

## AGREEMENT

This **AGREEMENT** is effective this 1st day of January, 2012, between the **Pennsylvania Turnpike Commission (“COMMISSION”)**, an instrumentality of the Commonwealth of Pennsylvania, with principal offices at 700 South Eisenhower, Blvd., Middletown, Pennsylvania 17057 (mailing address: P. O. Box 67676, Harrisburg, PA 17106-7676);

**AND**

**G.R. Sponaugle (“CONTRACTOR”)**, a Pennsylvania corporation, with its principal office at 4391 Chambers Hill Road, Harrisburg, PA 17111.

**WITNESSETH:**

**WHEREAS**, the **COMMISSION** desires to enter into an agreement to provide Mechanical/Electrical Maintenance Services at the Pennsylvania Turnpike Commission’s Central Administration Building (CAB), Transcore Building (located at CAB site), Turnpike Industrial Park (TIP) Building, TIP Maintenance Building (located on TIP site) and the Steelton Warehouse;

**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 a contract with **CONTRACTOR**;

**WHEREAS**, the **COMMISSION** desires to retain the services of **CONTRACTOR** upon the following terms; and

**NOW, THEREFORE**, in consideration of these mutual covenants, and intending to be legally bound, the parties agree as follows:

### Contractor's Scope of Work

The **CONTRACTOR** will perform the work described in Request for Proposal #11-40130-2981 dated February 23, 2011, titled Mechanical/Electrical Maintenance Services at Central Administration Building (CAB), Transcore Building (located on CAB site), Turnpike Industrial Park (TIP) Building, TIP Maintenance Building (located on TIP site), and Steelton Warehouse and the **CONTRACTOR'S** proposal dated April 15, 2011. This document is made part of this Agreement by reference.

### Commission's Responsibilities

The **COMMISSION** shall furnish the **CONTRACTOR** access to key personnel, relevant documents, and adequate workspace for completing the work.

### Compensation

For the work, services, and material as defined in this Agreement, the **CONTRACTOR** shall be paid the amount of FOUR HUNDRED FIFTY FOUR THOUSAND FOUR HUNDRED THIRTY FIVE AND 00/100 DOLLARS (\$454,435.00) per year, in twelve monthly installments.

Additional work, if outside the contracted scope, is required for equipment repair and/or replacement work, as defined in Section IV-4a of the RFP, shall be completed at an additional cost using the rates in accordance with the Cost Submittal Table 4A dated April 15, 2011. No additional work shall be completed unless authorized by the Director of Facilities and Energy Management Operations or his designee.

### Duration of Agreement and Renewal

The term of this Agreement shall be for the period of January 1, 2012 to December 31, 2014.

The term may be extended for two additional 2-year extensions by a writing signed by both parties.

This Agreement will not terminate until the **COMMISSION** accepts all work as complete and tenders final payment to the **CONTRACTOR**.

### Termination

Either party may terminate this agreement at any time upon thirty- (30) calendar day's written notice. If this notice is given, the **CONTRACTOR** shall be paid only for the services already rendered upon the date of the notice and for the services rendered to the date of termination, subject to all provisions of this agreement. The notice will be effective on the date of receipt. 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 termination may not be revoked except upon written consent of the parties through a supplemental agreement to this agreement.

### Assignment and Delegation

The **CONTRACTOR** may not transfer, assign, or delegate any terms of this contract, in whole or in part, without prior written permission from the **COMMISSION**.

### Governing Law

This agreement will be interpreted according to the laws of the Commonwealth of Pennsylvania.

### Observance of Laws

The **CONTRACTOR** agrees to observe all relevant federal, state, and local laws and to obtain in its name all necessary permits and licenses.

### Work for Hire

Except for hardware, third party licensed software, and software previously developed by **CONTRACTOR**, all Deliverables, including but not limited to source code, software, specifications, plans, designs and engineering, drawings, data, information or other written, recorded, photographic, or visual materials, trademarks, service marks, copyrights or other Deliverables produced by **CONTRACTOR** or any supplier in the performance of the contract shall be deemed "Work Product". All Work Product shall be considered services for hire. Accordingly, except as set forth earlier in this paragraph, all Work Product shall be the exclusive property of the **COMMISSION**.

The **CONTRACTOR** agrees to notify the **COMMISSION** in writing before using any of **CONTRACTOR's** previously developed software for services provided under this Agreement.

The **CONTRACTOR** and the **COMMISSION** will honor all applicable preexisting licenses, copyrights, trademarks, service marks, and patents. If as part of an expense item under this

Agreement, the **CONTRACTOR** purchases the right to any license, the agreements for the use or ownership of such license will be placed in the name of the **COMMISSION** along with all other rights and obligations. In addition, the **CONTRACTOR** will mark all Turnpike content or previously unprotected work product designated by the **COMMISSION** with a notice as follows: "Pennsylvania Turnpike Commission, (Year)".

#### Audit/Retention of Records

**CONTRACTOR** and its subcontractors shall maintain books and records related to performance of this contract or subcontract and necessary to support amounts charged to the **COMMISSION** in accordance with applicable law, terms and conditions of this contract, and generally accepted accounting practice. **CONTRACTOR** shall maintain these books and records for a minimum of three (3) years after the completion of the contract, final payment, or completion of any contract, audit or litigation, whichever is later. All books and records shall be available for review or audit by the **COMMISSION**, its representatives, and other governmental entities with monitoring authority upon reasonable notice and during normal business hours. **CONTRACTOR** agrees to cooperate fully with any such review or audit. If any audit indicates overpayment to **CONTRACTOR**, or subcontractor, the **COMMISSION** shall adjust future or final payments otherwise due. If no payments are due and owing to **CONTRACTOR**, or if the overpayment exceeds the amount otherwise due, **CONTRACTOR** shall immediately refund all amounts which may be due to the **COMMISSION**. Failure to maintain the books and records required by this Section shall establish a presumption in favor of the **COMMISSION** for the recovery of any funds paid by the **COMMISSION** under the contract for which adequate books and records are not available to support the purported disbursement.

#### Dispute Resolution

All questions or disputes regarding any matter involving this contract or its breach shall be referred to the Board of Claims of the Commonwealth of Pennsylvania pursuant to 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.

### Indemnification

The **CONTRACTOR** shall be responsible for all damage to life and property due to negligence or other tortious acts, errors, and omissions arising from or related to the work of this Agreement. The **CONTRACTOR** shall indemnify and hold harmless the **COMMISSION**, the **COMMISSION's** officers, and the **COMMISSION's** employees from any claim or liability of any type or nature arising from or related to the work of the **CONTRACTOR** or that of the **CONTRACTOR's** employees or subcontractors or the presence of these persons or individuals on the **COMMISSION's** premises.

### Contractor Provisions

The Contractor Integrity and Contractor Responsibility Provisions are attached as **Exhibit A** and made a part of this agreement.

### Confidentiality Provisions

1. As a consequence of the performance of its duties with the Pennsylvania Turnpike Commission ("Commission"), Contractor may learn, be given, or become aware of certain information, including, but not limited to, matters pertaining to internal communications, information, proprietary information, individually identifiable health information, trade practices, business operations, or other sensitive information collectively known as Confidential Information. Regardless of how transmitted or received by Contractor, whether by receipt, sending, or merely becoming available to Contractor through its relationship to the Commission, Contractor agrees to maintain and treat as proprietary and confidential to the Commission all such Commission Confidential Information, and shall not discuss, reveal, or use for any purpose outside the performance of its contract with the Commission such Commission Confidential Information.

2. With respect to its employees, Contractor agrees

- a) to require all of its employees to maintain confidentiality;
- b) to prosecute its employees, officers, and subcontractors for any and all violations of this agreement;
- c) to keep such agreements in full force and effect;

d) to obtain from the Commission its approval, which shall not be unreasonably withheld, of the terms of such agreements; and

e) to permit the Commission to inspect such agreements and other documents for compliance with these requirements.

3. With respect to any subcontractor that Contractor wishes to employ to perform any of its obligations under any agreement with the Commission, Contractor agrees to require any such approved subcontractor to execute written confidentiality agreements that require each such contractor and its employees to comply with all the requirements set forth above.

4. Contractor agrees that any breach of this Agreement may result in civil and/or criminal penalties, for Contractor, its officers and employees, and subcontractors.

5. Notwithstanding any other provision to the contrary, Contractor agrees that this provision shall survive the termination of this and any and all agreements between the Contractor and the Commission.

6. Contractor agrees to treat the information in the same way Contractor treats its own most confidential information and to inform each such person of these provisions.

7. Contractor agrees to immediately notify the Commission of any information which comes to its attention which does or might indicate that there has been any loss of confidentiality or information.

8. Contractor shall return to the Commission upon demand any and all Confidential Information 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 Contractor 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 Contractor. The Contractor further agrees that neither itself nor its employees or representatives will copy, in whole or in part, any such Confidential Information without the prior written consent of the Commission.

9. Contractor agrees to indemnify the Commission for all damages, costs, and legal fees resulting from any legal actions brought against the Commission for breach of agreements regarding the use of nondisclosure of proprietary and confidential information where it is determined that Contractor is responsible for any use of such information not permitted by such agreements.

10. Contractor agrees that if they have had or will have an SAS70 audit that they will comply with and abide by the findings of such audit to protect Commission information.

Entire Agreement

This Agreement, together with any writings either attached as exhibits or incorporated by reference, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties.

Modification

This agreement may be modified only by a writing signed by both parties.

**[SIGNATURES ARE SET FORTH ON THE NEXT PAGE]**

**IN WITNESS WHEREOF**, the **Pennsylvania Turnpike Commission** and **G.R. Sponaugle** have executed this Agreement by their duly authorized officers and affixed their respective official and corporate seals on the date written above.

## 1. 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. CONTRACTOR 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 percent interest.
- d. Financial Interest means:
  - (1) ownership of more than a 5 percent interest in any business; or
  - (2) 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.

2. The CONTRACTOR 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.

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

4. The CONTRACTOR 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.

5. The CONTRACTOR 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.

6. Except with the consent of the COMMISSION, neither the CONTRACTOR 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.

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

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

9. The CONTRACTOR, 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.

10. The CONTRACTOR, upon the inquiry or request of the COMMISSION's Operations Review Department, 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 Department 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 CONTRACTOR's business or financial records, or documents or files of any type or form regarding this agreement. The CONTRACTOR shall retain this information for three years beyond contract termination unless otherwise provided by law.

11. For violating any of these provisions, the COMMISSION may terminate this and any other agreement with the CONTRACTOR, 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.

## 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 sub-grantee, 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 sub-grant with the Commonwealth, or with a person under contract, subcontract, grant, or sub-grant 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.

1. The contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any suppliers 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 the bid/proposal, a written explanation of why such certification cannot be made.
2. The contractor must also certify, in writing, that as of the date of its execution, of any Commonwealth contract it has no tax liabilities or other Commonwealth obligations.
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 contracting agency 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 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 contracting agency 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, which 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/debarment.htm> 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