could include electronic/virtual platforms or include one-on-one training opportunities to assist operators in plan development.
10. The District will conduct a minimum of 1 technical training program targeting consultants assisting operators in the development of a MMPs or providing planning services to operators for MMP development. The target audience of the training program may include certified NMSs, manure haulers and brokers, and any individual offering manure management planning assistance, such as 4-H educators or students, FFA educators or students, private crop or pesticide consultations, etc., regardless of certification status. The implementation of this activity may be coordinated with technical trainings for operators.
    * + 1. Planning and implementation assistance.
11. The District will provide technical assistance to operators and their consultants in developing MMPs consistent with priorities established in the District’s program implementation strategy.
12. The District will provide technical assistance to operators and their consultants in implementing their MMP consistent with priorities established in the District’s program implementation strategy, as resources permit.
13. The District will write a minimum of 10 MMPs for operators within the county. These written MMPs must be entered into PracticeKeeper. This required output measure is waived if the District chooses to perform “status reviews” under M.6 below. If a district has accepted Chesapeake Bay Technician Funding, this requirement is being met under that contract
14. The District may provide full plan development for operators consistent with the District’s Manure Management Program strategy and priorities, as resources permit.
15. The District may perform quality assurance of the accuracy of MMPs and the implementation of plans, when District verification is requested by an operator consistent with the District’s Manure Management Program strategy and priorities, as resources permit.
    * + 1. Farm status review activities:
16. The District shall perform status reviews of agricultural operations that use or produce manure to assess compliance with 25 Pa. Code § 91.36.
17. The District will perform status reviews on a minimum of 10 agricultural operations (1 Fulltime Equivalent Funding or more) or 5 agricultural operations (less than 1 Fulltime Equivalent Funding). Such status reviews will be conducted consistent with guidelines or Standard Operating Procedures (SOPs) provided by DEP. This required output measure is waived if the District chooses to write MMPs under M.5 above. If a district has accepted Chesapeake Bay Technician Funding, this requirement is being met under that contract.
    * + 1. Complaint response and referral
18. Within 7 business days of receipt of a complaint, the District will either refer the complaint to the appropriate agency if it is outside of this delegation, or if it is a complaint dealing with Section 91.36 activities, the District will schedule and make a site visit to assess the issue in cooperation with other appropriate agencies or organizations. Complaints and site visits will be documented on forms provided by the DEP, with an account of the visit conveyed back to the complainant. The complaint and the site visit forms shall be retained in the District files.
19. The District will work with agricultural operators found to be in violation of 25 Pa. Code Section 91.36 to obtain compliance with its provisions as specified in guidance provided by the DEP. The District shall record any contact with agricultural operators to document attempts to bring the operation into compliance.
20. Agricultural operations involving continued violations and where compliance cannot be obtained by the District are to be reported to the DEP for further action. The District will use the criteria established by the DEP for documentation and preparation of enforcement actions. All actions, reports and other forms of documentation including personal observations may be used as evidence during any subsequent enforcement actions by the DEP.
    * + 1. The District will provide the DEP with quarterly reports detailing accomplishments under this agreement that includes, outreach and educational efforts completed, trainings and workshop provided to operators and consultants, technical assistance activities provided to operators, manure management plans written, status reviews performed, the number of complaints, and the number and status of complaint related site visits. Reports will be submitted on forms or databases (PracticeKeeper) supplied by the Department.
        2. Compliance inspections - The District may perform inspections (and additional status reviews above the requirement in M.5 above) of any agricultural operation to assess compliance with Section 91.36 and review MMP implementation efforts.
21. The District may assess compliance with Chapter 91 and the MMP requirements by performing on-site inspections of any non-CAO, non-CAFO agricultural operation.
22. The District may assist operations determined to be out of compliance based on an inspection or implementation of the BMPs required for or identified in their MMP.  The District shall follow its agricultural complaint response policy and the guidelines or SOPs provided by DEP for operations that fail to come into compliance through the District’s efforts.
23. As part of the District’s inspection, the District may assess an operator’s implementation of the OMP for the BMPs included in the MMP.
    * + 1. Recordkeeping – The District will retain as separate files: the quarterly reports required by the DEP; the District’s Manure Management Program outreach, education and training, and compliance implementation strategy, including the date when this strategy was adopted; the District’s approved fee schedule, including the date when this fee schedule was adopted; and MMP development and verification information, as required by the DEP.

**ATTACHMENT B**

**Commonwealth Terms and Conditions**

1. **COMMONWEALTH HELD HARMLESS** 
   1. 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.
   2. 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 Grantee agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the grant agreement or any subgrant agreement, contract, or subcontract, the Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee 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.

2. The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not 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 of its employees.

3. Neither the Grantee nor any subgrantee nor any 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 grant agreement, subgrant agreement, contract or subcontract.

4. Neither the Grantee nor any subgrantee nor any 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.

5. The Grantee, any subgrantee, contractor or any 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 grant services are performed shall satisfy this requirement for employees with an established work site.

6. The Grantee, any subgrantee, contractor or any subcontractor shall not 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 any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the grant relates.

7. The Grantee and each subgrantee, contractor and subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Grantee and each subgrantee, contractor and 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 Grantee, any subgrantee, any contractor or any 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 granting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause.

8. The Grantee, any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.

9. The Granter’s and each subgrantee’s, contractor’s and subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the grant agreement through the termination date thereof. Accordingly, the Grantee and each subgrantee, contractor and subcontractor shall have an obligation to inform the commonwealth if, at any time during the term of the grant agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.

10. The commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

1. **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.

1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
2. **“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.
3. **“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.
4. **“Contractor”** means the individual or entity, that has entered into this contract with the Commonwealth.
5. **“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.
6. **“Financial Interest”** means either:
   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.
7. **“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*](http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_785_708_0_43/http;/pubcontent.state.pa.us/publishedcontent/publish/global/files/executive_orders/1980___1989/1980_18.pdf), the *4 Pa. Code §7.153(b)*, shall apply.
8. **“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.
9. In furtherance of this policy, Contractor agrees to the following:
10. 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.
11. 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.
12. 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.
13. 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.
14. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
    1. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
    2. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
    3. had any business license or professional license suspended or revoked;
    4. 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
    5. 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 if 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.

1. 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).*
2. 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.
3. 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.
4. 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.
5. 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 anyone 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.
6. **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 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.

1. **AMERICANS WITH DISABILITIES ACT**
   1. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
   2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from 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.
2. **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.

1. **RIGHT TO KNOW LAW**
   1. 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.
   2. 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.
   3. 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.
   4. 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.
   5. 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.
   6. 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.
   7. 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.
   8. 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.
   9. 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.
2. **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.

1. **AUTOMATED CLEARING HOUSE (ACH) PAYMENTS**

a. The Commonwealth will make payments to the recipient through ACH. Within 10 days of the grant award, the grantee must submit or must have already established its ACH information in the Commonwealth’s Master Database. The grantee will also be able to enroll to receive remittance information via electronic addenda and email (e-Remittance). ACH and e-Remittance information is available at

b. https://www.budget.pa.gov/Services/ForVendors/Pages/Direct-Deposit-and-e-Remittance.aspx.

c. The recipient must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth’s ACH remittance advice to enable the recipient to properly apply the state agency’s payment to the respective invoice or program.

d. It is the responsibility of the recipient to ensure that the ACH information contained in the Commonwealth’s Master Database is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments

#### ATTACHMENT C

Staff resources of the county conservation district to be committed to completion of all Nutrient Management and Manure Management program requirements and responsibilities specified in the delegation agreement executed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 2**\_\_\_\_\_\_**, between the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County Conservation District and the Pennsylvania State Conservation Commission and the Pennsylvania Department of Environmental Protection.

A. Name: Title:

1. Education: Year:

2. List License And/or Certification:

3 License/Certification Expiration Date:

4. Years In Current Position:

B. Listing of Act 38/Chapter 91 Work Assignments in Percentage (%) Of Total Employee Work Time:

1. Administration (General) : %

2. Education (To Others) : %

3. Training (By Others) : %

4. Technical Assistance : %

5. Review Of Plans : %

6. Approval Of Plans : %

7. Program Compliance & Inspections: %

**C. Other: List Any Other Pertinent Information, Work Experience and Training On Separate Sheets of Paper And Attach To This Sheet:**

## ATTACHMENT D

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NUTRIENT MANAGEMENT / MANURE MANAGEMENT PROGRAM**

**DELEGATION AGREEMENT**

**PROPOSAL FORM**

**\_\_\_\_\_\_\_\_\_\_**

**CONSERVATION DISTRICT**

I. Delegation Option:

\_\_\_\_\_ Single District or \_\_\_\_\_ Multi-district

(List Districts Involved)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Host District

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Associate District

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Associate District

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Associate District

II. Time Period Covered by the Proposal: July 1, 2022 to June 30, 2023

III. Technical Staff Working for the Nutrient and Manure Management Programs

A. \_\_\_\_\_ Number of Conservation District Staff providing all their time to these programs

B. \_\_\_\_\_ Number of Conservation District Staff providing a portion of their time to these programs

C. \_\_\_\_\_ Number of the above staff currently certified under the Act 38 Program

D. \_\_\_\_\_ Total hours/week doing Nutrient Management/ Manure Management Program work (total for all staff above)

E. \_\_\_\_\_ Total hours/week the staff included in “A” and “B” above is doing other work (List other work being carried out by these staff) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

F. Please complete the following table for each relevant staff person including the name of the staff person, **total** salary and benefits cost for the position, name of the program funding source (list all sources, including Act 38, ACT, county funding, district fees, Chesapeake Bay Program, NRCS cooperative agreements, etc.) and the program funding amount.

|  |  |  |  |
| --- | --- | --- | --- |
| **Staff Person Name** | **Total Salary and Benefits Cost** | **Program or Funding Source Name**  **(use multiple lines or sheets if necessary)** | Salary and Benefits Amount Funded |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

(Use additional page(s) if necessary)

IV. Narrative Description of the Proposal

(Add or modify the description if necessary)

We agree to carry out the responsibilities relating to the Nutrient Management and Manure

Management programs and regulations in accordance with the conditions and duties as

described in the delegation agreement and appropriate guidelines in the “Pennsylvania

Nutrient Management and Manure Management Manual Program, Act 38 and Chapter 91

Administrative Manual”, in accordance with conditions and duties described in the delegation

agreement and guidance provided by the State Conservation Commission and the Department

of Environmental Protection. Claims for reimbursement will be for the performance of the

duties listed in Attachment A in accordance with the approved budget.

V. Budget Proposal

(Please complete the attached budget sheets)

VI. Authorization

Action was taken by the \_\_\_\_\_\_\_\_\_District Board on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

to approve this proposal.

Representative of the Conservation District

Name (type or print) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Grantee agrees to provide their signature and accept the SCC’s and DEP’s electronic signatures on the agreement making it a legally binding contract.

**Representative of the Conservation District**

Name (type or print) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State Conservation Commission**

X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Karl G. Brown

Executive Secretary

State Conservation Commission

**Department of Environmental Protection**

X**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Jill Whitcomb

Director, Chesapeake Bay Program Office

Department of Environmental Protection

I hereby certify funds in the amount of \_\_\_\_\_\_\_\_\_\_\_\_ are available under appropriation

Bay counties (split funded):

2009800000 – 2022 - 3533020000 – 3530239001 – 6600400 \_\_\_\_\_\_\_\_\_\_\_\_\_

7025800000 – 2022 - 3533020000 - V24953000000 - 6600300 (CFDA# 66.466) \_\_\_\_\_\_\_\_\_\_\_\_\_

2009800000 – 2022 - 3533020000- V24953000000 – 6600400 \_\_\_\_\_\_\_\_\_\_\_\_\_

X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Comptroller

SAP Doc. No. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

BUDGET WORKSHEET

FOR

July 1, 2022 - June 30, 2023

DISTRICT \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Salaries $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Benefits $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Travel Costs $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Equipment Costs $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Administrative Costs

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Administrative Subtotal

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Other/Miscellaneous (list budget items from approved categories)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ $\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Budget Total (transfer this total figure to the Budget Sheet page)** $\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NUTRIENT MANAGEMENT (ACT 38) and MANURE MANAGEMENT (25 Pa. Code § 91.36) PROGRAM DELEGATION AGREEMENT BUDGET SHEET

FOR

Fiscal Year: July 1, 2022 - June 30, 2023

CONSERVATION DISTRICT: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Delegation Agreement Budget Request** $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

#### ATTACHMENT E

DEPARTMENT OF ENVIRONMENTAL PROTECTION

FEDERAL REQUIREMENTS

If this Agreement is funded in whole or in part with funds from the Federal Government, or by non-Federal funds used to match a Federal grant, the following provisions apply:

1. All work under this Agreement shall be performed in accordance with applicable statutes, rules and regulations of the Federal Government. All applicable Federal statutes and provisions of the Code of Federal Regulations (CFR) in effect on the date of execution of this Agreement are an integral part of this Agreement.

2. All applicable contract provisions specified by the Federal Government are an integral part of this Agreement.

3. If this Agreement is funded in whole or in part by a grant from the United States Environmental Protection Agency (EPA), all applicable provisions of 40 CFR Parts 31 and 35 (Subpart O), in effect on the date of the Assistance Award for this project, are an integral part of this Agreement. Further, Contractor shall comply with the provisions pertaining to conflict of interest set forth at 40 CFR §35.6550(b)(2)(ii).

4. Rights to Inventions Made Under a Contract or Agreement – Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the Federal Grantor Agency. Further this Agreement is subject to Federal Grantor Agency requirements and regulations pertaining to reporting and patent rights if the Agreement involves research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under this Agreement, as well as Federal Grantor Agency requirements and regulations pertaining to copyrights and rights in data.

5. Equal Employment Opportunity – All contracts shall contain a provision requiring compliance with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

6. Audit/Compliance Review Requirements

Audit Requirements

The Contractor must comply with all Federal and State audit requirements including: the Single Audit Act Amendments of 1996; Office of Management and Budget (OMB) Circular A‑133, “Audits of States, Local Governments and Non‑Profit Organizations,” as amended; and any other applicable law or regulation and any amendment to such other applicable law or regulation which may be enacted or promulgated by the Federal government.

If the Contractor is a local government or non-profit organization and expends total Federal awards of $500,000 or more during its fiscal year, received either directly from the Federal Government or indirectly from a recipient of Federal funds, the Contractor is required to have an audit made in accordance with the provisions of OMB Circular A‑133.

If the Contractor expends total Federal awards of less than $500,000 during its fiscal year, it is exempt from these audit requirements, but is required to maintain auditable records of Federal awards and any State funds which supplement such awards, and to provide access to such records by Federal and State agencies or their designees.

Submission of Audit Information to the Commonwealth

The Contractor shall submit copies of the audit report package to the Commonwealth, which shall include:

1. Data Collection Form.

2. Financial statements and schedule of expenditures of Federal awards.

3. Auditor’s reports on the financial statements and schedule of expenditures of Federal awards, internal control, and compliance as well as a schedule of findings and questioned costs.

4. Summary schedule of prior audit findings.

5. Corrective action plan.

6. Management letter comments.

The number of copies to be submitted shall equal one for the Bureau of Audits (archival copy) plus one for each Commonwealth agency which provided Federal pass-through awards to the entity, as reflected in the entity’s Schedule of Expenditures of Federal Awards. The audit report package should be submitted to:

Office of the Budget/Bureau of Audits

Division of Subrecipient Audit Review

Verizon Tower - 6th Floor

303 Walnut Street

Harrisburg, PA 17101

Phone: 717-783-9120 Fax: 717-783-0361

In instances where a Federal program-specific audit guide is available, the audit report package for a program-specific audit may be different and should be prepared in accordance with the audit guide and OMB Circular A‑133.

General Audit Provisions

The Contractor is responsible for obtaining the necessary audit and securing the services of a certified public accountant or other independent governmental auditor. Federal regulations preclude public accountants licensed in the Commonwealth of Pennsylvania from performing audits of Federal awards.

The Commonwealth reserves the right for Federal and State agencies or their authorized representatives to perform additional audits of a financial or performance nature, if deemed necessary by Commonwealth or Federal agencies. Any such additional audit work will rely on work already performed by the Contractor’s auditor, and the costs for any additional work performed by the Federal or State agencies will be borne by those agencies at no additional expense to the Contractor.

Audit documentation and audit reports must be retained by the Contractor’s auditor for a minimum of five (5) years from the date of issuance of the audit report, unless the Contractor’s auditor is notified in writing by the Commonwealth or the cognizant or oversight Federal agency to extend the retention period. Audit documentation will be made available upon request to authorized representatives of the Commonwealth, the cognizant or oversight agency, the Federal funding agency, or the Government Accountability Office.

7. Clean Air Act (42 U.S.C. 7401 *et seq.)* and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) - Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq*.). Violations shall be reported to the Regional Office of the EPA.

8. Contractor shall comply with mandatory standards and policies relating to energy efficiency in compliance with the U.S. Energy Policy and Conservation Act (Pub. L. 94-163).

9. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) – Where applicable, all contracts awarded by recipients in excess of $100,000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

10. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) – All contracts and subgrants in excess of $100,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal Grantor Agency.

11. Davis-Bacon Act (40 U.S.C. 276a to a-7) – When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal Grantor Agency.

12. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors who apply or bid for an award of more than $100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

13. Debarment and Suspension (Executive Orders 12549 and 12689) - No contract shall be made to parties listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, “Debarment and Suspension.” This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other that Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

14. This commitment is contingent upon funds being appropriated by the legislature for each succeeding fiscal year and Federal funds being provided to the Commonwealth for the contract purpose.

15. Federal Funding Accountability and Transparency Act (FFATA or Transparency Act)

For all federally funded grants that DEP issues (except ARRA grants):

16. Registration and Identification Information

Grantee must maintain current registration in the System for Award Management ([www.sam.gov](http://www.sam.gov)) at all times during which it has active federal awards funded pursuant to this agreement. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number ([www.dnb.com](http://www.dnd.com/)) is one of the requirements for registration in the System for Award Management.

Grantee must provide its assigned DUNS number, and DUNS + 4 number if applicable, to the Commonwealth along with Grantee’s return of the signed grant agreement. The Commonwealth will not process this grant until such time that Grantee provides this information.

17. Primary Location

Grantee must provide to the Commonwealth the primary location of performance under the award, including the city, State, and zip+4. If performance is to occur in multiple locations, then Grantee must list the location where the largest amount of the grant award is to be expended pursuant to this grant agreement.

Grantee must provide this information to the Commonwealth along with Grantee’s return of the signed grant agreement. The Commonwealth will not process this grant until such time that Grantee provides this information.

18. Compensation of Officers

Grantee must provide to the Commonwealth the names and total compensation of the five most highly compensated officers of the entity **if**—

(i) the entity in the preceding fiscal year received—

(I) 80 percent or more of its annual gross revenues in Federal awards; and

(II) $25,000,000 or more in annual gross revenues from Federal awards; and

(ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

If the Grantee does not meet the conditions listed above, then it must specifically affirm to the Commonwealth that the requirements of this clause are inapplicable to the Grantee.

Grantee must provide information responding to this question along with Grantee’s return of the signed grant agreement. The Commonwealth will not process this grant until such time that Grantee provides the information responding to this question.

**ATTACHMENT F**

# WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM

1. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania’s Unemployment Compensation Law, Workers’ Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:
2. Construction Workplace Misclassification Act
3. Employment of Minors Child Labor Act
4. Minimum Wage Act
5. Prevailing Wage Act
6. Equal Pay Law
7. Employer to Pay Employment Medical Examination Fee Act
8. Seasonal Farm Labor Act
9. Wage Payment and Collection Law
10. Industrial Homework Law
11. Construction Industry Employee Verification Act
12. Act 102: Prohibition on Excessive Overtime in Healthcare
13. Apprenticeship and Training Act
14. Inspection of Employment Records Law
15. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. § 531 (Debarment or suspension).

# CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee’s compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. § 4904 (Unsworn falsification to authorities).

|  |  |
| --- | --- |
|  | |
| ***Signature*** | ***Date*** |
|  | |
| ***Name (Printed)*** | |
|  | |
| ***Title of Certifying Official (Printed)*** | |
|  |  |
| ***Contractor/Grantee Name (Printed)*** | |

BOP-2201

Published: 02/07/2022