APPENDIX B

MODEL FORM OF SMALL DIVERSE BUSINESS/VETERAN BUSINESS ENTERPRISE SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement ("Subcontract") is made effective as of _____ __, 20__, by and between _____, ("Contractor") and _____,
a Small Diverse Business or Veteran Business Enterprise ("Subcontractor") (collectively referred to as the "Parties").

RECITALS

Contractor has entered into a contract dated _____ (the "Prime Contract") with the Department of _____ of the Commonwealth of Pennsylvania ("Commonwealth"). Under the Prime Contract, Contractor has agreed to provide certain supplies, services or construction ("Services") to the Commonwealth.

In connection with the Procurement leading to the Prime Contract, Contractor and Subcontractor entered into a letter agreement dated _____ ("Letter of Commitment") whereby the Contractor committed a certain percentage of work ("Small Diverse Business or Veteran Business Enterprise Commitment") under the Prime Contract to the Subcontractor.

As contemplated by the Letter of Commitment and in accordance with the provisions of the Procurement and Prime Contract, the Parties have agreed to enter into this Subcontract to fulfill the Small Diverse Business or Veteran Business Enterprise Commitment expressed in the Letter of Commitment and as required by the Prime Contract.

DEFINITIONS

The following words and terms when used in this Subcontract shall have the following meanings:

Bureau – The Department's Bureau of Diversity, Inclusion and Small Business Opportunities.

Contracting Officer – The person authorized to administer and make written determinations for the Commonwealth with respect to the Prime Contract.

Department – The Department of General Services of the Commonwealth of Pennsylvania.

Issuing Office – The department, board, commission or other agency of the Commonwealth of Pennsylvania that issued the Procurement.

Procurement – The Invitation for Bids, Request for Quotes, Request for Proposals or other solicitation and all associated final procurement documentation issued by the Commonwealth to obtain proposals from firms for award of the Prime Contract.

Small Business – A business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than $38.5 million in gross annual revenues.

Small Diverse Business – A Department-verified minority-owned small business, woman-owned small business, LGBT-owned small business, disability-owned small business, or service-disabled veteran-owned small business.

Veteran Business Enterprise – A Department-verified veteran-owned small business or service-disabled veteran-owned small business.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Subcontractor Representations. Subcontractor represents and warrants to Contractor as follows:

(a) Subcontractor is verified as a Small Diverse Business or Veteran Business Enterprise by the Bureau of Diversity, Inclusion and Small Business Opportunities in accordance with the requirements and procedures established by the Bureau;

(b) Subcontractor possesses the necessary knowledge, experience, expertise, capital, resources and personnel required to perform the Services it will provide under this Subcontract;

(c) Subcontractor (i) is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, (ii) has the power and authority to own its properties and to carry on business as now being conducted, and (iii) has the power to execute and deliver this Subcontract;

(d) The execution and performance by Subcontractor of the terms and provisions of this Subcontract have been duly authorized by all requisite action, and neither the execution nor the performance of this Subcontract by Subcontractor will violate any provision of law, any order of any court or other agency of government, the organizational documents of Subcontractor or any indenture, agreement or other instrument to which Subcontractor is a party, or by which Subcontractor is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Subcontract, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Subcontractor pursuant to, any such indenture agreement or instrument;

(e) Subcontractor has obtained all licenses, permits and approvals required to perform the Services it will provide under this Subcontract; and

(f) Subcontractor is not under suspension or debarment by the Commonwealth or any other governmental entity, instrumentality or authority.

2. Contractor Representations. Contractor represents and warrants to Subcontractor as follows:

(a) Contractor (i) is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, (ii) has the power and authority to own its properties and to carry on business as now being conducted, and (iii) has the power to execute and deliver this Subcontract;

(b) The execution and performance by Contractor of the terms and provisions of this Subcontract by Contractor have been duly authorized by all requisite action, and neither the execution nor the performance of this Subcontract will violate any provision of law, any order of any court or other agency of government, the organizational documents of Contractor or any indenture, agreement or other instrument to which Contractor is a party, or by which Contractor is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Subcontract, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Contractor pursuant to, any such indenture agreement or instrument;

(c) Contractor has obtained all licenses, permits and approvals required to perform the Services to be provided by Contractor under the Prime Contract; and

(d) Contractor is not under suspension or debarment by the Commonwealth or any other governmental entity, instrumentality or authority.

3. Relationship of the Parties. The provisions of this Subcontract are not intended to create, nor shall be deemed or construed to create, any joint venture, partnership or other relationship between Contractor and Subcontractor, other than that of independent entities contracting with each other solely for the purpose of carrying out the provisions of this Subcontract. Neither of the Parties to this Subcontract, nor any of their respective employees, agents, or other representatives, shall be construed to be the agent, employee or representative of the other party. Neither party shall have the authority to bind the other party, nor shall a party be responsible for the acts or omissions of the other party, unless otherwise stated in this Subcontract. Similarly, the Parties expressly acknowledge that neither the Contractor nor the Subcontractor is an agent, employee or representative of the Commonwealth and each party covenants not to represent itself accordingly.

4. Prime Contract Flow-Down.

(a) General. This agreement is a subcontract under the Prime Contract and all provisions of the Prime Contract and any amendments thereto applicable to the Services being performed by the Subcontractor shall extend to and be binding upon the Parties as part of this Subcontract.

(b) Specific. The Parties agree to comply with the following provisions of the Prime

Contract, which are incorporated herein by reference:

(1) The Americans with Disabilities Act Provisions.
(2) Nondiscrimination/Sexual Harassment Clause.
(3) Contractor Integrity Provisions.
(4) Contractor Responsibility Provisions.

(c) Termination. Should the Prime Contract be terminated pursuant to the terms and conditions provided in the Procurement, such termination shall have the same effect on this Subcontract. Payment for Services provided as of the date of termination must be made in accordance with the Section 13 of this Subcontract.

(d) Audit Provisions. The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents, and records of the Parties to the extent that the books, documents, and records relate to the Parties' compliance with the provisions set forth in subsection (b) above or to the Small Diverse Business or Veteran Business Enterprise Commitment effectuated through this Subcontract. The Parties shall preserve such books, documents, and records for a period of three years from the date of final payment hereunder. The Parties shall give full and free access to all such records to the Commonwealth and/or its authorized representatives.

5. Order of Precedence. The Letter of Commitment, Procurement and Prime Contract are incorporated herein by reference into this Subcontract. In the event of any conflict or inconsistency among the individual components of this Subcontract, such conflict or inconsistency shall be resolved by observing the following order of precedence:

(a) This Subcontract;
(b) The Letter of Commitment;
(c) The Prime Contract; and
(d) The Procurement.

6. Further Action. The Parties shall take such actions and complete, execute and deliver any and all documents or instruments necessary to carry out the terms and provisions of this Subcontract, to effectuate the purpose of this Subcontract, and to fulfill the obligations of each party hereunder.

7. Description of Services. Subcontractor will perform the following Services for the Contractor which Contractor is obligated to provide to the Commonwealth under the Prime Contract:

[DESCRIBE IN DETAIL THE SPECIFIC SUPPLIES, SERVICES OR CONSTRUCTION THE SUBCONTRACTOR WILL PROVIDE OR PERFORM WITH THE CORRESPONDING UNITED NATIONS STANDARD PRODUCTS AND SERVICES CODES (UNSPSC)]

_____

_____

_____

_____
_____
_____.

8. Small Diverse Business or Veteran Business Enterprise Commitment. The above-referenced Services represent __ % of the final negotiated total cost for the initial term of the Prime Contract. Any proposed change to the Small Diverse Business or Veteran Business Enterprise Commitment must be submitted in writing to the Bureau and the Contracting Officer. The Bureau will make a recommendation to the Commonwealth Contracting Officer regarding a course of action.

9. Performance of Services. Subcontractor may not subcontract more than 50% of the work subcontracted to it hereunder without written permission from the Bureau. Subcontractor will perform the Services strictly in accordance with any applicable plans and specifications as contained in the Prime Contract and the reasonable deadlines set by Contractor in view of the requirements of the Prime Contract, and in a good workmanlike manner consistent with industry standards, meeting all applicable local, state and federal laws, regulations and policies.

10. Location of Services. Subcontractor will provide the Services at the following address(es):
_____
_____.

11. Timeframe for Performance of Services. The Services will be provided by Subcontractor during the initial term of the Prime Contract, and during any extensions, options or renewal periods of the Prime Contract exercised by the Commonwealth, as more specifically set forth below:

[IDENTIFY THE SPECIFIC TIME PERIODS DURING THE INITIAL CONTRACT TERM AND EXTENSIONS, OPTIONS AND RENEWALS WHEN THE SUBCONTRACTOR WILL PERFORM COMPONENT SERVICES]
_____
_____
_____
_____
_____.

12. Pricing of Services. Subcontractor shall provide or perform the Services at the pricing specified in Exhibit ___ to this Subcontract.

[ATTACH A BILL OF MATERIALS, RATE CARD OR OTHER APPROPRIATE COST SHEET COVERING THE SERVICES TO BE PROVIDED.]

13. Payment for Services. Contractor shall exert reasonable and diligent efforts to collect prompt payment from the Commonwealth. Contractor shall pay Subcontractor in proportion to amounts received from the Commonwealth which are attributable to the Services performed by Subcontractor. Contractor shall pay Subcontractor within fourteen (14) days after the Contractor receives such payment from the Commonwealth, unless the parties expressly agree upon a

different payment schedule or structure as set forth below: _____
_____
_____.

14. Utilization Reports. Both the Contractor and Subcontractor shall complete Monthly Utilization Reports (or similar type documents containing the same information) and submit them to the Contracting Officer and to the Bureau within ten (10) business days at the end of each month. This information will be used to determine the actual dollar amount paid to Subcontractor and will also serve as a record of fulfillment of Contractor's Small Diverse Business and Veteran Business Enterprise Commitments. If there was no activity during the month, then the form must be completed by stating "No activity in this month." A late fee of $100.00 per day may be assessed against the Contractor if the Contractor's Utilization Report is not submitted in accordance with the schedule above.

15. Change Orders. If the Commonwealth issues any change order or other formal contract instrument either expanding or limiting the work to be performed under the Prime Contract, the Parties shall accept such Change Orders. Contractor agrees to provide Subcontractor with written notice of any such change orders that affect the Services to be provided by the Subcontractor hereunder as soon as practical after Contractor receives such notice. Any resulting increase or decrease in the Services, Small Diverse Business or Veteran Business Enterprise Commitment provided for in Paragraphs 7 or 8 above must be in writing, mutually agreed to, and signed by both Parties and communicated to the Bureau. If the Parties are unable to reach an agreement regarding any adjustment to the Services, Small Diverse Business or Veteran Business Enterprise Commitment necessitated by a Commonwealth Change Order, the Parties must submit the matter in writing to the Bureau which will make a recommendation to the Contracting Officer regarding a course of action.

16. Force Majeure. Neither party will incur any liability to the other if its performance of any obligation under this Subcontract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemic and quarantines, general strikes throughout the trade, and freight embargoes. The existence of such causes beyond a party's control shall extend the period for performance to such extent as may be necessary to enable complete performance in the exercise of reasonable diligence after the causes have been removed.

17. Dispute Resolution.

(a) The Parties will attempt to resolve any dispute arising out of or relating to this Subcontract through friendly negotiations.

(1) The Parties expressly acknowledge and confer upon the Bureau and Contracting Officer the authority to adjudicate disputes that the Parties cannot resolve amicably concerning the Parties' compliance with their Small Diverse Business and Veteran

Business Enterprise Commitments as provided in the Prime Contract and this Subcontract.

(2) The Bureau may recommend to the Contracting Officer a range of sanctions it deems appropriate if the Bureau determines a party has failed to satisfy or perform its Small Diverse Business or Veteran Business Enterprise commitment. Such sanctions include, but are not limited to, one or more of the following: a determination that the party is not responsible under the Contractor Responsibility Program; withholding of Prime Contract and/or Subcontract payments; suspension or termination of the Prime Contract and/or Subcontract together with consequential damages; revocation of the party's Small Diverse Business and/or Veteran Business Enterprise verification status; and/or suspension or debarment of one or both parties from future contracting opportunities with the Commonwealth.

(3) The Parties' acknowledge that their prior performance in meeting their Small Diverse Business and Veteran Business Enterprise contractual obligations may be considered by the Commonwealth when reviewing future bids or proposals for responsiveness and responsibility.

(b) Nothing herein shall be construed to prevent either party from seeking such relief as provided by law in a court or tribunal of competent jurisdiction.

18. Notices. Any written notice to any party under this Subcontract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to the following:

If to Contractor:

_____
_____
_____

If to Subcontractor:

_____
_____
_____

19. Waiver. No waiver by either party of any breach of this Subcontract shall be deemed to waive any other breach. No acceptance of payment or performance after any breach shall be deemed a waiver of any breach. No failure or delay to exercise any right by a party upon another's default shall prevent that party from later exercising that right, nor shall such failure or delay operate as a waiver of any default.

20. Severability. If any provision of this Subcontract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

21. Assignment. Neither party may assign or transfer this Subcontract without the prior written consent of the Commonwealth. If Contractor's Prime Contract with the Commonwealth is assigned to another contractor, the new contractor must maintain the Small Diverse Business and Veteran Business Enterprise Commitments set forth in the Prime Contract as implemented through this Subcontract.

22. Applicable Law. This Subcontract shall be governed by the laws of the Commonwealth of Pennsylvania.

23. Entire Agreement. This Subcontract constitutes the entire agreement of the Parties regarding the subject of this Subcontract as of the date of execution. No other agreement or understandings, verbal or written, expressed or implied, are a part of this Subcontract unless specified herein.

24. Amendment. This Subcontract may be modified or amended only if made in writing and signed by both Parties. Any proposed change to the Contractor's Small Diverse Business or Veteran Business Enterprise Commitment to Subcontractor must be submitted in writing to the Bureau which will make a recommendation to the Contracting Officer regarding a course of action.

25. Binding Effect. This Subcontract shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, representatives, successors and assigns.

26. Counterparts. This Subcontract may be executed by the Parties in counterparts, each of which together shall be deemed an original but all of which together shall constitute one and the same instrument. A party's delivery of a duly executed signature page of this Subcontract in electronic format shall have the same force and effect as delivery of an original signature page.

ADDITIONAL TERMS AND CONDITIONS

[THE PARTIES MAY INCLUDE ADDITIONAL TERMS AND CONDITIONS APPROPRIATE FOR THE SERVICES TO BE PROVIDED SO LONG AS THEY ARE COMMERCIALLY REASONABLE TERMS FOR THE APPLICABLE BUSINESS OR INDUSTRY, ARE NO LESS FAVORABLE THAN THE TERMS OF THE PRIME CONTRACT, AND DO NOT PLACE DISPROPORTIONATE RISK ON THE SMALL DIVERSE BUSINESS OR VETERAN BUSINESS ENTERPRISE RELATIVE TO THE NATURE AND LEVEL OF THE SMALL DIVERSE BUSINESS' OR VETERAN BUSINESS ENTERPRISE'S PARTICIPATION IN THE PROJECT. SUCH TERMS MAY INCLUDE:

Background Checks
Confidentiality/Disclosure of Information

Data Security
Insurance
Invoicing Requirements
Environmental Protection
Intellectual Property Rights
Record Retention/Audits
Service Level Agreements (SLAs) (consistent with Prime Contract SLAs)
Public Works Construction Requirements (including Bonding, E-Verify, Prevailing Wage, and Prompt Payment provisions)

IN WITNESS WHEREOF, the Parties hereto have caused this Subcontract to be executed by their duly authorized officers as set forth below.

Contractor	Subcontractor
Insert Company Name	*Insert Company Name*
By: _____	By: _____
Signature	Signature
_____	_____
Printed Name	Printed Name
_____	_____
Title	Title
_____	_____
Date	Date