

**SUPPLEMENTAL AGREEMENT NO. 3**

Estimated Engineering  
Cost: **\$6,000,000.00**

Widening of the Northeast Extension  
Mid-County I/C to the Lansdale I/C  
Final Design  
Project

Montgomery  
County

Urban Engineers, Inc.  
Engineer

23-1575527  
Federal I.D. No.

N/A  
Federal Project Nos.

This **AGREEMENT** is made this 10<sup>th</sup> day of May, 2012,  
between the **Pennsylvania Turnpike Commission (COMMISSION)**, an instrumentality of  
the Commonwealth of Pennsylvania, with principal offices near Middletown, Pennsylvania  
(mailing address: P.O. Box 67676, Harrisburg, Pennsylvania 17106-7676; physical  
address: 700 South Eisenhower Boulevard, Middletown, PA 17057)

**AND**

**Urban Engineers, Inc. (ENGINEER)**, a Pennsylvania Corporation engaged in rendering  
professional engineering services, with its principal office at 530 Walnut Street,  
Philadelphia, Pennsylvania 19106.

**WITNESSETH:**

**WHEREAS**, by an Agreement dated November 15, 2004, the **COMMISSION** has retained the **ENGINEER** on an open end contract basis to perform an Environmental Study (Level 2 Categorical Exclusion) and Preliminary Engineering for the Widening of the Pennsylvania Turnpike Northeast Extension from the Mid-County Interchange (MP A20) to the Lansdale Interchange (MP A30) in Montgomery County; and,

**WHEREAS**, after executing the agreement, the **COMMISSION** and the **ENGINEER** entered into Supplements to the Agreement dated April 26, 2005; and, April 22, 2011

**WHEREAS**, the **COMMISSION** desires to increase the dollar limit of the Agreement as supplemented; 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,

**THEREFORE**, in consideration of these mutual covenants and intending to be legally bound, the Agreement is amended and supplemented as follows:

**A. SCOPE OF AGREEMENT**

1. Scope

In addition to the general items of work listed in the Agreement and Supplements No. 1 and No. 2, the **ENGINEER** shall, subject to the same general contract

conditions, perform all services and work, and all equipment and materials not otherwise provided, necessary to advance the final design of the mainline contracts including regulatory requirements such as storm water management, noise analysis and remediation and environmental remediation and permitting. Additionally the M.P. A-31 mainline Bridge Replacement Project was incorporated into this M.P. A-26 to A-30 Total Reconstruction Project.

1. **A. SCOPE OF AGREEMENT - Item 5 - Time of Completion:** is amended by adding the following as a new first sentence:

It is agreed between the parties hereto that the **ENGINEER** shall complete all of the work covered by the terms of this Agreement on or before December 31, 2014.

2. The following paragraphs are added to **B. COMPENSATION Item 1 Maximum Cost:**

The not-to-exceed amount of **TWENTY-TWO MILLION FIVE HUNDRED and 00/100 DOLLARS (\$22,500,000.00)** stated in the Supplemental Agreement dated April 22, 2011, will now be increased to a total of **TWENTY-EIGHT MILLION FIVE HUNDRED and 00/100 DOLLARS (\$28,500,000.00)** or an additional **SIX MILLION and 00/100 DOLLARS (\$6,000,000.00)**.

Total payment for this contract may not exceed **TWENTY-EIGHT MILLION FIVE HUNDRED and 00/100 DOLLARS (\$28,500,000.00)**.

The **ENGINEER** agrees that the **COMMISSION** may set off the amount of any state tax liability or other obligation of the **ENGINEER** or its subsidiaries to the Commonwealth against any payments due the **ENGINEER** under any contract with the **COMMISSION**.

3. In 7. Engineer Intergity Provisions the existing paragraphs are stricken and replaced with the following:

It is essential that those who seek to contract with the Pennsylvania Turnpike Commission (“Commission”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commission procurement process.

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

1. 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 with the Commission.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commission and Commission employees, and which is distributed and made known to all Contractor employees.

3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commission employee to breach the standards of ethical conduct for Commission employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; *Commission Policy 3.10, Code of Conduct*; or to breach any other state or federal law or regulation.

4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commission official or employee or to any other person at the direction or request of any Commission official or employee.

5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commission official or employee or to any other person, the acceptance of which would violate *Commission Policy 3.10, Code of Conduct*; or any statute, regulation, statement of policy, management directive or any other published standard of the Commission.

6. Contractor, its affiliates, agents and employees shall not, 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 Commission official or employee.

7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the Contract, except as provided in the Contract.

**8.** Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commission in writing and the Commission consents to Contractor's financial interest prior to Commission execution of the contract. Contractor shall disclose the financial interest to the Commission 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.

**9.** Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this Contract without the prior written approval of the Commission, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this Contract. Any information, documents, reports, data, or records secured by Contractor from the Commission or a third party in connection with the performance of this Contract shall be kept confidential unless disclosure of such information is:

- a.** Approved in writing by the Commission prior to its disclosure; or
- b.** Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commission approval; or
- c.** Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
- d.** Necessary for purposes of Contractor's internal assessment and review; or
- e.** Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commission; or
- f.** Permitted by the valid authorization of a third party to whom the information,

documents, reports, data, or records pertain: or

**g.** Otherwise required by law.

**10.** Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commission contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

**a.** Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

**b.** Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:

**(1)** obtaining;

**(2)** attempting to obtain; or

**(3)** performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

**c.** Violation of federal or state antitrust statutes.

**d.** Violation of any federal or state law regulating campaign contributions.

**e.** Violation of any federal or state environmental law.

**f.** Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor

violations.

- g.** Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
- h.** Violation of any federal or state law prohibiting discrimination in employment.
- i.** Debarment by any agency or department of the federal government or by any other state.
- j.** Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commission may, in its sole discretion, terminate the Contract for cause upon such notification or when the Commission otherwise learns that Contractor has been officially notified, charged, or convicted.

**11.** If this Contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641 of the Pennsylvania Election Code, 25 P.S. §3260a*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

- a.** Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
- b.** Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

**12.** Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commission procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.

**13.** When Contractor has reason to believe that any breach of ethical standards as set forth in law, *Commission Policy 3.10, Code of Conduct*; or in these provisions has occurred or may occur, including but not limited to contact by a Commission officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commission contracting officer or Inspector General in writing.

**14.** 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.

**15.** Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commission employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of 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 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 refers to or concern this Contract.

**16.** For violation of any of these Contractor Integrity Provisions, the Commission 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 report violations to the Commonwealth which could lead to Contractor being debarred and suspended from doing business with the Commission or 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 Commission may have under law, statute, regulation, or otherwise.

**17.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.

**a.** "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of 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 pre-qualification, bid, proposal, or contractual terms, the

Commission shall be deemed to have consented by virtue of execution of this Contract.

**c.** “Contractor” means the individual or entity that has entered into this Contract with the Commission, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.

**d.** “Financial interest” means:

**(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.

**e.** “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 *Commission Policy 3.10, Code of Conduct* shall apply.

**f.** “Immediate family” means a spouse and any unemancipated child.

**g.** “Non-bid basis” means a Contract awarded or executed by the Commission with Contractor without seeking bids or proposals from any other potential bidder or offeror.

**h.** “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

4. The following section is added to the Agreement:

8. 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 provide the **COMMISSION** with monthly status reports on all work orders under this Open End Contract by the 15<sup>th</sup> day of each month, using the format provided by the **COMMISSION's** Engineering Department. Failure to submit the monthly status report in the required timeframe will result in the **COMMISSION** withholding payment to the **ENGINEER**.

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. The **ENGINEER** agrees to maintain the minimum participation level of 10% for the inclusion of DBE, MBE, or WBE firms for the duration of the agreement and provide monthly status reports that demonstrate that this commitment is being upheld.

The **ENGINEER** will be required to demonstrate good faith efforts to achieve the required minimum participation level of 10% for the inclusion of DBE/ MBE/ or WBEs firms for the duration of the agreement and provide monthly status reports that demonstrate that this commitment is being upheld. Failure to make a good faith effort to maintain the minimum participation level will result in the **ENGINEER** being in breach of the agreement.

Evidence of "Good Faith" includes but is not limited to:

- A. Engineer shall first attempt to maintain minimum participation levels by using DBE/MBE/WBEs firms as listed in the Statement of Interest for Reference No. 2-085.
- B. Engineer shall solicit through all reasonable and available means (pre-proposal meetings, advertisements and/or written notices) the interest of certified DBE/MBE/WBEs who have the capability to perform the work of the contract. Engineer shall make solicitations for goods/services that are within the project scope and which you reasonably expect to utilize.
- C. Selecting portions of the work to be performed by DBE/MBE/WBEs in order to increase the likelihood that the DBE/MBE/WBEs minimum participation level will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE/MBE/WBEs participation, even when the prime might otherwise prefer to perform these work items with its own forces.
- D. Providing interested DBE/MBE/WBEs with adequate information about the work and services required in a timely manner to assist them in responding to a solicitation.
- E. (1) Negotiating in good faith with interested DBEs. It is the ENGINEER's responsibility to make a portion of the work available to DBE/MBE/WBEs subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE/MBE/WBEs subcontractors and suppliers, so as to facilitate DBE/MBE/WBEs participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE/MBE/WBEs 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 DBE/MBE/WBEs to perform the work.

(2) An ENGINEER using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE/MBE/WBEs 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 DBE/MBE/WBEs is not in itself sufficient reason for an ENGINEER'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 ENGINEER of the responsibility to make good faith efforts.

F. Not rejecting DBE/MBE/WBEs 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.

The classification of "ENGINEER" means a registered professional engineer. If an individual otherwise well qualified to perform the duties of engineer is approved by the Chief Engineer, a suitable title without the term "ENGINEER" shall be assigned by the **ENGINEER** with the approval of the Chief Engineer.

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.

All other terms, conditions, specifications and requirements established in the Original Agreement will remain.

**(SIGNATURES ARE SET FORTH ON THE NEXT PAGE)**