

## **OPEN END AGREEMENT**

This **AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, 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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**GANNETT FLEMING, INC. (ENGINEER)**, a corporation rendering professional engineering services, with an office at 207 Senate Avenue, Camp Hill, PA 17011.

### **WITNESSETH:**

**WHEREAS**, the **COMMISSION** desires to engage the services of a professional consulting firm to perform Traffic Operations and Intelligent Transportation Systems (ITS) and Safety Services on an Open End Contract basis, Systemwide; 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 Traffic Operations and ITS design, construction management and studies of ITS and Operations; and Safety services throughout the entire Pennsylvania Turnpike System on an Open End Contract basis, Systemwide. The work and services which may be required under this Agreement encompass a wide range of studies and efforts with the possibility of several different types of projects with short completion schedules being assigned concurrently.

The firm may be required to perform tasks including but not limited to the following for Traffic Operations: technology research; development of procedures and guidelines; transportation system management and operations (TSMO) program maintenance; data integration, analysis and performance measurement; training, and the identification of safety and mobility strategies relating

to recurring and non-recurring congestion as it relates to work zone management, incident and emergency response, connected vehicle environment and freight and winter operations.

The firm may be required to perform ITS tasks including planning, systems engineering, design, and construction evaluation and inspection for specific projects as well as the development of operational concepts, GIS support and geospatial analytics, system architectures, deployment plans and metrics as it relates to the existing programs and possible future needs such as connected vehicles and unmanned aircraft systems (UAS) program support. Additional ITS tasks may include, but not limited to, the following: device field surveys; oversight of systems integration; plotting topography and cross sections; evaluation of utility and communication needs; utility locating services; wireless line of sight surveys; right-of-way investigation and plans; field view meetings; environmental studies and permitting; highway occupancy permits; soil and foundation engineering reports as applicable; roadway plans; structure plans as applicable; traffic control plans and narrative; full design construction plans; design/build construction plans; specifications and estimates; the preparation of RFP documents for ITS and traffic operations technology projects; technical construction oversight and inspection; communication systems; and software/hardware acceptance testing and system acceptance.

The firm may also be required to perform engineering studies and reports relating to traffic control, highway safety, crash analysis, traffic and revenue studies and traffic growth and forecasting. The firm may also be responsible for the review and/or creation of contract specifications and plan standards dealing with the Maintenance and Protection of Traffic (MPT) during design and throughout the construction of the projects.

Other assignments may include on-site staff to support emergency transportation operations.

Descriptions of potential traffic operations and ITS projects which may be executed under this agreement are as follows:

Transportation Operations Performance (TOP) Program maintenance and project planning: This work may include the maintenance and update of the TOP Program to include updates of processes, core functional areas, project updates and reprioritization.

Performance Reporting and Data Analysis: This work may consist of working with the Turnpike's data analytics provider to identify key performance measures, KPIs, and to standardize annual and quarterly reporting.

Traveler Information Technologies: This work may focus on the refinement of current travel information technologies, identify refinements to social media and crowdsourcing initiatives and identify data feed needs to support third party partnerships.

ITS Design & Deployment: Design and deployment of Dynamic Message Signs (DMS), Closed Circuit Television (CCTV) Cameras, Road Weather Information Systems (RWIS), and other ITS technologies as required.

**ITS Device and System Construction Consultation:** This work may consist of ITS technical oversight during the construction of ITS projects. Work will include, but not be limited to, fiber splice testing, site inspection, field and final acceptance testing, final site inspection, as-built drawing review, pre-final plan and specification review, ITS device inventory document review, attend meetings representing the Turnpike, and review shop drawings.

**Connected Vehicle / Autonomous Vehicle Planning and Project Development:** This work may involve further refinement of the Turnpike's Connected Vehicle Roadmap; assisting in collaboration with PennDOT, other agencies, and coalitions; and planning, design, and device construction oversight of connected vehicle projects.

**Work Zone Operations Management:** This work may include the development of traffic management plans, smart work zones and other operational strategies in support of the Work Zone Safety Subcommittee. Work may also include support of the automated work zone speed enforcement program.

**Traffic Incident Management program support:** This work may include delivering incident management training; drafting RFPs for new Towing or HAZMAT contracts; drafting agreements with fire companies and EMS; and supporting efforts of the PennTIME committee or subcommittees.

**Traffic Operations Center (TOC) support:** This work may include the development of TOC SOGs and SOPs; training TOC operators; evaluation of system or operator performance;

drafting RFPs or other contract agreements to deploy new TOC systems; and planning, design, and integration consultation for the deployment of TOC systems.

The **ENGINEER** agrees to comply with and to provide the required services and work in accordance with the following terms, conditions, and provisions, as well as the Exhibits listed below, which are attached hereto and made a part hereof.

Exhibit A – Specifications and Special Requirements for Final Design

Exhibit B – Insurance Specification - Minimum Insurance Requirements

Exhibit C – Diverse Business Requirements

Exhibit D – Security Requirements

This work shall be done in accordance with negotiated work orders as assigned by the **COMMISSION**'s Director of Traffic Engineering & Operations or designee (in accordance with the Commission's internal Engineering Work Authorization Procedures) for Advertisement No. T00125.

## ARTICLE II – COMMISSION

The **COMMISSION**, through its Director of Traffic Engineering & Operations 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 Exhibit A "Specifications and Special Requirements for Final Design" dated December 2013.

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, (“Department”) 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 January 31, 2023. It is understood that the time for completion excludes delays incurred, through no fault of the **ENGINEER**.

The time of completion may be extended for work orders issued prior to the above mentioned completion date if the extension is approved by the **COMMISSION** in the form of a letter signed by the Director of Traffic Engineering & Operations. 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**

It is understood that the total maximum cost of this Agreement to the **COMMISSION** may not exceed the amount of **TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00)**.

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.

The method of payment for work related to design services covered under this Agreement shall be Cost Plus Fixed Fee, and the method of payment for work related to post-design/construction consultation shall be Specific Rate of Compensation. The Cost Plus Fixed Fee shall be the actual of the following Cost Categories: Direct/Indirect Payroll Costs; Direct Costs other than Payroll; Direct Cost of Work and Services by Others; and Fixed Fee. Additional information concerning these cost categories can be found in the Department's Publication 93. The Cost Plus Fixed Fee shall be paid in partial amounts monthly, apportioned over the course of the total project in amounts incurred according to the extent that authorized items are completed.

#### **A. Direct Payroll Costs**

The **ENGINEER** shall include in its price proposal a listing of anticipated project employees by name, classification, and payroll rate per hour. The hourly payroll rates as listed will be subject to review by the **COMMISSION** during the price proposal negotiations. During the life of the project, the **ENGINEER** shall notify the **COMMISSION's** Director of Traffic Engineering & Operations or designee of new employees assigned to the project and proposed wage rate increases prior to placing them into effect. If the **COMMISSION** objects to the amount of such increase, the wage rate will be rejected and justification will be required.

The **ENGINEER**'s estimate of its in-house Direct Payroll cost, presented as a breakdown of work-hour requirements into the work breakdown structure tasks and detail tasks, is required to be included in the **ENGINEER**'s price proposal to accomplish the Work Order. Each detail cost task will have the employees to be used with the hourly rate for each employee or the classification of employees to be used with the average hourly rate for each classification, extended and summated to arrive at the total estimated payroll cost.

## **B. Indirect Payroll Costs**

The **ENGINEER** will use its current, approved Overhead Rate to develop its price proposal to establish a budget and for invoicing. Overhead Rates shall be based on the rates established in the Department's Engineering and Construction Management System (ECMS). The maximum overhead used for negotiations will be based on the rate approved in ECMS for the latest completed fiscal year. This will be considered the provisional overhead rate. If the latest fiscal year concluded within six calendar months prior to the submission of the **ENGINEER**'s price proposal, the maximum overhead used for negotiations will be based on a rate approved in ECMS for a fiscal year completed within the last eighteen months.

If the **ENGINEER** does not have a rate approved in ECMS, the **ENGINEER** shall have a FAR Audit performed and furnished to the **COMMISSION**, at no direct cost to the **COMMISSION**, within six calendar months of the end of each of the firm's fiscal year. The maximum Overhead used for negotiations will be based on a FAR Audit for the latest completed fiscal year. If the latest fiscal year concluded within six calendar months prior to the submission of the **ENGINEER**'s price proposal the maximum Overhead Rate could be based on a FAR Audit for a fiscal year completed within the previous eighteen months.

### **C. Direct Costs Other Than Payroll**

The **ENGINEER**'s out of pocket expenses for lodging and meals shall be charged at actual costs, not to exceed GSA CONUS rates as authorized by the Commonwealth Management Directive 230.10. Regardless of the amount submitted in the Price Proposal, the **ENGINEER** is responsible to use the current rate as indicated in the Commonwealth Management Directive when invoicing.

For additional guidance regarding the application of direct costs other than payroll including Non-Professional Services, see the Department's Publication 93.

### **D. Direct Cost of Work and Services By Others**

Subconsultants shall generally follow the same requirements as the **ENGINEER** as set forth in this Article of the Agreement. The **ENGINEER** shall pay subconsultant(s) as stated by law.

### **E. Fixed Fee**

The allowable fixed fee or profit will primarily consider the degree of responsibility to be assumed by the **ENGINEER** for each Work Order. See the Department's Publication 93 for guidance regarding the maximum allowable profit factor for the type of services provided.

It is agreed and understood that this Fixed Fee will constitute full compensation to the **ENGINEER** as a fee in addition to its costs to provide the required work and services. The **ENGINEER**'S man-hour estimate to provide the work and services is not a firm commitment on

the part of the **ENGINEER**. A change in man-hours is not a basis to change the Fixed Fee unless the increase or decrease in man-hours is due to a substantial change in the required scope of work and services.

#### **F. Specific Rates of Compensation**

Specific rates of compensation shall be determined using actual hourly payroll rates multiplied by the fixed specific rate factor. The **ENGINEER** shall include in its price proposal a listing of anticipated project employees by name, classification, and payroll rate per hour. The hourly payroll rates as listed will be subject to review by the **COMMISSION** during the price proposal negotiations. During the life of the project, the **ENGINEER** shall notify the **COMMISSION**'s Director of Traffic Engineering & Operations or designee of new employees assigned to the project and proposed wage rate increases prior to placing them into effect. If the **COMMISSION** objects to the amount of such increase, the wage rate will be rejected and justification will be required.

The specific rate factor shall remain fixed for the life of the Work Order and shall be determined using the profit rate and the overhead rate that is approved in the Department's ECMS at the time of the price proposal submission. If the **ENGINEER** does not have an overhead rate approved in ECMS, the **ENGINEER** shall have a FAR Audit performed for its most recently completed fiscal year and furnished to the **COMMISSION** with its price proposal, at no direct cost to the **COMMISSION**. If the latest fiscal year concluded within six calendar months prior to the submission of the **ENGINEER**'s price proposal the maximum overhead rate could be based on a FAR Audit for a fiscal year completed within the previous eighteen months.

## **G. Invoicing**

The **ENGINEER** may at intervals of not less than once a calendar month submit an invoice for its accrued direct and indirect costs for the invoice period, including certified invoices paid to subconsultants, subcontractors and suppliers. Invoicing intervals may be less often than once a month upon approval by the **COMMISSION**'s Director of Traffic Engineering & Operations or designee.

For Cost Plus Fixed Fee invoices the Fixed Fee will be earned based on the percent of work completed regardless of the amount and will be invoiced as a part of a monthly invoice for direct and indirect costs. Cost Plus Fixed Fee invoices shall include backup documentation showing proof of overhead rate approval in the form of a printout from ECMS or documentation of **COMMISSION** approval of the **ENGINEER**'s FAR audited Overhead Rate. The computation of the **ENGINEER**'s monthly partial payment will be computed initially using, at a maximum, the provisional Overhead Rate. Upon notification in ECMS or upon approval by the **COMMISSION** of a new FAR audited Overhead Rate, the **ENGINEER** shall use, at a maximum, the new provisional Overhead Rate for the computation of the **ENGINEER**'s ensuing monthly partial payments. Overhead rate adjustment invoices or refunds are not required unless the **ENGINEER** fails to use, at a maximum, the provisional overhead rate that was approved at the end of the invoice period in the computation of its monthly partial payment.

## **H. Monitoring of Costs**

When the costs incurred by the **ENGINEER** for any cost category other than Fixed Fee/Profit reaches seventy-five (75) percent of the maximum not to be exceeded amount for that

cost category, the **ENGINEER** shall cease work and evaluate the status of the Work Order. Work shall not recommence and the **COMMISSION** will not process any invoices on that Work Order unless one of the following actions has occurred:

1. The **ENGINEER** has evaluated the status of the work and services required for that Work Order under the terms of the Agreement and verifies in writing that all of the work and services required for that Work Order can be provided without exceeding the maximum amounts stipulated in executed Work Order.
  
2. The **ENGINEER** has evaluated the status of work and services required to be provided for Work Order under the terms of the Agreement and has requested a supplement for additional funds to complete the work and services or a transfer of existing funds within the **COMMISSION**'s executed Work Order. The **COMMISSION**, acting through the Director of Traffic Engineering & Operations or his designee, has reviewed the **ENGINEER**'s request, has agreed that the Supplemental Work Order request or fund transfer is justified, and has notified the **ENGINEER** in writing that they may continue with the work and services up to the maximum not to be exceeded amounts stipulated in the approved executed Work Order Amendment.

## **I. Overpayment and Non-eligible Costs**

In the event that an overpayment or non-eligible charge is disclosed, as a result of a Departmental audit of the certified costs as herein provided, it is agreed by the **ENGINEER** that upon notice of such overpayment or non-eligible charge the **ENGINEER** will refund the amount

thereof to the **COMMISSION** in accordance with the terms of such notice. Upon failure of **ENGINEER** to comply with said notice **COMMISSION** is hereby authorized to deduct such overpayments from monies due the **ENGINEER** under the terms of the Agreement or any other agreement between the **COMMISSION** and the **ENGINEER**.

#### **J. Final Invoice**

After the work to be performed by the **ENGINEER** under the Agreement has been completed and deemed satisfactory in all respects by the **COMMISSION**'s Director of Traffic Engineering & Operations or designee, the **COMMISSION** will pay to the **ENGINEER** upon its final invoice when accepted and approved by the **COMMISSION**'s Director of Traffic Engineering & Operations or designee, all moneys due the **ENGINEER** under the terms of the Agreement. The payment of the final invoice to the **ENGINEER** for work and services under the terms of the Agreement does not waive the right of the **COMMISSION** to establish overpayments or adjustments disclosed by subsequent audits by the **COMMISSION** of the **ENGINEER**'s project records and cost accounts. The **COMMISSION** will notify the **ENGINEER** of such amounts due the **COMMISSION** and request a refund for the amount of the overpayment as provided in these Specifications. 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.

## **K. Offset Provision**

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**.

## **ARTICLE V – NON-DISCLOSURE**

A. 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.

B. 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**.

**C.** 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.

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

**E.** 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** shall be responsible for, and shall indemnify, defend, and hold harmless the **COMMISSION** and its Commissioners, officers, employees, and agents (the “Indemnified Parties”) from all claims, liabilities, damages, and costs including reasonable attorneys’ fees, for bodily injury (including death) and damage to real or tangible personal property arising from or related to the negligence or other tortious acts, errors, and omissions of **ENGINEER**, its employees, or its subcontractors while engaged in performing the work of this Agreement or while present on the **COMMISSION**’s premises, and for breach of this Agreement regarding the use or disclosure of proprietary and confidential information where it is determined that **ENGINEER** is responsible for any use of such information not permitted by this Agreement. This indemnification obligation shall not be reduced in any way by any limitation on the amount or type of damages, compensation, or benefits payable by **ENGINEER** or its subcontractors under any employee benefit act including but not limited to workers’ compensation acts, disability benefits Acts, or other employee benefit act.

## **ARTICLE VII - DATA/INFORMATION SECURITY BREACH NOTIFICATION**

“Breach” shall mean any successful unauthorized acquisition, access, use, or disclosure of **COMMISSION** data that compromises the security or privacy of such data.

“Commission Data” means **COMMISSION**-provided information and **COMMISSION** related information acquired as a result of the services provided to **COMMISSION** under this Agreement.

**ENGINEER** shall report to **COMMISSION** any Breach affecting Commission Data.

The notice to be provided to **COMMISSION** by **ENGINEER** shall be provided without unreasonable delay and no later than within 48 hours of **ENGINEER**'s discovery of any Breach. A Breach shall be deemed to be discovered on the first day on which the **ENGINEER** knows or reasonably should have known of the Breach. The notice to be provided to **COMMISSION** by **ENGINEER** shall be made in writing to **COMMISSION**'s Information Security Officer and shall include the following content: (1) the nature of the Breach; (2) the specific **COMMISSION** Data affected by the Breach; (3) the steps the **ENGINEER** is taking to remediate the Breach; and (4) steps the **ENGINEER** is taking to mitigate future Breaches. Following notification of the Breach, **ENGINEER** shall cooperate with **COMMISSION**'s investigation of the Breach and provide any other information regarding the Breach or the Commission Data affected which **COMMISSION** may reasonably request. Should notice to individuals whose information was part of Commission Data be required under any applicable data privacy law, including, but not limited to, individual state data breach notice laws or federal laws such as HIPAA and Graham Leach Bliley Act, **ENGINEER** shall provide **COMMISSION** with copies of any template notification letters and draft regulatory correspondence for **COMMISSION**'s prior approval. **ENGINEER** shall provide any notifications required under the applicable data privacy laws on behalf of **COMMISSION** at the request of the **COMMISSION**. **COMMISSION** reserves the right to handle any notifications required and shall notify **ENGINEER** if **COMMISSION** will be handling the required notifications. Upon request, **ENGINEER** shall provide the **COMMISSION** with its cyber-security policies and procedures. **ENGINEER** agrees to reimburse **COMMISSION** for any and all reasonable costs associated with **COMMISSION**'s response to **ENGINEER**'s Breach, including any fees associated with **COMMISSION**'s

investigation of **ENGINEER**'s Breach, notification costs, and any reasonable offer of credit or identity monitoring product.

#### **ARTICLE VIII - ASSIGNMENT AND DELEGATION**

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

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 in the form of a letter signed by the Director of Traffic Engineering & Operations.

#### **ARTICLE IX – 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 X – 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 XI – TERMINATION**

The **COMMISSION** has the right to terminate this agreement or any portion thereof at any time upon ten (10) calendar day's written notice, signed by the Director of Traffic Engineering & Operations. 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 terminate 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.

## **ARTICLE XII –CONTRACTOR INTEGRITY PROVISIONS**

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 contracting and procurement process.

**A. DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

1. **“Affiliate”** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
2. **“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 the execution of this contract.
3. **“Contractor”** means the individual or entity, that has entered into this contract with the Commission, and “Contractor Related Parties” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5% or more interest in the Contractor
4. **“Financial Interest”** means either:
  - a. Ownership of more than a five percent interest in any business; or
  - b. Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

5. **“Gratuity”** means tendering, giving, or providing anything of 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. See *Commission Policy 3.10, Code of Conduct*.
6. **“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.

**B.** In furtherance of this policy, **GANNETT FLEMING, INC.** (“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 or procurement 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 activity with the Commission and Commission employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
3. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer,

directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of 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 in violation of any other federal or state law in connection with performance of work under this contract, except as provided in this contract.

4. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, 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.
5. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Entities have not:
  - a. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
  - b. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
  - c. had any business license or professional license suspended or revoked;
  - d. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

- e. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.
- 6. If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commission will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commission in writing if at any time during the term of the contract if becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commission may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.
- 7. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- 8. 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 these Contractor Integrity 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 the Chief Compliance Officer in writing.

9. 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, to include any extensions thereof. Contractor shall immediately notify the Commission in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commission for the reasonable costs of investigation incurred by the Chief Compliance Officer for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commission that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
10. Contractor shall cooperate with the Chief Compliance Officer in investigating any alleged Commission agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews

at reasonable times and places. Contractor, upon the inquiry or request of an 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 Chief Compliance Officer 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 refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commission and any such subcontractor, and no third party beneficiaries shall be created thereby.

11. 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 debar and suspend Contractor from doing business with the 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.

### **ARTICLE XIII – AUDIT/RETENTION OF RECORDS**

**ENGINEER** and its subcontractors shall maintain books and records related to performance of this Agreement or subcontract and necessary to support amounts charged to the **COMMISSION** in accordance with applicable law, terms and conditions of this Agreement, and generally accepted accounting practice. **ENGINEER** shall maintain these books and records for a minimum of three (3) years after the completion of the Agreement, 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. **ENGINEER** agrees to cooperate fully with any such review or audit. If any audit indicates overpayment to **ENGINEER**, or subcontractor, the **COMMISSION** shall adjust future or final payments otherwise due. If no payments are due and owing to **ENGINEER**, or if the overpayment exceeds the amount otherwise due, **ENGINEER** 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 this Agreement for which adequate books and records are not available to support the purported disbursement.

#### **ARTICLE XIV – COMMITMENT TO DIVERSITY AND INCLUSION**

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** shall furnish or make available for inspection, in a timely manner to the Office of Diversity and Inclusion, **ENGINEER**'s Equal Opportunity Plan (subsequent updates if a version was requested and submitted at time of contract award), communications, verification of payments, and necessary reports and assistance necessary to demonstrate compliance with these provisions regarding nondiscrimination, equal opportunity, and commitment to diversity. For contracts requiring a minimum participation level for Diverse Businesses (DBs) or for contracts for which DBs are indicated as part of the team in the initial Statement of Interest, the **ENGINEER** shall provide the **COMMISSION** with an executed copy of the contract with the **ENGINEER**'s DB subconsultant(s). The **ENGINEER** shall pay the DB subconsultant(s) within ten (10) business days of receipt of payment from the **COMMISSION**.

The **ENGINEER** agrees to maintain the minimum participation level of 10% for the inclusion of DB firms for the duration of the agreement including supplements hereto and provide monthly status reports that demonstrate that this commitment is being upheld. **ENGINEER** shall first attempt to maintain minimum participation levels by using DB firms as listed in the Statement of Interest for Advertisement T00125. In the alternative, a showing of good faith effort shall be

documented and be subject to the concurrence of the **COMMISSION**. Failure to make a good faith effort to maintain the minimum participation level will result in the **ENGINEER** being in breach of the agreement. Refer to Diverse Business Requirements in attached Exhibit C, section (d) Consultant Requirements During Performance of Services.

#### **ARTICLE XV – USE OF UNMANNED AIRCRAFT SYSTEMS**

The **ENGINEER** shall not use or operate Unmanned Aircraft Systems (UAS) without the express written approval of the **COMMISSION**. Such approval shall be determined upon review and authorization of a written request from the **ENGINEER** by the **COMMISSION**'s Legal Department and UAS program managers. If approved, the **ENGINEER** shall execute a separate Authorization to Operate UAS or other applicable third-party agreement prepared by the **COMMISSION**'s Legal Department setting forth the necessary indemnification, release and insurance requirements. The Authorization shall define the requirements the **ENGINEER** must follow in order to operate UAS within **COMMISSION** right-of-way and property. All approved UAS operations shall be conducted using Small Unmanned Aircraft Rule (Part 107) (14 CFR Part 107) of the Federal Aviation Administration (FAA) Regulations.

#### **ARTICLE XVI – EXECUTION IN COUNTERPARTS**

This Agreement may be executed in counterparts, including counterparts transmitted electronically or by facsimile, each of which shall constitute an original of this Agreement.

## **XVII - 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 Director of Traffic Engineering & Operations, 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 Director of Traffic Engineering & Operations. In no event may the **ENGINEER** incur any liability by any verbal directions or instructions that he may be given by the Director of Traffic Engineering & Operations 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 Director of Traffic Engineering & Operations.

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 submit for approval by the Director of Traffic Engineering & Operations or his designee: a project schedule (to be updated monthly) within 30 days of Notice to Proceed for each work order. Failure to receive approval of the above item will result in the **COMMISSION** withholding payment to the **ENGINEER**.

The **COMMISSION** uses KAHUA (by KAHUA, Inc., found at [kahua.com](http://kahua.com)), as its project collaboration and documentation system tool. The **ENGINEER** is required to purchase and maintain the number of KAHUA licenses that are needed for this contract, as determined by the **ENGINEER** and at the **ENGINEER**'s cost.

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

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)**

**IN WITNESS WHEREOF**, the Pennsylvania Turnpike Commission and GANNETT FLEMING, INC. executed this Agreement by their duly authorized officers on the date written above.

**ATTEST:**

## PENNSYLVANIA TURNPIKE COMMISSION

Ann Louise Edmunds  
Assistant Secretary-Treasurer

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Chair Date

**APPROVED AS TO FORM AND LEGALITY:**

Albert C. Peters II Date  
General Litigation and Contracts Counsel

**Pennsylvania Attorney General Date**

**ATTEST:**

## **GANNETT FLEMING, INC.**

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Signature \_\_\_\_\_ Date \_\_\_\_\_

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Signature \_\_\_\_\_ Date \_\_\_\_\_

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Type Name

Type Name

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Type Title

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Type Title

25-1613591

**Federal Tax ID Number(s)**

	<b>Pennsylvania Turnpike Commission</b> <b>SPECIFICATIONS AND SPECIAL REQUIREMENTS</b> <b>FOR FINAL DESIGN</b>	December 2013
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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 at the sole expense of the Engineer.

5. For open-end agreements that are not project-specific, the Engineer shall submit, if requested by the Chief Engineer or his designee, a contract status report in the form agreed to on a monthly basis that provides information pertaining to each Work Order's authorized and invoiced amounts.

	<b>Pennsylvania Turnpike Commission</b> <b>SPECIFICATIONS AND SPECIAL REQUIREMENTS</b> <b>FOR FINAL DESIGN</b>	December 2013
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6. For agreements with established minimum participation levels or if requested by the Chief Engineer or his designee, the Engineer shall submit a DBE/MBE/WBE Status Report on the previous months work in the form agreed to on a monthly basis that provides information pertaining to the amount and percentage authorized and paid to DBE/MBE/WBE subconsultants.
7. 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.
8. 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.
9. 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.

	<p style="text-align: center;"><b>Pennsylvania Turnpike Commission</b>  <b>INSURANCE SPECIFICATION</b>  <b>MINIMUM INSURANCE REQUIREMENTS</b></p>	<p style="text-align: right;">February 2017</p>
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Before starting any work and until completion and final payment is made for the work, or final acceptance of the work, the Contractor will provide and maintain the following minimum levels of insurance at Contractor's own expense. The cost of the required insurance shall be included in the Contractor's cost proposal and no adjustment shall be made to the contract price on account of such costs. Contractor shall furnish Certificates of Insurance showing the effective date of coverage as outlined below. No work may be performed until the required evidence of Insurance is provided in accordance with the terms of the contract. Contractor shall be responsible for ensuring that all Subcontractors hired by the Contractor are properly insured. Contractor shall not permit any such Subcontractors to start work until such evidence has been provided to the Contractor.

- a) All insurance shall be procured from insurers permitted to do business in the State in which the project is taking place and having an A.M. Best Rating of at least "A-, Class VIII".
- b) Contractor shall not have a Self Insured Retention (SIR) on any policy greater than \$50,000, which is the responsibility of the Contractor. If Contractor's policy(ies) has a Self Insured Retention exceeding this amount, approval must be received from the Commission prior to starting work. In the event any policy includes an SIR, the Contractor is responsible for payment within the SIR of their policy(ies) and the Additional Insured requirements specified herein shall be offered within the SIR amount(s).
- c) All insurance required herein, except for Professional Liability Insurance, shall be written on an "occurrence" basis.
- d) The Contractor's insurance carrier(s) shall agree to provide at least thirty (30) days prior written notice to the Commission in the event coverage is canceled or non-renewed, unless cancellation is for non-payment of premium. In the event of cancellation or non-renewal of coverage(s) for any reason, it is the Contractor's responsibility to replace coverage to comply with the Contract requirements so there is no lapse of coverage for any time period.

If the insurance carriers will not issue or endorse their policy(s) to comply with the above it is the responsibility of the Contractor to report any notice of cancellation or non-renewal at least thirty (30) days prior to the effective date of this notice.

- e) Contractor shall provide the Commission with Certificates of Insurance, showing the insurance coverages listed below, ten days prior to the start of work of this Project and thereafter upon renewal or replacement of each coverage. The Contractor shall not begin any work until the Commission has reviewed and approved the Certificate of Insurance.

Failure of the Commission to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Commission to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.



## Pennsylvania Turnpike Commission

### INSURANCE SPECIFICATION MINIMUM INSURANCE REQUIREMENTS

February 2017

Upon completion of the contract, an additional certificate(s) of insurance evidencing coverage shall be provided to the Commission with final application for payment.

- f) The Commission, and its Commissioners, officers, employees and agents shall be added as ADDITIONAL INSUREDS on all required liability policies (except Workers' Compensation and Professional Liability) for ongoing operations and completed operations on a primary noncontributory basis.

The Commission reserves the right to require Contractor to name other parties as additional insureds as required by the Commission.

- g) Waiver of Rights of Subrogation: Contractor shall waive all rights of recovery against the Commission and all the additional insureds for loss or damage covered by any of the required insurance (except Professional Liability).
- h) The amount of insurance in the required coverages shall not be construed to be a limitation of the liability on the part of the Contractor.
- i) The carrying of insurance described below shall in no way be interpreted as relieving the Contractor of any responsibility or liability under the contract.
- j) Any type of insurance or any increase in limits of liability not required by the Commission but which the Contractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense.
- k) Contractor shall promptly notify the Commission and the appropriate insurance company(ies) in writing of any accident(s) as well as any claim, suit or process received by the insured Contractor arising in the course of operations under the contract. The Contractor shall forward such documents received to its insurance company(ies), as soon as practicable, or as required by its insurance policy(ies).

**REQUIRED COVERAGES - the following may be provided through a combination of primary and excess policies in order to meet the minimum limits set forth below:**

1. **Workers' Compensation and Employer's Liability:**

Provided in the State in which the work is to be performed and elsewhere as may be required and shall include:

- a) Workers' Compensation Coverage: Statutory Requirements
- b) Employers Liability Limits not less than:
- |                            |                         |
|----------------------------|-------------------------|
| Bodily Injury by Accident: | \$500,000 Each Accident |
| Bodily Injury by Disease:  | \$500,000 Each Employee |
| Bodily Injury by Disease:  | \$500,000 Policy Limit  |
- c) Includes sole proprietorships and officers of corporation who will be performing the work.



Pennsylvania Turnpike Commission

## INSURANCE SPECIFICATION

## MINIMUM INSURANCE REQUIREMENTS

February 2017

## 2. Commercial General Liability:

Provided on standard ISO forms or an equivalent form including Premises - Operations, Independent Contractors, Products/Completed Operations, Broad Form Property Damage, Contractual Liability, and Personal Injury and Advertising Injury.

- a) Occurrence Form with the following limits:
    - (1) General Aggregate: \$2,000,000
    - (2) Products/Completed Operations Aggregate: \$2,000,000
    - (3) Each Occurrence: \$1,000,000
    - (4) Personal and Advertising Injury: \$1,000,000
  - b) Products/Completed Operations Coverage must be maintained for a period of at least three (3) years after final payment / completion of work (including coverage for the Additional Insureds as set forth in these Insurance Requirements).
  - c) No amendment to the definition of an "Insured Contract" except that the definition of an "Insured Contract" must be amended to provide coverage for all work on or within 50 feet of a railroad. A stand-alone Railroad Protective Liability policy may be required based on the scope of this project.

### 3. **Automobile Liability:**

- a) Coverage to include All Owned, Hired and Non-Owned Vehicles (or "Any Auto"). If Contractor does not have any Owned Vehicles, Contractor is still required to maintain coverage for Hired and Non-Owned Vehicles as either a stand-alone policy or endorsed onto the Commercial General Liability policy above
  - b) Per Accident Combined Single Limit \$1,000,000

#### 4. **Commercial Umbrella Liability:**

- a) Policy(ies) to apply on a Following Form Basis of the following:  
(1) Commercial General Liability,  
(2) Automobile Liability, and  
(3) Employers Liability Coverage.

b) Minimum Limits of Liability  
Occurrence Limit: \$5,000,000  
Aggregate Limit (where applicable): \$5,000,000

## 5. Professional Liability Insurance:

- a) Minimum Limits of Liability
    - Per Claim Limit: \$5,000,000
    - Aggregate Limit: \$5,000,000
  - b) The Definition of "Covered Services" shall include the services required in the scope of this contract.
  - c) Coverage shall be extended to cover "Green Building", if applicable.



## Pennsylvania Turnpike Commission

### INSURANCE SPECIFICATION

### MINIMUM INSURANCE REQUIREMENTS

February 2017

d) If Professional Liability coverage is written on a claims made form the following requirements will apply:

- 1) The retroactive date must be on or before the start of work under this contract;
- 2) The Contractor must purchase "tail coverage/an extended reporting period" or maintain coverage for a period of three (3) years after the completion of their work/final payment.

	<b>Pennsylvania Turnpike Commission</b> DIVERSE BUSINESS (DB) REQUIREMENTS	October 2014
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**Diverse Business Participation.** The Commission is committed to Diverse Business (DB) participation on competitive contracting opportunities. Firms or entities that have not previously performed work or provided services to the Commission are encouraged to respond to the solicitations. RFPs may include DB participation as part of the criteria for the evaluation of proposals (for the purposes of this specification Statements of Interest are synonymous with Proposals), and the Commission may consider DB participation as a selection factor.

**Minimum Participation Level (MPL).** The minimum participation level (MPL) for the inclusion of DBs will be established in the RFP/advertisement as a percentage.

**(a) General Requirements.** Section 303 of Title 74 of the Pennsylvania Consolidated Statutes, 74 Pa.C.S. § 303, requires proposer on contracts funded pursuant to the provisions of Title 74 (Transportation) and 75 (Vehicle Code) administered and issued by the Commission to make Good Faith Efforts to solicit subconsultants that are Diverse Businesses (DBs) as defined in Section 303. The DB requirements of Section 303 apply to this contract.

Section 303 requires proposers to make Good Faith Efforts, as described below, to solicit subconsultants that are DBs during the proposal process to maximize participation of DBs in competitive contracting opportunities.

The Commission is committed to participation by DBs and will enforce the requirements of Section 303 and this section. Failure to make Good Faith Efforts and demonstrate such Good Faith Efforts in the solicitation of subconsultants may result in the proposer being declared ineligible for the contract.

Proposers shall document and submit to the Commission all Good Faith Efforts, as described in this section, to solicit subconsultants that are DBs during the solicitation process.

Proposers are encouraged to utilize and give consideration to consultants offering to utilize DBs in the selection and award of contracts.

Proposers shall not discriminate on the basis of gender, race, creed or color in the award and performance of contracts in accordance with 62 Pa.C.S. §3701.

Failure to comply with the requirements of Section 303 or this specification may result in the imposition of sanctions as appropriate under section 531 of the Procurement Code, 62 Pa.C.S. § 531 relating to debarment and suspension.

The Commission's Director of the Office of Diversity and Inclusion, or designee, is designated the Responsible Official who shall supervise the DB program and ensure that the Commission complies with the DB program.

**(b) Definitions.** The following definitions apply to terms used in this specification:

**1. Disadvantaged Business** – A business that is owned or controlled by a majority of persons, not limited to members of minority groups, who are subject to racial, social, ethnic prejudice or cultural bias.

**2. Diverse Business** – A disadvantaged business, minority-owned or women-owned business or service-disabled veteran-owned or veteran-owned small business that has been certified by a third-party certifying organization.

**3. Minority-owned Business** – A business owned and controlled by a majority of individuals who are African Americans, Hispanic Americans, Native Americans, Asian Americans, Alaskans or Pacific Islanders.

**4. Professional Services** – An industry of infrequent, technical or unique functions performed by independent contractors or consultants whose occupation is the rendering of the services, including: (1)

	<b>Pennsylvania Turnpike Commission</b> DIVERSE BUSINESS (DB) REQUIREMENTS	October 2014
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design professional services as defined in 62 Pa.C.S. § 901 (relating to definitions); (2) legal services; (3) advertising or public relations services; (4) accounting, auditing or actuarial services; (5) security consultant services; (6) computer and information technology services; and (7) insurance underwriting services.

**5. Pro Forma Effort** – The act of completing a form or document identifying efforts to solicit DBs for a project in order to satisfy criteria with little or no expectation that the DBs contacted or identified will perform any of the work.

**6. Service-Disabled Veteran-Owned Small Business** – A business in the United States which is independently owned and controlled by a service-disabled veteran(s), not dominant in its field of operation, and employs 100 or fewer employees.

**7. Subconsultant** – Any individual, partnership, firm, or corporation entering into a contract with the prime consultant for work under the contract, including those providing professional and other services.

**8. Third-party Certifying Organization** – An organization that certifies a small business, minority-owned business, women-owned business or veteran-owned small business as a diverse business. The term includes: (1) the National Minority Supplier Development Council; (2) the Women's Business Development Enterprise National Council; (3) the Small Business Administration; (4) The Department of Veteran Affairs; (5) the Pennsylvania Unified Certification Program.

**9. Veteran-owned Small Business** – A small business owned and controlled by a veteran or veterans.

**10. Women-Owned Business** – A business owned and controlled by a majority of individuals who are women.

**(c) Actions Required by Proposer during the procurement/consultant selection phase**

**1. Submission Requirements – Consultant Responsiveness.**

- a. **Minimum Participation Level (MPL) Documentation** - If the documentation submitted in conjunction with the proposal demonstrates that the proposer has identified DBs sufficient to meet the MPL established for this contract, the proposer will be deemed to have satisfied the DB requirement during this phase. The proposer is required to provide the business name and business address of each DB and supporting documentation that includes proof of certification.

If the consultant's proposal demonstrates the consultant's inability to meet the MPL established for this contract, the proposer shall demonstrate Good Faith Efforts within 7 calendar days of being notified of the selection. Submit written documentation by email at [RFP-Q@pturnpike.com](mailto:RFP-Q@pturnpike.com). Failure to submit the required documentation demonstrating Good Faith Efforts as further described below within 7 calendar days of being notified of selection may result in a rejection of the proposal.

- b. If no MPL has been established for this contract, the proposer is required to either provide a statement of intent that it will self-perform 100% of the work for the agreement, or demonstrate Good Faith Efforts to solicit subconsultants that are DBs. In either case documentation shall be made within 7 calendar days of being notified of

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selection. Submit written documentation by email at [RFP-Q@paturpike.com](mailto:RFP-Q@paturpike.com).

Failure to submit the required information identified above within 7 calendar days of being notified of selection may result in a rejection of the proposal.

**2. Good Faith Effort Requirements:** The documentation of Good Faith Efforts must include the business name and business address of each DB considered. Supporting documentation must also include proof of certification and any explanation of Good Faith Efforts the proposer would like the Commission to consider. Any services to be performed by a DB are required to be readily identifiable to the agreement. Good Faith efforts are demonstrated by seeking out DB participation in the project given all relevant circumstances. The Commission requires the proposer to demonstrate more than Pro Forma Efforts. Evidence of Good Faith Efforts includes, but is not limited to:

- a. Consultant solicits through all reasonable and available means the interest of all certified DBs with the capacity to perform the scope of work set forth in the agreement.
- b. The proposer must provide written notification at least 5 business days before solicitations are due to allow the DBs to respond to the solicitation.
- c. The proposer must determine with certainty if DBs are interested by taking appropriate steps to follow up initial solicitations.
- d. The proposer must make efforts to select portions of the work to be performed by DBs to include, where appropriate, breaking out contract work into economically feasible units to facilitate DB participation;
- e. It is the proposer's responsibility to make a portion of the work available to DBs and, to select those portions of the work, so as to facilitate DB participation.
- f. The proposer shall provide evidence of such negotiations that include the names, addresses, and telephone numbers of DBs considered; A description of the information provided regarding the required work and services for the work selected for subconsultants; and evidence as to why additional agreements could not be reached for DBs to perform the work.
- g. Proposers cannot reject or withhold solicitation of DBs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- h. The DB's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example union v. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the proposer's efforts to meet the Good Faith Efforts requirement.
- i. Efforts to assist interested DBs in obtaining bonding, lines of credit or insurance.

**3. Actions Taken by the Commission.** After the apparent successful proposer has been notified of its selection, the Commission will review the submissions to determine whether the proposer has complied with Section 303 and this specification in the selection of DB subconsultants. The Commission will determine whether the proposer has either met the MPL or provided acceptable documentation as noted above. The Commission reserves the right to contact proposers for clarification during the review and negotiation process.

If the Commission determines that the proposer has failed to either meet the MPL or provide acceptable documentation as noted above, the proposal may be rejected.

**(d) Consultant Requirements During Performance of Services.**

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**1. Replacement of a DB Subconsultant.** Consultant must continue good faith efforts through completion of the contract. The obligation to make Good Faith Efforts to solicit subconsultants for any type of service extends to additional work required for any service which is identified to be performed by a DB. If at any time during the performance of the work, it becomes necessary to replace or add a subconsultant that is a DB, the consultant, as appropriate, shall immediately notify the Commission and seek approval in writing in accordance with the Agreement of the need to replace the DB, which notice shall include the reasons for the replacement. If a prime consultant who originally indicated that it would self-perform all work subsequently decides to use a subconsultant for any work under the contract, the consultant must submit documentation of all Good Faith Efforts as to the work for which a subconsultant is obtained.

**2. Records.** Maintain project records as are necessary to evaluate DB compliance and as necessary to perform the reporting function addressed below. Maintain all records for a period of 3 years following acceptance of final payment. Make these records available for inspection by the Commission, its designees or agents. These records should indicate:

**2.a.** The number of DB and non-DB subconsultants and the type of services performed on or incorporated in this project.

**2.b.** The progress and efforts made in seeking out DB subconsultant organizations and individual DB consultants for work on this project to increase the amount of DB participation and/or to maintain the commitments made at the time of the proposal to DBs.

**2.c.** Documentation of all correspondence, contacts, telephone calls, and other contacts made to obtain the service of DBs on this project.

**3. Reports.** Maintain monthly reports and submit reports as required by the Commission concerning those contracts and other business executed with DBs with respect to the records referred to in subsection (e)2. above in such form and manner as prescribed by the Commission. At a minimum, the Reports shall contain the following:

**3.a** The number of Contracts with DBs noting the type of services provided, including the execution date of each contract.

**3.b** The amounts paid to each DB during the month, the dates of payment, and the overall amounts paid to date. If no payments are made to a DB during the month, enter a zero (\$0) payment.

**3.c** Upon request and upon completion of individual DB firm's work, submit paid invoices or a certification attesting to the actual amount paid. In the event the actual amount paid is less than the award amount, a complete explanation of difference is required.

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#### 4. Subconsultant Contracts

**4.a.** Subcontracts with DB firms will not contain provisions waiving legal rights or remedies provided by laws or regulations of the Federal Government or the Commonwealth of Pennsylvania or the Commission through contract provisions or regulations.

**4.b.** Prime consultant will not impose provisions on DB subconsultants that are more onerous or restrictive than the terms of the prime's contract with non-DBs.

**4.c.** Executed copies of subcontracts/purchase orders are to be received by the Commission before the commencement of work by the DB.

**5. Payments to DB Subconsultants.** Payments to DBs are to be made in accordance with the prompt payment requirements of Chapter 39, Subchapter D of the Procurement Code, 62 Pa.C.S. §3931 et seq. Performance of services by a DB subconsultant in accordance with the terms of the contract entitles the subconsultant to payment.

**(e) Actions to be Taken by Commission After Performance of Services.** Following completion of the Consultant's services, the Director of the Commission's Office of Diversity and Inclusion or his/her designee will review the overall DB participation to assess the Consultant's compliance with Section 303 and this contract. Appropriate sanctions may be imposed under 62 Pa.C.S. § 531 (relating to debarment or suspension) for a Consultant's failure to comply with Section 303 and the requirements of the contract.



## General Security Requirements

Vendor shall supply all hosting equipment (hardware and software) required for performance of the contract and ensure maintenance and replacement as necessary to maintain compliance with the Service Level Agreement(s).
The vendor shall warrant all system/software to be delivered free of malware or other malicious or destructive code.
In the event of adverse risk findings through an audit or assessment, the vendor shall cooperate with the Commission in remediating any risks to the system, including complying with requests to temporarily take the system offline or otherwise limit access to the system during remediation if warranted.
Vendors must have a plan for compliance with all applicable breach notification laws, including Pennsylvania's Breach of Personal Information Notification.
The Commission must be notified in writing within 72 hours of the earliest indication or report of a potential breach or unintended disclosure of confidential information.
Incident response actions that may affect confidential information must be conducted quickly and with ample resources. Vendor must hire a professional third-party incident response team if its inhouse resources do not have sufficient skill or availability.
The Commission shall have the right to view all incident response evidence, reports, communications, and related materials, affecting Commission systems, upon request.
If requested by the Commission, or if required by law, the vendor, at its own cost and expense, shall notify in writing all persons affected by the incident.
The vendor is responsible for hardening all devices to run only the services required to support the application. All unnecessary services must be disabled (for example, UPnP, SLP, etc.).
If Commission user service disruptions are expected, the change must be approved by the Change Review Board (CRB) before implementation.
No generic user accounts for shared resources will be permitted.
Audit logs must be implemented for all systems. All actual or attempted violations of system security must generate an audit log. Audit logs must be secured against unauthorized access or modification.
All account credentials (username/password) must be encrypted during transmission.
All administrator account passwords and SNMP community strings must be changed from the manufacturer's default values to a hardened value.



## Hosted/Cloud-Based Security Requirements

<p>The Commission's data must be located and remain within the continental United States.</p>
<p>Vendor shall use commercially reasonable resources and efforts to maintain adequate internet connection bandwidth, service capacity, and ensure its data center and/or other vendors performing subcontracted services have industry standard physical, technical, human, and administrative controls.</p>
<p>Vendor shall house all services and equipment in an operational environment that meets industry standards including climate control, fire and safety hazard detection, redundancy, electrical needs, and physical security.</p>
<p>If Commission employee access is required, then the latest version of ADFS (Active Directory Federated Services), using the latest version of SAML, must be used for authentication and authorization.</p>
<p>All cloud-based/hosted systems using HTTPS, or any other protocol using SSL/TLS, must use TLS 1.2 or later with a key size no smaller than 2048 bits.</p>
<p>For public-facing systems, the vendor shall utilize a third-party certificate provider who is a recognized and trusted authority in the industry.</p>
<p>The vendor is responsible for sending the Commission system/network vulnerability scan results upon request.</p>
<p>The vendor will supply firewall and IPS logs for malicious intrusion and access attempts into hosted Commission systems upon request.</p>
<p>Vendors must have, and upon request by the Commission, shall provide copies of its information security policies that cover the following elements:</p> <ul style="list-style-type: none"><li>- Data classification and privacy</li><li>- Security training and awareness</li><li>- Systems administration, patching, and configuration</li><li>- Application development and code review</li><li>- Incident response</li><li>- Workstation management, mobile devices, and antivirus</li><li>- Backups, disaster recovery, and business continuity</li><li>- Regular audits and testing</li><li>- Requirements for third-party business partners and contractors</li><li>- Compliance with information security or privacy laws, regulations, or standards</li></ul>
<p>The vendor shall allow the Commission, or an agreed upon third party, to perform security assessments, vulnerability assessments, or audits of systems that contain Commission data.</p>
<p>For systems hosted off the Commission's network, an industry-accepted endpoint protection solution must be operated on all hosting servers.</p>



## On-Prem/Physically-Connected Security Requirements

The Commission's IT Security Team must be allowed to scan, for security vulnerabilities, any new equipment and/or changes to existing equipment before implementation.

The Commission's IT Security team must be given administrator-level access to all installed equipment for incident response and security assessment.

All Microsoft Windows-based systems, connected to the Commission's network, will be joined to the Commission's Active Directory domain and will be patched by the Commission's IT staff on a monthly-basis at a minimum.

The vendor is responsible for updating all non-Windows systems, not operated or administered by the Commission, to the vendors' latest recommended level.

All vendors shall use the Commission's VMWare's HorizonView infrastructure for remote access.

The vendor's system/software must co-exist with all industry accepted endpoint software with no exceptions.

The vendor must provide the necessary directory and file exclusions to allow the system/software to operate as intended.