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**LEGAL DOCUMENT**

<b>Agreement:</b> E02260	<b>Project Specific</b>	<b>Active</b>
<b>Name:</b> PA26/36 Culvert Replcmnts		<b>Selection Process:</b> Modified
		<b>Initiating Org:</b> Engineering District 9-0

**Project Specific Agreement E02260**

**Engineering District 9-0**

Initiating Organization

**\$1,071,011.37**

Maximum Agreement Cost

**CDI-Infrastructure, LLC d/b/a L. R. Kimball 27-2620523**

Consultant - FID

**Cost Plus Fixed Fee**

**Specific Rate of Compensation**

Method(s) of Payment

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<u>Location</u>	<u>State Route</u>	<u>Section</u>
Bedford	0026	13B

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THIS AGREEMENT, made and entered into on 10/05/2011, at Harrisburg, Pennsylvania, between the Commonwealth of Pennsylvania, acting through its Department of Transportation, by the Secretary, ("Department"), and CDI-Infrastructure, LLC d/b/a L. R. Kimball, a Limited Liability Company 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 Preliminary Engineering, Environmental Studies, Final Design, and Services During Construction for the replacement of three structures on SR 0026 (BMS# 05-0026-0660-0000, BMS# 05-0026-0660-0257 and BMS# 05-0026-0660-0826) and one structure on S.R. 0036 (BMS# 05-0036-0010-1195) over Tributaries of Yellow Creek in Hopewell Township, Bedford County.

### Part 1 - Preliminary Design

State Project Number: 3-00026-0-3-13B-0910-324  
Federal Project: xNot-Fed-eral  
MPMS Number: 88571  
Maximum Amount: \$584,698.11  
Method of Payment: Cost Plus Fixed Fee

### Part 2 - Final Design

State Project Number: 3-00026-0-4-13B-0910-324  
Federal Project: xNot-Fed-eral  
MPMS Number: 88571  
Maximum Amount: \$425,258.15  
Method of Payment: Cost Plus Fixed Fee

### Part 3 - Services During Construction

State Project Number: 3-00026-0-7-13B-0910-324  
Federal Project: xNot-Fed-eral  
MPMS Number: 88571  
Maximum Amount: \$61,055.11  
Method of Payment: Specific Rate of Compensation

## 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 April 16, 1999**
  - ii. **Consultant Integrity Provisions, dated July 30, 2010**
  - iii. **Commonwealth Nondiscrimination Clause for Consultant Agreements, dated July 30, 2010**
  - iv. **Federal Nondiscrimination and Equal Employment Opportunity Clauses, dated January 1976**
  - v. **Offset Provision for Commonwealth Contracts, dated April 16, 1999**

- vi. **Pennsylvania Election Code, dated February 22, 2001**
  - vii. **Publication 442, Bureau of Design Specifications for Consultant Agreements, dated August 4, 2010**
  - viii. **Provisions Concerning the Americans With Disabilities Act, dated January 2001**
- 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 April 26, 2001** and the following standard method of payment special provisions: **Method of Payment - Cost Plus Fixed Fee, dated May 1, 2009**, **Method of Payment - Specific Rate of Compensation, dated February 28, 2001**, 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 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 Supplemental Agreement.

## **B. Agreement Duration**

### **1. Notice To Proceed**

The consultant shall not proceed with work and services required under any Part of this Agreement until specifically authorized by the Department to proceed on that Part in the form of an electronic Notice to Proceed (NTP) issued through the Engineering and Construction Management System (ECMS).

### **2. Time Of Completion**

- a. The Consultant shall complete all of the work and services covered by each Part of this Agreement within the time period

indicated below:

Part 1 - Within 18 calendar months after the NTP date.

Part 2 - Within 12 calendar months after the NTP date.

Part 3 - Within 12 calendar months after the NTP date.

- b. The Consultant shall not be eligible for and shall not request reimbursement from the Department for any costs incurred under an Agreement Part after the expiration of that Part.
- c. The time of completion for a Part may be extended by the execution of a Supplemental Agreement or by a letter signed by the Deputy Secretary for Highway Administration, or his Designee. The Consultant must initiate a time extension request in the form of a letter, to the Department's Manager of this Agreement, providing justification for the time extension prior to the termination date of the Part. An authorized Department Representative shall submit a transmittal letter and a copy of the Consultant's time extension request to the Consultant Agreement Division, Bureau of Design, for approval by the Deputy Secretary for Highway Administration, a minimum three (3) weeks prior to the termination date of the Agreement Part. If justified, the Deputy Secretary for Highway Administration, or his Designee, will issue a time extension approval letter prior to the expiration date of the Agreement Part. A copy of the time extension approval letter shall be forwarded to the Department's Project Manager and the Document Review and Control Division, Comptroller's Office.

### **C. Compensation**

#### **1. Maximum Cost**

- a. The total cost of each Part of this Agreement shall not exceed the maximum cost for each Part as specified in the Consultant's Price Proposal. The total maximum cost of this Agreement shall not exceed \$1,071,011.37 without prior approval by the Department and by the Federal Highway Administration (FHWA), where applicable, in the form of a Supplemental Agreement signed by the Department and the Consultant.
- b. The maximum costs under each Part 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.

**Removal of Wage Rate Limitation**

The statement "Remuneration of principals or employees performing work on this project shall be limited to \$55.00 per hour, or their audited actual remuneration, whichever is less" in the standard method of payment document attached hereto is null.

<p><b>Document Status:</b> Executed  <b>Negotiator:</b> Sube, Paula S.</p>
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Attachments		
Name	Created By	Created On
<i>No records found.</i>		

Workflow			
Status	Name	Disposition	Date/Time
Draft	Paula S Sube/PennDOT	Submit	09/28/2011 11:08:17 AM

Consultant Review	Richard E Genday/PennDOT BP-005926 - Vice President	Approve	09/29/2011 09:59:24 AM
Deputy Secretary Review	Brian D Hare/PennDOT	Approve	09/30/2011 09:56:51 AM
Chief Counsel Review	Michael H Kline/PennDOT	Approve	10/03/2011 03:55:25 PM
Comptroller Review	Andrew K Peters/PennDOT	Approve	10/04/2011 11:28:01 AM
CAD Chief Approval	Gary R Kleist/PennDOT	Execute	10/05/2011 04:46:40 PM

<b>Audit Information</b>			
<b>Created By</b>	<b>Created On</b>	<b>Modified By</b>	<b>Modified On</b>
Paula S Sube/PennDOT	09/28/2011 08:01:36 AM	Gary R Kleist/PennDOT	10/05/2011 04:46:40 PM

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**Tue Oct 11 08:14:24 EDT 2011**  
Official ECMS Date/Time