

INTERGOVERNMENTAL AGREEMENT

Between

**THE COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
STATE HISTORIC PRESERVATION OFFICE**

And

THE BOROUGH OF BEAVER

THIS INTERGOVERNMENTAL AGREEMENT, (hereinafter "Agreement") is made this _____ day of _____, 2016 by and between the Commonwealth of Pennsylvania, Pennsylvania Historical and Museum Commission, (hereinafter "COMMISSION"), 300 North Street, Fifth Floor, Harrisburg, Pennsylvania 17120-0024, and Borough of Beaver, a Pennsylvania municipality, (hereinafter "BOROUGH"), with principal offices located at 469 Third Street, Beaver, Pennsylvania 15009.

RECITALS

WHEREAS, the COMMISSION is an independent state agency vested with the power and duty to preserve Pennsylvania's cultural heritage and carry out historic preservation efforts in this Commonwealth, 37 Pa.C.S. § 301; and

WHEREAS, the COMMISSION has the power and duty to receive funds from any public or private source for purposes of historic preservation and to contract with other states and public officials in this Commonwealth for purposes of historic preservation, 37 Pa.C.S. § 502(11), (14); and

WHEREAS, the COMMISSION's State Historic Preservation Office ("SHPO"), as created by section 101 of the National Historic Preservation Act ("Act"), conducts project reviews in accordance with Section 106 of the Act, 16 U.S.C. § 470 et. seq.; and

WHEREAS, BOROUGH is authorized to enter into contracts pursuant to the Borough Code, 8 Pa.C.S.A. § 1401; and

WHEREAS, the COMMISSION has received a portion of funding under the Programmatic Agreement (SHPO ER# 2013-2037-007) entered into among the Commission, Shell Chemical Appalachia LLC, and the United States Army Corps of Engineers, Pittsburgh District to assist the Borough with developing a historic preservation plan and developing design guidelines; and

WHEREAS, the COMMISSION has determined that it's most advantageous to delegate certain tasks required under the Programmatic Agreement to the Borough and to work cooperatively and collaboratively with the Borough to complete the scope of work described herein.

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

AGREEMENT

1. The foregoing recital clauses are herein incorporated by reference.
2. This Agreement is entered into pursuant to Attachment C of the Programmatic Agreement between Shell Chemical Appalachia LLC, the United States Army Corps of Engineers, Pittsburgh District, and the Commission dated _____, 2016.

Comment [SG1]: This Agreement shouldn't be executed prior to the PA being fully executed.

3. The term of this Agreement shall be twelve (12) months from the effective date (the “Term”), subject to the other provisions of this Agreement, and the availability of funds, unless terminated by either party according to the termination provisions of this Agreement. The Commission reserves the right to extend the Term in writing.
4. The parties may terminate this Agreement for the following reasons:
 - (a) Termination for Convenience. The BOROUGH or the COMMISSION may terminate this Agreement, with or without cause, by providing not less than thirty (30) days written notice of such termination to the other party.
 - (b) Termination for Breach - It is agreed that if the BOROUGH should fail to comply with any of the material covenants, terms or conditions of this Agreement during the Term, the COMMISSION may, after giving the BOROUGH notice to comply, at its option, terminate this Agreement immediately for failure to comply.
5. Hold Harmless:
 - a. BOROUGH shall, at all times, save and hold harmless and indemnify the Commonwealth, the COMMISSION, its agencies, officers and employees, from and against all losses, damages, expenses, claims, demands, suits and actions arising out of the performance of this Agreement, including, but not limited to all claims for personal injuries and property damages, except as may be occasioned by the negligence of the Commonwealth, the COMMISSION, its agencies, officers or employees.
 - b. 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 COMMISSION in actions brought against the COMMISSION. 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 BOROUGH, the COMMISSION will cooperate with all reasonable requests of the BOROUGH made in the defense of such suits.
 - c. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The COMMISSION may, in its sole discretion, allow the BOROUGH to control the defense and any related settlement negotiations.
6. The scope of work (the “Scope of Work”) shall consist of the following tasks:
 - a. Consistent with applicable Borough policies and in consultation with SHPO, the Borough will issue a Request for Proposal, or similar invitation (“RFP”), for a consultant to complete tasks as outlined in Attachment C of the Programmatic Agreement, which is attached hereto and incorporated herein as Exhibit A, and in accordance with applicable SHPO policies and guidance;
 - b. Consistent with applicable Borough policies, the Secretary of the Interior’s Professional Qualifications Standards for Archeology and Historic Preservation and in consultation with SHPO, select a consultant to complete the project;

- c. Consistent with applicable Borough policies and in consultation with SHPO contract directly with consultant to complete the project;
- d. Consistent with applicable Borough policies will receive billings/receipts for reimbursement from consultant as the project is completed;
- e. Consistent with applicable Borough policies and documentation requirements will reimburse consultant with funds provided under this Agreement;
- f. In consultation with SHPO, the Borough will participate in quality control/quality assurance of the project as it proceeds which will include, but may not be limited to:
 - i. Review of and comment upon interim documents and progress reports provided by the consultant on an agreed-to schedule and within an agreed-to timeframe;
 - ii. Participation in public outreach/education component of the project; and
 - iii. Acceptance and approval of final products.

The Commission through SHPO shall complete the following tasks:

- a. Disburse funding to the Borough for the project's completion;
- b. Draft and complete an RFP and Statement of Work in consultation with the Borough and in accordance with the Programmatic Agreement and SHPO policies and guidance. The RFP shall include references to the completed historic building inventory and will require use of its findings for completion of the preservation plan project;
- c. Provide information to and consult with the Borough regarding the desired consultant qualifications for the project;
- d. Review and approve of the Borough/consultant contract to ensure SHPO policies, guidance and project needs are binding upon the consultant;
- e. Provide project-related guidance directly to consultant as necessary and in consultation with the Borough;
- f. Provide quality control/assurance for the project by, but not limited to:
 - i. Review and approve of interim documents and progress reports provided by the consultant on an agreed-to schedule and within an agreed-to timeframe;
 - ii. Participate in public outreach/education component of the project; and
 - iii. Approve work products produced pursuant to this Agreement.
- 7. The Commission shall pay the Borough an aggregate sum of Seventy-Five Thousand Dollars (\$75,000) for the Borough's performance under this agreement (the "Project Funds"). The Project Funds shall be allocated as follows: Commission shall disburse Seventy-Five Thousand Dollars (\$75,000) to the Borough for the development of a historic preservation plan and developing design guidelines, in consultation with the SHPO, and as outlined in the Programmatic Agreement.
- 8. Payment shall be sent and received in the following manner:
 - a. Payment shall be made in accordance two payments and made payable to: Beaver Borough at the following address:

 Beaver, Pennsylvania _____

- b. The Commission shall withhold Seven Thousand Five Hundred Dollars (\$7,500) from the Project Funding (the "Retainage"), which it shall release to the Borough following the Borough's completion of the Scope of Work and the Commission's written approval of the completed work.
 - c. The Borough shall only use the Project Funding in accordance with this Agreement.
 - d. Following the end of the term of this Agreement, the Borough shall return any unspent portion of the Project Funding to the Commission within thirty (30) calendar days.
9. All notices under this Agreement shall be in writing and shall be deemed to have been given when delivered in person, or mailed by first class mail postage prepaid, or sent by facsimile copy or by e-mail in either case after acknowledgement of receipt by the other party to:

If to the COMMISSION to:

Andrea L. MacDonald, Director
Pennsylvania State Historic Preservation Office
Pennsylvania Historical and Museum Commission
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

With a copy to:

Chief Counsel
Pennsylvania Historical and Museum Commission
300 North Street, Suite 513
Harrisburg, Pennsylvania 17120

If to BOROUGH to:

10. This Agreement constitutes the entire agreement of the parties concerning its subject matter and supersedes all other previous agreements, either written or oral, and may be modified only in writing signed by both parties.
11. This agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

12. BOROUGH RESPONSIBILITY PROVISIONS (MD 215.9 – OCTOBER 2010)

- A. For the purpose of these provisions, the term BOROUGH 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 BOROUGH includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The BOROUGH 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 BOROUGH, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the BOROUGH cannot so certify, then it agrees to submit, along with this Agreement, a written explanation of why such certification cannot be made.
2. The BOROUGH also certifies, in writing, that as of the date of its execution of this Agreement 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 BOROUGH's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the BOROUGH shall have an obligation to inform the COMMISSION if, at any time during the term of this Agreement, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the BOROUGH, 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 BOROUGH to notify the COMMISSION of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Agreement with the COMMISSION.
5. The BOROUGH agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the BOROUGH's compliance with the terms of this or any other agreement between the BOROUGH and the Commonwealth that results in the suspension or debarment of the BOROUGH. 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 BOROUGH shall not be responsible for investigative costs for investigations that do not result in the BOROUGH's suspension or debarment.
6. The BOROUGH may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

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

13. **BOROUGH INTEGRITY PROVISIONS (MD 215.8 AMENDED – JANUARY 14, 2015)**

It is essential that those who seek to contract with the Commission 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 BOROUGH Integrity Provisions, the following terms shall have the meanings found in this Section:
 - a. “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.
 - b. “Consent” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
 - c. “BOROUGH” means the Borough of Beaver, and municipality of the Commonwealth.
 - d. “BOROUGH Related Parties” means any affiliates of the BOROUGH and the BOROUGH’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the BOROUGH.
 - e. “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.
 - f. “Gratuity” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
 - g. “Non-bid Basis” means a contract awarded or executed by the Commonwealth with BOROUGH without seeking bids or proposals from any other potential bidder or offeror.
2. In furtherance of this policy, BOROUGH agrees to the following:
 - a. BOROUGH 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 BOROUGH or that govern contracting or procurement with the Commonwealth.

- b. If applicable, the BOROUGH shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the BOROUGH activity with the COMMISSION and Commonwealth employees and which is made known to all BOROUGH employees. Posting these BOROUGH 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.
- c. BOROUGH, its affiliates, agents, employees and anyone in privity with BOROUGH 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.
- d. BOROUGH 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 COMMISSION in writing and the COMMISSION consents to BOROUGH's financial interest prior to the COMMISSION's execution of this Agreement. BOROUGH 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 BOROUGH's submission of the contract signed by BOROUGH.
- e. BOROUGH certifies to the best of its knowledge and belief that within the last five (5) years BOROUGH or BOROUGH 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 BOROUGH 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 COMMISSION will determine whether a contract may be entered into with the BOROUGH. The BOROUGH's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the BOROUGH shall have an obligation to immediately notify the COMMISSION in writing if at any time during the term of the AGREEMENT it becomes aware of any event which would cause the BOROUGH's certification or explanation to change. BOROUGH acknowledges that the Commonwealth may, in its sole discretion, terminate the Agreement 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 Agreement.

- f. BOROUGH 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, BOROUGH must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- g. When BOROUGH has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these BOROUGH 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, BOROUGH shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. BOROUGH, 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 BOROUGH 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. BOROUGH shall immediately notify the COMMISSION in writing of any actions for occurrences that would result in a violation of these BOROUGH Integrity Provisions. BOROUGH agrees to reimburse the COMMISSION for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the BOROUGH's compliance with the terms of this or any other agreement between the BOROUGH and the COMMISSION that results in the suspension or debarment of the BOROUGH. BOROUGH shall not be responsible for investigative costs for investigations that do not result in the BOROUGH's suspension or debarment.

- i. BOROUGH 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 BOROUGH non-compliance with these BOROUGH Integrity Provisions. BOROUGH agrees to make identified BOROUGH employees available for interviews at reasonable times and places. BOROUGH, 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 BOROUGH's integrity and compliance with these provisions. Such information may include, but shall not be limited to, BOROUGH's business or financial records, documents or files of any type or form that refer to or concern this Agreement. BOROUGH 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 COMMISSION and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. For violation of any of these BOROUGH Integrity Provisions, the COMMISSION may terminate this and any other contract with BOROUGH, 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 BOROUGH to complete performance under this contract, and debar and suspend BOROUGH from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

14. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE (MD 215.16 – FEB. 2015)

The BOROUGH agrees:

1. In the hiring of any employee(s) for the performance of work, or any other activity required under the contract or any subcontract, the BOROUGH, subcontractor, or any person acting on behalf of the BOROUGH or subcontractor shall not discriminate 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. Neither the BOROUGH nor any subcontractor nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the performance of work, or any other activity required under the contract.

3. The BOROUGH and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees 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 contract services are performed shall satisfy this requirement.
4. The BOROUGH and each subcontractor shall not discriminate in violation of the PHRA and applicable federal laws against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The BOROUGH and each 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 BOROUGH and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The BOROUGH and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Small Business Opportunities (BSBO), for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause.
6. The BOROUGH shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The BOROUGH's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the BOROUGH and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
8. The COMMISSION may cancel or terminate the Agreement and all money due or to become due under the Agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the BOROUGH in the BOROUGH Responsibility File.

15. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT (MD 215.12 – OCT. 2011)

For the purpose of these provisions, the term BOROUGH is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to

furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth.

During the term of this Agreement, the BOROUGH agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of the *Americans with Disabilities Act*, 28 C. F. R. § 35.101 *et seq.*, the BOROUGH understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, the BOROUGH agrees to comply with the *"General Prohibitions Against Discrimination,"* 28 C. F. R. § 35.130, and all other regulations promulgated under *Title II* of the *Americans with Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth through contracts with outside BOROUGHs.
2. The BOROUGH shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the COMMISSION as a result of the BOROUGH's failure to comply with the provisions of paragraph 1.

16. OFFSET PROVISION (MD 215.9 - OCT. 2010)

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

17. RIGHT TO KNOW LAW (FEB. 2010)

- A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- B. If the COMMISSION needs the BOROUGH's assistance in any matter arising out of the RTKL related to this Agreement, it shall notify the BOROUGH using the legal contact information provided in this Contract. The BOROUGH, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the COMMISSION.
- C. Upon written notification from the COMMISSION that it requires the BOROUGH's assistance in responding to a request under the RTKL for information related to this Agreement that may be in the BOROUGH's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the BOROUGH shall:
 1. Provide the COMMISSION, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the BOROUGH's possession arising out of this Agreement that the COMMISSION reasonably believes is Requested Information and may be a public record under the RTKL; and

2. Provide such other assistance as the COMMISSION may reasonably request, in order to comply with the RTKL with respect to this Agreement.
- D. If the BOROUGH 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 BOROUGH considers exempt from production under the RTKL, the BOROUGH must notify the COMMISSION and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the BOROUGH explaining why the requested material is exempt from public disclosure under the RTKL.
 - E. The COMMISSION will rely upon the written statement from the BOROUGH in denying a RTKL request for the Requested Information unless the COMMISSION determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the COMMISSION determine that the Requested Information is clearly not exempt from disclosure, the BOROUGH shall provide the Requested Information within five (5) business days of receipt of written notification of the COMMISSION's determination.
 - F. If the BOROUGH fails to provide the Requested Information within the time period required by these provisions, the BOROUGH 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 BOROUGH's failure, including any statutory damages assessed against the COMMISSION.
 - G. The COMMISSION will reimburse the BOROUGH for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
 - H. The BOROUGH 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 BOROUGH shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth and COMMISSION harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the BOROUGH's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the BOROUGH agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
 - I. The BOROUGH's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the BOROUGH has Requested Information in its possession.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

BOROUGH

_____		Attest: _____	
Name:	Date	Name:	Date
President/Vice-President/Chair		Secretary/Treasurer	

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION**

_____	_____
James Vaughan	Andrea MacDonald
Executive Director	Director, State Historic Preservation Office
Date	Date

APPROVED AS TO FORM & LEGALITY

Samara Gomez
Chief Counsel, PHMC
Date

Deputy General Counsel
Office of General Counsel
Date

Deputy Attorney General
Office of Attorney General
Date

COMPTROLLERS APPROVAL

Comptroller, PHMC
Date

BOROUGH Controller Date