

PROJECT SPECIFIC
OPEN END AGREEMENT

This **AGREEMENT** is made this 28th day of September, 2011, between the **Pennsylvania Turnpike Commission ("COMMISSION")**, an instrumentality of the Commonwealth of Pennsylvania, with its principal offices near Middletown, Pennsylvania (mailing address: P.O. Box 67676, Harrisburg, Pennsylvania 17106-7676; physical address: 700 South Eisenhower Boulevard, Middletown, PA 17057)

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Pennoni Associates, Inc. (ENGINEER), a corporation rendering professional engineering services, with its corporate office at 1215 Manor Drive, Suite 100, Mechanicsburg, PA 17055.

WITNESSETH:

WHEREAS, the **COMMISSION** desires to engage the services of a professional engineering firm on an Open-End Contract basis to provide preliminary and final design engineering services to complete the design work for the full depth roadway total reconstruction project from Milepost A37.5 to A44.5 in Salford and Marlborough Townships, Montgomery

County and West Rockhill and Milford Townships, Bucks County, Pennsylvania, for the **COMMISSION** upon the following terms and conditions; and

WHEREAS, the **ENGINEER** has represented to the **COMMISSION** that it is qualified to perform these duties; and,

WHEREAS, by Act No. 211 of the General Assembly of the Commonwealth of Pennsylvania approved May 21, 1937, and its amendments, the **COMMISSION** is authorized and empowered to enter into an Agreement with **ENGINEER**; and,

NOW, THEREFORE, in consideration of the following covenants and intending to be legally bound, the **COMMISSION** and **ENGINEER** agree that:

ARTICLE I – SCOPE OF WORK

The **ENGINEER**, in consideration of payments made by the **COMMISSION**, agrees to perform all the preliminary and final design services for the full depth total roadway reconstruction from Milepost A37.5 to A44.5. The project will include the reconstruction of approximately 7 miles of the Turnpike, the replacement of both overhead and mainline structures, lengthening culverts and the possibility of retaining and/or noise walls. The reconstruction will result in a six-lane typical section with full 12-foot right-hand shoulders and widening of the median width from ten (10) feet to twenty-six (26) feet.

This work shall be done in accordance with negotiated work orders as assigned by the **COMMISSION**. The **ENGINEER's** letter dated July 27, 2011, that lists the personnel and

overhead rate will be considered a part of this Agreement and will have the same effect as if fully stated herein.

ARTICLE II – COMMISSION

The **COMMISSION**, through its Chief Engineer or his duly authorized representative, shall review the work of the **ENGINEER** from time to time and shall render, in writing, the decisions required to progress the work, upon which the **ENGINEER** may be entitled to rely. Nevertheless, nothing in this Agreement may in any way be construed to modify the requirements of the attached “Specifications and Special Requirements for Final Design” dated August 2009.

The **COMMISSION** shall furnish the **ENGINEER** all existing drawings and data which it has in its possession and which may be required in performing any of the assigned projects, together with standard specifications of the **COMMISSION** or the Pennsylvania Department of Transportation, or both, and any supplemental information in the possession of the **COMMISSION** as may be applicable.

ARTICLE III – TIME OF COMPLETION

The **ENGINEER** shall complete all work under this contract on or before September 30, 2019. It is understood that the time for completion excludes delays incurred, through no fault of the **ENGINEER**.

The time of completion may be extended if the extension is approved by the **COMMISSION** in the form of a letter signed by the Chief Engineer. This letter will become part of this Agreement.

This contract will not terminate until the **COMMISSION** accepts all work as complete and tenders final payment to **ENGINEER** unless earlier terminated pursuant to the terms of this agreement or the Specifications and Special Requirements.

ARTICLE IV – PAYMENT

The method of payment for work covered under this Agreement shall be Cost Plus Fixed Fee. The **ENGINEER** shall provide the services and work as directed by the **COMMISSION** in the form of Work Orders for each phase of the project. When assigned a Work Order, the **ENGINEER** shall prepare and submit a proposal for the **COMMISSION's** review and approval. If the **COMMISSION** concurs with the scope of services and cost of work, the **COMMISSION** will issue a written Notice to Proceed. It is understood that the total maximum cost of this Agreement to the **COMMISSION** may not exceed the amount of **EIGHTEEN MILLION AND 00/100 DOLLARS (\$18,000,000.00)**.

The **ENGINEER** further agrees to receive, and the **COMMISSION** agrees to pay, this price as full compensation for furnishing all the materials and labor which may be required to complete all work in this agreement, and in all respects, to complete the work to the **COMMISSION's** satisfaction.

Overhead, profit, and applicable rates will be set forth in the attached letter from the **ENGINEER** dated July 27, 2011. No modifications to these rates may be permitted unless the **ENGINEER** submits the listing of the revised rates and the approval letter from the Pennsylvania Department of Transportation to the **COMMISSION's** Chief Engineer. If the **ENGINEER** does not currently have work with the Department, the revised salary rates should be submitted to the **COMMISSION** with a letter explaining that the **ENGINEER** currently does not have Department work, and, therefore, has not submitted these rates to the Department for approval. In either case, rate modifications must be approved by the **COMMISSION** in the form of a letter signed by the Chief Engineer prior to invoicing for any of the revised rates. This letter will become part of this agreement.

For contracts requiring a minimum participation level for DBE/MBE/WBE's or for contracts for which DBE/MBE/WBE's are indicated as part of the team in the initial Statement of Interest, the **ENGINEER** shall provide the **COMMISSION's** Office of Contract Administration with an executed copy of the contract with the **ENGINEER's** DBE/MBE/WBE subconsultant(s). The **ENGINEER** shall pay the DBE/MBE/WBE subconsultant(s) within five (5) business days of receipt of payment from the **COMMISSION**. The **ENGINEER** shall pay all other subconsultant(s) as stated by law.

The **ENGINEER's** acceptance of the final payment will be considered as a release in full of all claims against the **COMMISSION** arising out of, or by reason of, the work done and materials furnished under this contract.

ARTICLE V – NON-DISCLOSURE

1. For purposes of this Agreement, the term “Confidential Information” means any and all information delivered or otherwise disclosed (whether orally, in writing, in any other medium, however, documented (or not documented), and whether prepared by the **COMMISSION**, its advisors or otherwise) to the **ENGINEER**, whether already so disclosed, or now, or in the future, by or on behalf of the **COMMISSION**, including, without limitation, the **COMMISSION’S** actual and proposed business(es); traffic and revenue data, historical and protected financial information; budgets; services; products; trade secrets; techniques; processes; operations; formulae; product specifications; know-how; processes; compositions; inventions; discoveries; designs; sketches; drawings; samples; formats; marketing plans and materials; analyses; strategies; forecasts; research and development; concepts; ideas; names, addresses and any other characteristics identifying information or aspects of the **COMMISSION’S** existing or potential customers, employees, vendors or suppliers; or any information derived, summarized or extracted from any of the foregoing. In addition, “Confidential Information” shall be deemed to include all notes, analyses, compilations, studies, interpretations and other documents prepared by the **ENGINEER** which contain, reflect or are based upon, in whole or in part, Confidential Information.

Confidential Information shall not include any information that (i) is or becomes available to the public other than as a consequence of a breach by any individual, a partnership, a corporation, an association, a limited liability company, a joint stock company, a trust, a joint venture, an unincorporated organization (each a “Person”) of any fiduciary duty or obligation of confidentiality, including, without limitation, catalogues, publications, product descriptions and sales literature that the **COMMISSION** has distributed to the public generally; or (ii) information which at the time of disclosure to the **ENGINEER** is in the public domain; or (iii) is disclosed as required by a final,

unappealable court order and no suitable protective order, or equivalent remedy, is available, or (iv) the **ENGINEER** was aware of prior to its disclosure to the **ENGINEER** by the **COMMISSION** from a source not bound by a confidential obligation and the **ENGINEER** provides the **COMMISSION** written notice of such fact prior to the execution of this Agreement or promptly upon the **ENGINEER'S** learning that the information was Confidential Information; or (v) information which the **ENGINEER** can demonstrate with competent written evidence was independently developed by or for the **ENGINEER** without use of or reliance on the Confidential Information.

If the **ENGINEER** is requested or required by governmental order, judicial process or similar means (including by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any Confidential Information, it shall provide the **COMMISSION** with prior, prompt written notice of any such request or requirement so that the **COMMISSION** may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. Notwithstanding the foregoing, in the event the **ENGINEER** discloses Confidential Information under the terms of this Article V, it shall exercise such efforts as it would use to protect its own interests under similar circumstances, to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the **COMMISSION** to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

Confidential Information will be used solely for the purpose of providing **Services**, and, such information will be kept strictly confidential by the **ENGINEER**. The **ENGINEER** shall not under any circumstances disclose any Confidential Information to any third party except as provided below.

2. The **ENGINEER** acknowledges the confidential and proprietary nature of the Confidential Information and the damage that could result to the **COMMISSION** if any part of the Confidential Information were disclosed to any third party or for any other reason. Therefore, the **ENGINEER** agrees that neither it nor its Representatives (as hereinafter defined) will, directly or indirectly, disclose all or any part of the Confidential Information, except as herein provided. The **ENGINEER** shall be entitled to disclose the Confidential Information only to employees, officers, attorneys, agents and advisers of the **ENGINEER** (collectively, "Representatives") if the **ENGINEER** advises each such Representative of the obligations contained herein and that by receiving or creating such information such Representatives are agreeing to be bound by this Agreement. The **ENGINEER** shall be responsible for any breach of this Agreement by it and/or any Representative and shall indemnify and hold the **COMMISSION** harmless from any such breach. The **ENGINEER** shall provide the **COMMISSION** with prior written notice of its intent to disclose the Confidential Information to a non-employee Representative of the **ENGINEER**, which notice shall identify the name and address of the Representative and its relationship to the **ENGINEER**.

3. The **ENGINEER** shall return to the **COMMISSION** upon demand any and all Confidential Information created by or entrusted to it by the **COMMISSION** pursuant to this Agreement (including any and all copies, abstracts, compilations or analyses thereof and memoranda related thereto or incorporating the Confidential Information) or the **ENGINEER** may request permission from the **COMMISSION**, which permission may be granted or denied in the **COMMISSION'S** sole discretion, to destroy all such Confidential Information and provide a certificate of destruction to the **COMMISSION** signed by the **ENGINEER**. The **ENGINEER** further agrees that neither its nor its Representatives will disclose or copy, in whole or in part, any such Confidential Information

without the prior written consent of the **COMMISSION**, except for the sole use of its Representatives under the terms hereof.

4. The terms and conditions of this Agreement shall survive any termination of the evaluation by the parties of a business relationship.

5. The **ENGINEER** agrees that money damages would not be a sufficient remedy for any breach of this Agreement by the **ENGINEER** and/or its Representatives and that in addition to all other remedies which may be available, the **COMMISSION** shall be entitled to specific performance and injunctive or other equitable relief as a remedy for such breach and the **ENGINEER** further agrees to waive and to use its best efforts to cause its Representatives to waive any requirement for securing or posting of any bond in connection with such remedy.

ARTICLE VI - INDEMNIFICATION

The **ENGINEER** will indemnify and save harmless the **COMMISSION**, the **COMMISSION's** officers, and the **COMMISSION's** employees, from any claim or liability of any type or nature arising from the **ENGINEER's** negligence or that of the **ENGINEER's** employees or subcontractors in performing the work under this contract.

The **ENGINEER** shall take out, pay for, and maintain, during the life of the contract, insurance in the following amounts and kinds:

(a) Workers' Compensation with the minimum statutory limit including Coverage B (Employer's Liability) with limits of 500/500/500;

(b) Commercial General Liability Insurance including: Personal Injury Liability; Property Damage Liability; Products/Completed Operations; Blanket Contractual Liability-All Written & Oral Contracts; Premises and Operations Liability; Explosion, Collapse and Underground; Personal Injury; Independent Contractors; Broad Form Property Damage; Separation of Insured Provisions; Personal Injury and Advertising Liability; Premises Medical Payments; Host Liquor Liability; Fire Damage Legal Liability; Incidental Malpractice (including employees); non-owned watercraft; and automatic coverage for newly acquired entities.

The limits of liability for such coverage shall be at the **ENGINEER's** existing primary and excess liability limits, with a minimum required limit of \$1,000,000 per occurrence and \$2,000,000 in the Aggregate. Each policy shall contain a special endorsement which states that the policy's General Aggregate Limit, to the extent of the minimum required insurance limit, applies separately to the Project;

(c) Comprehensive Automobile Liability Insurance with a combined single limit of \$2,000,000.

The above limits can be satisfied by a combination of primary and excess insurance. The Pennsylvania Turnpike **COMMISSION** shall be named as an Additional Insured Party on all Commercial General Liability and Auto Liability insurance provided hereunder, but only to the extent of the **ENGINEER's** obligations under this Agreement. Certificates evidencing such coverage shall be provided the **COMMISSION** by the insurance carrier before work is begun under the contract.

ARTICLE VII – ASSIGNMENT AND DELEGATION

The **ENGINEER** shall not engage the services of any person or persons currently employed by the **COMMISSION**, except with the **COMMISSION'S** approval.

The **ENGINEER** shall neither assign this contract, in part or in whole, nor the right to any monies due him under it. Any part of the work to be done or material furnished under the contract shall not be sublet except to those firms indicated as part of the team in the initial Statement of Interest, without the **COMMISSION'S** prior consent.

ARTICLE VIII – WORKERS COMPENSATION

The **ENGINEER** shall accept, insofar as work covered by the contract is concerned, the provisions of the Workmen's Compensation Act of 1915, and its supplements or amendments, and shall insure his liability thereunder or file with the **COMMISSION**, a certificate of exemption from insurance from the Bureau of Workmen's Compensation of the Department of Labor and Industry.

ARTICLE IX – DISPUTE RESOLUTION

All questions or disputes regarding any matter involving this contract or its breach, shall be referred to the Board of Claims as provided in 62 Pa. C.S.A. § 1701 et seq. If the Board of Claims either refuses or lacks jurisdiction, these questions or disputes shall proceed as provided in 42 Pa. C.S.A. § 7301 et seq. (Statutory Arbitration). The panel of arbitrators will consist of a representative of each of the parties and a third party chosen by the representatives, or if the representatives are unable to choose, by the American Arbitration Association. Reference of

questions under the arbitration provisions may not be made until after the preparation of the final certificate and must be made prior to final payment.

ARTICLE X – TERMINATION

The **COMMISSION** has the right to cancel this agreement or any portion thereof at any time upon ten (10) calendar day's written notice, signed by the Chief Engineer. If this notice is given, the **ENGINEER** shall be paid only for the services already rendered upon the date of the notice and for the services rendered thereafter to the date of cancellation, subject to all provisions of this agreement. The ten- (10) days notice will date from the time of the mailing of the letter to the **ENGINEER**. The right to cancel may be exercised as to the entire project, or as to any particular phase or phases, part or parts, and upon one or upon several occasions, but any cancellation may not be revoked except upon written consent of the parties through a supplemental agreement to this agreement.

ARTICLE XI –ENGINEER INTEGRITY PROVISIONS

Definitions:

(a.) Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the **COMMISSION**.

(b.) Consent means written permission signed by a duly authorized officer or employee of the **COMMISSION**, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the **COMMISSION** shall be deemed to have consented by virtue of execution of this agreement.

(c.) **ENGINEER** means the individual or entity that has entered into this agreement with the **COMMISSION**, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.

(d.) Financial Interest means:

(1) Ownership of more than a 5% interest in any business; or holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(e.) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

The **ENGINEER** shall maintain the highest standards of integrity in the performance of this agreement and may take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the **COMMISSION**.

The **ENGINEER** may not disclose to others any confidential information gained by virtue of this agreement.

The **ENGINEER** may not, in connection with this or any other agreement with the **COMMISSION**, directly or indirectly offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the **COMMISSION**.

The **ENGINEER** may not, in connection with this or any other agreement with the **COMMISSION**, directly or indirectly offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the **COMMISSION**.

Except with the consent of the **COMMISSION**, neither the **ENGINEER** nor anyone in privity with him may accept or agree to accept from any person, or give or agree to give to any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.

Except with the consent of the **COMMISSION**, the **ENGINEER** may not have a financial interest in any other **ENGINEER**, subconsultant, or supplier providing services, labor, or material on this project.

The **ENGINEER**, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the **COMMISSION** in writing.

The **ENGINEER**, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.

The **ENGINEER**, upon the inquiry or request of the **COMMISSION's** Operations Review Group, shall provide, or if appropriate, reasonably and promptly make available to that office and its representatives, for inspection and copying, any information of any type or form deemed relevant by the Operations Review Group to the contractor's integrity, as that term is

defined by Pennsylvania law or Governor's management directives. This information may include, but is not limited to, the **ENGINEER's** business or financial records, or documents or files of any type or form regarding this agreement. The **ENGINEER** shall retain this information for three years beyond contract termination unless otherwise provided by law.

For violating any of these provisions, the **COMMISSION** may terminate this and any other agreement with the **ENGINEER**, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another engineer to complete performance of this agreement, or debar and suspend the **ENGINEER** from doing business with the **COMMISSION**. These rights and remedies are cumulative, and the use or nonuse of any one does not preclude the use of all or any other. These rights and remedies are in addition to those the **COMMISSION** may have under law, statute, regulations, or otherwise.

ARTICLE XII – MISCELLANEOUS

It is agreed that no claim for extra work or materials not specifically provided, done, or used by the **ENGINEER** will be allowed by the Chief Engineer, nor may the **ENGINEER** do any work or furnish any materials not covered by the Specifications and the Agreement, unless the work or materials are ordered in writing by the Chief Engineer. In no event may the **ENGINEER** incur any liability by any verbal directions or instructions that he may be given by the Chief Engineer or his authorized assistants; nor will the **COMMISSION** be liable for any materials furnished or for any work or labor done unless the materials, work, or labor are required of the **ENGINEER** on written order furnished by the Chief Engineer.

Any work or materials done or furnished by the **ENGINEER** without a written order first being given will be at the **ENGINEER's** risk, cost, and expense, and he hereby agrees that without written order he will make no claim for compensation for work or materials so done or furnished.

If the **ENGINEER's** costs exceed that of the negotiated work order and the Scope of Work does not change, the **COMMISSION** is not responsible for any of the exceeded costs.

The **ENGINEER** shall exhibit a commitment to diversity by maintaining the diversity of the staff that will be substantially involved in the work performed under this Agreement. The **ENGINEER** agrees to assign aspects of such work to qualified minority and women staff. The **ENGINEER** shall further ensure that all employment practices are free of discrimination and shall maintain its equal employment opportunity and diversity policies.

This Agreement and the respective rights and obligations of the parties hereto shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to its conflict of laws, principles or rules, and the decisions of the Pennsylvania courts. The **ENGINEER** consents to the jurisdiction of any state or federal court located within the Commonwealth of Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The **ENGINEER** agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

(SIGNATURES ARE SET FORTH ON THE NEXT PAGE)

SPECIFICATIONS AND
SPECIAL REQUIREMENTS
FOR FINAL DESIGN

1. General: These provisions supplement the project work as defined in Article I "Scope of Work" of this Agreement. The Engineer shall perform project work according to the applicable portions of these specifications and requirements, the Commission's Final Design Deliverable Requirements, the best and accepted engineering practices and procedures, and the specific directions of the Commission's Chief Engineer as well as applicable provisions of the Commission's Design Consistency Guidelines, Specifications and Standards, PennDOT Standards and Publications and AASHTO Design Guidelines.

Directions from the Commission's Chief Engineer will be in writing and may not be construed to supersede these Specifications and Special Requirements unless specifically stated.

Plans, Documents, Calculations, and Specifications shall become the property of the Commission.

2. The Engineer shall assume responsibility for all standards and data used by him in preparing the reports and/or final design drawings for the project and shall justify their use as required by the Commission. It shall be assumed that the Engineer has reviewed all standards and data recommended and used and that he is fully confident of their applicability and correctness for incorporation into the design and construction.
3. The estimated cost of construction includes all materials, labor, use of equipment, construction contractor's profit, and overhead necessary to construct the project. The final construction cost estimates shall be determined by applying agreed upon unit prices to the checked quantities for all items of the work. The prices used shall be supported by detailed estimates based on current prices for labor, materials, and equipment at the time the final cost estimate for each construction section is submitted to the Commission. The unit prices determined by the Engineer will be tabulated on the Schedule of Prices and shall be subject to approval by the Commission.
4. The Engineer will place in charge of the work a representative who shall be a qualified, experienced Engineer. This representative will be designated by the Engineer to carry on the work covered by this contract and to receive and carry out the instructions of the Chief Engineer or his authorized representatives pursuant to this contract.

The work shall be subject to the inspection and direction of the Chief Engineer of the Commission and his duly authorized representatives. Any work performed by the Engineer, which is found to be unsatisfactory shall be redone as directed.

5. After execution of the contract, the Engineer shall promptly submit his proposed chart of progress covering the completion of the component parts of the work. The chart shall include a percentage breakdown of the value of the various operations of the various sections of the work and the fee to be assigned to each component part. These charts and the monetary breakdown of the fee shall be subject to the approval of the Commission.

Once each month, no later than the fifteenth calendar day, the Engineer shall submit the project status report as well as the DBE/MBE/WBE Status Statement on the previous months work to the Chief Engineer in the form agreed to.

The Engineer shall have a Federal Acquisition Regulation (FAR) Audit performed and furnished to the Commission, at no direct cost to the Commission, within six (6) calendar months of the end of each of his fiscal years, for each fiscal year during which work is performed under the services and work are completed and accepted by the Commission. When an actual FAR Audited Overhead rate is established for any fiscal year, invoices submitted for work performed during that year using a provisional rate shall be adjusted by an overhead adjustment invoice to reflect the actual FAR overhead rate. The Engineer shall not submit to the Commission an invoice that includes costs incurred after the scheduled submission of a FAR Audit until the Engineer submits the FAR Audit as required above. This also applies to any subconsultants of the Engineer.

There will be no limitation of per annum or per hour remuneration of principals or employees performing work as a direct payroll cost under the contract. There also will be no per annum or per hour remuneration limitation on indirect payroll cost. This also applies to any subconsultants of the Engineer.

6. The Engineer shall submit a Quality Assurance/Quality Control Plan and Guidelines to the Commission for review and acceptance. The Engineer's QA/QC Plan should contain, at a minimum, the following key elements: Design Team Checks, Principal Engineers Review, Independent Checks, and Constructability Reviews.
7. If the Engineer experiences difficulty concerning entry upon private property in making surveys or studies, the Engineer shall be considered an agent of the Commission, but he may not incur any expense in this connection without instruction from the Chief Engineer.
8. The Engineer shall contact, as necessary, any public or private agencies concerned to determine design requirements for the project. In these preliminary negotiations the Engineer may not make any commitments for the Commission.