



*Excellence Delivered **As Promised***

February 13, 2020

Johnson, Mirmiran & Thompson, Inc.
Marquis Corporate Center Two
5313 Campbells Run Road
Suite 100
Pittsburgh, PA 15205

Attn: Ms. Lisa A Cooper, P.E.
Vice President

Re: PennDOT Bureau of Design
PDT E04767
Open End for Various Engineering Services
GF Project #066507
Subconsultant Agreement

Dear Ms. Cooper:

Enclosed is a complete copy of the agreement for the above referenced project, which includes Exhibit A (Overall Agreement, Technical Proposal and Base Price Proposal) and Exhibit B (PDT Harassment Memos).

Please sign and return a fully executed copy to my attention: scalaman@gfnet.com; if live signature copies are preferred, please print one (1) copy of the Agreement, sign and return to our office, to my attention, Susan Calaman. We will then sign and return to you for your files. **Please note that all exhibits and attachments are for your files and do not need to be returned with the signed Agreement.**

Should you have any issues with the contract please contact us before signing and returning to us with markups. Our legal department will gladly work with you and your legal department to amend the document as needed so that both parties are in equal agreement. Please also be sure to review and update Sections 8.7 and 8.8 as applicable to you.

Additionally, please forward, with the signed Agreements, your Certificate of Insurance for this project. Please note that your General Liability Certificate of Insurance should have Gannett Fleming, Inc., added as the "Named Insured", and include all language indicated under section 7.1.7. Please be sure to include Gannett Fleming Project No. 066507 and address to the attention of the undersigned.

In order to adhere to Gannett Fleming's ISO – 9001 requirements, Section 1.1.4 concerning the QA/QC process has been included in the agreement. Please include a signed statement, either in the transmittal letter or as a separate document, that all submissions have been prepared, reviewed and checked in

Gannett Fleming, Inc.

Subconsultant Agreement

PennDOT Bureau of Design

E04767 Various Structural Related Services O/E

GF#066507

Page 2 of 2

accordance with your QA/QC process. A copy of the QA/QC Submittal form is attached to the agreement and should be used as a guideline for all submissions by your company.

We will be sending out Amendments as individual work orders are approved for which you will be providing services as outlined in the original Agreement, Technical Proposal and Price Proposal.

If you have any questions, please feel free to call.

Very truly yours,
GANNETT FLEMING, INC.



Susan Calaman
Project Manager Assistant
Roadway
Bridge Section

Enclosures

c: File 066507.99a

AGREEMENT BETWEEN CONSULTANT AND SUBCONSULTANT

Agreement made as of the ____ day of _____, 20____.

Between the CONSULTANT: Gannett Fleming, Inc.
207 Senate Avenue
Camp Hill, PA 17011
Telephone: 717-763-7211
www.gfnet.com
Attn: D. Scott Fegan, P.E.

and the SUBCONSULTANT: Johnson, Mirmiran & Thompson, Inc.
Marquis Corporate Center Two
5313 Campbells Run Road
Suite 100
Pittsburgh, PA 15205
Telephone: 412-375-5124
www.jmt.com
Attn: Ms. Lisa A. Cooper, P.E..

CLIENT: Pennsylvania Department of Transportation
Bureau of Design
400 North Street, 7th Floor
Harrisburg, PA 17120

the PROJECT: PennDOT E04767
Open End for Various Engineer Services
GF Project #066507

WHEREAS, the Consultant has entered into an agreement, hereinafter referred to as the Prime Agreement, with Client for the Project;

WHEREAS, the Consultant desires the Subconsultant to perform General Engineering services including complex structures, 3D and Finite Element Modeling Design Reviews, Constructability Reviews and other structure related services in connection with the Project as more fully described below in Article 1 – Subconsultant's Services and Responsibilities (the Services); and

WHEREAS, the Subconsultant is willing to and capable of performing those Services;

NOW, THEREFORE, it is agreed by and between the parties hereto, for and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

TERMS AND CONDITIONS OF AGREEMENT

ARTICLE 1 SUBCONSULTANT'S SERVICES AND RESPONSIBILITIES

The Subconsultant's Basic Services for the Pennsylvania Department of Transportation, Bureau of Design project are as described in Exhibit A, which is attached to this Agreement and incorporated herein.

1.1 Basic Services

- 1.1.1 The Basic Services to be performed by Subconsultant are based on Subconsultant's technical proposal submitted to Client by Consultant and the applicable sections of the Client's Scope of Work. When and as directed by the Consultant in writing, Subconsultant, as an independent contractor, hereby agrees to provide the necessary facilities, personnel, materials, equipment and shall otherwise do all things necessary or incident to perform all the tasks and services set forth in Exhibit A of this Agreement in accordance with the terms and conditions expressed herein and in the Prime Agreement, in a manner consistent with all applicable professional practices and standards, with due diligence and in a sequence, time and manner that will permit Consultant to comply with the requirements and applicable sections of

the Prime Agreement.

- 1.1.2 Subconsultant represents that it has the expertise, experience, personnel and resources to perform the services and that all personnel engaged in performing the services shall be fully qualified and authorized or permitted under applicable laws or regulations to perform such services. None of the services shall be subcontracted without the prior written approval of Consultant.
- 1.1.3 Subconsultant shall be solely responsible for the professional quality, technical accuracy, completeness compatibility with, and coordination of, all designs, drawings, specifications, calculations, data, reports or other Services to be provided by Subconsultant hereunder, and shall, without any additional compensation, correct or revise any errors or deficiencies which result from the Subconsultant's services promptly upon notice or discovery thereof. Neither review, approval or acceptance, nor payment for, any of the services provided hereunder shall be construed as a waiver of any rights under this Agreement by Consultant or of any cause of action arising out of the performance of this Agreement, and Subconsultant shall be liable for all damages caused by ~~or arising out of~~ Subconsultant's performance of the Services provided or required hereunder. Subconsultant shall perform its services in accordance with the standard of care in the Prime Agreement but with no less than the same degree of care, skill and diligence exercised by a member of the same profession currently practicing under similar circumstances.
- 1.1.4 Subconsultant shall have a documented Quality Assurance/Quality Control (QA/QC) process that provides for checking and reviewing work for accuracy, completeness and compliance with the scope of services. Prior to submission of deliverables, Subconsultant shall check and review Subconsultant's work for accuracy and correctness according to the Subconsultant's QA/QC process. When making submissions Subconsultant shall verify that checking and reviewing has been conducted according to the QA/QC process. Subconsultant shall maintain written records of these checks and reviews and, upon request by Consultant, shall supply copies of Subconsultant's QA/QC records. Along with the submission of final documents or any other work products or deliverables defined by the scope of services, Subconsultant shall submit a completed SUBCONSULTANT QUALITY VERIFICATION FORM (Attachment 1). Consultant shall be permitted to conduct independent audits to verify that Subconsultant's QA/QC processes are being followed, and Subconsultant shall fully cooperate with such audits. Should the Subconsultant not have an acceptable documented QA/QC process, Consultant shall have the right to require that Subconsultant comply with Consultants' QA/QC processes. Nothing in this paragraph shall in any way limit Subconsultant's responsibility or liability for any errors or omissions in its or its subconsultants' or subcontractors' work. **Note: All deliverables must be created utilizing software product(s)/version(s) whose native file format(s) match that specified by Consultant. Translation of files between formats/versions is not permitted. If the use of document management software (DMS) is specified by consultant, all files must be accessed, worked on, and maintained within the DMS at all times.**
- 1.1.5 Neither the Subconsultant nor any of its personnel or its subcontractors may communicate or deal on substantive technical or contractual matters directly with the Client or any of its agents or representatives regarding the project without the knowledge and approval of the Consultant. Notwithstanding this provision, all material contact, communication and dealings with the Client and its agents and representatives by Subconsultant and any of its personnel shall be solely through the Consultant, or his designated representative.
- 1.2 Additional Services
- 1.2.1 Consultant may make changes within the general scope of this Agreement. If the Subconsultant is of the opinion that any proposed changes causes an increase or decrease in the cost required for performance of this Agreement, Subconsultant shall notify Consultant of that fact. Any notification by the Subconsultant shall be provided to Consultant within 14 days after Subconsultant is advised of the change. Subconsultant shall not perform any additional service, or incur any additional expense unless the Subconsultant provides such prior written notice, obtains the prior written approval of Consultant (and Client, if appropriate) and a written amendment is executed. Should the Client authorize a change of scope or additional services, the appropriate amount of payment for such services shall be determined at the time of Consultant's and Client's written approval and shall be included in an amendment to this Agreement. Subconsultant agrees that all additional or extra services performed without written authorization by Consultant and Client shall be at Subconsultant's own risk and sole expense. Consultant shall not be liable for payment of any additional services except upon a written amendment.
- 1.3 Time

provided that the Subconsultant's performance be in any event, governed by sound professional standards.

- 1.3.1 The Subconsultant shall perform its services in accordance with the project time schedule. If the Subconsultant is of the opinion that any proposed change will cause an increase or decrease in the time required for the performance of this Agreement, Subconsultant shall notify Consultant of the fact within 14 days after Subconsultant has notice of or is advised of the change.
- 1.3.2 The overall Project is set to expire on January 31, 2025. No new work will be activated within 6 months of this date. Requests for extensions with regards to active work orders that need to be extended past this date should be submitted to the Consultant 30 days prior to the expiration date. All requests will then be submitted to the Client for approval. If granted, Subconsultant will receive a written notification.

ARTICLE 2 THE CONSULTANT'S RESPONSIBILITIES

- 2.1 Consultant agrees to coordinate with Subconsultant, Client and other parties on the project.
- 2.2 The consultant agrees to furnish information requested by Subconsultant and render approvals and decisions regarding the progress of the Subconsultant's services to the extent that such information is available from the Client.

ARTICLE 3 BASIS OF COMPENSATION

The Consultant agrees to compensate the Subconsultant for its services in accordance with Article 4, Payments to the Subconsultant, and the other terms and conditions of this Agreement, as follows:

- 3.1 Basic Compensation
 - 3.1.1 For Basic Services, as described in Paragraph 1.1 and Exhibit A, Subconsultant's compensation shall be an accumulative amount based on various work orders as assigned through contractual Amendments to this Agreement, and the dollar values will be based on a specific not-to-exceed amount, that may not be altered without the advance written approval of the Consultant.
 - 3.1.2 Compensation to the Subconsultant for Basic Service will be determined per Work Order and may be a Cost Plus Fixed Fee, Lump Sum or Specific Rate of Compensation basis as more fully described in the Base Agreement Price Proposal, made part of Exhibit A, and using Subconsultant's overhead rates, fixed fees, and direct expenses included in Subconsultant's Technical and Cost Proposal.
- 3.2 For additional services, requested in writing by the Consultant and approved by Client, compensation shall be based on rates and scope agreed to by the Consultant, Subconsultant and Client and incorporated into this Agreement by written amendment.
- 3.3 Subconsultant agrees to maintain all pertinent books, records, documents and other evidence (hereinafter "records") and shall apply consistent accounting procedures and practices sufficient to properly reflect its transactions under this Agreement. Subconsultant agrees to maintain all records for a period of three years after final payment and audit by the Client under this Agreement or for the period of time specified in the Prime Agreement, whichever is longer. Subconsultant agrees to make such records available for audit by Consultant or Client or any other governmental funding agency and to repay to Consultant within fifteen days of notice any overpayments to Subconsultant under this Agreement disclosed by audit. Consultant shall also have the right to withhold the total of such disallowed amounts from any sums payable under this Agreement.

ARTICLE 4 PAYMENTS TO THE SUBCONSULTANT

- 4.1 Subconsultant shall submit invoices for services rendered during the previous month to Consultant on a monthly basis, and a final invoice within forty-five days after completion of required services per assigned agreement or task. Said invoices shall be prepared in accordance with the requirements of the Prime Agreement and include all necessary documentation and backup. In no event shall Subconsultant's invoices for Basic Services exceed the amount provided in Article 3.1.1 unless Subconsultant shall have prior approval in writing as provided elsewhere in this Agreement. Consultant will not be responsible for reimbursing Subconsultant (nor seeking reimbursement from the Client) for any fees or costs invoiced more than ninety days after the costs were incurred. All invoices are

unless the Client's non-payment arises from an act, or failure to act, by the Consultant and without the fault of the Subconsultant, in which case Consultant shall be obligated to pay Subconsultant within a reasonable time not later than 60 days after receipt of Subconsultant's invoice.

to be submitted using the Client's online application: ECMS.

- 4.2 Consultant agrees to pay Subconsultant for all amounts not in dispute within ten business days after Consultant has received payment for Subconsultant's services from Client. Consultant shall not be obligated to make payment to Subconsultant for invoices received until payment for such invoices is received by Consultant from the Client. When the Prime Agreement specifies that retainage is to be withheld from Consultant's fees, the same provisions shall apply to the Subconsultant. Retainage will be remitted upon receipt of payment from the Client. It is agreed that Consultant is under no obligation to reimburse Subconsultant for alleged Additional Services unless such Additional Services work and reimbursement is specifically approved in writing and paid by the Client. In no event, will Consultant be liable for any loss of future profits or consequential damages to the Subconsultant.
- 4.3 All payments hereunder are subject to audits, adjustments, limitations and determinations that apply to Consultant under the Prime Agreement. Consultant may withhold payments in whole or in part, and continue to withhold any such payments, for services not completed, completed unsatisfactorily, services that are behind schedule or services that are otherwise performed in an inadequate or untimely manner as reasonably determined by Consultant in its discretion. Consultant shall receive all rights of ownership or title to all data, inventions, reports or developments, including software, prepared in performance of any assignment, whether specified as a deliverable item or not. Payment will be released and paid to Subconsultant promptly when the services are satisfactorily performed, and all deliverables have been received by Consultant.
- 4.4 Subconsultant acknowledges that the total compensation as set forth in Article 3 and as increased by any written amendments shall be in full and complete satisfaction of all indebtedness and obligation of any nature whatsoever for the services to be performed by Subconsultant under this Agreement and includes any and all costs for inefficiency, disruption or delay associated with Subconsultant's services. Subconsultant agrees that acceptance of payment in the amount set forth in Article 3 (and any increases in compensation provided by written amendment) shall constitute on its behalf and on behalf of its successors and assigns, a full release and discharge of Consultant and Client of and from all manner of demands, claims, actions, causes of actions, suits, accounts, covenants, contracts, agreements and any and all claims and liabilities whatsoever, in law and equity, arising under or by virtue of this Agreement and any amendments thereto. Subconsultant further agrees to sign any release for payment required by the Client under the Prime Agreement.

Johnson, Mirmiran & Thompson, Inc.

ARTICLE 5 APPLICABILITY OF PRIME CONTRACT AND SPECIAL CONDITIONS

- 5.1 In addition to the scope of services, the Subconsultant agrees to be bound by and comply with all applicable sections of the Prime Agreement in the same manner and to the same extent that Consultant is bound regarding the services of the Subconsultant. All relevant terms of the Prime Agreement apply to the Subconsultant Agreement unless specifically stated otherwise in this Agreement. When different or additional terms exist between this Agreement and the Prime Agreement, the provision that imposes the more stringent requirement on the Subconsultant shall control. With respect to the Prime Agreement, the designation "client"/PennDOT shall be read to be the "Consultant" *Gannett Fleming, Inc.* and the designation "Consultant" shall be read to be the "Subconsultant" *The Markosky Engineering Group, Inc.* A copy of the Prime Agreement is attached hereto as Exhibit A and by reference made a part of this Subconsultant Agreement.
- 5.1.1 The Subconsultant further agrees to be bound by any modification of the Prime Agreement that may occur from time to time. The Consultant agrees to timely notify the Subconsultant of all such changes.
- 5.2 *If the Prime agreement is with a nonexempt Federal department or agency, the following specific contract provisions are required of all consultants and subconsultants with whom they do business, including posting of the required Federal Notice, per Executive Order 13496:*
During the term of this agreement, the subconsultant agrees to post a notice, of such size and in such form, and containing such content as the Secretary of Labor prescribed pursuant to Executive Order 13496 of January 30, 2009, "Notification of Employee Rights under Federal Labor Laws", in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically. The language of the notice is prescribed at: https://www.dol.gov/olms/regs/compliance/EO_Posters/EmployeeRightsPoster11x17_2019Final.pdf.
- 5.3 The following additional Special Conditions apply to this Agreement:

All employees working on this project must be familiar with the Client's Sexual Harassment Policy and Client's Harassment/Hostile Work Environment Policies attached to this Agreement as Exhibit B.

ARTICLE 6 TERMINATION OF AGREEMENT

- 6.1 The Client may and including terminate the Prime Agreement for any reason. This includes a situation attributable to the alleged acts or omissions of the Consultant or Subconsultant. In such an event, this Agreement with the Subconsultant shall be terminated as to all services that have not been performed by Subconsultant. Consultant will pay Subconsultant for services completed satisfactorily and all reimbursable expenditures justifiably incurred for the services up until the date of termination, and for the corresponding payments traceable to those services to the extent of the funds actually received by Consultant from the Client for Subconsultant's services
- 6.1.1 In addition, upon seven days' notice, the Consultant shall have the option to terminate this Subconsultant Agreement in the following cases:
- 6.1.1.1 If Consultant terminates the Prime Agreement.
 - 6.1.1.2 If Subconsultant has subcontracted, yielded or shared any part of the services described under the Contract without the authorization of Consultant.
 - 6.1.1.3 If Subconsultant fails to provide or is late in providing certificates of insurance after a demand in writing for the same, or if Consultant receives notice of the cancellation of any insurance coverage required by the Subconsultant hereunder.
 - 6.1.1.4 If there are errors, omissions, faults or delays in the execution of the services or unsatisfactory performance by Subconsultant.
 - 6.1.1.5 If Subconsultant ceases doing business, commits an act of bankruptcy, or makes an assignment for the benefit of creditors or takes benefit of any insolvency act, or if a receiver or trustee shall be appointed for it or, more generally, in any case where the financial or technical position of Subconsultant is modified in such a way as in Consultant's judgment impairs its financial responsibility or its ability to perform the nature or scope of the work entrusted to it hereunder.
 - 6.1.1.6 If Subconsultant conducts itself in an unprofessional manner in the execution of the services entrusted to it, or makes any unauthorized disclosure of information relating to this Agreement or the Prime Agreement, or it fails to fulfill its obligations under the Subconsultant Agreement, fails to make progress, or manifests its intention not to fulfill its obligations under this Agreement.
 - 6.1.1.7 At the request of the Client.
- 6.1.2 Termination of the Subconsultant shall be effected by written notice to the Subconsultant. In the event termination is due to action or fault of the Subconsultant, the Consultant shall have all rights to recover any and all damages and expenses due to the action or fault of Subconsultant, any damage of any kind to the services performed due to said action or fault, additional costs to perform or re-perform Subconsultant's services, and any penalties, damages or interest which are incurred by the Consultant as a result of said action or fault in addition to all remedies and damages in the Prime Agreement and all rights at law and in equity. The damages and expenses set forth above may be deducted from any amounts due to the Subconsultant, and Subconsultant shall promptly pay any deficiencies. In the event said termination shall be determined not to be for substantial failure to perform, such termination shall be deemed a termination for convenience under Article 6.2.
- 6.2 This Agreement may be terminated for convenience by the Consultant upon at least ten (10) days written notice to the Subconsultant. Consultant shall have the right to terminate this Agreement at any time and for any reason and such action shall in no event be deemed a breach of contract by Consultant. In the event of termination not the fault of the Subconsultant, the Subconsultant shall be compensated for all authorized services satisfactorily performed up to the date of termination to the extent of the funds actually received by Consultant from Client for Consultant's services. In the event of such termination, the Subconsultant agrees that it will not file claims against Consultant for any losses, including future profit or consequential damages.
- 6.3 Upon receipt of a termination notice, Subconsultant shall immediately discontinue all services affected and deliver to Consultant all original data, drawings, reports, summaries, electronic files and other information and materials

generated in performing services on the Project.

- 6.4 The rights and remedies set forth herein shall be in addition to any other remedies provided by law, and waiver by Consultant of any provision hereunder or a breach thereof by the Subconsultant shall not be deemed a waiver of future compliance thereof and such provision shall continue in full force and effect.

ARTICLE 7 INSURANCE AND INDEMNITY

- 7.1 Subconsultant shall, at its sole expense, maintain at all times, during the performance of the Services under this Contract, as required by the agreement or applicable to the prime agreement referenced in 5.1; insurance coverages with limits no less than those set forth below with insurers licensed to do business in the State in which the Project is located, currently rated a minimum of "A-" Financial Strength by A.M. Best, and under forms of policies consistent with the following provisions:

- 7.1.1 Subconsultant shall carry Commercial General Liability insurance on ISO CG 00 01 or equivalent form acceptable to Consultant and owner written on an occurrence basis with limits of liability of a least \$1,000,000 per occurrence and \$1,000,000 general aggregate coverages included shall be:

- 7.1.1.1 Premises and operations;
- 7.1.1.2 Broad Form Contractual Liability;
- 7.1.1.3 Independent contractors;
- 7.1.1.4 Cross liability (separation of insureds) clause providing that the insurance applies separately to each insured except with respect to the limits of liability;

Should the Services included work within 50 feet of an active Railroad, the policy exclusion for such operations shall be deleted via ISO CG 24 17 or similar endorsement acceptable to owner.

Should the Services include installation or construction activities, the policy shall include a completed operations aggregate of at least \$1,000,000 and such coverage shall be renewed for a period of ten years after completion of work under the Contract.

- 7.1.2 Subconsultant shall carry a Commercial Business Automobile Liability policy for bodily injury (including death) and property damage which provide total limits of not less than \$1,000,000 combined single limit per accident applicable to all owned, non-owned and hired vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are operated. If the services involve transport of hazardous materials, this policy shall also include a MCS-90 Endorsement..
- 7.1.3 Subconsultant shall maintain excess liability umbrella following the form of Employer's Liability, Commercial General Liability and Commercial Automotive Liability with minimum limits of \$1,000,000 per occurrence and aggregate.
- 7.1.4 Certificates of Insurance, satisfactory to Client and Consultant will be furnished before any services are performed. Sub Consultant will provide for thirty (30) days written notice to Consultant prior to cancelation, either by insurer or any insured, of the insurance.
- 7.1.5 Such policies shall carry the following endorsements, copies of which shall be provided:
- 7.1.5.1 Inclusion of Client and Consultant, their directors, officers, agents and employees as additional insured as respects to services or operation under this Subconsultant Agreement (except Workers Compensation).
 - 7.1.5.2 Stipulation that the insurance is primary insurance and that no insurance of Consultant will be called upon to contribute to a loss.
 - 7.1.5.3 Waiver of Subconsultant's rights of subrogation against Consultant and Client, where allowed by law.

- 7.1.6 Consultant and Client together with any other entities required by the Contract Documents to be named as additional insured, shall be added as additional insured.

Should the Services include installation or construction activities Endorsement ISO CG 20 10 07 04 or equivalent under Subconsultants' Commercial General Liability Policy is required; coverage under such Policy shall be primary with Consultant's, the Client's, and the others', as noted above, insurance to be non-contributory and excess over Subconsultant's coverage

- 7.1.7. Subconsultant shall carry statutory worker's compensation coverage including a broad form all states endorsement; Employers Liability Insurance for not less than \$100,000 Each Accident, \$500,000 Disease Policy Limit, \$100,000 Disease Each Employee for all employees engaged in services or operations under this Subcontract Agreement, including an insurer's waiver of subrogation in favor of Client and Consultant and their directors, officers, representatives, agents and employees unless waiver of subrogation is prohibited by state law in the state the project is performed in.

Based on the above requirements under Section 7, the following required wording should appear on all General Liability Insurance Certificates is as follows, and reluctance to include the following endorsement could delay payment to the Subconsultant:

"Gannett Fleming and the Pennsylvania Department of Transportation, and their respective directors, officers, agents and employees are additional Insured as respects General Liability; including Completed Operations, when required by written contract.

General Liability applies on a Primary and Non-Contributory basis as per policy language when required by written contract agreed to prior to a loss.

Waiver of Subrogation applies as respects General & Automobile Liability and Workers Compensation when required by contract prior to a loss. Includes Severability of Interest and no conflicting cross liability language."

- 7.2 During the performance of services hereunder and for a period of five years thereafter, Subconsultant shall maintain Professional Liability Insurance in an amount not less than \$1,000,000 per claim and aggregate.

If the liability insurance specified above shall be provided on a claims-made basis, then in addition to the coverage requirements above the policy shall provide that:

1. The retroactive date shall coincide with the Subconsultant's start of Services (including subsequent purchased as renewals or replacements);
2. The policy shall allow for the reporting of circumstances or incidents that might arise to future claims;
3. Consultant will maintain similar insurance for at least five (5) years following completion of the Services and
4. If insurance is terminated for any reason, Subconsultant agrees to purchase an extended reporting provision sufficient to meet the requirements of (3.) above to report claims arising from Services performed in connection with the Contract, or to provide a retroactive date on new coverage that coincides with or precedes Subconsultant's start of service.

- 7.3 Prior to beginning work, insurance certificates that comply with the requirements of Article 7.2 shall be furnished to Consultant's Project Manager prior to performance of the services and provide for not less than 30 days prior written notice to Consultant of any cancellation, or reduction of limits in the policy. The certificates provided to Consultant shall specifically state the following on the face:

7.3.1 PennDOT Bureau of Design E04767 Non-Project Specific O/E

7.3.2 GF Project #066507

7.3.3 GF Project Manager: D. Scott Fegan

- 7.4 All Certificates of Insurance are required to be renewed yearly and updated copies are to be sent to the Consultant prior to their yearly expirations.

7.5 All Insurance Certificates and Renewals for the project should be mailed to the attention of:

Susan Calaman
Project Manager Assistant
Bridge Section
207 Senate Avenue
Camp Hill, PA 17011
Or emailed to: scalaman@gfnet.com

7.6 Subconsultant shall require all sub-subconsultants to carry the insurance required herein unless otherwise authorized in writing by the Consultant. The Consultant or Client, may, at their option provide coverage for any and all subconsultants, and, if so, the evidence of insurance submitted shall so stipulate. The fact that insurance is required hereunder and obtained by Consultant or Client, shall not be deemed to release, diminish or limit the liability of Subconsultant; including without limitation, liability under the indemnity provisions of the Agreement.

7.7 To the fullest extent permitted by law, Subconsultant shall indemnify, defend and hold harmless Consultant and the Client, their officers, agents and employees from and against all claims, losses, actions and expenses, including but not limited to legal fees and expenses, on account of errors and omissions, economic loss, bodily injury to or death of any person (including but not limited to employees, agents or authorized representatives of Subconsultant, Consultant or the Client) or for damage to property or the work (including but not limited to the property of Subconsultant, Consultant or the Client) arising out of or caused by the negligent acts, errors or omissions of Subconsultant, its employees, agents, or Subconsultants in the performance of services under this Agreement. This indemnification by Subconsultant shall not be limited as to the amount or type of damages, compensation or benefits payable by or for the Subconsultant under workers' compensation acts, disability benefit acts or other employee benefit acts. In the event a claim is made against the Consultant alleging damages that arose out of or are caused by Subconsultant's services under this Agreement, the Subconsultant agrees that it shall, at its own expense, defend the claim and the Consultant through the resolution of the claim by negotiation, mediation, trial or arbitration if and as applicable.

Further, Subconsultant explicitly waives any right it has to immunity under applicable industrial insurance laws and agrees to indemnify, defend and hold *Gannett Fleming Inc and the Pennsylvania Department of Transportation*, their employees, officers, directors and agents harmless from any and all liability, losses, costs, expenses, and fees arising out of claims or law suits brought by Subconsultant's employees or any of its lower tier subconsultants' employees for bodily injuries or death sustained while performing services hereunder, except to the extent caused by the gross negligence or willful misconduct of *Gannett Fleming, Inc. and the Pennsylvania Department of Transportation*.

To the fullest extent permitted by law, Subconsultant shall indemnify, ~~defend~~ and hold harmless Consultant and the Client, their officers, agents, funding agencies and employees in the same manner and to the same extent that *Consultant is required to defend and indemnify the Client, or any other person or entity, under the* indemnification provisions contained in the Prime Agreement. Subconsultant agrees that the Client and the other indemnitees named in the Prime Agreement shall be intended third party beneficiaries of this Agreement.

To the fullest extent permitted by law, Subconsultant ~~guarantees~~ ^{agrees} that any material provided, work performed or services rendered will not infringe any United States or foreign Letters Patent, Registered or Industrial Design, Trademark or Trade Name, Trade Secret, Copyright or other protected right in any country. Subconsultant agrees to defend, protect and save harmless GF, its officers, employees, and agents from and against all damages, claims and demands, for actual or alleged infringement of any Intellectual Property right by reason of the sale or use of the material provided, work performed or services rendered hereunder.

7.8 ~~Subconsultant~~ ^{Each party} waives claims for, and in no event will ~~Consultant~~ ^{either party} be liable to ~~Subconsultant~~ ^{the other} under this Agreement for consequential damages arising out of or relating to this Agreement. This waiver includes, without limitation, damages incurred by Subconsultant or any of its Subconsultants for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except for agreed upon profit on services satisfactorily performed. This waiver of consequential damages shall apply to all such damages regardless of cause, including breach of contract, tort (including sole or concurrent negligence) strict liability, or otherwise.

7.9 The provisions of this Article shall survive the expiration or any termination of this Agreement.

Subconsultant\Agts\H1-Consultant(GF)-SubConsultant-A
© Gannett Fleming, Inc. 2006-2020

Notwithstanding the foregoing, Subconsultant shall have no obligation to indemnify or defend claims of infringement arising from the express requirements of this Agreement or GF's direction to use, specify, otherwise implement third-party intellectual property. 02/05/2020 Agreement

ARTICLE 8 MISCELLANEOUS PROVISIONS

- 8.1 This Agreement shall be enforced and governed by the laws as specified in the Prime Agreement or, if the Prime Agreement does not specify the controlling law then, this Agreement will be subject to the law of the State where the Project is located. Subconsultant agrees to submit to the jurisdiction and venue, if any, specified in the Prime Agreement and to joinder by Consultant in any suit or arbitration arising out of or related to this Agreement or the Prime Agreement. In the event of any dispute or any action to enforce this Agreement solely between Consultant and Subconsultant, the parties will first attempt to settle the matter through amicable discussions. If no agreement can be reached, then the parties shall submit to mediation with a mediator chosen by the Consultant. The location for mediation shall be Cumberland County, PA. The cost for a mediator shall be shared equally by the Consultant and Subconsultant. In the event the dispute cannot be resolved by mediation, then either party may bring an action in a court of competent jurisdiction where the Project is located or Cumberland County, PA. In any such litigation, the parties agree to waive their rights to a jury trial on all issues.
- 8.2 Subconsultant hereby agrees that all information provided by Client and Consultant hereunder shall be considered confidential and proprietary, and shall not be reproduced, transmitted, used or disclosed by the Subconsultant without the written consent of Consultant, except as may be necessary for the Subconsultant to fulfill its obligations hereunder; provided that the limitation shall not apply to information or any portion thereof, which was within the public domain at the time of its disclosure or was previously known to Subconsultant, or is required to be produced in response to subpoena, court order or other legal proceeding and Subconsultant provides immediate notice to Consultant of such request. The requirements of this provision shall survive the term of this Agreement.
- 8.3 All reports, programs, drawings, renderings, or other documents or materials prepared by Subconsultant in course of this project (excluding any pre-existing materials which remain property of Subconsultant) shall become the property of the Client if imposed by the Prime Agreement, or the Consultant if the Prime Agreement is silent. Subconsultant may retain a record copy for its files.
- 8.4 Subconsultant shall comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and orders in effect throughout the term of this Agreement, including, but not limited to Executive Order No. 11246 of September 24, 1965, as amended (regarding Equal Employment Opportunity), and the Orders of the Secretary of Labor pursuant thereto.
- 8.5 The Consultant and Subconsultant, respectively, bind themselves, their partners, successors, assigns and legal representatives of each party with respect to all covenant of this Agreement. The Subconsultant shall not assign, sublet or transfer any interest in this Agreement without the written consent of the Consultant.
- 8.6 During the term of this Agreement and for a period of twelve months after the termination of this Agreement, or any extensions or renewals thereof, Subconsultant agrees not to directly or indirectly solicit, employ, hire or retain any of the employees of the Consultant or its affiliates without Consultant's prior written consent.
- 8.7 DBE Notification: At the time of executing this Agreement is Subconsultant registered as a State certified Disadvantaged Business Enterprise (DBE) Company? (You can check more than one category.) (Consultant to be notified within 5 business days if DBE status is lost.)
Yes ☐
If yes: WBE ☐ SBE ☐ MBE ☐
If SBE: Disabled Veteran Enterprise ☐
If MBE: Asian/Pacific Islander ☐ Black ☐ Hispanic ☐ Native American ☐
No ☐
- 8.8 SBA Notification: At the time of executing this Agreement does Subconsultant qualify as a Federal small business (listed at <http://web.sba.gov/pro-net/>) (Consultant to be notified within 5 business days if Federal small business status changes).
Yes ☐
If yes:
Small Only ☐
Other Small Category (you can check more than one subcategory)
WOSB ☐ Economically Disadvantaged WOSB ☐
VOSB ☐ Service-Disabled VOSB ☐

SDB ☐ HUBZone ☐
If SDB: Black American ☐ Hispanic American ☐ Native American ☐
Asian Pacific American ☐ Subcontinent Asian American ☐
Economically Disadvantaged ☐ Other ☐

No ☐

- 8.9 The provisions of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) are incorporated herein by reference. This Consultant and Subconsultant shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, national origin, sexual orientation or gender identity. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, sexual orientation, gender identity, protected veteran status or disability.
- 8.10 Where applicable, the provisions of DOT Order No. 1050.2A are incorporated herein by reference. During the performance of this Agreement, Subconsultant agrees to comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement. The Subconsultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, national origin, sex, religion, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. See Appendices A and E of DOT 1050.2A attached.
- 8.11 Notification – All correspondence to Consultant shall be addressed as follows:
- Gannett Fleming, Inc.
207 Senate Avenue
Camp Hill, PA 17011
Attn: Mr. D. Scott Fegan, P.E.
Project Manager
dfegan@gfnet.com
- 8.11.1 All correspondence to the Subconsultant shall be addressed as follows:
- Johnson, Mirmiran & Thompson, Inc.
Marquis Corporate Center Two
5313 Campbells Run Road
Suite 100
Pittsburgh, PA 15205
Attn: Ms. Lisa Cooper, P.E.
Vice President
lcooper@jmt.com
- 8.11.2 The parties may, with written notice, from time to time redesignate the receipt or change the addresses only indicated above.
- 8.12 This Agreement together with all Exhibits including the Prime Agreement and documents incorporated therein, represents the entire and integrated agreement between the Consultant and the Subconsultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Consultant and the Subconsultant.
- 8.13 In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, terms, conditions, or covenant shall not be construed by the other party as a waiver or a subsequent breach of the same by the other party.

This Agreement is entered into as of the day and year first written above.

CONSULTANT	SUBCONSULTANT
Gannett Fleming, Inc.	Johnson, Mirmiran & Thompson, Inc.
Name, Title	Name, Title
Date:	Date:

Attachment 1: SUBCONSULTANT QUALITY VERIFICATION FORM

Subconsultant must provide a signed copy of this form with each deliverable* specified in the Work Order or the deliverable will not be accepted.

This form must be signed by Subconsultant's Quality Assurance/Quality Control Officer

Project Name:

Gannett Fleming Project Number:

Deliverable Description:

I, _____, represent that the project deliverable described above and attached to this form was developed in accordance with the project scope of work and complies with the standard of care and any specifications or requirements. All elements relating to the quality of the deliverable were verified in accordance with the requirements of my firm's internal quality management/quality assurance system. This deliverable satisfies applicable requirements of our Contract with Gannett Fleming.

Signature: _____
(by Subconsultant's QA/QC Officer)

Date: _____

Subconsultant: _____

***'Deliverable' shall mean all calculations, drawings, maps, specifications, reports, data bases, logs and other information developed from wells, borings and cores, laboratory data, materials schedules, instrument calibration data and all other items developed, prepared and delivered to Gannett Fleming as specified in the Scope of Work, in any form or media.**

Sample Acord form to match H-1 Agreement.

CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY)				
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER AND THE CERTIFICATE HOLDER.						
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).						
PRODUCER <div style="text-align: center;">Carrier Information</div>	CONTACT NAME: _____ PHONE (A/C No. Ext): _____ FAX (A/C, H/R): _____ E-MAIL ADDRESS: _____ INSURER(S) AFFORDING COVERAGE: _____ INSURER A: _____ INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____ INSURER F: _____					
INSURED <div style="text-align: center;">Subconsultant Information</div>	INSURER A: _____ INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____ INSURER F: _____					
COVERAGES CERTIFICATE NUMBER: _____ REVISION NUMBER: _____						
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
RISK	TYPE OF INSURANCE	ADDITIONAL	POLICY NUMBER	POLICY EFF.	POLICY EXP.	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> GLASS/MADE <input checked="" type="checkbox"/> OCCUR	X X	CGL XXXXXXXXXXXX			EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EOC) \$ 25,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADY INURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROMISE \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL DAMAGE POLICY <input checked="" type="checkbox"/> HIRED AUTOS	X X	AUTO XXXXXXXXXXXX			COVERED BODILY INJURY (Per person) \$ 1,000,000 BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____ BODILY INJURY \$ _____
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB	X X	ULB XXXXXXXXXXXX			EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROP ETOR PARTHRE/REPUTIVE CITIZENSHIP/INCL EXCLDCT (Mandatory or Non) If yes, describe under PROVISIONS OF OPERATIONS below	N/A X	WC XXXXXXXXXXXX			WC STATE LIMITS \$ 100,000 ALL EACH ACCIDENT \$ 100,000 ALL DISEASE - EA EMPLOYE \$ 500,000 ALL DISEASE - POLICY LIMIT \$ 100,000
C	Professional Liability		PL XXXXXXXXXXXX			\$2,000,000 per claim and aggregate.
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 104, Additional Reports Schedule, if more space is required) Project name and Project: Waives of Subrogation applies to General Liability, Auto Liability and Workers Compensation where allowed by state law and as required by written contract. Client and Consultant and their directors, officers, representatives, agents and employees are named as Additional Insured in respects to General Liability, Auto and Umbrella Liability. These coverages are primary and non-contributory as required by written contract. Severability of Interests applies to General Liability.						
CERTIFICATE HOLDER Gannett Fleming Companies PO Box 67100 Harrisburg, PA 17108-7100				CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE		

ACORD 25 (2010/05)

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EXHIBIT A

GF 066507
PDT E04767

BASE AGREEMENT



LEGAL DOCUMENT

Agreement: E04767**Open End /Non Project Specific****Executed****Name:** Various Structure Related Services**Selection Process:** Modified**Initiating Org:** Bureau of Design

Open End / Non Project Specific Agreement E04767

Bureau of Design

Initiating Organization

\$2,000,000.00

Maximum Agreement Cost

Gannett Fleming, Inc. 25-1613591

Consultant - FID

Cost Plus Fixed Fee

Lump Sum

Specific Rate of Compensation

Method(s) of Payment

THIS AGREEMENT, made and entered into on 01/31/2020, at Harrisburg, Pennsylvania, between the Commonwealth of Pennsylvania, acting through its Department of Transportation, by the Secretary, ("Department"), and Gannett Fleming, Inc., a Corporation of CONSULTANTS, registered as such in the Commonwealth of Pennsylvania, their heirs, executors, administrators, successors, or assigns, ("CONSULTANT").

WITNESSETH:

A. Scope Of This Agreement

1. Project Identification

The Consultant, for and in consideration of the payment or payments specified in this AGREEMENT, shall perform all work and services, and furnish all equipment and materials not otherwise provided, for various Structure Related Services

2. Terms, Conditions and Provisions

- a. The Consultant agrees to comply with and to provide the required work and services in accordance with the provisions listed below, which are incorporated into this AGREEMENT by reference, as though physically attached.

- i. **Commonwealth Contractor Responsibility Provisions, dated October 25, 2010**
- ii. **Consultant Integrity Provisions, dated January 14, 2015**
- iii.

- Commonwealth Nondiscrimination Clause for Consultant Agreements, dated August 15, 2018**
 - iv. **Federal Nondiscrimination and Equal Employment Opportunity Clauses, dated January 1976**
 - v. **Offset Provision for Commonwealth Contracts, dated October 25, 2010**
 - vi. **Pennsylvania Election Code, dated February 22, 2001**
 - vii. **Publication 442, Bureau of Design Specifications for Consultant Agreements, dated November 6, 2019**
 - viii. **Provisions Concerning the Americans With Disabilities Act, dated October 14, 2011**
 - ix. **US DOT Standard Title VI/Non-Discrimination Assurances, dated June 26, 2019**
 - x. **Enhanced Minimum Wage Provisions (July 2018)**
- b. By signing this Agreement, the Consultant certifies their compliance with the following requirements:
 - i. **Consultant's Certification of Non-Collusion, dated February 1990**
 - ii. **Certification Regarding Debarment, Suspension and Other Responsibility Matters, dated August 1990**
 - iii. **Certificate of Restrictions on Lobbying, dated August 6, 1990**
 - iv. **Consultant's Acceptance of PA Workmen's Compensation Act, dated August 1999**
- c. By signing this Agreement, the Department certifies their compliance with the following requirement:
 - i. **Department's Certificate of Non-Collusion, dated January 1999**
- d. The Consultant agrees to comply with and to provide the required work and services in accordance with the **Department's Standard Agreement Special Requirements, dated February 11, 2015** and the following standard method of payment special provisions: **Method of Payment - Cost Plus Fixed Fee, dated May 1, 2009** , **Method of Payment - Lump Sum, dated November 1, 2013** , **Method of Payment - Specific Rate of Compensation, dated November 1, 2013** , which have been made available to the Consultant in electronic or paper form, and the Consultant's **Technical Proposal**, and **Price Proposal**, which are incorporated into this Agreement by reference.
- e. The Consultant shall provide the services and work within the geographic jurisdiction of the Initiating Organization, as directed by the Department, in the form of a Work Order for each project.
- f. The Department reserves the right to choose which projects will be assigned to the Consultant by Work Order and, if the Department so elects, to assign the same type of work and services to other Consultants or Department forces.
- g. No new Work Orders will be executed during the six (6) months prior to the Agreement expiration date but Amendments to existing Work Orders may be executed during the last six (6) months of the Agreement period.
- h. When assigned a project by the Department, the Consultant shall prepare and submit to the Department Project Manager technical and price proposals for review and approval. If the Department concurs with the scope and cost of the work and services, a Work Order will be prepared and forwarded to the Consultant for his approval. Execution of the Work Order by the Consultant shall constitute his notice to proceed with the work described therein.
- i. The scope of work and services, as set forth in the Consultant's technical proposal, are to be performed in conformance with the requirements of this Agreement and the applicable provisions of the current Department Publications, Manuals, Handbooks, Policies and Procedures. The

Department and the Consultant shall confer at any time when the Department issues an amendment, revision, amplification, increase, and/or change to any Publication, Manual, Handbook, Policy or Procedures to determine whether there is a change in scope and/or accepted work and services completed by the Consultant which is ordered changed. The Department, with the approval of the Federal Highway Administration (FHWA) when applicable, where there is such a change, will issue a Work Order Amendment

B. Agreement Duration

1. Notice To Proceed

The consultant shall not proceed with work and services required under this Agreement until specifically authorized by the Department to proceed in the form of a fully executed Work Order.

2. Time Of Completion

- a. This Agreement shall terminate 60 months from the date of execution.
- b. The Engineer agrees to monitor the progress of the services and work under each Work Order to insure that the services and work are completed within the agreed upon time period for that Work Order. A letter may extend the time of completion for a Work Order under this Agreement from an authorized Department Representative. The Consultant must initiate a request for the time extension and provide the justification for the time extension prior to the termination date of the Work Order. An authorized Department Representative must issue the time extension letter prior to the termination date of the Work Order and any time extension must end within the Agreement time period. Individual copies of the time extension approval letter must be forwarded by the Department's Project Manager to the Consultant Agreement Section, Bureau of Design and the Document Review and Control Division, Comptroller's Office, within one (1) week of the date of the time extension.
- c. The Consultant shall not be eligible for and shall not request reimbursement from the Department for any costs incurred under a Work Order after the expiration of the Work Order.

C. Compensation

1. Maximum Cost

- a. It is understood that the total cost of this Agreement to the Department shall not exceed the amount of \$2,000,000.00.
- b. It is agreed and understood that the maximum cost to the Department for a Work Order shall not exceed the maximum amount stipulated in each individual Work Order without prior approval of the Department and Federal Highway Administration, where applicable, in the form of an executed Work Order Amendment.
- c. The maximum costs under each Work Order may be adjusted when the Consultant establishes and the Department agrees that there has been or is to be a significant change in the following:
 - i. Scope, complexity, or character of the original work and services to be performed, induced, caused or directed by the Department.
 - ii. Conditions under which the original work and services were required to be performed, neither foreseen by the Department nor by the Consultant at the time of execution of the

original Agreement, nor created thereafter by the Consultant.

- iii. Duration of work, if the change from the time of completion specified in the Agreement was induced, caused or was the result of directions issued by the Department.
- iv. The Department will not reimburse the Consultant for any costs incurred in excess of the maximum amount stipulated for any category of funds on the Consultant's invoice template as approved by the Department at the time the costs were incurred.

D. Disadvantaged Business Enterprise Goal

1. The Consultant shall attain the Disadvantaged Business Enterprise goal of 10% of the total cost of this Agreement, including all supplements hereto. Costs included in a DBE firm's price proposal as direct cost of work and services by others shall not count as DBE participation in this Agreement for non DBE firms. In the alternative a showing of good faith effort shall be made.

For agreements with an established Disadvantaged Business Enterprise goal, documentation of good faith effort shall be made by the Consultant and be subject to the concurrence of the Department. A list of the requirements constituting good faith effort is included in this provision: [Good Faith Effort, dated May 4, 2001](#).

Specific Rate Factor Condition

Overhead rate(s) used to establish specific rate factors under this Agreement are subject to further review and modification by the Department. The statement "These specific rate factors shall remain fixed for the life of this Agreement" in the standard method of payment document attached hereto is null and the Department reserves the right to adjust specific rate factors, by supplemental Agreement, if further review of compensation components included in the overhead rates used to establish the specific rate factors are determined to be unreasonable. Revisions to a specific rate factor by supplement would be effective the execution date of this original Agreement.

Escalation, Profit, and Direct Costs Other Than Payroll

Any Escalation, Profit, or Direct Costs Other Than Payroll indicated in the Price Proposal for this Open-end Contract are included for information only. Escalation, Profit, and Direct Costs Other Than Payroll for individual Work Orders shall conform to current Department limitations, considered on a project-by-project basis.

Document Status: Executed

Prepared By: Harter, Michele L.

Attachments

Name

Created By

Created On

No records found.

Workflow

Status	Name	Disposition	Date/Time
Draft	Michele L Harter/PennDOT	Submit	01/15/2020 09:44:45 AM
Consultant Review	Scott W Zeevaart/PennDOT BP-000064 - Vice President	Approve	01/15/2020 11:08:12 AM

Deputy Secretary Review	Mark J Chappell/PennDOT	Approve	01/17/2020 02:21:44 PM
Chief Counsel Review	Jeffrey M Spotts/PennDOT	Approve	01/29/2020 05:41:03 PM
Comptroller Review	Andrew K Peters/PennDOT	Approve	01/31/2020 11:22:48 AM
CAD Chief Approval	Michele L Harter/PennDOT	Execute	01/31/2020 11:26:28 AM

Audit Information			
Created By	Created On	Modified By	Modified On
Michele L Harter/PennDOT	01/15/2020 09:44:09 AM	Michele L Harter/PennDOT	01/31/2020 11:26:27 AM

You are currently logged in as **Susan A. Calaman**.

Release: 71.2
Session size: 0.1k

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Tue Feb 11 15:36:51 EST 2020
Official ECMS Date/Time

Contractor Responsibility Provisions

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

- 1.** The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- 2.** The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- 3.** The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- 4.** The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- 5.** The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- 6.** The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

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

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:

- 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. **"Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.
- d. **"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.
- 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 Contractor without seeking bids or proposals from any other potential bidder or offeror.

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

- a. 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.

- b. 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.
- c. 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.
- d. 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.
- e. 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 it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. 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)*.
- g. 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.
- h. 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.
- i. 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.
- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Contracts]

The Contractor agrees:

- 1.** In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not 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.** Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- 3.** The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- 4.** The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- 5.** The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII* of the *Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- 6.** The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

7. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

8. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

FEDERAL NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY CLAUSES
(All Federal Aid Contracts)*

1. Selection of Labor:

During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contract will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractors commitments under section 2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of Section 2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. Compliance With Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations) which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including

*Not to be used if otherwise included in Construction or Appalachian Contract Provisions.

employment practices when the contract covers a program set forth in the Regulations.

c. Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(1) withholding of payments to the contractor under the contract until the contractor complies, and/or

(2) cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The contractor shall include the provisions of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Wherever hereinabove the word "contractor" is used, it shall also include the word engineer, consultant, researcher, or other entity (governmental, corporate, or otherwise), its successors and assigns as may be appropriate.

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.


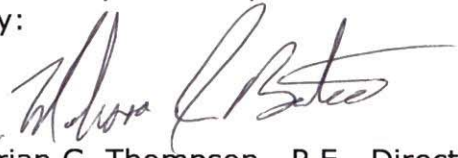
PENNSYLVANIA ELECTION CODE, 25 P.S. § 3260a.
February 22, 2001

The Consultant shall be governed by Act 201, July 21, 1974, which amended the Act of June 3, 1937, (Public Law 1333, No. 320), known as the Pennsylvania Election Code, as follows:

"Section 1605.1 Report of Contributions, Duty of Secretary of Commonwealth.

- (a) Any business entity, including but not limited to a corporation, company, association, partnership or sole proprietorship, which has been awarded non-bid contracts from the Commonwealth and its political subdivisions during the preceding calendar year, shall report by February fifteenth to the Secretary of the Commonwealth, an itemized list of all political contributions known to the business entity by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner or individual owner that has been made by (1) any officer, director, associate, partner, limited partner, individual owner or members of their immediate family and (2) any employe or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year. For the purpose of this subsection, "immediate family" means a person's spouse and any unemancipated child.
- (b) It shall be the duty of the Secretary of the Commonwealth to publish sixty days after February fifteenth, a complete itemized list of all contributions given under the provisions of subsection (a). This list shall be a matter of public record open to public inspection and copies made available at cost to any individual who requests the same."

Forms for the report are available from the Bureau of Elections, Department of State, Room 304, North Office Building, Harrisburg, Pennsylvania 17120.

<p>OS-299 (11-13)</p>  <p>pennsylvania DEPARTMENT OF TRANSPORTATION www.dot.state.pa.us</p>	<p>TRANSMITTAL LETTER</p>	<p>PUBLICATION: Publication 442 - 2018 Edition</p> <p>DATE: March 2, 2018</p>
<p>SUBJECT:</p> <p>Specifications for Consultant Agreements for Project Development Services, Publication 442, 2018 Edition</p>		
<p>INFORMATION AND SPECIAL INSTRUCTIONS:</p> <p>An electronic version of the 2018 Edition of Publication 442, Specifications for Consultant Agreements for Project Development Services, is available in the ECMS File Cabinet.</p> <p>Publication 442 (2018) will be effective March 16, 2018. All agreements and supplements created after March 16, 2018 will have the updated 2018 edition attached to them.</p> <p>Comments or questions concerning this edition may be directed to Michele L. Harter, P.E., Chief, Contract Management Section, Bureau of Project Delivery, at 717-787-7894 or email at micharter@pa.gov.</p>		
<p>CANCEL AND DESTROY THE FOLLOWING:</p> <p>Publication 442 (December 2016) Specifications for Consultant Agreements for Project Development Services,</p> <p>List of Clearance Transmittals:</p> <p>H-17-018</p>	<p>ADDITIONAL COPIES ARE AVAILABLE FROM:</p> <p><input type="checkbox"/> PennDOT SALES STORE (717) 787-6746 phone (717) 525-5180 fax ra-penndotsalesstore@pa.gov</p> <p><input checked="" type="checkbox"/> PennDOT website - www.dot.state.pa.us <i>Click on Forms, Publications & Maps</i></p> <p><input type="checkbox"/> DGS warehouse (PennDOT employees ONLY)</p> <p>APPROVED FOR ISSUANCE BY:</p> <p>Leslie S. Richards, - Secretary of Transportation By:  Brian G. Thompson, P.E., Director Bureau of Project Delivery</p>	

Publication 442 - Specifications for Consultant Agreements for Project Development Services (2018 Revisions)			
Chapter	Section		Revision
Preamble			No change
Chapter 1 General	1.1	Introduction	No change
	1.2	Applicability	No change
	1.3	Definitions	No change
	1.4	Consultant Office	No change
	1.5	Certificate of Authority	No change
	1.6	Federal Funds	No change
	1.7	Disadvantaged Business Enterprise (DBE) Program Assurance	No change
	1.8	Diverse Business	No change
Chapter 2 Agreement Administration	2.1	Project Manager	No change
	2.2	Inspection and Quality of Work and Services	No change
	2.3	Consultant Qualification Package	No change
	2.4	Quality of Consultant Personnel	No change
	2.5	Restrictions on Employment	No change
	2.6	Contacting Agencies, Utilities or Individuals	No change
	2.7	Notice of Intent to Enter Property	No change
	2.8	Agreement Assignment	No change
	2.9	Good Faith Acceptance of Consultant's Proposal	No change
	2.10	Scope Conflict	No change
	2.11	Notice to Proceed	No change
	2.12	Management of Project Costs	No change
	2.13	Date of Acceptance	No change
	2.14	Acceptance of Final Payment	No change
	2.15	Consultant Evaluation/Past Performance Report	No change

**Publication 442 - Specifications for Consultant Agreements for Project Development Services
(2018 Revisions)**

Chapter	Section		Revision
Chapter 3 Agreement Terms and Conditions	3.1	Save Harmless Clause	No change
	3.2	Contract Suspension and Cancellation	No change
	3.3	Violation or Breach of Contract	No change
	3.4	Ownership of Material and Work	No change
	3.5	Cost Elements for Consultant Agreements	Editorial
	3.6	Proposed Project Employees	No change
	3.7	Agreement Performance	No change
	3.8	Transfer of Electronic Data	No change
	3.9	Overpayment and Non-Eligible Costs	No change
	3.10	Costs Incurred Outside the Legal Agreement	Semi Annual Invoice Audit
	3.11	Overtime	No change
	3.12	Publication 408 Specifications	No change
	3.13	No Third-Party Rights Created	No change
	3.14	Right to Know Law	No change
	3.15	Records and Documentation	No change
Chapter 4 Invoices	4.1	Partial Payments	No change
	4.2	Monitoring of Costs	No change
	4.3	Final Invoice	No change
	4.4	Prompt Payment of Subconsultant/Subcontractor Invoices	No change
		Maintaining Records and Documentation	No change
	4.5	Invoice Template	No change
Chapter 5 Design Errors and Claims	4.6	Management Directive 230.10	No change
	5.1	Save Harmless Clause	No change
	5.2	Consultant Design Error Liability	No change
	5.3	Responsibility for Design Errors	No change
	5.4	Board of Claims	No change
	5.5	Notice of Intent to File a Claim and Determination of Claim	No change

Publication 442 - Specifications for Consultant Agreements for Project Development Services (2018 Revisions)			
Chapter	Section		Revision
Chapter 6 Consultant Restrictions	6.1	Disclosure of Confidential Information	No change
	6.2	Legal or Quasi-Legal Proceedings	No change
	6.3	Engineering Involvement Restrictions	No change
	6.4	Conflicts of Interest	No change
Chapter 7 American Recovery and Reinvestment Act (ARRA) of 2009	7.1	Applicability	No change
	7.2	ARRA Section 902	No change
	7.3	ARRA Section 1515 (a)	No change
	7.4	Implementation of the American Recovery and Reinvestment Act of 2009	No change



Publication 442

Specifications for Consultant Agreements for Project Development Services

Prepared by:
Pennsylvania Department of Transportation
Bureau of Project Delivery
Highway Delivery Division
Contract Management Section



PUB 442 (3-18)

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Preamble

Code of Ethics

The Consultants will conduct themselves in an ethical manner by adhering to the current National Society of Professional Engineers (NSPE) Code of Ethics. The current NSPE Code of Ethics for Engineers is located on the internet at <http://www.nspe.org/Ethics/CodeofEthics/index.html>.

Chapter 1 – General

1.1 Introduction

These specifications, contract provisions, and policies apply to the Prime Consultant and all subconsultants.

The Prime consultant is responsible for ensuring that all subconsultants adhere to all PennDOT contract provisions, specifications and policies.

1.2 Applicability

It is understood and agreed that, unless otherwise indicated in writing in an executed Consultant Agreement, the specifications hereinafter set forth apply to and become a part of all Consultant Agreements required to assist PennDOT in the development and construction of a transportation improvement project and any parts thereof as provided by law.

1.3 Definitions

Prime Consultant - The contractual party providing Consultant Work and Services pursuant to the Agreement with the Department.

Subconsultant/Subcontractor - The party providing work and services to the Prime Consultant (which is providing Consultant Work and Services pursuant to an agreement with the Commonwealth) pursuant to an Agreement with the Prime Consultant to which the Department is not a party.

Consultant – Within this publication, unless otherwise specified, this term will apply to both consultant and subconsultant.

PennDOT - The Pennsylvania Department of Transportation acting through the Secretary of Transportation or designee.

FHWA – Federal Highway Administration

ECMS – Engineering and Construction Management System

Responsible Charge - An individual position that requires initiative, skill and independent judgment, and implies such degree of competence and accountability gained by technical education and experience of a grade and character as is sufficient to qualify the individual to personally and independently engage in and be entrusted with the work involved.

Professional Engineer - An individual licensed and registered under the laws of the Commonwealth of Pennsylvania (Commonwealth) to engage in the practice of engineering.

Professional Land Surveyor - An individual licensed and registered under the laws of the Commonwealth to engage in the practice of land surveying.

Professional Geologist - An individual licensed and registered under the laws of the Commonwealth to engage in the practice of geology.

Employee - An individual who is on a firm's payroll and for whom taxes are withheld and Social Security is withheld and matched.

Engineering Firm/Corporation (Engineer) - A firm or corporation, where the directing heads and employees of such firm or corporation, in responsible charge of its activities in the practice of engineering, are licensed and registered in conformity with the Commonwealth's "Engineer, Land Surveyor and Geologists Registration Law," Act of 1945, P.L. 913, No. 367, as amended, 63 P.S. Sections 148—158.2.

1.4 Consultant Office

- A. The Consultant shall maintain, for the life of the Agreement, a legal address within the Commonwealth through which notices or messages can be transmitted for action in cases of emergency. The address information must also be maintained in PennDOT's Engineering and Construction Management System (ECMS) Business Partner Registration.
- B. The Consultant shall notify PennDOT immediately after the receipt of the executed Agreement of any change in the location or locations where the work will be performed as well as the type and approximate percentage of the work to be accomplished at each location.

The Consultant shall obtain prior written approval of PennDOT's Project Manager for any subsequent change in work location.

- C. If the Consultant elects to perform any or all the work at a location outside the Commonwealth, the Consultant shall not be reimbursed for either Direct or Indirect Costs of the travel, food or lodging of the Consultant or its employees to or from the location or from locations outside the Commonwealth to any office in Pennsylvania designated for required conferences and/or inspection of the work by PennDOT and/or the Federal Highway Administration (FHWA).

1.5 Certificate of Authority

The Consultant shall obtain a Certificate of Authority from the Pennsylvania Department of State authorizing the Consultant to do business in Pennsylvania if the Consultant is conducting business as:

- A. A Corporation not incorporated under the laws of Pennsylvania;
- B. A business with headquarters within or outside the Commonwealth and operating under a fictitious name.

1.6 Federal Funds

If funds are provided by the FHWA for participation in the cost of this Agreement, the work and services to be provided by the Consultant, as set forth in this Agreement, will be subject to and will be governed by the requirements of PennDOT's Specifications.

Public Law 101-121, Section 319, prohibits Federal funds from being expended by the recipient or any lower tier sub-recipients of the Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement.

1.7 Disadvantaged Business Enterprise (DBE) Program Assurance

The Consultant agrees to comply with the terms and conditions of the following Disadvantaged Business Enterprise (DBE) Program Assurance for Federally-funded Agreements:

The Consultant shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of United States Department of Transportation-assisted agreements. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Pennsylvania Department of Transportation deems appropriate. If the Consultant is providing services or supplies for the Pennsylvania Department of Transportation pursuant to this Agreement the Consultant must include this assurance in each subcontract that the Consultant signs with a subcontractor. If the Consultant is a grantee or other recipient of funds from the Department of Transportation, the Consultant must include this assurance in each contract into which the Consultant enters to carry out the project or activities being funded by this Agreement.

1.8 Diverse Business Participation for Non-Federally Funded Projects

NOTE: For use in non-federally funded consultant selection contracts administered and issued by the Pennsylvania Department of Transportation (Department).

I. GENERAL GOOD FAITH EFFORT REQUIREMENTS—

Section 303 of Title 74 of the Pennsylvania Consolidated Statutes, 74 Pa.C.S. §303, requires offerors on contracts funded pursuant to the provisions of Title 74 (Transportation) and 75 (Vehicle Code) administered and issued by the Department to make good faith efforts to solicit subcontractors that are Diverse Businesses (DBs) as defined in Section 303. The DB requirements of Section 303 apply to this contract.

Under the statute, offerors must make good faith efforts as set forth below to ensure that DBs have the opportunity to compete for and perform contracts. Do not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts. Failure to exert good faith efforts in the solicitation of subcontractors that are DBs may result in the offeror being declared ineligible for the contract.

Document and submit to the Department all good faith efforts to solicit subconsultants that are DBs as more fully described below. Offerors are encouraged to utilize and give consideration to second-tier or lower-tier subconsultants offering to utilize DBs in the selection and award of contracts.

Within 7 calendar days of being selected as the successful offeror, provide to the Department the name and business address of each subconsultant that is a DB and will provide the prime consultant with professional services in connection with the performance of the contract, all as set forth below.

If it becomes necessary to replace a subconsultant that is a DB at any time during the evaluation of a proposal or performance of awarded work the offeror or consultant, as appropriate, immediately notify the Department of the need to replace the DB. Include the reasons for the replacement in the notice.

Good faith efforts to solicit and use DBs are in addition to all other equal opportunity requirements of the contract.

Failure to comply with requirements of Section 303 or as specified may constitute a breach of contract and may result in imposition of sanctions as appropriate under Section 531 of the Procurement Code, 62 Pa.C.S. §531 (relating to debarment and suspension).

II. DEFINITIONS—

The following definitions apply for terms used in this specification:

- (a) **Disadvantaged Business.** A business that is owned or controlled by a majority of persons, not limited to members of minority groups, who are subject to racial or ethnic prejudice or cultural bias.
- (b) **Diverse Business (DB).** A disadvantaged business, minority-owned or women-owned business or service-disabled veteran-owned or veteran-owned small business that has been certified by a third-party certifying organization and is both an ECMS Business Partner and pre-qualified, if required.
- (c) **ECMS.** The Department's Engineering and Construction Management System.
- (d) **ECMS Business Partner.** An individual, firm, partnership, or corporation that has a valid Registered Business Partner Identification issued by the Department through ECMS.
- (e) **Good Faith Effort Review Officer.** The Department's Executive Deputy Secretary for Administration or his/her designee, who reviews good faith efforts submitted by offerors.
- (f) **Minority-owned Business.** A business owned and controlled by a majority of individuals who are African Americans, Hispanic Americans, Native Americans, Asian Americans, Alaskans or Pacific Islanders.
- (g) **Professional Services.** An industry of infrequent, technical or unique functions performed by independent contractors or consultants whose occupation is the rendering of the services, including design professional services as defined in Section 901 of the Procurement Code, 62 Pa.C.S. §901 (relating to definitions); legal services; advertising or public relations services; accounting, auditing or actuarial services; security consulting services; computer and information technology services; and insurance underwriting services.
- (h) **Service-disabled Veteran.** Being in possession of a disability rating letter issued by the United States Department of Veterans Affairs or a disability determination from the United States Department of Defense or, if approved by the Department of General Services, a surviving spouse or permanent caregiver of a such a service-disabled veteran.
- (i) **Service-disabled Veteran-owned Small Business.** A business in the United States which is independently owned and controlled by a service-disabled veteran or veterans, not dominant in its field of operation, and employs 100 or fewer employees.
- (j) **Subconsultant.** Any individual, partnership, firm, or corporation entering into a contract with the consultant for work under the contract.

(k) Third-party Certifying Organization. An organization that certifies a small business, minority-owned business, women-owned business or veteran-owned small business as a DB, including the National Minority Supplier Development Council; the Women's Business Enterprise Council, the Small Business Administration; the Department of Veterans Affairs; and the Pennsylvania Unified Certification Program.

(l) Veteran. An individual who served on active duty in the United States Armed Forces, including a reservist or member of the National Guard who was discharged or released from the service under honorable conditions, a reservist or member of the National Guard who completed an initial term of enlistment or qualifying period of service, and a reservist or member of the National Guard who was disabled in the line of duty during training.

(m) Veteran-owned Small Business. A business in the United States which is independently owned and controlled by a veteran or veterans, is not dominant in its field of operation, and employs 100 or fewer employees.

III. ACTIONS REQUIRED BY THE OFFEROR AT THE PROPOSAL STAGE AND PRIOR TO AWARD—

(a) Submission Requirements. The apparent successful offeror that will self-perform 100% of its agreement is required to submit paper documentation by 3:00 P.M. prevailing local time within 7 calendar days after the selection is published. Submit paper documentation by email to minorityparticipation@pa.gov or by fax to (717) 705-1504. This paper documentation will become part of the agreement.

The apparent successful offeror that will not self-perform 100% of its agreement is required to demonstrate its good faith efforts to solicit subconsultants that are DBs by 3:00 P.M. prevailing local time on the seventh (7th) calendar day after the selection is published. Present good faith efforts by submitting paper documentation by email to minorityparticipation@pa.gov or by fax to (717) 705-1504. The good faith efforts will become part of the agreement.

The paper documentation of good faith efforts must include the business name and business address of each DB, as well as all good faith efforts to solicit other DBs that are not ECMS Business Partners. Supporting documentation must also include a DB acknowledgment for each DB providing services, proof of certification, and any explanation of good faith efforts the offeror would like the Department to consider. Any services to be performed by a DB are required to be readily identifiable to the agreement.

When the seventh (7th) calendar day after the selection falls on a day that the Department offices are closed, submit the good faith efforts by 3:00 P.M. prevailing local time on the next business day.

Failure to electronically submit good faith efforts within 7 calendar days of the selection by the 3:00 P.M. deadline will result in rejection of the proposal. The next ranked offeror will be notified to electronically submit good faith efforts in the manner described above by 3:00 P.M. prevailing local time within 7 calendar days of the notification.

(b) Good Faith Efforts Requirements. Good faith efforts are demonstrated by seeking out DB participation in the project given all relevant circumstances. The following illustrate the types of efforts that may be taken, but they are not deemed to be exclusive or

exhaustive. The Good Faith Review Officer may consider other factors and types of efforts included in an offeror's submission of good faith efforts if deemed relevant.

1. Efforts made to solicit through all reasonable and available means (e.g., use of the DB Directory, advertising and/or written notices) the interest of all certified DBs with the capability to perform the work of the agreement. The offeror must provide written notification at least 5 calendar days before the time solicitations are due to allow the DBs to respond to the solicitation. The offeror must determine with certainty if DBs are interested by taking appropriate steps to follow up initial solicitations.
2. Efforts made to select portions of the work to be performed by DBs. This includes, where appropriate, breaking out contract work into economically feasible units to facilitate DB participation.
3. Efforts made to provide interested DBs with adequate information about the services required in a timely manner to assist them in responding to a solicitation.
4. Efforts made to negotiate in good faith with interested DBs. Offerors are encouraged to make a portion of the work available to DBs and to select those portions of the work needs consistent with the available DBs so as to facilitate participation of DBs. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBs that were considered; a description of the information provided regarding the required services selected for subcontracting; and evidence as to why additional agreements could not be reached for DBs to perform the services. An offeror using good business judgment would consider a number of factors in negotiating with subconsultants, including DB subconsultants, and would take a firm's capabilities into consideration as well as its own ability or desire to perform the services with its own work force.
5. Efforts made to thoroughly investigate DBs for qualification based on their capabilities. Offerors cannot reject or withhold solicitation of DBs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DB's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the offeror's efforts to meet the good faith efforts requirement.
6. Efforts to assist interested DBs in obtaining bonding, lines of credit, or insurance.
7. Efforts to assist interested DBs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Efforts to effectively use existing databases and the resources of supportive services to assist in finding DBs.

IV. ACTIONS TO BE TAKEN BY THE DEPARTMENT BEFORE AWARD—

- (a) Approval.** If the apparent successful offeror submits acceptable good faith efforts by the deadline and meets all other contract requirements, the Department will approve the submission. The Good Faith Review Officer will make the determination of whether the good faith efforts are acceptable. The offeror may be contacted for clarifications during the review.

- (b) **Conditional Approval.** The Department will issue a conditional approval of the good faith efforts to the apparent successful offeror if any DB is not included in the DB listing, or not an ECMS Business Partner at the time the Department desires to award the contract.
- (c) **Rejection of Bid.** If the Good Faith Review Officer determines that the apparent successful offeror has failed to make acceptable good faith efforts, the proposal will be rejected and the apparent successful offeror will be notified of the rejection. The Department will then notify the next ranked offeror on the project to submit good faith efforts by 3:00 P.M. prevailing local time within 7 calendar days after notification. When the seventh (7th) calendar day after the notification falls on a day the Department offices are closed, submit good faith efforts by 3:00 P.M. prevailing local time on the next business day.

V. ACTIONS REQUIRED BY THE CONSULTANT DURING PERFORMANCE OF THE SERVICES—

- (a) **DB Participation.** Continue good faith efforts for the life of the project.
- (b) **DB Subcontractor Approval.** Firms listed in the good faith efforts submission are not to commence work until they are approved.
- (c) **Conditional Approval Resolution.** Continually monitor conditional approval of DB subconsultant.
- (d) **Replacement or addition of DB.** If it becomes necessary to replace or add a subconsultant that is a DB at any time during performance of the services immediately notify the Department of the need to replace the DB. Include the reasons for the replacement in the notice. If a prime consultant who originally elected to self-perform all work subsequently decides to use a subconsultant for any work under the contract, the consultant must submit documentation of good faith efforts as to the work for which a subconsultant is obtained.
- (e) **Additional Work.** The obligation to make good faith efforts to solicit subconsultants that are DBs extends to additional work required for any service which is identified as to be performed by a DB.
- (f) **Payments.** Make payments to DB subconsultants in accordance with the prompt payment requirements of Chapter 39, Subchapter D of the Procurement Code, 62 Pa.C.S. §§3931 et seq. and 49 C.F.R. part 26. Performance of services by a DB subconsultant in accordance with the terms of the contract entitles the subconsultant to payment.
- (g) **Records and Reports.** Keep such project records as are necessary to perform the reporting function discussed below. These records can be used as documentation of good faith efforts. Design these records to indicate:
 - 1. The number of DB and non-DB subconsultants and the type of work or services performed on the project.
 - 2. The progress and efforts made in seeking out DB consultant organizations and individual DBs for services under the contract.
 - 3. Documentation of all correspondence, personal contacts, telephone calls, etc., to obtain the services of DBs. Submit reports, as required by the Department. Certify that the amounts were actually paid to the DB for services performed

under the agreement and keep cancelled checks on file in the home office to reflect payment for the specific agreement and for inspection and audit by the Department. Track payment information and include the following:

- a. The number of agreements awarded (with approved subconsultants) to DBs, noting the type of service and amount of each agreement executed with each firm and including the execution date of each agreement.
- b. The amount paid to each DB during the month and the amount paid to date. If no payments are made to a DB during the month, enter a zero (\$0.00) payment.
- c. Paid invoices or a certification attesting to the actual amount paid to each firm, upon completion of the individual DB's work. In the event the actual amount paid is less than the award amount, provide a complete explanation of the difference.

Maintain all such records for a period of 3 years following acceptance of final payment. Make these records available for inspection by the Department.

VI. ACTIONS REQUIRED BY THE CONSULTANT FOLLOWING COMPLETION OF THE SERVICES—

When requested, or within 30 days of the end of the agreement submit a report to the Department summarizing the use of approved DB subconsultants.

Identify in the report the name of the subconsultant; the nature of the work or services performed by the subconsultant (i.e. prime, direct or tiered subconsultant; who certified the subconsultant as a DB; the subconsultant's ECMS Business Partner number; the subconsultant's ECMS agreement number; and the amount of their subcontract).

For direct and tiered subconsultants, provide the amount of the contract that is performed, managed and supervised by the DB's own forces. The value of the subcontracted work may be counted only if the DB's subconsultant is itself a DB; do not include services that a DB subcontracts to a non-DB firm.

VII. ACTIONS TO BE TAKEN BY THE DEPARTMENT FOLLOWING PERFORMANCE OF THE SERVICES—

Upon completion of the services the Department will review the actual DB participation and make a determination regarding the contractor's compliance with Section 303 and this policy. Sanctions may be imposed for noncompliance.

Chapter 2 – Agreement Administration

2.1 Project Manager

The Consultant shall place in responsible charge of the work and services covered by the Agreement a designated representative, who is an experienced and qualified Project Manager. The Project Manager shall be the individual identified in the Consultant's statement of interest and/or technical proposal. The Project Manager shall be empowered by the Consultant to affix his/her name and professional seal, if applicable, as the person responsible for the preparation of plans, calculations, reports, etc. as required by PennDOT's policy and procedures.

The Consultant shall not remove or reassign the Project Manager without written permission from PennDOT's Project Manager.

2.2 Inspection and Quality of Work and Services

All work and services rendered under the Agreement shall be of high quality, complete, accurate and in full conformance with PennDOT requirements and shall be consistent with the highest professional standards common to the consulting/engineering profession. Such work shall be subject to PennDOT's and, when applicable, the FHWA's periodic review and quality check in the field, the Consultant's office, or PennDOT's office. If after said periodic review and quality check PennDOT and/or FHWA determine that the Consultant's work performed, services rendered, and/or material furnished does not measure up to PennDOT requirements as specified in writing at the time of execution of the Agreement, and the quality and professional standards normally required, it shall be redone, reperformed, recomputed, and/or refurnished as directed by PennDOT's Deputy Secretary for Highway Administration (Deputy Secretary), to meet the said requirements and quality standards at the sole expense of the Engineer and at no direct or indirect cost to PennDOT. All materials and records shall be furnished in accordance with PennDOT's standards of quality.

2.3 Consultant Qualification Package

All Consultants, both prime and subconsultants, must submit a Consultant Qualification Package (CQP) annually through ECMS. The CQP indicates the Consultant's project experience, quality plan, employee qualifications and certifications, the services that the Consultant can provide, and the Disadvantaged Business Enterprise certification, if applicable.

ECMS automates the packaging of supporting documents and provides an electronic "cover page" used to collect and store general information about the Consultant, its location, and services. The cover page is also used to attach (or package) the other documents comprising the CQP.

The following elements comprise the CQP:

- Cover Page (online)
- General Information (template provided)
- Project Experience (template provided)
- Employee Resumes (template provided)
- Quality Plan (no template provided)

2.4 Quality of Consultant Personnel

The Consultant shall employ only competent and efficient engineers, designers, drafters, and/or other necessary personnel required in the performance of the Agreement. Whenever, in the opinion of PennDOT, any employee is unfit to perform his/her task, or does his/her work contrary to instructions, or conducts himself/herself improperly, the Consultant shall discontinue the services of such employee immediately upon receipt of the Deputy Secretary's, or designee's, written request; and the Consultant shall not employ him/her again on this or any other Agreement with PennDOT without PennDOT's prior written permission.

2.5 Restrictions on Employment

The Consultant shall not engage, on a full, part-time, or other basis during the period of the Agreement, any professional or technical personnel who are employed by the FHWA or PennDOT, without the knowledge and consent of the employer of such person. The Consultant shall not employ a former PennDOT employee on any PennDOT Agreement during the first year after the employee leaves PennDOT, without express written opinion rendered by the State Ethics Commission.

2.6 Contacting Agencies, Utilities, or Individuals

The Consultant, when and as directed by PennDOT, shall contact any public or private agencies, utilities, or individuals concerned to coordinate the requirements for the project development. The provisions of the applicable Chapters and Sections of PennDOT Manuals, or as specifically directed by PennDOT, shall apply to such contacts. The Consultant in making these contacts is not authorized to and shall not make any commitment for PennDOT and shall so inform the contacted parties.

2.7 Notice of Intent to Enter Property

Section 309 of the Eminent Domain Code, 26 Pa. C.S. effective September 1, 2006, requires that entry upon any land or improvement prior to condemnation by PennDOT employees or agents, whether for the purpose of conducting studies, surveys, tests, soundings or appraisals, must be preceded by ten days notice to the owner of the land or the party in whose name the property is assessed. The Notice of Intent to Enter Form is located in the current version of Publication 378, *Right-of-Way Manual*. Additional information can be found in Design Manual 1-C (DM-1C), Section 3.3, Preliminary Engineering Activities.

2.8 Agreement Assignment

The Consultant shall not assign, in whole or in part, the Agreement, or its duties, obligations, liabilities, rights or benefits, including the right to payment under the Agreement, without the prior written consent of PennDOT's Deputy Secretary for Highway Administration or authorized designee. If an assignment is anticipated and approved, the Consultant and its assignee shall enter into and execute a written agreement, in which the assignee agrees to be legally bound by all of the terms and conditions of the Agreement and to assume the duties, obligations and liabilities being assigned. In addition, the Consultant and PennDOT may have to enter into and execute a Supplemental Agreement signifying PennDOT's consent to the assignment.

2.9 Good Faith Acceptance of Consultant's Proposal

It is expressly understood that all information, statements, and material presented by the Consultant and used by PennDOT in the negotiations, development, and computation of the Consultant Cost Estimate, the Lump Sum for Fixed Fee and the total fee to be paid the Consultant are accepted in good faith by PennDOT and the burden of proof of the accuracy remains with the Consultant for the life of the Agreement. PennDOT may at its option elect to cancel the Agreement for cause and recover damages or elect to enter into a renegotiation to revise the amount of the fee as provided for in the Agreement when PennDOT determines that the said Consultant's submissions are in error, inaccurate and/or false and that the correct information and/or material when used will cause a change in the amount of fee to be paid the Consultant. It is expressly understood that such action by PennDOT is applicable to any Agreement regardless of the method of payment as set forth in these specifications or as may be otherwise provided in the Agreement.

2.10 Scope Conflict

The Consultant's Technical Proposal has been accepted by PennDOT subject to the modifications, additions, and amplification set forth in the Agreement. The provisions in this Agreement and PennDOT's Scope of Work and Services shall govern where a conflict occurs with any Scope of Work and approach set forth in the Consultant's Technical Proposals.

2.11 Notice to Proceed

The Consultant agrees work and services performed under this Agreement and any supplements to this agreement (regardless of the basis of payment) will be accomplished as directed by PennDOT through the issuance by PennDOT of Notices to Proceed.

For ECMS agreements, the Consultant shall not proceed with work and services required under any Part of this Agreement until specifically authorized by PennDOT to proceed on that Part in the form of an electronic Notice to Proceed issued through ECMS.

NTP for Work Orders under an Open End Agreement occurs at the time of the consultant's signature.

Any work or services performed by the Consultant prior to the receipt of a Notice to Proceed will not be reimbursable.

The Department reserves the right to issue an Advanced Notice to Proceed ("ANTP") to the Consultant by means of an ANTP Letter, in a form prescribed by the Department (Publication 93 Appendix 4J), signed by authorized representatives of the Department and the Consultant, for any Work Order or Work Order Amendment prepared during the term of this Agreement or any supplements or extensions thereof. The parties shall act promptly following issuance of the ANTP to prepare and execute the Work Order or Work Order Amendment. Upon receipt of the ANTP, the Consultant may rely on it to begin performing work and incurring costs under the Work Order or Work Order Amendment; provided, however, that the Consultant shall not invoice the Department for work performed and costs incurred, and the Department shall not make payment, until the Work Order or Work Order Amendment has been fully executed. A work order should be executed in ECMS within 60 days of ANTP. If the Work Order or Work Order Amendment is not fully executed on account of budgetary reasons or issues relating to form and legality, the Consultant risks nonpayment for any work already performed.

2.12 Management of Project Costs

The Consultant shall exercise proper management practice pertaining to personnel and fiscal, technical, and professional surveillance to ensure that the project costs (for cost reimbursable type agreements) are kept within the man-hours and dollars in the Consultant's estimate. The Consultant shall (for cost reimbursable type Agreement) inform PennDOT promptly when the cost deviates from the estimate and provide PennDOT with justification and documentation required to cover the increase in man-hours and cost. PennDOT will review the justification and documentation and if acceptable will issue the necessary adjustment by a Supplemental Agreement.

- A. The Consultant shall agree and understand that the maximum cost to PennDOT for each Category of Compensation shall not exceed the maximum amount stipulated in PennDOT-approved invoice template without prior approval of PennDOT and the FHWA, where applicable, in the form of a Fund Transfer approval from PennDOT.
- B. The Consultant agrees that the Consultant will not request reimbursement for any costs incurred in excess of the maximum amount stipulated for each Category of Compensation in the PennDOT-approved invoice template.

2.13 Date of Acceptance

The date on which PennDOT Project Manager notifies the Consultant of the acceptance of all work and services provided under the Agreement shall be the date of final settlement of the Agreement.

If the Consultant files a claim with the Board of Claims the date of final settlement shall be the date of the final adjudication of the claims filed with the Board of Claims.

2.14 Acceptance of Final Payment

It is also agreed and understood that the acceptance of the final payment by the Consultant shall be considered as a release in full of all claims against the Commonwealth of Pennsylvania arising out of, or by reason of, the work, services and materials furnished under this Agreement for which final payment has been made.

2.15 Consultant Evaluation / Past Performance Report

Immediately upon the completion of all the work and services required under an individual Part of an Agreement, PennDOT's Project Manager will evaluate the Consultant's performance on that particular part.

The Evaluation/Past Performance Report will be discussed with and signed by the Consultant's Project Manager and/or a Principal of the Consultant.

The Consultant's Project Manager and/or Principal should sign the report acknowledging that they have read the report and had the opportunity to discuss the report with the appropriate PennDOT representative(s). The Consultant signature does not mean that the Consultant agrees with the rating but they did have an opportunity to discuss the rating with PennDOT representative(s). For ECMS agreements, if the Consultant does not respond within fifteen days, the system automatically finalizes the evaluation without comments by updating the status to "Complete".

The Evaluation/Past Performance Report will be used for comparison purposes during the consultant selection process.

Chapter 3 – Agreement Terms and Conditions

3.1 Save Harmless Clause

The Consultant, on behalf of itself, its subconsultants/subcontractors, agents and/or employees, agrees to indemnify and save harmless the Commonwealth and other agencies of the Commonwealth and Federal Government as defined herein. The Consultant shall furnish insurance certificate(s) and relevant, supporting insurance policy documents listing the project number and providing the following coverages and requirements:

- (1) property and general liability coverage, naming the Department as an additional insured on the policy; and
- (2) professional liability (errors and omissions) coverage (except for construction inspection agreements); and
- (3) sufficient documentation that its insurer will provide notice to the Department, as an additional insured party, at least thirty (30) days in advance of cancellation for reasons other than nonpayment of premium; and
- (4) sufficient documentation that its insurer, consistent with the requirements of 40 P.S. § 3310 (relating to notice to the first named insured), will provide notice, to the Department, as an additional insured, at least fifteen (15) days in advance of cancellation for nonpayment of premium.

For general liability, procure only occurrence-based insurance coverage in the minimum amounts of \$250,000 per person and \$1,000,000 per occurrence for bodily injury, including death, and \$250,000 per person and \$1,000,000 per occurrence for property damage, with any general aggregate limits on a per project basis, and so note on the certificate.

~~The Consultant shall notify the Department of material changes to insurance coverages, including, but not limited to, cancellation initiated by the Consultant, at least thirty (30) days in advance of the effective date of the changes or cancellation. This notification must come from the Consultant and is in addition to the requirements above for the insurer to provide notice to the Department.~~

The Consultant must attach certificate(s) of insurance to the technical proposal for each agreement and supplement. If the certificate(s) does (do) not provide or contain the necessary information concerning the foregoing requirements, please include the relevant endorsements with the certificate(s), including, but not limited to, all insurance policy endorsements that pertain to cancellation. Legal agreements and legal supplements will not be created without this proof of insurance. An example Certificate is provided in Publication 93 Appendix 5D.

3.2 Contract Suspension and Cancellation

A. Suspension of Work Notice

The Deputy Secretary (or authorized designee), District Executive, and Assistant District Executive shall have the authority to suspend the work wholly or in part, under the terms of the Agreement whenever the Deputy Secretary deems such suspension is in the best interest of the Commonwealth, by issuing a Suspension Order to the Consultant. The Suspension Order may apply to the entire Agreement, or to any part(s), phase(s), or item(s) of work thereof, and upon one or multiple occasions. Upon receipt of such Suspension Order, the Consultant shall cease work immediately in accordance with the Suspension Order provisions and shall order all subconsultant(s) and subcontractor(s) to cease work immediately. The Consultant shall continue the suspension of work until such Suspension Order is subsequently withdrawn in writing by PennDOT. During the time the Suspension Order is in effect, the Consultant shall exercise due care and caution to protect and secure the completed work and work that was in process.

After receipt of the Suspension Order the Consultant may exercise one of the following options:

- 1) **For Cost Plus Fixed Fee Method**, the Consultant may invoice for the Direct and Indirect Payroll costs, for any applicable In-house Direct Costs, and the Direct Cost of Work and Services by Others as of the effective date specified in the Suspension Order.
- 2) **For Lump Sum Method and Unit of Work Method and for the Lump Sum Fee in the Cost Plus Fixed Fee Method**, the Consultant, with the approval of PennDOT, may establish an interim percentage of progress payments for accrued earnings to the effective date specified in the Suspension Order and may submit an invoice for the amount thereof.
- 3) **For the Specific Rate of Compensation Method**, the Consultant may invoice for the total accrued hours of work for the employees as of the effective date specified in the Suspension Order.

In support of such invoice the Consultant shall cite the Suspension Order as the basis for the submission. A copy of the Suspension Order should be attached to the invoice.

PennDOT will not recognize nor authorize standby time during the effective period of the Suspension Order.

If the Suspension Order is in effect for a period of six months or longer prior to being rescinded, PennDOT will consider negotiating a Supplemental Agreement.

B. Cancellation of Contract

PennDOT shall have the right to cancel the Agreement at any time upon written notice signed by the Deputy Secretary, and in any such event the Consultant shall be paid as hereinafter set forth, by the method of payment indicated in the Agreement and Supplements thereto. The Consultant shall cease work as of the date the registered letter is received and shall be paid only for such work and services as have already been rendered up to and including the cease work date specified in said Notice of Cancellation.

The Consultant shall also be paid for a period of thirty (30) calendar days after the Cancellation Notice for work and services performed for the collection, assembling and transmitting to PennDOT the items which were obtained, prepared or developed as part of the work required under the Agreement. These items include, but are not limited to, all materials; electronic files; plans; studies; correspondence; drawings; computations; maps; supplies; survey notes, including field books; and property records, including deeds, tax maps, title searches, etc.

- 1) The amount due the Consultant for earnings on a Cost Plus Fixed Fee type of Agreement shall include the Consultant's direct and indirect costs defined in the Agreement as of the date of cancellation plus a payment in the amount of the Lump Sum for Fixed Fee computed on an agreed upon percentage of the Consultant's progress of completion of the Agreement as of the effective termination date specified in the Cancellation Notice. This agreed upon percentage shall be based on the actual work completed and not the percentage determined by comparing the expended payroll amount against the estimated amount for payroll included in the Agreement.
- 2) The amount due the Consultant for earnings on a Lump Sum Method of Payment contract shall be based on an agreed upon percentage of actual work completed. This percentage shall be based on a detailed review of the work

completed as applied to the amounts established in the Estimated Progress Report, approved at the start of the project or as subsequently approved by PennDOT.

- 3) The amount due the Consultant for earnings on a Specific Rate of Compensation type Agreement shall be the payment for the total accrued amount of Compensation due the Consultant as of the effective date specified in the Cancellation Notice.
- 4) The amount due the Consultant for earnings on a Cost per Unit of Work Method of Reimbursement shall be the payment:
 - (a) For all Units of Work completed as of the effective date specified in the Notice of Cancellation.
 - (b) For the completion of Units of Work on which the Consultant has work underway and PennDOT directs completion subsequent to the effective date specified in the Notice of Cancellation.
 - (c) For Units of Work on which actual work has been performed prior to the effective date specified in the Notice of Cancellation an agreed percentage of completion of each unit, after negotiation with the Consultant, shall be established by PennDOT to determine the amount of reimbursement due the Consultant.
 - (d) No allowance will be made for Units of Work on which the Consultant has performed no work as of the date of the receipt of the Notice of Cancellation.
- 5) The thirty (30) days notice shall date from the time of mailing of such letter to the Consultant. The right to cancel may be exercised by PennDOT as to the entire project, or as to any particular phase or phases, part or parts, thereof, and such cancellation shall not be subject to revocation.

3.3 Violation or Breach of Contract

If a consultant or subconsultant finds that it is in violation or breach of contract, it should notify PennDOT immediately.

If PennDOT finds that a consultant or subconsultant is in violation or breach of contract, PennDOT will notify the consultant. Appropriate corrective legal action will be taken.

3.4 Ownership of Material and Work

All plans, specifications, estimates, electronic files, including copies of the surveyed surface, design surface(s), and alignment files in LandXML format, correspondence, software developed or acquired as a part of the project, drawings, studies, computations, aerial photographic negatives and models, mosaics, maps and all other material, supplies, and designs prepared, developed, or obtained under the terms of the Agreement shall be delivered to and become the sole property of PennDOT. The original survey field books, notes, sketches, records, charts, computations, computer programs, tests results, LandXML files, and other data prepared, acquired, or obtained under this Agreement at PennDOT expense shall be delivered and become the sole property of PennDOT upon request without restriction or limitation on their further use. When an Agreement is for studies only, no commitment shall be implied therefrom that would constitute a limitation on the subsequent use of the studies, reports, and plans by PennDOT.

PennDOT and the Consultant intend and agree that all work, services, products, and materials (Works) created under this Agreement shall constitute works made for hire as that term is defined under the Copyright Act of 1976, as amended (Copyright Act). The Consultant acknowledges and agrees that the Works shall belong to and shall be the sole and exclusive property of PennDOT. If for any reasons the Works would not be considered a work made for hire under applicable law, the Consultant hereby sells, assigns, and transfers to the Commonwealth, acting through PennDOT, its successors and assigns, the right, title and interest in and to the copyright in the Works and any registrations and copyright applications relating therefore and in and to all works based upon, derived from, or incorporating the Work. Consultant agrees to sign and deliver to PennDOT, either during or subsequent to the term of this Agreement, such other documents as PennDOT considers necessary to effectuate the assignment of copyright. This provision shall survive the term of the Agreement.

3.5 Cost Elements for Consultant Agreements

All costs must be in accordance with federal cost principles, as contained in the FAR.

The following cost elements are totaled to determine the maximum not to be exceeded Agreement amount:

- Direct Labor/Direct Payroll
- Overhead/Indirect Payroll
- Direct Costs Other Than Payroll
- Direct Cost of Work and Services by Others
- Fixed Fee or Profit
- Escalation
- Premium Pay (Design and Miscellaneous Services Agreements)

Additional information concerning these elements can be found in Pub 93.

A. Direct Labor/Direct Payroll

Direct labor is the cost of salaries for those personnel such as Project Manager, engineers, technicians, drafters, CADD operators, survey personnel, and clerks that are directly chargeable to the project.

All consultant personnel must be on the consultant's PennDOT approved roster prior to working under a PennDOT Agreement.

The Consultant's estimate of its in-house Direct Payroll cost, presented as a breakdown of work-hour requirements into the work breakdown structure tasks and detail tasks, is required to accomplish the project. Each detail task will have the classifications of employees to be used with the average hourly rate for each classification, extended and summated to arrive at the total estimated payroll cost. The work breakdown structures tasks and detail tasks so presented in this estimate shall be identical to those used in the Consultant's Cost Accounting Records for the work and services performed under the Agreement .

B. Overhead/Indirect Payroll

The overhead cost represents those allowable costs that are not directly attributable to the project. Overhead costs generally include, but are not limited to, the following:

- Provisions for office, light, heat, and related items associated with the working space, depreciation allowances or rental for furniture, drafting equipment, and CADD equipment, automobile expenses, and office and drafting supplies not directly chargeable to the project;
- Taxes and insurance other than those included as salary cost, but excluding federal income taxes;
- Library and periodical expense, and other means of keeping current in the profession, such as attendance at technical and professional meetings;
- Those services and expenses essential to conduct business, including preliminary arrangements for new projects, executive, administrative, accounting, and legal salaries and expenses, other than identifiable salaries included in salary costs and expenses included in reimbursable non-salary expenses, plus salaries of partners and principals, to the extent that they perform general executive and administrative services as distinguished from technical or advisory services directly applicable to the project;
- Business development expenses, including salaries of principals and salary costs of employees so engaged; Provision for loss of productive time of technical employees between assignments and for time of principals and employees on public-interest assignments; and
- Payroll burden and fringe benefits, which include:
 - paid sick leave
 - vacation
 - holidays
 - payroll taxes
 - unemployment contributions
 - social security taxes
 - insurance benefits
 - retirement

The determination of the allowable cost items making up the Consultant overhead/indirect costs shall be governed by provisions set forth in FAR Part 31.

The Consultant overhead rate expressed as a percentage is calculated as follows:

$$\text{Overhead Rate (\%)} = (\text{Allowable Overhead Costs} / \text{Direct Labor Costs}) \times 100$$

The Indirect Payroll cost is calculated by multiplying the direct labor cost by the overhead rate divided by 100.

Overhead Submissions

The Consultant shall have a current approved FAR overhead rate(s) on file with PennDOT in order to perform work on PennDOT projects. Approved FAR overhead rate(s) are valid up to eighteen months from the consultant's audit fiscal year end.

In order to obtain PennDOT approval of their overhead rate(s), consultants must submit the following documentation to PennDOT :

- Cognizant approved indirect cost rate(s) if available (see Cognizant Audit below for requirements). If the consultant has received a cognizant letter, the only additional documentation required is the Contractor Cost Certification below. OR
- FHWA Order 4470.1A Appendix A – Contractor Cost Certification – See [Appendix 3C](#).
- Audit report disclosing the results of an indirect cost rate(s) FAR audit, performed by an independent CPA in accordance with Generally Accepted government Auditing Standards. It is highly recommended that the CPA also utilize the guidance provided in the latest edition of the AASHTO Uniform Audit and Accounting Guide to perform the audit of the indirect cost rate(s). The FAR audit report shall be provided at no direct cost to PennDOT. The consultant may submit an unaudited FAR overhead rate(s) statement but will be limited to being a subconsultant on PennDOT projects with direct plus indirect costs for each subconsultant agreement limited to a maximum of \$250,000.
- A complete compensation analysis prepared in accordance with all criteria outlined in the AASHTO Uniform Audit and Accounting Guide Section 7.5 or the National Compensation Matrix (NCM) Executive Compensation Compliance Worksheet – See [Appendix 3D PennDOT Executive Compensation \(PEC\) Statement](#) of Publication 93.
- AASHTO Internal Control Questionnaire (ICQ) and the following attachments:
 - Final fiscal year end trial balance that reconciles to the overhead schedule. If accounts on the overhead statement include multiple expense accounts, indicate which expense accounts on the trial balance make up the overhead statement account.
 - Overhead rate schedule showing the calculation of the overhead rate(s) and showing excluded unallowable amounts as per [FAR 31](#).
 - The Company's policies for vacation and sick leave.
 - The Company's bonus policy.

The updated ICQ and NCM are available at <http://audit.transportation.org>.

Additional information may be requested by the PennDOT negotiator and shall be provided by the Consultant in a timely manner.

Voluntary Lower Overhead Rates – A Consultant requesting approval for use of an overhead rate lower than the overhead rate it submitted as FAR compliant (audited or unaudited) must agree that it will stand by the lower overhead rate for the duration of affected agreements and will not expect additional reimbursement for amounts above the requested lower rate based on any future audits of the rate. Additionally, the consultant requesting approval for a lower overhead rate must provide as part of its overhead submission a certification that it will stand by the requested lower rate for the duration of agreements affected by the rate, a narrative explaining why it is requesting a lower overhead rate, and an identification of the specific costs that are being voluntarily reduced to arrive at the lower overhead rate.

Pro-Forma Overhead Rate - If the Consultant is unable to generate a FAR Overhead Rate because the firm has not been in business for a complete fiscal year, the Consultant shall generate a Pro-Forma Overhead Rate based on the best available accounting information. This Pro-Forma Overhead Rate will be used as provisional rate in the Consultant's price proposal.

The office Pro-Forma overhead rate is limited to 130%. The field Pro-Forma overhead rate is limited to 95%.

Cognizant Audit - PennDOT will accept indirect cost rates deemed by a cognizant agency, to be established in accordance with the FAR cost principles. This determination may be made through an audit performed by the cognizant agency or through their concurrence with an audit performed by a CPA firm. A cognizant agency may be any of the following: (1) Federal agency; (2) The Home State DOT (the State where the consulting firm's accounting and financial records are located); or (3) A Non-Home State DOT to whom the Home State has transferred cognizance in writing for the particular indirect cost rate audit of a consulting firm.

PennDOT requires a letter from the cognizant agency establishing the accepted "cognizant indirect cost rate(s)". A cognizant indirect cost rate(s) submission must include the Contractor Cost Certification of Final Indirect Costs form. This form is available at the ECMS website overhead information link and in Publication 93 Appendix 3C.

Office Overhead Rates

Design and Miscellaneous Agreements – The use of an office overhead rate is allowed for all operations.

A prime consultant is required to have an audited FAR overhead rate on file with PennDOT prior to submitting a price proposal using Lump Sum, Cost per Unit of Work, or Specific Rate of Compensation methods of payment. The consultant may use an internally prepared FAR overhead rate, accepted by PennDOT, for price proposal preparation for an agreement using a Cost Plus Fixed Fee method of payment, but an audited FAR overhead rate must be on file with PennDOT prior to submitting an invoice under the agreement.

For an agreement where the estimated direct plus indirect payroll cost for the subconsultant is more than \$250,000, a subconsultant is required to have an audited FAR overhead rate on file with PennDOT prior to submitting a price proposal using Lump Sum, Cost per Unit of Work, or Specific Rate of Compensation methods of payment. The subconsultant may use an internally prepared FAR overhead rate, accepted by PennDOT, for price proposal preparation for an agreement using a Cost Plus Fixed Fee method of payment, but an audited FAR overhead rate must be on file with PennDOT prior to submitting an invoice under the agreement.

For an agreement with an estimated direct plus indirect payroll cost for the subconsultant is less than \$250,000, a subconsultant may use an internally prepared FAR overhead rate, accepted by PennDOT. The internally prepared overhead rate must be accepted by PennDOT prior to price proposal preparation. A subconsultant may submit an audited FAR overhead rate if one is available.

Field Overhead Rates

Construction Inspection Agreements - A prime consultant is required to have an audited FAR field overhead rate on file with PennDOT prior to submitting a SOI.

For an agreement where the estimated direct plus indirect payroll cost for the subconsultant is more than \$250,000, a subconsultant is required to have an audited FAR field overhead rate on file with PennDOT prior to being included as a subconsultant in an SOI.

For an agreement with an estimated direct plus indirect payroll cost for the subconsultant is less than \$250,000, a subconsultant may use an internally prepared FAR field overhead rate, accepted by PennDOT. The internally prepared field FAR overhead rate must be accepted by PennDOT prior to the subconsultant being included in an SOI. A subconsultant may submit an audited FAR field overhead rate if one is available.

Design and Miscellaneous Agreements – The use of a field overhead rate is required for consultant employees who are not supplied a full time workstation within the consulting firm's operations.

In situations, where a field rate will be required but the consulting firm does not have an approved field rate, PennDOT and the Office of the Comptroller has the ability to approve a provisional field overhead rate.

C. Direct Costs Other than Payroll

The Consultant will not receive any mark-up on in-house direct costs.

Indirect Costs - The Direct Costs Other Than Payroll costs to be provided by the Consultant are to be identified as being directly charged to the Agreement and not to an account which is included in the Consultant's overhead percentage. The out of pocket expenses, for travel and subsistence (lodging and meals), for both the Consultant and the subconsultant (subcontractor) shall be charged at actual cost, not to exceed those authorized by the Commonwealth's Management Directive 230.10 and revisions thereto, whether charged as a direct or an indirect cost. Both the Consultant and subconsultant (subcontractor) shall be governed by the regulations as defined by this Directive.

DBE Crediting - For professional work and services, DBE crediting will be made only when the work and services have been performed by a DBE subconsultant. Costs for professional work and services included in a DBE consultant's price proposal as direct costs of work and services by others should not count as DBE participation in the Agreement unless the direct cost is incurred by a certified DBE consultant.

If the prime Consultant is a certified DBE, all costs except for those realized by non-DBE certified subconsultants will count toward the DBE goal.

All DBE participation will be counted towards the Agreement's DBE goal in accordance with 49 CFR Part 26.55.

D. Direct Costs of Services and Work by Others

The Consultant will not receive any mark-up on these direct costs.

This element encompasses the actual costs associated with subconsultants and Non-Professional Contractual Services whether obtained by negotiations or by bidding. Even though subconsultant costs are considered a direct cost with respect to the Prime's agreement, each subconsultant agreement has its own budget of funds per Category of Compensation and shall be managed in accordance with all procedures detailed in Publication 93 and terms and conditions indicated in Publication 442.

3.6 Proposed Project Employees

The Consultant shall submit to PennDOT the names of the employees proposed to be used on the project. Their payroll classification, actual current payroll rate and the date the payroll rate was effective will be provided by ECMS. During the life of the contract, the Consultant shall notify PennDOT, through ECMS, of proposed wage rate increases and request approval prior to placing them into effect. When PennDOT objects to the amount of such increase, the wage rate will be rejected and justification will be required. Submissions for approval of payroll rate increases are to be made through ECMS indicating the proposed payroll rate with the new effective date.

3.7 Agreement Performance

The Consultant shall perform with its own forces all the work and services and furnish all equipment and materials required to accomplish all the provisions and requirements of the Agreement, with the exception of those services, work, equipment, and/or material specifically listed in the Agreement or approved pursuant to the provisions above, which are to be performed or furnished by other than the Consultant forces.

3.8 Transfer of Electronic Data

A. Terms and Conditions for the Release of Electronic Data Files

- 1) That PennDOT does not warrant or guarantee the information and data in these Computer Aided Design Drafting (CADD) project files as a substitute for the sound engineering judgment of the Consultant.
- 2) That use of the CADD project files in conjunction with engineering work and services provided by the Consultant to PennDOT will reduce the cost of such services and thereby benefit the public.
- 3) That the Consultant desires to make use of the CADD project files in conjunction with engineering work and services provided by the Consultant to PennDOT.
- 4) That PennDOT grants permission to the Consultant to use the CADD project files (Commonwealth's Intellectual Property) and any translated or converted form of these files subject to the terms and conditions of this Agreement, and any supplements to this Agreement. A paper copy of the Commonwealth's Intellectual Property will be provided by PennDOT.
- 5) That the Consultant has no proprietary rights in or to the Commonwealth's Intellectual Property or any subsequent version thereof. The Consultant shall maintain and protect the Commonwealth's Intellectual Property in the strictest confidence. No translated or converted form may be transferred in any form without the express written permission of PennDOT.
- 6) That the Commonwealth's Intellectual Property or any translated or converted form of this Intellectual Property shall not be used by the Consultant on any other project. The Consultant shall be expressly prohibited from copying any portion of the files, except to the extent necessary to perform the Project.

- 7) That the Consultant may not copy, distribute, sell, rent, sublicense, or lease the Commonwealth's Intellectual Property to any third parties or use the files or any translated or converted form of the files to produce, market, or support the Consultant's own products.
- 8) That no information or data contained in the Commonwealth's Intellectual Property or any translated or converted form of same shall be transferred in any electronic form without written permission of PennDOT's Deputy Secretary for Highway Administration.
- 9) That, after payment of the final invoice for work and services provided by the Consultant as part of this Agreement, the Consultant shall remove the information and data contained in the Commonwealth's Intellectual Property or any translated or converted form of the same from all of the Consultant's electronic data processing systems. The Consultant shall not retain any electronic copies of the information and data contained in the Commonwealth's Intellectual Property or any translated or converted form of its Intellectual Property after payment of the final invoice for work and services provided under this Agreement. Within ten (10) days of the conclusion of the Project work, the Consultant shall return all copies of the Commonwealth's Intellectual Property and all related materials to PennDOT and shall delete all portions of the Commonwealth's Intellectual Property from computer memory.
- 10) That PennDOT may terminate this Agreement at any time, and the Consultant shall immediately remove the Commonwealth's Intellectual Property or any translated or converted form of the same from the Consultant's electronic data processing systems upon demand of PennDOT.
- 11) That PennDOT reserves all rights not expressly granted. Nothing in this Agreement constitutes a waiver of PennDOT's rights under any federal or state law.
- 12) That the Commonwealth's Intellectual Property is being provided "AS IS" without any covenant, representation, or warranty of any kind or nature whatsoever, express or implied; and the Consultant assumes the entire risk as to its quality and performance. The Consultant's remedy is limited to returning the Commonwealth's Intellectual Property and accompanying documentation to PennDOT for replacement.
- 13) That PennDOT shall not be liable for any direct, indirect, special, incidental, or consequential damages, whether based on contract, in tort or in any other legal theory, arising out of the use of, or inability to use, the Commonwealth's Intellectual Property or any accompanying documentation.
- 14) That PennDOT shall not be liable for any direct, indirect, special, incidental, or consequential damages, whether based on contract, in tort or on any other legal theory, arising out of any defect in the Commonwealth's Intellectual Property or any accompanying documentation.
- 15) That the Consultant shall indemnify and hold harmless the Commonwealth, PennDOT, its officials, and employees for any injury to the person or property of third parties arising out of the use of or any defect in Commonwealth's Intellectual Property or any translated or converted form of this Intellectual Property or any accompanying documentation.

- 16) That the Consultant shall indemnify and hold harmless the Commonwealth, PennDOT, its officials, and employees for any injury arising out of any infringement of the copyright laws of the United States of America.
- 17) That the warranty and remedies set forth in this Agreement are exclusive and in lieu of all others, oral or written, express or implied.
- 18) That nothing contained in this Agreement shall be construed to represent or warrant that the Consultant has any right to reproduce or copy any portion of the Commonwealth's Intellectual Property; and the Consultant acknowledges that it has no right to reproduce and include copyright or trade secret notices, or patent rights on any copies, in whole or in part, in any form. All copies of the Commonwealth's Intellectual Property remain the property of the Commonwealth and any rights involving the copyright law as codified in 17 U.S.C. Section 101 et seq. remain with the Commonwealth and PennDOT as defined by the software licensing provisions of its CADD acquisition agreements.
- 19) That this Agreement constitutes the entire Agreement between PennDOT and the Consultant. No employee of PennDOT is authorized to make any modification or addition to this Agreement, except through the issuance of a fully executed Supplemental Agreement.
- 20) That the Consultant shall provide, at no cost to PennDOT, the magnetic medium, acceptable to PennDOT, for transfer of the Commonwealth's Intellectual Property.

B. Additional terms and conditions for the release of electronic BRADD project drawing files

- 1) That the Consultant is solely responsible for the installation of the transferred BRADD files onto its electronic drafting system.
- 2) That the Consultant shall verify the integrity, correctness, and acceptability of the transferred data contained in the BRADD files as compared to the paper copy of the files provided by PennDOT.
- 3) That the Consultant shall acknowledge in writing the integrity, correctness, and acceptability of the transferred BRADD files.
- 4) That PennDOT will provide the Consultant, without modification, the BRADD files as produced by PennDOT 's BRADD System.
- 5) That the Consultant is solely responsible to make all the necessary and required modifications and changes to the BRADD files as per the SHEET O file.
- 6) That the Consultant shall sign and seal all final bridge plans. This includes all transferred BRADD files used in the final bridge plans, whether or not those files were modified by the Consultant.
- 7) That prior to payment of the final invoice, the Consultant shall submit in writing, at no additional expense to PennDOT, documentation of the experience using the transferred files. This documentation shall include:

- (a) the effort required by the Consultant to accept and use the transferred files;
- (b) the accuracy of the transferred files as compared to the paper copy, including any corrections required to the files; and
- (c) the effect of the transferred file size and format on the subsequent use of the files by the Consultant.

3.9 Overpayment and Non-eligible Costs

In the event that an overpayment or noneligible charge is disclosed, as a result of a Departmental audit of the certified costs as herein provided, it is agreed by the Consultant that upon notice of such overpayment or noneligible charge the Consultant will refund the amount thereof to PennDOT in accordance with the terms of such notice. Upon failure of Consultant to comply with said notice PennDOT is hereby authorized to deduct such overpayments from monies due the Consultant under the terms of the Agreement or any other agreement between PennDOT and the Consultant.

3.10 Costs Incurred Outside the Legal Agreement

No costs for work or services included in a Legal Agreement, Work Order, or Supplement can be incurred by the Consultant prior to NTP or beyond the expiration date. No costs for work or services outside a legal Agreement, Work Order, or Supplement can be incurred.

The Consultant is prohibited from incurring costs for work outside the terms and conditions of the agreement, even if such costs are incurred based on verbal directions or instructions that may have been given by a PennDOT representative. Similarly, Subconsultants are prohibited from incurring costs for work outside the terms and conditions of the agreement, even if such costs are incurred based on directions or instructions that may have been given by a Prime representative. Directions or instructions for work, services, or materials, not provided for in the Agreement, issued by any PennDOT official/employee or other Consultant will not be binding on nor will PennDOT be liable for payment for the work or service.

Any such work or materials which may be done or furnished by the Consultant shall be at the Consultant's risk, cost, and expense.

No one within PennDOT has the authority to direct a Consultant to perform work outside of a fully executed Agreement, Work Order or Supplement. In cases where a PennDOT representative directs the Consultant to perform work without an agreement, the responsible individual may be subject to disciplinary action

If a Consultant incurs costs outside of the constraints of its Legal Agreement, Work Order, or Supplement, i.e. works prior to or after the contract time, or incurs costs beyond Category of Compensation limitations, invoices requesting these type of costs cannot be processed by PennDOT.

In these cases, IO Project Managers are advised to contact the Contract Management Section (CMS) Chief. The CMS Chief can provide the Consultant with the various avenues available to rectify the situation.

The CO CMS office (Consultant Agreement Unit) will run a report on approved invoices every six months to determine any invoices that are outside the set parameters of probability for the firm's budget. The Districts and the Consultant will be contacted and the Consultant will be given a chance to provide justification for expenses within budget. If found outside their budget the firm will be instructed to repay the Department.

3.11 Overtime

The design Consultant shall be reimbursed for such overtime paid to its employees for work and services performed hereunder, as is provided for or may be required under existing law or approved labor agreement, when such overtime has been provided for in the Agreement and has been approved in writing by the Deputy Secretary for Highway Administration and approved where applicable by the FHWA. No employee shall receive for any overtime a sum exceeding the normal rate paid by the Consultant's overtime policy.

3.12 Publication 408 Specifications

If the engineering work to be performed by the Consultant under this Agreement is subject to Section 100 of PennDOT's Specifications, Publication 408 (current version at time of executed agreement), the Consultant shall comply with all applicable portions of Section 100, unless otherwise provided in this Agreement or its Special Requirements. In this connection, where the word "contractor" appears in any portion of Section 100 of Publication 408, it shall mean the Consultant; and where the word "engineer" appears, it shall mean the Deputy Secretary for Highway Administration of the Department of Transportation.

3.13 No Third-Party Rights Created

Nothing contained in the Agreement, or in these Specifications shall be deemed to create any contractual relationship with, or to create a cause of action of any kind, nature or type, whether grounded in contract, tort, equity or any other legal theory, in favor of any third party against either PennDOT or the Consultant, or any of their officers, agents, employees, consultants, or designees, or anyone acting on their behalf.

Nothing contained in the Agreement or in these Specifications is intended to benefit any third party. PennDOT and the Consultant do not intend that any other person or entity, including, but not limited to contractors, their subcontractors, their officers, agents, or employees, or anyone acting on their behalf, shall be third-party beneficiaries of the Agreement.

3.14 Right to Know Law

- A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. Therefore, this Contract/Agreement is subject to, and the Consultant shall comply with, the clause entitled Contract Provisions – Right to Know Law 8-K-1532, as follows and made a part of this Contract/Agreement. As used in this Contract/Agreement, the term "Contractor" refers to the Consultant. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- B. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

- C. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
 - 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- D. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- E. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- F. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

3.15 Records and Documentation

The Consultant and its subconsultants/subcontractors shall maintain and provide access to all books, documents, papers, records supporting cost proposals, accounting records, employees time cards, payroll records, and other evidence pertaining to costs incurred on the project and shall make such materials available at a site designated by PennDOT at all reasonable times during the Agreement period and for seven years from the date of final payment under the Agreement for inspection and/or audit by PennDOT, FHWA, or any other authorized representative of the state or federal government, and copies thereof shall be furnished, if requested.

The Consultant and its subconsultants/subcontractors shall maintain and provide access to PennDOT, Municipalities, FHWA, the US Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representative to any books, documents, papers, and records of the consultant which are directly pertinent to this specific contract for the purpose of making audit examination, excerpts, and transcription.

Chapter 4 – Invoices

4.1 Partial Payments

The interval for consultants to submit an invoice should be four to six weeks. ECMS will allow prior period invoicing if charges were missed. A note (comment) should be added in ECMS to explain missed charges. The invoicing period should not span between the consultant's two fiscal years.

Each subconsultant invoice must be approved by the supervising Consultant (which may be either another subconsultant or the prime). All subconsultant invoices for the same consultant Agreement/Part number that are in "Supervisor Firm Approved" status are linked with the prime invoice into a "payment".

Lump Sum Payment – As the work progresses, PennDOT, at its discretion, may require the Consultant, at intervals of time of one month or longer, to develop and submit an interim Progress Report as provided in these Specifications. The IO Project Manager will verify the Progress Report and upon acceptance will process the Consultant's invoice as provided above.

Cost Per Unit of Work Payment - The Consultant may at intervals of not less than once a calendar month submit an invoice for work completed during that time frame.

Cost Plus Fixed Fee Payment - The Consultant may at intervals of not less than once a calendar month submit an invoice for its accrued direct and indirect costs for the invoice period, including certified invoices paid to subconsultants, subcontractors and suppliers. The Lump Sum for Fixed Fee will be processed as same as that for a Lump Sum Method, above, with the exception that any amount earned based on the percent of work completed regardless of the amount will be invoiced as a part of a monthly invoice for direct and indirect costs as set forth above.

The computation of the Consultant's monthly partial payment will be computed initially using the provisional Overhead Rate.

Upon notification by PennDOT of the acceptance of the Overhead Rate for the Consultant's fiscal year, the Consultant shall, by an appropriate adjustment of the prior partial payment invoices, in which the provisional Overhead Rate was used, submit an invoice to PennDOT for the amount due the Consultant or make an appropriate refund to PennDOT for overpayments.

The accepted fiscal year Overhead shall be used as the provisional Overhead Rate for the ensuing fiscal year and at its end, the Consultant and PennDOT will establish the accepted audited Overhead Rate and the foregoing adjustments will again be made. The verification of the Consultant's Overhead Rate together with the appropriate adjustment of the Consultant's billing will be accomplished for each of the Consultant's fiscal years for the term of the Agreement.

Specific Rate of Compensation - The Consultant may at intervals of not less than one month submit an invoice covering such earnings to PennDOT.

4.2 **Monitoring of Costs**

When the costs incurred by the Consultant for any Category of Compensation other than Lump Sum for Fixed Fee, Lump Sum, or Cost Per Units, for any Part/Work Order of this Agreement, reaches seventy-five (75) percent of the maximum not to be exceeded amount stipulated in PennDOT's approved invoice template for that category, the Consultant shall cease work on that Part/Work Order and evaluate the status of the entire Agreement. Work shall not resume and PennDOT will not process any invoices on that Part/Work Order of the Agreement unless one of the following actions has occurred:

- A. The Consultant has evaluated the status of the work and services required for that Part/Work Order under the terms of the Agreement, and verified in writing that all of the work and services required for that Part/Work Order can be provided without exceeding the maximum amounts stipulated in PennDOT approved invoice template.
- B. The Consultant has evaluated the status of work and services required to be provided for that Part/Work Order under the terms of the Agreement and requested a supplemental agreement for additional funds to complete the work and services or a transfer of existing funds within PennDOT approved invoice template. PennDOT, acting through the Agreement Project Manager Administrator, has reviewed the Consultant's request, has agreed that the Supplemental Agreement request or fund transfer is justified, and has notified the Consultant in writing that they may continue with the work and services up to the maximum not to be exceeded amounts stipulated in the approved invoice template for that Part/Work Order of the Agreement

4.3 **Final Invoice**

After the work to be performed by the Consultant under the Agreement has been completed and deemed satisfactory in all respects by PennDOT's Project Manager and accepted by PennDOT and where applicable by the FHWA, PennDOT will notify the Consultant in writing of its acceptance of the work as fulfilling the Agreement, or part of the Agreement. The Consultant must submit its final invoice within fourteen (14) calendar days of receipt of PennDOT's acceptance of work. The final invoice may be submitted by the Consultant within one month of the previous invoice. PennDOT will pay to the Consultant upon its final invoice when accepted and approved by PennDOT's Project Manager, all moneys due the Consultant under the terms of the Agreement. The payment of the final invoice to the Consultant for work and services under the terms of the Agreement does not waive the right of PennDOT to establish overpayments or adjustments disclosed by subsequent audits by PennDOT of the Consultant's project records and cost accounts. PennDOT will notify the Consultant of such amounts due PennDOT and request a refund for the amount of the overpayment as provided in these Specifications.

Lump Sum Method of Payment - The Consultant shall be paid the Lump Sum amount as provided in the Agreement for the project as a whole or such parts thereof on which a Lump Sum is provided. The amount of the final invoice shall be the remaining amount due the Engineer after all prior partial and/or interim payments by PennDOT have been deducted from the Lump Sum amount as set forth in the Agreement.

Cost Per Unit of Work Method - The Consultant will be paid for the total number of Units of Work completed. The final invoice shall be the total number of units completed minus prior units paid.

Cost Plus a Fixed Fee Amount Method – The Consultant shall be paid the amount of the fee computed in accordance with the procedure set forth for partial payments in these Specifications above, subject to a final audit of the Agreement and the determination of the Consultant's total amount due. The final settlement will be the submission by the Consultant of a Final Invoice in the amount of the audited amount due less the aggregate sum of the prior partial payments by PennDOT to the Consultant where the total aggregate sum of the prior partial payments exceeds the amount of the final audited amount of fee, the Consultant shall refund the overpayment amount to PennDOT.

Specific Rate of Compensation - The Consultant shall be paid the accumulated earnings of the Consultant's employees authorized by PennDOT to perform work less the amount of the aggregate total of partial payments by PennDOT to the Consultant.

4.4 Prompt Payment of Subconsultant/Subcontractor Invoices

In compliance with the Contractor and Subcontractor Payment Act (CASPA) and the Prompt Payment Act (PPA) of the Pennsylvania Procurement Code, when a subconsultant/subcontractor has performed in accordance with the provisions of the contract, the prime Consultant is obligated to make prompt payment on the invoices.

All monies received by the Consultant for work and services furnished by a subconsultant/subcontractor must be paid in full to that subcontractor within fourteen (14) calendar days of the date the prime Consultant received payment from PennDOT.

It is the Consultant's responsibility to ensure prompt payments to any and all subconsultants/subcontractors in accordance with the contractor and subcontractor Payment Act (CASPA), the Prompt Payment Act (PPA), 49 CFR part 26 and the project agreement terms and conditions.

The Consultant is responsible to comply with the prompt payment requirements specified in 49 CFR 26.29.

4.5 Invoice Template

The Consultant shall use the invoice template provided by PennDOT for the Agreement when requesting reimbursement from PennDOT.

For ECMS Agreements, the Consultant shall use the invoice template provided by PennDOT through the ECMS when requesting reimbursement from PennDOT.

4.6 Management Directive 230.10

The Consultant's out of pocket expenses for lodging and meals shall be charged at actual costs, not to exceed those authorized by the Commonwealth Management Directive 230.10.

Regardless of the amount submitted in the Price Proposal, consultants are responsible to use the current rate as indicated in the Commonwealth Management Directive when invoicing.

Reimbursement for subsistence is not allowed for Construction Inspection.

Chapter 5 – Design Errors and Claims

5.1 Consultant Design Error Liability

PennDOT will attempt to recover all PennDOT costs incurred above what PennDOT's cost would have been without design errors that are determined to be the responsibility of a consultant.

5.2 Responsibility for Design Errors

A design error is a design flaw presented by the Consultant in a set of plans, specifications, contract documents or design computations as a result of negligent engineering or negligent document preparation. Negligent engineering and/or negligent document preparation is a failure to meet the standard of reasonable care, skill and diligence that an engineering professional would ordinarily exercise under similar circumstances.

Design errors that are discovered prior to contract letting are to be corrected by the Consultant at no additional costs to PennDOT.

For design errors discovered after contract letting, the ADED (Assistant District Executive for Design) or designee shall verbally notify the Consultant of the alleged design error and confirm the notification in writing to the Consultant. The ADED shall request that the Consultant participate in developing a solution in cooperation with the PennDOT Staff, at no cost to PennDOT. Corrective action should not be taken prior to notifying the Consultant unless the DE (District Executive) determines safety issues warrant immediate action.

The ADED and ADEC (Assistant District Executive for Construction) shall immediately assemble an appropriate team, including the Consultant, if willing, and the Contractor, if appropriate, to determine the likely cause of the alleged error and develop recommended solutions that are cost-effective and provide the desired quality. The ADED shall instruct the Consultant in writing to keep all charges associated with developing a solution for the potential design error separate from the other consultant project costs. These consultant costs will not be eligible for payment if it is determined a design error exists. The ADED and ADEC shall brief the DE as to the outcome of the team efforts. The ADEC shall recommend a solution to the DE and the CMS Chief that is cost-effective and provides the desired quality.

The ACE shall oversee the preparation of a construction work order that provides a complete description and consequences of the error and document the additional construction cost. The ACE shall provide a copy of this work order to the ADED.

The ADED shall provide a copy of the construction work order, where applicable, to the Consultant and notify the Consultant of the amount to pay PennDOT as a result of the design error. If the Consultant agrees with the cost, a payment plan to PennDOT will be arranged. The Office of Chief Counsel must approve any payment plan that results in PennDOT not receiving full payment within ninety (90) calendar days. Payment of the determined amount shall conclude the design error process.

If a consultant is unwilling to reimburse PennDOT for all costs resulting from the determination of a design error, a fact-finding meeting between the DE or designee, a

representative of the Office of Chief Counsel and the CMS Chief and the Consultant will be conducted. The Consultant will be given an opportunity to provide evidence that the cost is incorrect or justification to support the position that the Consultant was not negligent or should not be responsible for all, or a portion of the cost. The DE, in consultation with the FHWA and the Director of the Bureau of Project Delivery or designee, shall consider the additional information and make appropriate corrections in the determination of negligence and/or in the cost if warranted. The Office of Chief Counsel will commence legal remedies if reimbursement from the Consultant is desired.

5.3 Board of Claims

All questions or disputes, respecting any matter pertaining to the Agreement or any part thereof or any breach of said Agreement, shall be referred to the Board of Claims created by the Pennsylvania Act of December 3, 2002, P.L. 1147, codified in Sections 1721-1726 of the Commonwealth Procurement Code, 62 Pa. C.S. §§ 1721-1726, in the manner and under the terms and conditions as provided therein.

5.4 Notice of Intent to File a Claim and Determination of Claim

- A. As a condition precedent to filing a claim for additional compensation, submit notice of intent to claim to the Chief of the Contract Management Section, in writing, within ten (10) days' time of when the Consultant knew of or should have known of the circumstances leading to the claim. This notice of intent will give PennDOT the opportunity to investigate the claim and to maintain and document information for future resolution or litigation of the claim.

File the claim in writing with the Chief of the Contract Management Section within six (6) months of the date it accrues and not thereafter. If the Consultant fails to file the claim or does not file the claim within the specified time period, the Consultant will be deemed to have waived its right to assert the claim in any forum. Claims not filed within the specified time period will be disregarded by the Chief of the Contract Management Section. The claim, when filed, must state all grounds upon which the claim is based and must include a copy of the previously submitted notice of intent to claim.

- B. The Chief of the Contract Management Section will attempt to settle and resolve the claim with the Consultant. The Chief of the Contract Management Section, at his or her discretion, may conduct a claim review meeting to attempt to settle and resolve the claim with the Consultant. If a claim review meeting is held, it will be attended by representatives of the Consultant and such PennDOT representatives as the Chief of the Contract Management Section considers appropriate.

If the claim is not resolved by agreement between the Chief of the Contract Management Section and the Consultant, the Chief of the Contract Management Section will issue a determination in writing regarding the claim and will mail it to the Consultant by first class mail. The determination will be mailed within one hundred twenty (120) days of the date on which the Chief of the Contract Management Section received the claim, unless the one hundred twenty- (120-) day period is extended by consent of the Chief of the Contract Management Section and the Consultant. If the Chief of the Contract Management Section fails to issue a final determination within the one hundred twenty (120) days, unless extended by consent of the Chief of the Contract Management Section and the Consultant, the claim will be deemed denied. The determination of the Chief of the Contract Management Section will be the final

order of PennDOT regarding the claim. The determination of the Chief of the Contract Management Section will be conclusive and binding upon the Consultant unless the Consultant appeals the determination by filing a statement of claim with the Board of Claims within fifteen (15) days of the mailing date of the determination, or, if no extension is agreed to by the Chief of the Contract Management Section and the Consultant, within one hundred thirty-five (135) days of the receipt by the Chief of the Consultant Review Section of the claim, whichever occurs first.

Chapter 6 – Consultant Restrictions

6.1 Disclosure of Confidential Information

The Consultant agrees to guard the confidentiality of any Commonwealth matter with the same diligence with which it guards its own proprietary information. In order for information to be deemed confidential, PennDOT will designate the information as “confidential” in such a manner as to give notice to the Consultant. If the Consultant needs to disclose all or part of project materials to third parties to perform the work or services covered under this Agreement, it may do so only if such third parties sign agreements containing substantially the same provisions as those set forth in this Paragraph. Upon termination of this Agreement, the Consultant shall return all copies of confidential information to PennDOT, except for one copy, which may be maintained for archival purposes only.

The Consultant agrees that it will not purchase, lease, take options upon, or in any manner financially benefit from any transaction involving real estate, affected by or located contiguous to future improvements planned by the Department of Transportation, in the planning for which the Consultant has gained knowledge through its contractual or other activity relationships with PennDOT.

All restrictions imposed upon the Consultant by the preceding paragraphs of this section shall be compulsory and applicable not only to the Consultant, but to its employees, agents, and members of its family. The Consultant agrees that it will advise all of its employees, agents, and members of its family of the requirements of this section, and that it will constantly supervise the activities of its employees, agents, and members of its family to guarantee that the requirements of this section are not violated.

6.2 Legal or Quasi-Legal Proceedings

The Consultant shall not testify in any legal or quasi- legal proceeding concerning any matter under this Agreement or under a task force or committee without written consent of PennDOT.

6.3 Engineering Involvement Restrictions

By submitting a statement of interest for this project, the Consultant certifies that it is in agreement and in compliance with the following paragraphs and the Engineering Involvement Restriction Matrix.

- A. Any consultant that provided or is providing any work and services to PennDOT for a design-build project will **not** be eligible to provide any work and services to the contractor design-build team for that project. Engineering Districts may use the PennDOT Consultant that developed the conceptual design for Consultation During Construction, Department Review, or Construction Inspection.
- B. Any consultant providing work or services for the contractor design-build team, such as Final Design or Peer Review, is not eligible for any involvement under a Department Agreement on that project.
- C. Any consultant providing any work and services to PennDOT for a design project would not be eligible to provide any work and services as a prime consultant on a Consultant Management Project Manager (CMPM) agreement involving that

project. A consultant would not be restricted from serving as a subconsultant on a CMPM agreement provided that its involvement on the CMPM agreement would have no affiliation respective to its design effort.

- D. A consultant providing work or services to a developer, where the work or services directly or indirectly affect PennDOT's project (including the review of a Highway Occupancy Permit), will be restricted from any involvement under a Department Agreement on that project.
- E. A consultant providing work and services to a local government agency as its Municipal Engineer will not be restricted from project involvement under a Department Agreement, provided that the Municipal Engineer's involvement with the Municipality does not require that it advise the Municipality in the Municipality's review of PennDOT's project.
- F. A consultant under Agreement to a Municipality, or to a Municipal authority, to provide work or services for a Municipal project will not be restricted from project involvement under a Department Agreement, provided that the consultant's involvement with the Municipality does not require that it advise the Municipality in the Municipality's review of PennDOT's project and the projects are not related and no conflicts of interest exist between projects.
- G. A consultant that is involved with a grant application or preparing a Request for Proposal (RFP) for a particular project are not eligible to perform preliminary engineering or final design on that project.

ENGINEERING INVOLVEMENT RESTRICTIONS MATRIX

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
Feasibility Studies, Traffic Studies, Mapping Services		<ul style="list-style-type: none"> - No restrictions. However, <ul style="list-style-type: none"> • Constructability Reviews should be performed by personnel not directly involved with the project design to assure an independent, objective review. • No recommendations, in accordance with Adverse Interest Act.
Preliminary Engineering, Preliminary Engineering Constructability Reviews, and Environmental Studies Anticipating a CEE		<ul style="list-style-type: none"> - Not eligible for Preliminary Engineering Design Management. - A consultant providing Preliminary Engineering services is eligible for either the Department Review OR the Construction Inspection, but not both. - Not eligible to perform any work or services for the contractor design-build team. <ul style="list-style-type: none"> • Exception – A subconsultant working on a Department Agreement containing multiple “projects,” which are let under separate construction contracts, can be part of the contractor design-build team

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
		provided that the design-build work is for a “project” in which the subconsultant did not participate in ANY work for the Department. See “Department Agreements Containing Multiple Projects for Subconsultant” Table Below.
Preliminary Engineering, Preliminary Engineering Constructability Reviews, and Environmental Studies Anticipating an EA/ EIS		<ul style="list-style-type: none"> - Same Restrictions as “Preliminary Engineering, Preliminary Engineering Constructability Reviews, and Environmental Studies Anticipating a CEE” <u>and</u> the following: - May be considered for all other work and services, but may not enter into a specific Agreement, or a Work Order for other work and services, prior to the date of a Finding of No Significant Impact (FONSI) or Record of Decision (ROD).
Conceptual Design / Bid Package Preparation for Design-Build Project		<ul style="list-style-type: none"> - Not eligible to perform any work or services for the contractor design-build team. <ul style="list-style-type: none"> • Exception – A subconsultant working on a Department Agreement containing multiple “projects,” which are let under separate construction contracts, can be part of the contractor design-build team provided that the design-build work is for a “project” in which the subconsultant did not participate in ANY work for the Department. See “Department Agreements Containing Multiple Projects for Subconsultant” Table Below.
Final Design		<ul style="list-style-type: none"> - Not eligible for Construction Management Project Manager, Construction Inspection, Constructability Review, or the Design Management services of reviewing work, services or deliverables from consultant’s Final Design Agreement (Consultant may provide other Design Management services). • Exceptions to the <u>Department</u> Final Design Consultant: <ul style="list-style-type: none"> ○ Constructability Reviews are permitted if included in the Scope of Work of the Final Design Agreement. ○ Construction Inspection may be considered if criteria meet those

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
		specified in Section 1.5.1 of Publication 93.
	Final Design	<ul style="list-style-type: none"> - Consultant for contractor design-build team providing Final Design services is not eligible to perform Quality Assurance Reviews for the contractor design-build team. - Contractor design-build team participants are restricted from any future involvement under a Department Consultant Agreement for that contract.
Preliminary Engineering-Design Management, Review Note: This includes consultants performing reviews for a District or Central Office Agreement, including an Open End Agreement.		<ul style="list-style-type: none"> - Not eligible for Preliminary Engineering Design or environmental work and services. - Not eligible to perform any work or services for the contractor design-build team. <ul style="list-style-type: none"> • Exception – A subconsultant working on a Department Agreement containing multiple “projects,” which are let under separate construction contracts, can be part of the contractor design-build team provided that the design-build work is for a “project” in which the subconsultant did not participate in ANY work for the Department. See “Department Agreements Containing Multiple Projects for Subconsultant” Table Below
Final Design Management, Review Note: This includes consultants performing reviews for a District or Central Office Agreement, including an Open End Agreement.		<ul style="list-style-type: none"> - Not eligible for Preliminary Engineering, Environmental Studies or Final Design. - Not eligible to participate as a consultant for the contractor design-build team.
	Quality Assurance Review	<ul style="list-style-type: none"> - Contractor design-build team participants are restricted from any involvement under a Department Agreement including Department Review, Construction Consultant Management Project Manager, and Construction Inspection services.
Department Review (Any design review completed as a representative of PennDOT for Design-Build Project, including Quality Assurance		<ul style="list-style-type: none"> - Not eligible for Construction Inspection or Construction Consultant Management Project Manager Services.

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
Review and Owner's Perspective)		
Consultant Management Project Manager (CMPM)		<ul style="list-style-type: none"> - Not eligible for Construction Inspection or Construction Consultant Management Project Manager Services. <ul style="list-style-type: none"> • Exception – A subconsultant would not be restricted from serving as a subconsultant provided that their involvement on the Construction Inspection or Construction Consultant Management agreement would have no affiliation respective to their CMPM effort.
Consultant Construction Management Support Services (CM) (Any construction activity completed as a representative of PennDOT other than Construction Inspection, or Services During Construction)		<ul style="list-style-type: none"> - Eligible for Construction Inspection, except no involvement in: <ul style="list-style-type: none"> • Development or procurement of Construction Inspection Agreements. • Approval of Payrolls of Consultant Construction Inspection. • Establishment or adjustment of Construction Inspection resources. - Not eligible for Constructability Reviews unless the work and services are included in the Scope of Work of the Construction Consultant Management Project Manager contract. - Not eligible to participate as a consultant for the contractor design-build team.
Services during Construction (Any design support services/reviews conducted during construction)		<ul style="list-style-type: none"> - Not eligible for Construction Inspection. - Not eligible for Construction Consultant Management Project Manager.
Construction Inspection		<ul style="list-style-type: none"> - Eligible for Construction Consultant Management Project Manager, except no involvement in: <ul style="list-style-type: none"> • Development or procurement of Construction Inspection Agreements. • Approval of payrolls of Consultant Construction Inspection. • Establishment or adjustment of Construction Inspection resources. - Not eligible for Constructability Reviews unless the work and services are included in the Scope of Work of the construction inspection contract. - Not eligible to participate as a consultant for the contractor design-build team.

DEPARTMENT AGREEMENT CONTAINING MULTIPLE PROJECTS (FOR SUBCONSULTANT) TABLE

Work Subconsultant Performed Only on Project A		Project A				Project B			
		Final Design	Quality Assurance Review	Dept. Review	CM/CI	Final Design	Quality Assurance Review	Dept. Review	CM/CI
Project A	<i>Preliminary Engineering Activities (Does not include Bid Package Prep)</i>	N	N	Y *	Y *	Y'	Y'	Y'	Y'
	<i>Conceptual Design/Bid Package Prep</i>	N	N	Y *	Y *	Y'	Y'	Y'	Y'
	Final Design		N	N	N			N	N
	Quality Assurance Review			N	N			N	N
	Dept. Review				N	N	N	Y**	Y**

Note: Project A and Project B represent multiple projects under one Engineering Agreement that were let under **separate** construction contracts.

N - Subconsultant is not eligible to perform service.

Y*- A subconsultant, working on the Preliminary Design or Conceptual Design/Bid Package Prep for Project A, can work on **EITHER** the Department Review for Project A **OR** the Construction Inspection for Project A, but not both.

Y**- A subconsultant firm, that worked on the Department Review for Project A, can work on **EITHER** the Department Review for Project B **OR** the Construction Inspection for Project B, but not both

Y'- A subconsultant firm, that worked on the Preliminary Design or the Conceptual Design/Bid Package Prep for Project A, can only work **on one** of the following: Final Design, Quality Assurance Review, Department Review, or Construction Management/Construction Inspection (CM/CI) for Project B.

 Shading represents work to be performed by the Contractor Design-Build team

6.4 Conflicts of Interest

Consultants shall adhere to 2 CFR 200.112, 23 CFR 1.33 and 23 CFR 172 regarding conflicts of interest.

Chapter 7 – American Recovery and Reinvestment Act (ARRA) of 2009

7.1 Applicability

The specifications hereinafter set forth apply to and become a part of Consultant Agreements that are funded through the American Recovery and Reinvestment Act (ARRA) of 2009. Any and all other federal and state requirements are still applicable to ARRA projects.

7.2 ARRA Section 902

Required Contract Provision to Implement ARRA Section 902:

Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009 requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

“(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

(2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.”

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

7.3 ARRA Section 1515 (a)

Section 1515(a) of the ARRA provides as follows:

Section 1515(a) of the ARRA provides authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the inspector general have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

7.4 Implementation of the American Recovery and Reinvestment Act of 2009

A. Preamble –

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (“ARRA”) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

This agreement addendum addresses additional requirements applicable to ARRA funds. Subject to further guidance by the applicable Federal awarding agency, the following terms and conditions are consistent with the mandatory requirements for agreements funded by ARRA.

Be advised that ARRA funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of ARRA and related guidance. For projects funded by other sources in addition to ARRA funds, Contractors must keep separate records for ARRA funds and must ensure those records comply with the requirements of the ARRA.

The federal Government has not fully developed the implementing instructions of ARRA, particularly concerning specific procedural requirements for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of ARRA. In the event there is any inconsistency between these ARRA requirements and current award terms and conditions, the ARRA requirements will take precedence.

Contractor agrees that in consideration of receipt of Federal ARRA Funds, it will comply with all of the terms, conditions, requirements and limitations set forth below:

B. Definitions

- 1) “ARRA funds” means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.
- 2) “Contractor” is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

C. ARRA Terms & Conditions

- 1) Revisions to Requirements. Contractor acknowledges that this Addendum may be revised pursuant to ongoing guidance from the relevant Federal or Commonwealth agency regarding requirements for ARRA funds. Contractor agrees to abide by any such revisions upon receipt of written notification from the Commonwealth of the revisions, which will automatically become a material part of this Addendum, without the necessity of either party executing any further instrument.
- 2) Reporting Requirements.

Not later than 5 days after the end of each calendar quarter, or more frequently as directed by the Commonwealth, the Contractor shall submit a report to the Commonwealth that contains:

- (a) The total amount of ARRA funds received;
- (b) The amount of ARRA funds received that were expended or obligated to projects or activities;
- (c) A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
 - i) The name of the project or activity;
 - ii) A description of the project or activity;
 - iii) An evaluation of the completion status of the project or activity;
 - iv) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and
 - v) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under ARRA, and name of the person to contact at the agency if there are concerns with the infrastructure investment;
- (d) Detailed information on any subcontracts or subgrants awarded by the Contractor must include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget;
- (e) If required by the Commonwealth, Contractor agrees to separately identify the expenditures for each award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the Contractor reports required by ARRA;
- (f) If required by the Commonwealth, Contractor shall submit backup documentation for expenditures of ARRA funds including such items as timecards and invoices. Contractor shall provide copies of backup documentation at the request of the Commonwealth.

- 3) Registrations and Identification Information
 - (a) Contractor must maintain current registrations in the Center Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.
 - (b) If applicable, the Contractor agrees to separately identify to each sub-contractor and document at the time of award of contract or approval of application and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of ARRA funds.
- 4) Flow Down Requirement. Contractor must include these ARRA Terms and Conditions in any subcontract.
- 5) Prohibition on Use of Funds. No ARRA funds may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, or any other items prohibited by ARRA.
- 6) Required Job Posting. To ensure Pennsylvanians have the utmost opportunity to be hired for jobs created through the receipt of ARRA funding, all Contractors shall post jobs they create or seek to fill as a result of receiving ARRA funding to the PA CareerLink® system at www.pacareerlink.state.pa.us. Contractors can locate their local PA CareerLink® office through the same website or by calling 1-866-858-2753. Staff at local PA CareerLinks® can assist Contractors with posting positions and explain how to retrieve resumes or applications within the system.
- 7) Whistleblower Provision.
 - (a) An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:
 - i) gross mismanagement of an agency contract or grant relating to covered funds;
 - ii) a gross waste of covered funds;
 - iii) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
 - iv) an abuse of authority related to the implementation or use of covered funds; or
 - v) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

- (b) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate U.S. Office of the Inspector General.
 - (c) Any employer receiving covered funds under ARRA, shall post notice of the rights and remedies as required by Section 1553 of ARRA. See www.recovery.gov.
- 8) Duty to Report Fraud. Contractors and subcontractors shall promptly refer to the U.S. Office of Inspector General and Commonwealth Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person will or has: 1) submitted a false claim under the False Claims Act; 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, ethics or similar misconduct involving ARRA funds; or 3) engaged in misuse, gross waste, gross mismanagement or abuse of authority related to the use or award of ARRA funds.
- 9) Environmental and Preservation Requirements. The Contractor shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by the awarding Federal agency to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, the Clean Air Act, the Federal Water Pollution and Control Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Failure of the Contractor to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding. The Contractor shall not undertake any project having the potential to impact EHP resources without the prior approval of the awarding Federal agency, including but not limited to communication towers, physical security enhancements, new construction, and modification to buildings that are 50 years old or greater. The Contractor must comply with all conditions placed on the project as a result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, the Contractor must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Contractor will immediately cease construction in that area and notify the awarding Federal agency and the Pennsylvania Historical and Museum Commission. Any construction activities that have been initiated prior to the full environmental and historic preservation review will result in a non-compliance finding.

PROVISIONS CONCERNING THE *AMERICANS WITH DISABILITIES ACT*

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

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

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

EXHIBIT

**The United States Department of Transportation (US DOT)
Standard Title VI/Non-Discrimination Assurances
DOT Order No. 1050.2A**

General Assurance:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.”

Specific Assurance:

“The Commonwealth of Pennsylvania, Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§200d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

In addition to these assurances, please refer to the attached Appendices A, C, D, and E. Appendices A and E apply to this contract or agreement. Depending upon the nature of the activity, project or program for which Federal financial assistance is being provided under this contract or agreement, Appendices C and D may also apply.

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the nondiscrimination provision of this contract, the Recipient will impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Commonwealth of Pennsylvania, Department of Transportation, pursuant to the provisions of Assurance 7(a):

1. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - a. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Commonwealth of Pennsylvania, Department of Transportation, will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
3. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Pennsylvania, Department of Transportation, will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Commonwealth of Pennsylvania, Department of Transportation, and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Commonwealth of Pennsylvania, Department of Transportation, pursuant to the provisions Assurance 7(b):

1. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
2. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Pennsylvania, Department of Transportation, will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
3. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Pennsylvania, Department of Transportation will there upon revert to and vest in and become the absolute property of Commonwealth of Pennsylvania, Department of Transportation, and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §200d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131 – 12189) as implemented by the Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

CONSULTANT'S CERTIFICATION OF NON-COLLUSION, FEBRUARY, 1990

This certifies that the Consultant has not:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the Consultant) to solicit or secure this agreement/contract; or
- (b) agreed, as an express or implied condition or obtaining this agreement/contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; or
- (c) paid, or agreed to pay, to any firm, organization, or person (other than a bona fide employee working solely for the consultant) any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out this agreement/contract.

If the Consultant cannot so certify, then it agrees to submit along with the agreement/contract a written explanation of which certifications cannot be made.

The Consultant acknowledges that this certification is to furnished to the Department and to the Federal Highway Administration, U. S. Department of Transportation, in connection with this agreement/contract involving participation of Federal-aid funds, and is subject to the applicable State and Federal laws, both criminal and civil.

Appendix A of Title 49 Code of Federal Regulations, Part 29

Certification Regarding Debarment, Suspension, and other Responsibility Matters -- Primary Covered Transactions August 1990

Instructions for Certification

1. By signing and submitting this agreement, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Pennsylvania Department of Transportation's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Pennsylvania Department of Transportation determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Pennsylvania Department of Transportation may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the Pennsylvania Department of Transportation if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Pennsylvania Department of Transportation for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Pennsylvania Department of Transportation.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", provided by the Pennsylvania Department of Transportation, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is debarred, suspended, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Pennsylvania Department of Transportation may terminate this transaction for cause of default.

Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause of default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

CERTIFICATION
OF
RESTRICTIONS ON LOBBYING
August 6, 1990

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The Consultant shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

ACCEPTING PROVISIONS OF THE WORKMEN'S COMPENSATION ACT

The Consultant accepts the provisions of the Workmen's Compensation Act of 1915 of the Commonwealth of Pennsylvania, and supplements and amendments thereto, and has insured its liability thereunder in accordance with the terms of said Act.

CERTIFICATION OF DEPARTMENT OF TRANSPORTATION
COMMONWEALTH OF PENNSYLVANIA
JANUARY 1999

The Department certifies that the Consultant has not been required, directly or indirectly, as an expressed or implied condition in connection with obtaining or carrying out this agreement, to:

1. Employ or retain, or agree to employ or retain, any firm or person, or
2. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind, except as here expressly stated in this agreement (if any).

The Department acknowledges that this certification is to be furnished to the Federal Highway Administration, U. S. Department of Transportation, in connection with this agreement involving participation of Federal-aid highway funds, and is subject to the applicable State and Federal laws, both criminal and civil.

Department's Standard Agreement Special Requirements

February 11, 2015

1. Certificate of Authority

The Consultant shall obtain a Certificate of Authority from the Pennsylvania Department of State authorizing the Consultant to do business in Pennsylvania if the Consultant is conducting business as:

(A) A Corporation not incorporated under the laws of Pennsylvania;

(B) A business with headquarters within or without the Commonwealth of Pennsylvania and operating under a fictitious name.

2. Legal or Quasi Legal Proceedings

The Consultant shall not testify in any legal or quasi-legal proceeding concerning any matter under this Agreement or under a task force or committee without written consent of the Department.

3. Scope Conflict

The Consultant's Technical Proposal has been accepted by the Department subject to the modifications, additions, and amplification set forth in the Agreement. The provisions in this Agreement and the Department's Scope of Work and

Services shall govern where a conflict occurs with any Scope of Work and Services set forth in the Consultant's Technical Proposals.

4. Invoice Template

The Consultant shall use the Invoice Template provided by the Department through the ECMS when requesting reimbursement from the Department.

5. Monitoring of Costs

When the costs incurred by the Consultant for any Category of Compensation other than Lump Sum for Fixed Fee, Lump Sum, or Cost Per Units, for any Part of this Agreement, reaches seventy-five (75) percent of the maximum not to be exceeded amount stipulated in the Department's approved invoice template for that category, the Consultant shall cease work on that Part and evaluate the status of the entire Agreement. Work shall not recommence and the Department will not process any invoices on that Part of the Agreement unless one of the following actions has occurred:

- A. The Consultant has evaluated the status of the work and services required for that Part under the terms of the Agreement and verifies in writing that all of the work and services required for that Part can be provided without exceeding the maximum amounts

stipulated in the Department approved invoice template.

- B. The Consultant has evaluated the status of work and services required to be provided for that Part under the terms of the Agreement and has requested a supplemental for additional funds to complete the work and services or a transfer of existing funds within the Department approved invoice template. The Department, acting through the Agreement Project Manager Administrator, has reviewed the Consultant's request, has agreed that the Supplemental Agreement request or fund transfer is justified, and has notified the Consultant in writing that they may continue with the work and services up to the maximum not to be exceeded amounts stipulated in the approved invoice template for that Part of the Agreement.

6. Payment to Subconsultant/Subcontractor

- A. All monies received by the Consultant for services and work furnished by a Subconsultant/Subcontractor shall be paid in full to that Subconsultant/Subcontractor within fourteen (14) calendar days of the date the Consultant received payment from the Department.

B. It shall be the Consultant's responsibility to insure prompt payments to any and all lower tier Subconsultants/Subcontractors.

7. Federal Funds

If funds are provided by the Federal Highway Administration (FHWA) for participation in the cost of this Agreement, the work and services to be provided by the Consultant, as set forth in this Agreement, will be subject to and will be governed by the requirements of the Department Specifications, Publication 442, with respect to the review, comments and acceptance by the Department and by the Federal Highway Administration.

(a) Public Law 101-121, Section 319, prohibits Federal funds from being expended by the recipient or any lower tier sub-recipients of the Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement.

8. Maximum Direct Cost Other Than Payroll Reimbursement

The Department shall not accept any charges for subsistence or travel with rates in excess of the maximum State rates

set forth in appropriate directives promulgated by the Governor's Office, Commonwealth of Pennsylvania (Currently Management Directive 230.10).

9. Disadvantaged Business Enterprise (DBE) Program Assurance

That the Consultant agrees to comply with the terms and conditions of the following Disadvantaged Business Enterprise (DBE) Program Assurance for Federally-funded Agreements:

The Consultant shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of United States Department of Transportation-assisted agreements. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedies that include: (1) withholding monthly progress payments, (2) assessing sanctions, (3) liquidated damages, and/or (4) disqualifying the consultant from future bidding/consultant selection as non-responsible. If the Consultant is providing services or supplies for the Pennsylvania Department of Transportation pursuant to this Agreement the

Consultant must include this assurance in each subcontract that the Consultant signs with a subcontractor. If the Consultant is a grantee or other recipient of funds from the Department of Transportation, the Consultant must include this assurance in each contract into which the Consultant enters to carry out the project or activities being funded by this Agreement.

METHOD of PAYMENT

SPECIAL REQUIREMENTS

Cost Plus Fixed Fee

May 1, 2009

When the method of payment for work and services is Cost Plus Fixed Fee, the following provisions apply:

1. Method of Payment

The method of payment shall be the actual Direct/Indirect Payroll Costs, Direct Costs Other Than Payroll, Direct Cost of Work and Services by Others, and Lump Sum Fixed Fee.

2. Indirect Payroll Cost

For the computation of the Consultant's Indirect Payroll Cost and for partial payment purposes, a provisional Federal Acquisition Regulation (FAR) overhead percentage, as shown in the Consultant's Price Proposal, will initially be used. The Consultant shall establish, within six (6) months of the end of its fiscal year ending date, its actual FAR overhead percentage of direct salary cost for its first fiscal year ending after the date of this Agreement and submit it to the Department. This submission shall be reviewed and accepted, when applicable, by the Department prior to use by the Consultant. The Consultant shall establish its fiscal year FAR overhead percentage for

each of its fiscal years during which work is performed under this Agreement including the fiscal year in which the services and work are completed and accepted by the Department. When items or certain personnel classifications, ordinarily chargeable as indirect costs are charged to this Agreement as direct costs, the cost of like items applicable to other work of the Consultant will be eliminated from the indirect cost allocated to this Agreement.

3. Direct Payroll Cost

The Consultant has included in its price proposal a list of anticipated project employees by name, classification, and payroll rate per hour. The hourly payroll rates as listed will be subject to review by the Department. Any employee must have a wage rate approved by the Department prior to being assigned to work under this Agreement.

All requests for approval of wage rates shall be submitted to the Department through the Employee Roster and Maintenance Function of the Department's Engineering and Construction Management System.

In the event that the Department's maximum remuneration to principals or employees is revised, the revised maximum remuneration shall apply to this Agreement if allowed for by the Department's procedure implementing the revision.

Also, in the event principals are added, or dropped, or if the duties and responsibilities of a principal are revised, the Consultant shall advise the Department through the Roster Review and Approval of ECMS setting forth the terms as to its participation in those changes.

4. Compensation

The Consultant shall be reimbursed as provided in the Consultant's Price Proposal as further provided hereinafter.

A. Direct and Indirect Payroll Costs

The Consultant shall be reimbursed for its actual Direct and Indirect payroll costs incurred in the performance of the work and services required by this Agreement as allowable under the provisions of Part 31 of the Federal Acquisition Regulations and as provided for under the Department approved invoice template, supplied through ECMS, for the work and services to be provided by the Consultant.

B. Direct Costs Other Than Payroll

The Consultant shall be reimbursed for its actual Direct Costs Other Than Payroll incurred in the performance of work and services required by this Agreement as provided for under the Department approved invoice template supplied through ECMS.

C. Direct Costs of Work and Services Performed by Others

The Consultant shall be reimbursed for actual Direct Costs of Work and Services Performed by Others incurred in the performance of work and services required by this Agreement as provided for under the Department approved invoice template supplied through ECMS.

The computation of the Subconsultant's/Subcontractor's Indirect Payroll Costs included under this item shall conform to all of the terms and conditions described under Indirect Payroll Cost as shown above, with the exception that the Subconsultant's/Subcontractor's overhead rates shall be as shown for each Subconsultant/Subcontractor in the Consultant's Price Proposal.

D. Lump Sum for Fixed Fee

The Consultant, for the satisfactory completion of the required work and services and the acceptance of the Consultant's work and services by the Department, shall be paid a Lump Sum for Fixed Fee as provided for under the Department approved invoice template supplied through ECMS. It is agreed and understood that this Lump Sum for Fixed Fee will constitute full compensation to the Consultant as a fee in addition to

its costs to provide the required work and services.

The Consultant's man-hour estimate to provide the work and services is not a firm commitment on the part of the Consultant and is not a basis to change the Lump Sum for Fixed Fee unless the increase or decrease in man-hours is due to a substantial change in the required scope of work and services.

5. Express Supplement

The DEPARTMENT reserves the right to issue a Letter Supplement (No-Fee), which, if issued on an expedited basis, shall be known as an Express Supplement (No-Fee), at any time during the term of this Agreement or any supplements, renewals or extensions thereof, to increase the quantities of work items, where additional effort, consisting of additional hours by the CONSULTANT for existing work tasks in order to complete them, is necessary. Such additional effort shall not involve any of the following: Addition of new tasks to the project, addition of a new part or phase, inclusion of work activities that are part of a separate existing project phase, addition of substantial new units of work because of new structures or other new project elements, substantial change in project limits, or increase in the complexity of the project. Furthermore, the DEPARTMENT

shall not pay the CONSULTANT a fee in connection with such additional effort. Such Letter Supplement (No-Fee) or Express Supplement (No-Fee) shall be effective when signed by the authorized representatives of the CONSULTANT and the DEPARTMENT and approved by the Comptroller's Office.

METHOD OF PAYMENT

SPECIAL REQUIREMENTS

LUMP SUM

November 1, 2013

When the method of payment for work and services is Lump Sum, the following provisions apply:

1. Method of Payment

A. The method of payment for work and services shall be a Lump Sum amount together with Direct Costs Other Than Payroll and Subcontractor's Direct Costs Other Than Payroll and Non-Professional Costs paid on the basis of certified invoices.

B. The Lump Sum amount includes Direct and Indirect Payroll charges and profit for the Consultant and all Subconsultants. All other charges are to be invoiced at actual cost.

2. Compensation

The Consultant shall be reimbursed as provided in its Price Proposal, which is made a part of this Agreement by reference as further provided hereinafter.

A. Lump Sum

The Consultant shall be reimbursed for work and services completed as a percentage of the Lump Sum amount as further provided for under the Department approved invoice template supplied through ECMS.

B. Direct Costs Other Than Payroll

The Consultant shall be reimbursed for actual Direct Costs Other Than Payroll incurred in the performance of this Agreement as provided for under the Department approved invoice template supplied through ECMS.

C. Subcontractor's Direct Costs Other Than Payroll and Non- Professional Costs

The Consultant shall be reimbursed for the actual Subcontractor's Direct Costs Other Than Payroll and Non-Professional Costs as provided for under the Department approved invoice template supplied through ECMS. This category of compensation does not include Direct and Indirect Payroll Cost and profit for Subconsultants, which is included in the Lump Sum amount.

METHOD OF PAYMENT

SPECIAL REQUIREMENTS

SPECIFIC RATE OF COMPENSATION

November 1, 2013

When the method of payment for work and services is Specific Rate of Compensation, the following provisions apply:

1. Specific Rate of Compensation

- (1) The employees and their wage rates used to derive their specific rates of compensation, as listed in the Consultant's Price Proposal made a part of this Agreement by reference, are for estimating purposes only. Any employee must have a wage rate approved by the Department prior to being assigned to work under this Agreement. All requests for approval of wage rates shall be submitted through the Roster Maintenance Function of ECMS.
- (2) Specific rates of compensation shall be determined using actual approved hourly payroll rates multiplied by the appropriate specific rate factor as shown in the Consultant's Price Proposal, made a part of this Agreement by reference. These specific rate factors shall remain fixed for the life of the Agreement.

- (3) The specific rates of compensation for Subconsultants shall be determined using the actual approved hourly payroll rates multiplied by the appropriate specific rate factors shown in the Subconsultant's price proposal which is part of the Consultant's price proposal.

The above specific rate factors shall remain fixed for the life of the Agreement.

- (4) In addition to the specific rate of compensation, the Consultant shall be paid allowable in-house direct costs such as, but not limited to, travel, subsistence, and reproduction for deliverables only.
- (5) The Consultant shall also be paid the Direct Cost by Others for work and services provided by Subconsultants/Subcontractor, Non-Professional Services, outside computer services and outside reproduction, if directed by the Department.

2. Compensation

The Consultant shall be reimbursed as provided in its Price Proposal made a part of this Agreement by reference and as further provided hereinafter.

A. Specific Rate of Compensation

The Consultant shall be reimbursed for the Specific Rate of Compensation incurred in the performance of

the work and services required by this Agreement as further provided for under the Department approved invoice template supplied through ECMS.

B. Direct Costs Other Than Payroll

The Consultant shall be reimbursed for Direct Costs Other Than Payroll incurred in the performance of the work and services required by this Agreement as provided for under the Department approved invoice template supplied through ECMS.

C. Direct Costs of Work and Services Performed by Others

The Consultant shall be reimbursed for Direct Costs of Work and Services Performed by Others incurred in the performance of work and services required by this Agreement as provided for under the Department approved invoice template supplied through ECMS.

GOOD FAITH EFFORT, DATED MAY 4, 2001

The following is a list of types of actions that should be considered as part of the Consultant's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (ECMS Consultant Qualifications file) the interest of all certified DBEs who have the capability to perform the work of the contract. The Consultant must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Consultant must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the work and services required in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the Consultants's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the required work and services for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A Consultant using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Consultant's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime to perform the work of a contract with its own organization does not relieve the Consultant of the responsibility to make good faith efforts.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the firm's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or firm.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

ENHANCED MINIMUM WAGE PROVISIONS
[Executive Agency Contracts for Services and Construction]
[Leases of Property to Executive Agencies]

1. **Enhanced Minimum Wage.** Contractor/Lessor agrees to pay no less than \$10.15 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
2. **Adjustment.** Beginning January 1, 2017, and annually thereafter, Contractor/Lessor shall pay its employees described in Paragraph 1. above an amount that is no less than the amount previously in effect; increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication as determined by the United States Bureau of Labor Statistics; and rounded to the nearest multiple of \$0.05. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - d. required to be paid a higher wage under any state or local policy or ordinance.
4. **Notice.** Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
5. **Records.** Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
7. **Subcontractors.** Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

TECHNICAL PROPOSAL REPORT

☐ **Agreement:** E04767

Open End /Non Project Specific

Executed

Name: Various Structure Related Services**Selection Process:** Modified**Initiating Org:** Bureau of Design

Task 1 - Other Structures Activities

Objective:

2.7.99 - Other Structures Activities

This includes any other necessary PennDOT structure activities for the project which are not otherwise covered under the standard structure tasks.

Scope:

2.7.99 - Other Structures Activities

Perform services as described in the attached scope of work.

Detail Task 1 - Other Structures Activities

Department Details:

Perform services as described in the attached scope of work.

Approach:

Gannett Fleming, Inc. (GF) concurs with the

Department's attached Scope of Work, with the following modifications to Task 3 - Superstructure Analysis:

1. GF and our subconsultants will utilize VBent for Pier Analysis when required.
2. GF and our subconsultants will utilize current and active refined analysis programs listed in Appendix J, when required.

Consultant Hierarchy

Business Partner

DBE Type Supervising BP

Gannett Fleming, Inc.	No	
C.C. Johnson & Malhotra, P.C.	Yes	Gannett Fleming, Inc.
CONSOR Engineers, LLC	No	Gannett Fleming, Inc.
Johnson, Mirmiran & Thompson, Inc.	No	Gannett Fleming, Inc.
Lehigh University	No	Gannett Fleming, Inc.
Modjeski and Masters, Inc.	No	Gannett Fleming, Inc.
NTM Engineering, Inc.	Yes	Gannett Fleming, Inc.
Rettew Associates, Inc.	No	Gannett Fleming, Inc.
Texas A&M Transportation Institute	No	Gannett Fleming, Inc.
The Markosky Engineering Group, Inc.	Yes	Gannett Fleming, Inc.

Attachments



066507-PADOT-E04767-GL-Endorsements.pdf



066507-PADOT-E04767-PL.PDF



Scope of Work 4767.pdf

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PRICE PROPOSAL SUMMARY

☐ **Agreement:** E04767 **Open End /Non Project Specific** **Executed**

Name: Various Structure Related Services

Selection Process: Modified

Initiating Org: Bureau of Design

☐ **Johnson, Mirmiran & Thompson, Inc. - 000119** **Qualifications Package**

Type: Corporation

DBE Type:

SBE:

Price Proposal Information

Submitted

Price Proposal Due: 12/13/2019

Report Version: Submitted

Supervising Firm: Gannett Fleming, Inc.

Totals

Open End Amount: \$2,000,000.00

Consultant Proposals

Firm	Supervising Firm	Status	Current		Submitted		Commit		Amount	
			DBE	SBE	DBE	SBE	DBE	SBE	DBE	SBE
Johnson, Mirmiran & Thompson, Inc.	Gannett Fleming, Inc.	Submitted	No	No	No	No	No	No		

Price Proposal Details

Detail Description	Method of Payment	Detail Total
Estimate Detail	Cost Plus Fixed Fee, Lump Sum, Specific Rate of Compensation	\$0.00

Workflow

Status	Name	Disposition	Date/Time
Draft	Lisa A Cooper P.E./PennDOT BP-000119	Submit	12/05/2019 01:52:08 PM

Comment:

This comment is associated to a workflow action and will only be saved when performing a workflow action.

Audit Information

Created By	Created On	Modified By	Modified On
Lisa A Cooper P.E./PennDOT BP-000119	12/05/2019 12:54:05 PM	Lisa A Cooper P.E./PennDOT BP-000119	12/05/2019 01:52:08 PM

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Official ECMS Date/Time

PRICE PROPOSAL DETAILS

☐ **Agreement:** E04767 **Open End /Non Project Specific** **Executed**

Name: Various Structure Related Services

Selection Process: Modified

Initiating Org: Bureau of Design

☐ **Johnson, Mirmiran & Thompson, Inc. - 000119** **Qualifications Package**

Type: Corporation

DBE Type:

SBE:

Price Proposal Information

Submitted

Price Proposal Due: 12/13/2019

Report Version: Submitted

Supervising Firm: Gannett Fleming, Inc.

Totals

Open End Agreement Amount: 2,000,000.00

Consultant Proposals

Firm	Supervising Firm	Status	Cost	Current		Submitted		Commit		Amount	
				DBE	SBE	DBE	SBE	DBE	SBE	DBE	SBE
Johnson, Mirmiran & Thompson, Inc.	Gannett Fleming, Inc.	Submitted	\$0.00	No	No	No	No	No	No		
			\$0.00								

Cost Factors

Field Overhead Rate	Office Overhead Rate	Profit Class	Profit Factor	Premium Pay
124.706%	152.894%	C	8.96%	No

Specific Rate Factors

Type	Regular	Overtime	Hazardous	Overtime Hazardous
Field	2.4484	2.9484	2.4484	2.9484
Office	2.7555	3.2555	2.7555	3.2555

Escalations

Name	%	Calculation
TBD	0.000	Escalation will be determined with each work order.

Project Team

First Name	Last Name	Classification	Rate
Nikki	Bedillion	SR Engineer	\$64.30
Frederick	Braerman	Project Manager	\$95.00
Craig	Campbell	SR Engineer	\$80.50
Amy	Caplinger	CADD Tech	\$28.90
Lisa	Cooper	Project Manager	\$88.40
Thomas	Copenhaver	CADD Tech	\$20.60
Gilbert	Fitzhugh	Designer	\$32.40
Bradford	Hull	Project Manager	\$70.00
Thomas	Kulesher	Design Engineer	\$43.70
Michael	Leffler	SR Geotechnical Engineer	\$86.50

First Name	Last Name	Classification	Rate
Jimmy	Lin	Designer	\$32.30
Peter	Matthews	Designer	\$39.40
Kristina	Mattlin	Design Engineer	\$47.60
Carl	McGloughlin	Project Manager	\$57.70
Michael	Merritt	SR Engineer	\$63.80
William	Messenger	SR Engineer	\$60.20
Ryan	Murphy	Design Engineer	\$49.80
Mark	Neves	CADD Tech	\$33.90
Mark	Richard	Project Manager	\$71.60
Shawn	Rogan	Designer	\$36.20
Matthew	Snyder	SR Engineer	\$44.70
Brian	Strizki	Project Manager	\$101.00
Colleen	Yakupkovic	Designer	\$34.80
Employees displayed in red have rates that have expired.			

Labor Tasks

1 - Other Structures Activities

1.1 Other Structures Activities

Other Costs

Other Cost Name	PDA	DBE Eligible	SBE Eligible	Units	Cost Per Unit	Total Other Cost
No records found.						

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EXHIBIT B

PENNDOT
HARASSMENT MEMOS

**MEMO**

DATE: July 23, 2013

SUBJECT: Sexual Harassment Policy Statement

TO: All PennDOT Employees

FROM: Barry J. Schoch, P.E. *Barry J Schoch*
Secretary of Transportation

As Secretary of the Department of Transportation, I want to reaffirm the Department's policy regarding a harassment free work environment.

POLICY:

Sexual harassment is a violation of state and federal laws, and those laws will be enforced. Through consistent application of this policy, we will preserve the right of all employees to work in an environment free from sexual harassment and intimidation. This policy applies to all employees, including co-workers, supervisors, managers and officials. Additionally, the policy applies to covered third-party employees, which includes any employee of a covered third-party contractor or covered sub-contractor or any employee of any other covered third-party person or entity, governmental or non-governmental, where such employee is working under the supervision or direction of Department employees, or otherwise working with Department employees on any project. All employees share responsibility for ensuring that the workplace is free from all forms of sexual harassment.

Sexual harassment is a form of discrimination that undermines the integrity of the employment relationship and/or service delivery. To prevent sexual harassment in the workplace, all managers, supervisors, and employees, including covered third-party employees must be made aware of the Commonwealth's sexual harassment policy, the steps to take when concerns arise, and our commitment to address instances of sexual harassment aggressively and equitably.

DEFINITIONS:

Behavior which can constitute sexual harassment includes, but is not limited to unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature where:

- Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Prohibited sexual harassment may include actions by members of the opposite sex of an employee as well as members of an employee's own sex. Prohibited sexual harassment may include actions that are overtly sexual or facially neutral if such actions constitute gender-based discrimination. Examples of acts of sexual harassment include, but are not limited to, the following, particularly when they are repeated or part of a general pattern of behavior:

- | | |
|------------------|---|
| Written: | Unwelcome, suggestive, sexually explicit, or obscene letters, poems, notes or invitations. |
| Verbal: | Derogatory sexually explicit or offensive comments, epithets, slurs or jokes; inappropriate comments about an individual's body or sexual activities; repeated unwelcome propositions or repeated sexual flirtations; direct or subtle pressures or repeated unwelcome requests for dates or sexual activities. |
| Physical: | Impeding or blocking movements, or touching, patting, pinching or any other unnecessary unwanted physical contact. |
| Visual: | Sexually oriented gestures, display of sexually suggestive or derogatory objects, pictures, cartoons, posters or drawings. |

RESPONSIBILITIES:

Managers and supervisors have an obligation to promptly report harassment or suspected harassment or situations which they perceive to be harassment. Managers and supervisors are responsible for inspecting their respective work areas for materials that might be offensive to others and removing all such materials. They are also responsible for informing their employees of this policy and for ensuring that appropriate measures are taken to comply. In addition, supervisors and managers shall actively monitor the work

environment to ensure that the work environment is free of sexual harassment or retaliation.

No manager, supervisor, or other employee shall threaten or suggest, either explicitly or implicitly, that the refusal by another employee or applicant for employment to submit to sexual advances in any form will adversely affect that person's employment, performance evaluation ratings, wages, compensation, advancement, assigned duties, work assignments, work schedules, training, or any other terms or condition of employment or career development. Further threats or insinuations that lack of sexual favors will result in reprisal, punitive action, change of assignment, and a poor performance evaluation or the withholding of support for appointment, promotion or transfer is also a violation of this policy.

A manager or supervisor is obligated to report a complaint and cooperate in the investigation of the complaint, whether oral/written, after the matter comes to his or her attention. Supervisors and managers **MUST** report all sexual harassment complaints to the District Human Resources Office or Central Office Bureau of Human Resources at 717.787.3460.

A manager or supervisor will be subject to appropriate disciplinary action, up to and including termination of employment, if he or she fails to promptly report or address known or suspected harassment or retaliation.

Any Department of Transportation employee involved in harassing or retaliating against an employee or covered third-party employee will be subject to discipline, up to and including dismissal. Additionally, any Department employee who does not report or otherwise knowingly condones such behaviors may be subject to discipline. Individuals not employed by the Commonwealth will also be held responsible for any acts of sexual harassment committed within the Commonwealth work setting or upon employees of the Commonwealth while in the performance of their duties.

REPORTING PROCEDURES:

Any Department employee or covered third-party employee who believes that he or she has been the victim of sexual harassment in any form, by any manager, supervisor, co-worker, customer, client, or any other person in connection with his or her employment should bring the problem immediately to the attention of his or her supervisor, manager or someone in the employee's direct line of supervision. If the concern involves the employee's direct supervisor, manager or someone in the employee's direct line of supervision, or if the employee is uncomfortable for any reason with discussing such matters with the supervisor and/or others in the direct line of supervision, or is not satisfied after bringing the matter to such individuals, the employee may take his or her concerns to the Agency Equal Opportunity Manager/Specialist or Human Resources Office or other individual designated by Secretary of Transportation to receive or act upon harassment complaints.

Complaints filed with the Bureau of Human Resources, Equal Opportunity Section will be investigated in accordance with Management Directive 410.10 Amended, dated December 5, 2012, Guidelines for Investigating and Resolving Internal Discrimination Complaints.

Additionally, Department employees and covered third-party employees, may, at their option, also directly contact external agencies, including the Equal Employment Opportunity Commission or Pennsylvania Human Relations Commission, with any complaints. Contact information for those agencies are attached to this policy. The Department of Transportation respects the right of Department and covered third-party employees to contact the Equal Employment Opportunity Commission or Pennsylvania Human Relations Commission or to pursue other avenues of recourse, and it will not subject employees to retaliation of any kind for lodging a complaint, testifying, assisting or participating in any proceeding, investigation or hearing regarding any allegation of harassment or discrimination.

Supervisors and managers shall promptly report observations or complaints of sexual harassment or retaliation to Department employees designated to receive or act upon sexual harassment or retaliation complaints. Sexual harassment complaints do not have to be in writing before an investigation is initiated.

All employees, including managers/supervisors, within the Department of Transportation are required to receive sexual harassment training that encourages discussion of sexual harassment issues and where employees are educated and sensitized to sexual harassment.

Overall responsibility for this policy has been assigned to the Deputy Secretary for Administration. Persons who believe they have been, or are being sexually harassed, are aware of or suspect the occurrence of sexual harassment should contact Kathleen Begani, Equal Opportunity Officer. Ms. Begani is located in the Commonwealth Keystone Building, 400 North Street, 5th Floor, Harrisburg, PA 17120-0041. Contact may be in writing or by telephoning 717.787.3460, Monday through Friday, between the hours of 8:00 A.M. and 4:00 P.M.

Under this policy, employees who contact the Human Resources Office or Equal Opportunity Officer will not be adversely affected in the terms and conditions of employment nor discriminated against or discharged because of a responsible complaint. Sexual harassment issues will be promptly and impartially investigated to determine the facts and to recommend the appropriate remedy. All investigations are handled in a manner intended to protect the rights of all parties concerned and relevant information will be disclosed to only those individuals who have a legitimate need to know.

Retaliation against an employee or applicant, covered third-party employee, or against any client or other person receiving services or conducting

business with the Commonwealth, who have opposed any practice that they reasonably believed to be discriminatory, lodged a complaint, testified, assisted, or participated in any proceeding, cooperated with the investigation of a charge, or complaint, or hearing regarding any allegation of discrimination is strictly prohibited. Retaliation includes, but is not limited to: harassing behavior, isolation, changing work assignments, making demands that appear work-related but have a retaliatory purpose, directing, prompting, or encouraging others to commit retaliatory acts. Retaliation will itself be cause for appropriate disciplinary action. This prohibited retaliation may include conduct by co-workers, supervisors, managers, or other covered third parties, including contractors. Any employee who believes that he or she has been the victim of retaliation should report his or her concerns in the same way that harassment is to be reported. Such concerns may also be reported directly to the Bureau of Human Resources, Equal Opportunity Section.

Attachment

PENNSYLVANIA HUMAN RELATIONS COMMISSION (PHRC)

Must be filed within 180 days of Alleged Act of Discrimination

Internet Address: www.phrc.state.pa.us

Philadelphia Regional Office
110 North 8th Street, Suite 501
Philadelphia PA 19107
Phone Voice: (215)560-2496
TTY: (215)560-3599

Harrisburg Regional Office
Riverfront Office Center
1101-1125 S. Front St., 5th Floor
Harrisburg, PA 17104-2515
Phone Voice: (717)787-9780
TTY: (717)787-7279

Pittsburgh Regional Office
301 Fifth Avenue
Piatt Place, 3rd Floor, Suite 390
Pittsburgh, PA 15222
Phone Voice: (412)565-5395
TTY: (412)565-5711

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Must be filed within 300 days of Alleged Act of Discrimination

Internet Address: www.eeoc.gov

EEOC Nationwide Number: Voice: (800)669-4000
TTY: (800)669-6820

Philadelphia District Office
801 Market Street
Suite 1300
Philadelphia, PA 19107-3127
Phone Local: (215)440-2601
Phone Voice: (800)669-4000
TTY: (215)440-2610

Pittsburgh District Office
William S. Moorhead Federal Building
1000 Liberty Avenue, Room 1112
Pittsburgh, PA 15222
Phone Voice: (412)395-5902
TTY: (412)395-5904

**MEMO****DATE:** July 23, 2013**SUBJECT:** Harassment/Hostile Work Environment Policy**TO:** All PennDOT Employees**FROM:** Barry J. Schoch, P.E.
Secretary of Transportation

A handwritten signature in black ink, appearing to read "Barry J. Schoch", written over the printed name.

It is the Department of Transportation's policy that all employees have the right to work in an environment free from harassment.

POLICY:

This policy applies to all employees, including co-workers, supervisors, managers and officials. Additionally, the policy applies to all covered third-party employees, which includes any employee of a covered third-party contractor or covered sub-contractor or any employee of any other covered third-party person or entity, governmental or non-governmental, where such employee is working under the supervision or direction of Department employees, or otherwise working with Department employees on any project.

DEFINITIONS:

Harassment is verbal or physical conduct that denigrates or shows hostility or aversion towards an individual because of his/her age, ancestry, color, disability, national origin, race, religious creed, union membership, gender, sexual orientation, gender identity or expression or AIDS or HIV status that: (1) has the purpose or effect of creating an intimidating, hostile, or offensive work environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities.

The Department of Transportation strongly disapproves of the harassment of its employees in any form and affirms that all employees at all levels of the Department must avoid hostile or offensive behaviors at work.

Actions which the Department of Transportation prohibits may include but are not limited to the following:

- Written or graphic materials displayed or placed on bulletin boards, walls, or elsewhere on the Department of Transportation's premises, or circulated in the workplace, that offend or show hostility or aversion towards an individual or group because of his/her age, ancestry, color, disability, national origin, race, religious creed, union membership, gender, sexual orientation, gender identity or expression or AIDS or HIV status.
- Offensive names or expressions, slurs, negative stereotyping or threatening, intimidating, or hostile acts, that relate to his/her age, ancestry, color, disability, national origin, race, religious creed, union membership, gender, sexual orientation, gender identity or expression or AIDS or HIV status.
- Any displays which include, but are not limited to, personal and political views, newspaper articles, or cartoons that may be of an offensive nature.
- Any acts that are meant to be "jokes" or "pranks" but that could be perceived as hostile or demeaning with regard to age, ancestry, color, disability, national origin, race, religious creed, union membership, gender, sexual orientation, gender identity or expression or AIDS or HIV status.

In addition, other harassing conduct in the workplace, whether physical or verbal, committed by supervisors or non-supervisory personnel is also prohibited. This behavior includes, but is not limited to, sexually degrading words to describe an individual, offensive comments, innuendoes, and sexually suggestive magazines, photographs, cartoons, or pictures.

RESPONSIBILITIES:

Managers and Supervisors have an obligation to promptly report harassment or suspected harassment or situations which they perceive to be harassment. Supervisors and managers shall promptly report observations or complaints of harassment or retaliation to Department employees designated to receive or act upon harassment or retaliation complaints. In addition, supervisors and managers shall actively monitor the work environment to ensure that the work environment is free of harassment or retaliation.

A manager or supervisor is obligated to report a complaint and cooperate in the investigation of the complaint, whether oral/written, after the matter comes to his or her attention. Supervisors and managers **MUST** report all harassment complaints to the District Human Resources Office or Central Office Bureau of Human Resources at 717.787.3460.

Any Department of Transportation employee involved in harassing or retaliating against an employee or covered third-party employee will be

subject to discipline, up to and including dismissal. Additionally, any Department employee who does not report or otherwise knowingly condones such behaviors may be subject to discipline. Individuals not employed by the Commonwealth will also be held responsible for any actions of harassment committed within the Commonwealth work setting or upon employees of the Commonwealth while in the performance of their duties.

REPORTING PROCEDURES:

Any Department employee or covered third-party employee who believes that he or she has been the victim of harassment in any form, by any manager, supervisor, co-worker, customer, client, or any other person in connection with his or her employment should bring the problem immediately to the attention of his or her supervisor, manager or someone in the employee's direct line of supervision. If the concern involves the employee's direct supervisor, manager or someone in the employee's direct line of supervision, or if the employee is uncomfortable for any reason with discussing such matters with the supervisor and/or others in the direct line of supervision, or is not satisfied after bringing the matter to such individuals, the employee may take his or her concerns to the Agency Equal Opportunity Manager/Specialist or Human Resources Office or other individual designated by Secretary of Transportation to receive or act upon harassment complaints. Harassment complaints can be lodged orally or in writing. Complaints filed with the Bureau of Human Resources, Equal Opportunity Section will be investigated in accordance with Management Directive 410.10 Amended, dated December 5, 2012, Guidelines for Investigating and Resolving Internal Discrimination Complaints.

Additionally, Department employees and covered third-party employees, may, at their option, also directly contact external agencies, including the Equal Employment Opportunity Commission or Pennsylvania Human Relations Commission, with any complaints. Contact information for those agencies is attached to this policy. The Department of Transportation respects the right of Department and covered third-party employees to contact the Equal Employment Opportunity Commission or Pennsylvania Human Relations Commission or to pursue other avenues of recourse, and it will not subject employees to retaliation of any kind for lodging a complaint, testifying, assisting or participating in any proceeding, investigation or hearing regarding any allegation of harassment or discrimination.

The Department of Transportation will investigate all complaints promptly and impartially. When an investigation confirms the allegations, appropriate disciplinary action will be taken. A manager or supervisor will be subject to appropriate disciplinary action, up to and including termination of employment, if he or she fails to promptly report or address known or suspected harassment or retaliation.

The Department of Transportation will make every attempt to maintain the information in the complaint and information obtained during the investigative process as confidentially as possible, and relevant information will be disclosed to only those individuals who have a legitimate need to know.

Retaliation against persons who have opposed any practice that they reasonably believed to be discriminatory, lodged a complaint, testified, assisted, or participated in any proceeding, cooperated with the investigation of a charge, or complaint, or hearing regarding any allegation of discrimination is strictly prohibited. Retaliation includes, but is not limited to: harassing behavior, isolation, changing work assignments, making demands that appear work-related but have a retaliatory purpose, directing, prompting, or encouraging others to commit retaliatory acts.

Retaliation will itself be cause for appropriate disciplinary action. This prohibited retaliation also includes conduct by co-workers, supervisors, managers, or other covered third parties, including contractors. Any employee who believes that he or she has been the victim of retaliation should report his or her concerns in the same way that harassment is to be reported. Such concerns may also be reported directly to the Bureau of Human Resources, Equal Opportunity Section.

Overall responsibility for this policy has been assigned to the Deputy Secretary for Administration. Employees with complaints or concerns regarding this policy may contact Kathleen Begani, Equal Opportunity Officer. Ms. Begani is located in the Commonwealth Keystone Building, 400 North Street, 5th Floor, Harrisburg, PA 17120. Contact may be in writing or by telephoning 717.787.3460, Monday through Friday, between the hours of 8:00 A.M. and 4:00 P.M.

Attachment

PENNSYLVANIA HUMAN RELATIONS COMMISSION (PHRC)

Must be filed within 180 days of Alleged Act of Discrimination

Internet Address: www.phrc.state.pa.us

Philadelphia Regional Office

110 North 8th Street, Suite 501

Philadelphia PA 19107

Phone Voice: (215)560-2496

TTY: (215)560-3599

Harrisburg Regional Office

Riverfront Office Center

1101-1125 S. Front St., 5th Floor

Harrisburg, PA 17104-2515

Phone Voice: (717)787-9780

TTY: (717)787-7279

Pittsburgh Regional Office

301 Fifth Avenue

Piatt Place, 3rd Floor, Suite 390

Pittsburgh, PA 15222

Phone Voice: (412)565-5395

TTY: (412)565-5711

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Must be filed within 300 days of Alleged Act of Discrimination

Internet Address: www.eeoc.gov

EEOC Nationwide Number:

Voice: (800)669-4000

TTY: (800)669-6820

Philadelphia District Office

801 Market Street

Suite 1300

Philadelphia, PA 19107-3127

Phone Local: (215)440-2601

Phone Voice: (800)669-4000

TTY: (215)440-2610

Pittsburgh District Office

William S. Moorhead Federal Building

1000 Liberty Avenue, Room 1112

Pittsburgh, PA 15222

Phone Voice: (412)395-5902

TTY: (412)395-5904