



## LEGAL DOCUMENT

|   |                                       |   |
|---|---------------------------------------|---|
| <b>Agreement:</b> E02388                                  | <b>Open End /Non Project Specific</b> | <b>Executed</b>                                   |
| <b>Name:</b> Maintenance and Traffic Engineering Open End | <b>Selection Process:</b> Modified    | <b>Initiating Org:</b> Maintenance and Operations |

### Open End / Non Project Specific Agreement E02388

#### Maintenance and Operations

Initiating Organization

**\$2,000,000.00**

Maximum Agreement Cost

#### Orth- Rodgers & Associates, Inc. 23-2077102

Consultant - FID

#### Specific Rate of Compensation

Method(s) of Payment

THIS AGREEMENT, made and entered into on 10/26/2011, at Harrisburg, Pennsylvania, between the Commonwealth of Pennsylvania, acting through its Department of Transportation, by the Secretary, ("Department"), and Orth- Rodgers & Associates, 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 Maintenance and Traffic Engineering Open End

## 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 October 7, 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 - 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 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 12% 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.

**Escalation and Direct Costs Other Than Payroll**

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

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| <b>Document Status:</b> Executed<br><b>Negotiator:</b> Harter, Michele L. |
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| Attachments              |            |            |
|--------------------------|------------|------------|
| Name                     | Created By | Created On |
| <i>No records found.</i> |            |            |

| Workflow                |  |             |                        |
|-------------------------|--|-------------|------------------------|
| Status                  | Name   | Disposition | Date/Time              |
| Draft                   | James B O'shell/PennDOT                          | Submit      | 10/17/2011 12:51:40 PM |
| Consultant Review       | Steven B Bolt P.E./PennDOT BP-000139 - President | Approve     | 10/17/2011 02:51:43 PM |
| Deputy Secretary Review | R. Wayne Willey/PennDOT                          | Approve     | 10/18/2011 08:27:06 AM |
| Chief Counsel Review    | Michael H Kline/PennDOT                          | Approve     | 10/20/2011 12:06:16 PM |
| Comptroller Review      | Andrew K Peters/PennDOT                          | Approve     | 10/26/2011 09:46:44 AM |
| CAD Chief Approval      | Gary R Kleist/PennDOT                            | Execute     | 10/26/2011 04:39:11 PM |

| Audit Information       |                        |                       |                        |
|-------------------------|------------------------|-----------------------|------------------------|
| Created By              | Created On             | Modified By           | Modified On            |
| James B O'shell/PennDOT | 10/17/2011 11:23:37 AM | Gary R Kleist/PennDOT | 10/26/2011 04:39:11 PM |

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 Official ECMS Date/Time