

MASTER SUBCONSULTANT AGREEMENT
PDT E05081/GF 069059

This MASTER SUBCONSULTANT AGREEMENT – SINGLE PROJECT (“**Agreement**”) effective the
 day of , **2021** (“**Effective Date**”) is between

with an office located at 207 Senate Avenue, Camp Hill, PA 17011 (“**Gannett Fleming**”); and McCormick Taylor, Inc. with an office located 5 Capitol Drive, Suite 400, Harrisburg, PA 17110 (“**Subconsultant**”). Gannett Fleming and Subconsultant may also be referred to individually, as a “**Party**”, and collectively, as the “**Parties**”.

WHEREAS, Gannett Fleming has executed a Prime Agreement with the Client identified as the Pennsylvania Department of Transportation, Public-Private Transportation Partnership Office (“**Client**”), or an agreement with a consultant of a higher tier under the Prime Agreement to perform services for a Project identified as PDT# E05081, P3 Project Management PennDOT PATHways Major Bridge Initiative, GF Project #069059 (“**Project**”), and as expressly further specified in a work order executed between the Parties pursuant to this Agreement (“**Work Order**”), and desires to enter into an agreement with Subconsultant to perform Services on the Project; and

WHEREAS, the Subconsultant is willing, able, and authorized to perform the Services as Gannett Fleming’s Subconsultant on the Project.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Parties agree, as follows:

1. DEFINITIONS

- a. “**Applicable Law(s)**” means all legal, regulatory, and professional requirements which apply to Subconsultant’s performance of its obligations under this Agreement, including but not limited to, requirements that are identified in this Agreement or the Prime Agreement, and other federal state and local laws, ordinances, statutes, rulings, and regulations that are in effect at the time the Services are performed and govern Subconsultant’s performance of the Services.
- b. “**Claim(s)**” means causes of action, claims for damages, or any dispute, including, but not limited to, those arising with third parties, along with any losses, liabilities, costs, judgments, awards, arbitration, penalties, fines, or any other cost which a Party may incur or become liable for in connection with this Agreement or the Services, whether in whole or in part, and regardless of the legal theory, including but not limited to, injury, death, damage to property, or any other liabilities arising from this Agreement.
- c. “**Prime Agreement**” means the agreement between the Client and Gannett Fleming and/or any consultant of a higher tier governing the Project, as may be amended, and all referenced provisions therein, including documents incorporated by reference therein. The prime contract comprising part of such entire agreement dated **the ___ day of ___, 2021** is incorporated into this Agreement as described in Section 2 below.
- d. “**Services**” means the services to be performed by Subconsultant for the Project as described in a Work Order and as further specified in the Prime Agreement.

2. INCORPORATION OF THE PRIME AGREEMENT

The Parties will attach the Prime Agreement to this Agreement and the Prime Agreement is incorporated into this Agreement in its entirety. Subconsultant shall be subject to all provisions of the Prime Agreement which are applicable to its Services. The Prime Agreement, along with any amendment or work orders subsequently issued by the Client, shall be incorporated into this Agreement regardless of whether its provisions are hereto attached, in which case Subconsultant expressly acknowledges its sole responsibility to

obtain and review the provisions of the Prime Agreement prior to commencing its Services. The terms of this Agreement and the Prime Agreement shall be read together and construed, to the fullest extent possible, to be consistent. In the event of a direct conflict between the provisions of this Agreement and the provisions of the Prime Agreement, the provisions of the Prime Agreement shall control where the conflicting provision of the Prime Agreement imposes a more stringent requirement on Subconsultant. In all other instances, the provisions of this Agreement shall control. In addition to Subconsultant being subject to the provisions in the Prime Agreement which are applicable to its Services, Subconsultant assumes all contractual duties and/or obligations towards each and every party which the Prime Agreement requires Gannett Fleming to assume, including, but not limited to, those towards the Client and its named indemnitees and beneficiaries, all to the same degree and extent as Gannett Fleming. Gannett Fleming shall have the benefit of all rights, remedies and redress against Subconsultant that Client, by the Prime Agreement, has against Gannett Fleming.

3. SUBCONSULTANT DUTIES AND OBLIGATIONS

- a. Standard of Care. Subconsultant shall be obligated to perform all Services with the degree of care expected of a reasonably prudent professional performing similar services on substantially the same type of project, in the same geographic area under similar circumstances and conditions at the time such Services are performed in addition to any standard of care or similar requirement set forth in the Prime Agreement (“**Standard of Care**”). Failure to meet the Standard of Care shall be a material breach of this Agreement.
- b. Execution of the Services. Subconsultant shall supply and pay for all supervision, labor, administration, transportation, equipment, materials, supplies, insurance, and other facilities required and incidental for the prompt and efficient execution of the Services.
- c. Corporate Qualifications. During the Term of this Agreement, Subconsultant represents and covenants that it: (i) has the experience, capabilities, qualifications, and resources to perform the Services as required; (ii) fulfills all disclosure obligations and certifications required for performance of the Services in compliance with Applicable Laws and this Agreement; (iii) it validly exists under the laws of its jurisdiction of incorporation and is authorized to conduct business in any jurisdiction where the Services are offered and performed; (iv) it has the necessary corporate authority to enter into and perform its obligations under this Agreement; (v) there are no pending, threatened, or anticipated Claims that would have a material effect on its financial health or performance under the Agreement; and (vi) it is free of any actual or potential conflict of interest, including, but not limited to, those defined in any solicitation or procurement process to which the Services are subject, if any.
- d. Personnel Qualifications. Subconsultant represents and warrants that all personnel engaged in performing the Services have the experience, skills, licenses, training, and qualifications required to properly perform the Services in accordance with Applicable Laws and this Agreement. In its sole discretion, Gannett Fleming may require Subconsultant to remove or reassign personnel from the Project if directed in writing by Gannett Fleming or the Client. Subconsultant shall expeditiously comply with such direction and replace any personnel removed with qualified personnel who meet the requirements set forth herein within the period required in the Prime Agreement, if applicable, or as directed by Gannett Fleming. Subconsultant shall not replace or reassign any personnel assigned to perform the Services unless Gannett Fleming consents in writing.
- e. Subcontracting. Subconsultant shall not subcontract any portion of its Services to any other party without the written consent of Gannett Fleming and subject to Client's approval, if required under the Prime Agreement. Subconsultant shall be required to enter into a binding written agreement with each approved subconsultant or subcontractor prior to commencement of any subcontracted Services. The terms of such

agreements shall be no less stringent than the terms of this Agreement and shall incorporate all terms of this Agreement and the Prime Agreement applicable to the subcontracted Services.

- f. Quality. Subconsultant shall be solely responsible for the professional quality, technical accuracy, completeness and compatibility with, and coordination of, all designs, drawings, specifications, calculations, data, reports or other Services to be provided by Subconsultant, and shall promptly, upon notice or discovery thereof and without any additional compensation, correct or revise any errors, omissions, or deficiencies which arise or result from the Subconsultant's Services to the extent constituting a failure to meet the Standard of Care. Neither review, approval or acceptance, nor payment for, any of the Services provided hereunder shall be construed as its approval or acceptance of Subconsultant's Services. Subconsultant shall have a documented Quality Assurance/Quality Control ("**QA/QC**") process that provides for checking and reviewing work for accuracy, completeness and compliance with the scope of services. If Subconsultant does not have an adequate QA/QC process, Subconsultant shall comply with Gannett Fleming's QA/QC processes. Prior to submission of each and every deliverable, Subconsultant shall check and review Subconsultant's work for accuracy and correctness according to the Subconsultant's QA/QC process to verify that each deliverable submitted to Gannett Fleming complies with the Standard of Care and the requirements of this Agreement. Subconsultant shall maintain written records of these checks and reviews and, upon request by Consultant, shall supply copies of Subconsultant's QA/QC records.
- g. Communications and Publicity. Neither the Subconsultant nor any of its personnel, subconsultants or subcontractors, or any other party under its direction or control may communicate directly with the Client or its agents, representatives, other consultants, or contractors about substantive, technical or contractual matters related to the Project, the Services, or this Agreement, without Consultant's prior approval. Subconsultant shall not release or permit release of any public statements or other form of publicity about the Project without Gannett Fleming's prior written consent. Notwithstanding the foregoing, Subconsultant is permitted to generally reference the Project in proposals to the extent permitted under the Prime Agreement.
- h. Timing. Time is of the essence for all Services. Subconsultant shall perform the Services in accordance with the Project schedule, including, but not limited to, any milestones or other applicable requirements set forth in the Prime Agreement or herein. Gannett Fleming agrees to furnish information provided by Client that is required for the Services and to render approvals and decisions required for Subconsultant's performance in a manner that will not unreasonably hinder the progress of the Services. If the Subconsultant knows or reasonably should know that Subconsultant will be delayed in performance of its Services or that it will not meet any applicable deadline or delivery requirement, Subconsultant shall immediately notify Gannett Fleming in writing. If the Prime Agreement allows for extension of time in specific circumstances, and if Subconsultant timely claims that such relief is warranted, Gannett Fleming will review Subconsultant's claim, and if Gannett Fleming, in its sole discretion, believes that Subconsultant's claim has merit, Gannett Fleming will provide reasonable support in pursuing an extension of time from the Client. Subconsultant will not be entitled to an extension of time unless the Client grants an extension of time or schedule relief to Gannett Fleming sufficient to allow Gannett Fleming to meet its performance obligations under the Prime Agreement.
- i. Non-Discrimination. **The provisions of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) are incorporated herein by reference (as amended). Subconsultant shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60300.5(a) and 60-741.5(a) (as amended). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, national origin, sexual orientation, or gender**

identity. These regulations require that covered prime contractors and Subconsultants take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, sexual orientation, gender identity, protected veteran status or disability.

4. COMPENSATION AND PAYMENT TERMS

- a. Compensation for the Services. Subconsultant shall be compensated for its Services as described in the Work Order. Unless Gannett Fleming and Client expressly agree otherwise in a written amendment, Subconsultant's total aggregate compensation for its Services shall not exceed the maximum contract value in the Work Order, if any. The Subconsultant's rates and the amounts specified in the Work Order shall be inclusive of Subconsultant's labor and overhead rates, fixed fees, profit, direct expenses included in Subconsultant's technical and/or cost proposal or herein, and any other costs not expressly excluded from such amount, subject to any applicable requirements in the Prime Agreement. To the fullest extent permitted under Applicable Laws, Gannett Fleming's receipt of payment from the Client for Subconsultant's Services shall be an absolute condition precedent to Subconsultant's right to receive payment from Gannett Fleming. Subconsultant will be paid within thirty (30) days of Gannett Fleming's receipt of payment from the Client unless a shorter period for payment of subconsultants is expressly required under the Prime Agreement or Applicable Law. Gannett Fleming agrees to reasonably pursue payment, at Subconsultant's sole expense, for all Services for which Subconsultant is properly entitled to the extent Subconsultant has met all applicable requirements in the Prime Agreement and is not in Default (as hereinafter defined) of its duties and obligations herein. Gannett Fleming's review, approval, acceptance, or payment for, any of the Services shall not discharge Subconsultant of its obligations or liabilities under this Agreement and shall not be construed as a waiver by Gannett Fleming of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- b. Compensation for Additional Services. For any Services outside the agreed Scope of Services in a Work Order and authorized in writing by the Client and Gannett Fleming ("**Additional Services**"), the provisions of the Prime Agreement shall govern Subconsultant's compensation, except as expressly stated otherwise herein. In the event the provisions of the Prime Agreement are silent or incomplete with respect to Additional Services, then Gannett Fleming and Subconsultant shall negotiate and execute an amendment to this Agreement setting forth the scope and compensation for the Additional Services and any special terms that apply in addition to the terms of this Agreement. Where the parties cannot agree to an adjustment in compensation within a reasonable time of Gannett Fleming's authorization of Additional Services, Gannett Fleming may direct Subconsultant in writing to proceed with the Additional Services. Subconsultant shall comply with such direction and shall have the right to submit a Claim for payment subject to the dispute resolution provisions of this Agreement. All extra Services performed without written authorization as required herein shall be at Subconsultant's sole risk and expense.
- c. Invoicing. Invoices shall be submitted to Gannett Fleming by Subconsultant in the manner and within the time required in the Prime Agreement or as otherwise agreed by Gannett Fleming and Client with notice to Subconsultant. If no time period is specified in the Prime Agreement, then Subconsultant shall submit invoices for Services rendered during the previous month to Gannett Fleming on a monthly basis, and Subconsultant shall submit a final invoice within forty-five (45) days after completion of such Services. All invoices shall be prepared in accordance with the requirements of the Prime Agreement and must include all supporting information reasonably required by Gannett Fleming, including the project number assigned by Gannett Fleming. Gannett Fleming shall not be liable or required to reimburse Subconsultant, or to seek reimbursement from the Client, for any fees or costs invoiced later than the earliest occurrence of either: (i) ninety (90) days from the date any particular Services are performed or costs are incurred, or (ii) such period as may be designated and/or required in the Prime

Agreement. **As this is a PennDOT ECMS Agreement, all invoices will be submitted using PennDOT's ECMS site.**

- d. Withholding, Retainage. All payments hereunder are subject to audits, adjustments, limitations, withholding, retention, and determinations that apply to Gannett Fleming or to which the Client may be entitled under the Prime Agreement. To the fullest extent permitted by law, Gannett Fleming, in its sole reasonable discretion, may withhold payments in whole or in part, and continue to withhold any such payments for Services not completed, that fail to meet the Standard of Care, that are behind schedule, or that are otherwise performed in a manner that reasonably jeopardizes the timely progress and completion of the Project in accordance with the Standard of Care. If the Prime Agreement and/or Applicable Laws require any amount of retainage, holdback, bonds, guarantees, or financial assurance, then Subconsultant agrees it shall be subject to such requirements.
- e. Lien Waiver and Release Upon Final Payment. Subconsultant acknowledges that the total compensation as set forth in a Work Order and as increased by any written amendments shall be in full and complete satisfaction of all indebtedness and obligation of any nature whatsoever for the Services to be performed under this Agreement, including any form of reimbursement, remuneration, payment, or compensation whatsoever. Subconsultant agrees that acceptance of payment in the amount set forth here shall constitute on its behalf and on behalf of its successors and assigns, a full release and discharge of Gannett Fleming and Client of any and all Claims which are known or reasonably should have been known and those with respect to payment. Subconsultant further agrees to sign any release for payment that is required under Applicable Laws or the Prime Agreement.

5. TERM AND TERMINATION

- a. Term. The term of this Agreement begins on the Effective Date and shall remain in force unless and until sooner terminated by a Party pursuant to the provisions herein ("**Term**"). Notwithstanding earlier termination or expiration of this Agreement, the terms and conditions of this Agreement shall govern any Work Order until such time that the Work Order is completed pursuant to its terms or Gannett Fleming consents in a signed writing.
- b. Termination for Convenience. Gannett Fleming, in its sole discretion, may terminate this Agreement or any portion of the Services for convenience with written notice. The Parties may also mutually agree to terminate this Agreement in a writing signed by each Party.
- c. Termination for Cause. Gannett Fleming may, in its sole discretion, terminate this Agreement in the event: (i) Subconsultant is in breach or default (material or otherwise) of the provisions of this Agreement or the applicable provisions of the Prime Agreement, fails to meet the Standard of Care, or is not in compliance with any other applicable legal or contractual requirement to which Subconsultant is subject, including those which may be required under Applicable Laws ("**Default(s)**"), and such Default is not permitted to be cured under the provisions of the Prime Agreement or cannot reasonably be cured; or (ii) where Subconsultant Defaults, and the Default is permitted and able to be cured under the provisions of the Prime Agreement but Subconsultant fails to adequately cure the Default in the period required thereunder. If the Prime Agreement does not contain a period for curing Default but Subconsultant is both permitted and able to cure in accordance with the provisions of the Prime Agreement, then Subconsultant shall be entitled to a cure period which is reasonable under the circumstances pertinent to any particular instance of Default, as determined by Gannett Fleming in its reasonable commercial discretion, and provided that the Client consents, if applicable.
- d. Suspension. Gannett Fleming may suspend the Services in its sole discretion, at which point Subconsultant shall immediately cease all or any portion of its Services specified by

Gannett Fleming until Subconsultant receives direction to recommence the Services, which were subject to Gannett Fleming's suspension in a writing signed by Gannett Fleming. In addition, Subconsultant shall deliver to Gannett Fleming, within three (3) business days, all original data, drawings, reports, summaries, electronic files, and other information and materials generated in by Subconsultant in connection with its Services on the Project.

- e. Termination Costs. In the event Gannett Fleming is entitled to termination or demobilization costs under the Prime Agreement and such costs are actually reimbursed and paid by the Client to Gannett Fleming, then Subconsultant shall be entitled to its proportionate or reasonable equitable share of such costs, subject to any limitations herein. Other than as described above in this Section, Subconsultant shall not be entitled and Gannett Fleming shall not be liable, to Subconsultant for any termination, demobilization, or any other costs arising from or relating to Gannett Fleming's or Client's termination of this Agreement or suspension of Services.

6. INDEMNIFICATION, WAIVER OF CONSEQUENTIAL DAMAGES, LIMITATIONS OF LIABILITY

The provisions set forth below in this Section 6 shall be enforceable to the fullest extent permitted, but not to any extent prohibited, by Applicable Laws. In the event any provision in this Section 6 is found to be illegal or unenforceable, then such provision shall be severed and amended in accordance with the applicable provisions governing the same in this Agreement. The Parties expressly agree on the allocation of risk for this Project, as follows:

- a. Conditional Waiver of Consequential Damages. Neither Party shall be liable to the other Party under this Agreement for any indirect, special, incidental, punitive, exemplary or consequential damages, including but not limited to damages for lost time, opportunity, income, revenue, goodwill, data, profits, or revenues, or for business interruption, even if the Parties have been informed of the possibility of such damages and regardless of the legal theory from which they arise. Notwithstanding anything to the contrary, this waiver shall not limit Gannett Fleming's right to seek recovery and recoup from Subconsultant any damages, regardless of nature, which Gannett Fleming is required to pay to Client pursuant to the terms and conditions of the Prime Agreement or in connection with third party claims, to the extent such damages were caused by Subconsultant or persons for which Subconsultant is legally responsible. The provisions in this Section 6(a) shall be enforceable for all Claims, even if caused by a Party's strict liability, tort, breach of contract, breach of warranty, or other form of fault, regardless of the character and/or legal theory upon which it is based.
- b. Indemnification – Prime Agreement. The Subconsultant, along with its respective owners, officers, shareholders, board members, directors, employees, designated agents, and representatives ("**Subconsultant Group**") shall indemnify, defend and hold harmless Gannett Fleming, along with its respective owners, officers, shareholders, board members, directors, employees, designated agents, independent contractors, and representatives ("**Gannett Fleming Group**"), Client, and any other persons or entities identified as indemnitees or beneficiaries in the Prime Agreement ("**Prime Agreement Indemnitees**") in the same manner and to the same extent that Gannett Fleming is bound to indemnify, defend, and hold harmless the Client and the Prime Agreement Indemnitees under the Prime Agreement.
- c. Indemnification - Workers Compensation, Employee Benefits Claims. Subconsultant Group shall indemnify, defend, and hold harmless Gannett Fleming Group from and against any and all Claims relating to or arising from Subconsultant's employees for any injuries, death, disability, and any other Claim which is subject to the exclusive remedy of the Workers' Compensation laws in the jurisdiction to which the Claim is subject. The indemnification obligation under this Section 6(c) shall apply, without limitation, to all matters involving injured employees of the Subconsultant or any supplier or its Subconsultants of any tier, regardless of whether such Claims are caused in whole or in

part by the negligence of Gannett Fleming and regardless of any provisions of the applicable Workers' Compensation laws and the exclusive remedy and/or employees' immunity provisions of those laws, all of which are hereby expressly waived by Subconsultant. Subconsultant's indemnification obligations in this Section 6(c) shall not be limited in the type or amount of damages, notwithstanding any provision to the contrary herein or in any insurance provided by Subconsultant hereunder.

- d. Minimum Indemnification. To the extent of the absence of more stringent provisions in the Prime Agreement covering each category of Claims identified below or to the extent any of the indemnity provisions in this Section or the Prime Agreement are in any manner deemed illegal, unenforceable, or otherwise invalid the Subconsultant Group's minimum indemnity obligations to Gannett Fleming Group from and against such Claims shall be as follows:
- (i) Professional: Subconsultant Group shall indemnify and hold harmless, but not defend, the Gannett Fleming Group from and against Claims covered solely by Subconsultant's professional liability insurance to the extent arising from Subconsultant's negligent acts, errors, and omissions resulting from Subconsultant's failure to meet the Standard of Care in performance of professional Services.
 - (ii) Torts: Subconsultant Group shall indemnify, defend, and hold harmless Gannett Fleming Group from and against Claims to the extent arising from or relating to Subconsultant's negligence, gross negligence, willful acts, Claims for which Subconsultant is strictly liable under Applicable Laws, or for any tort which may be brought in the courts of the jurisdiction to which the Claim is subject.
 - (iii) Breach of Agreement or Violation of Applicable Laws: Subconsultant Group shall indemnify, defend, and hold harmless Gannett Fleming Group from and against Claims to the extent caused by Subconsultant's breach of this Agreement, including incorporated provisions of the Prime Agreement, or violation of Applicable Laws.
 - (iv) Infringement or Misappropriation: Subconsultant Group shall indemnify, defend, and hold harmless Gannett Fleming Group from and against Claims arising from or relating to Subconsultant's alleged or actual infringement or misappropriation of any patents, copyrights, trademarks, or any other intellectual property of any party in connection with the Project or Services and those of any third party, except to the proportionate extent finally determined to be caused by Gannett Fleming's contributory infringement or misappropriation.

7. INSURANCE

- a. Subconsultant shall have and maintain in effect insurance policies that meet or exceed the minimum requirements stated in *Exhibit B*; provided, however, that if the Prime Agreement requires greater amounts of insurance than stated in *Exhibit B*, Subconsultant shall maintain insurance in the amounts required in the Prime Agreement.
- b. Subconsultant shall maintain the required policies during the Term and for any longer period specified in the Prime Agreement. All of Subconsultant's insurance shall qualify in each province in which the Project is located or is required to be qualified under Applicable Laws and **shall be rated a minimum of "A-" Financial Strength by A.M. Best.**
- c. Prior to commencing the Services, Subconsultant shall furnish insurance certificates to Gannett Fleming which provide for **prior written notice to Gannett Fleming of any cancellation or, reduction or material change in the policies within the lesser of: (i) thirty (30) days, except 10 days notice for nonpayment of premium; or (ii) the period of time set forth in the Prime Agreement.**

8. HEALTH AND SAFETY REQUIREMENTS

Subconsultant shall, at all times while at the Project site, and in the performance of its Services, be solely responsible for the health and safety of its personnel, contractors, or other individuals under its control of for which it is legally responsible, which includes but is not limited to, compliance with all Occupational Health & Safety regulations and other Applicable Laws as well as any Client requirements in the Prime Agreement, and observance of any and all health, safety, or environmental policies or plans applicable to the Services, and as otherwise instructed by Gannett Fleming or the Client. Subconsultant shall take all necessary precautions to ensure the safety of its personnel, contractors, or other individuals under its control or for which it is legally responsible, at all times on the Project site. In no event shall Subconsultant be relieved of any obligations or any liability arising therefrom as a result of Gannett Fleming's or the Client's approval or instructions, or any reliance thereon. If Subconsultant's Services or the Project are stopped and/or suspended by Gannett Fleming or the Client for unsafe conditions associated with Subconsultant's Services or due to Subconsultant's failure to strictly adhere to the requirements set forth in the Prime Agreement and herein, Subconsultant shall be solely responsible for all costs and Claims arising therefrom.

9. CONFIDENTIALITY

- a. Confidential Information. In addition to the confidentiality obligations required under the Prime Agreement, Subconsultant agrees to adhere to the requirements set forth in this Section 9 with respect any information in writing, orally, digitally, and any other tangible or intangible form of information, regardless of whether marked or designated "confidential" or other similar designation that is disclosed by Gannett Fleming under this Agreement or in connection with the Services, which includes, but is not limited to, information relating to Gannett Fleming's business processes, intellectual property (existing or future rights), drawings, specifications, internal documents, forecasts, samples, any engineering related materials or concepts, personnel and employee information, customer information, and financial information, except as otherwise expressly stated to not be confidential herein ("**Confidential Information**"). Confidential Information shall not include information that was publicly available or rightfully in the possession of Subconsultant prior to disclosure by Gannett Fleming.
- b. Confidentiality Requirements. Subconsultant shall not disclose, alter or use Confidential Information without Gannett Fleming's prior written consent, except: (i) to its employees, subconsultants, agents or representatives who have a bona-fide need to know or receive Confidential Information as required to perform the Services ("**Subconsultant Recipients**"); (ii) order of a court with competent jurisdiction or other government legal authority, but only to the extent required for Subconsultant to comply with the provisions of the order; or (iii) to an attorney or appropriate government official for the purpose of reporting a violation of law in good faith or as otherwise required under Applicable Laws, but only to the minimum extent necessary and/or required to do so, when applicable. Subconsultant is responsible for Subconsultant Recipients' compliance with all applicable confidentiality requirements and shall be liable for any breach of such requirements caused by a Subconsultant Recipient. Subconsultant shall use at least the same degree of care for the Confidential Information that Subconsultant uses to protect its own confidential or proprietary information, and, at a minimum, a commercially reasonable degree of care. Subconsultant's obligations with respect to Confidential Information disclosed prior to termination of this Agreement shall survive termination or expiration.

10. INTELLECTUAL PROPERTY

Ownership of any materials, deliverables, Project documents, drawings, specifications, plans, processes, or other documentation furnished by Subconsultant in connection with the Services ("**Materials**"), along with any intellectual property rights associated therewith (copyrights, patents, trademarks, or otherwise) shall be determined in accordance with the Prime Agreement. If the Prime Agreement does not require ownership of the Materials by

Client, Subconsultant shall convey to Client and Gannett Fleming a paid-up, royalty-free, perpetual, non-exclusive, and worldwide license in the Materials to the fullest extent necessary for both Client to receive and Gannett Fleming to deliver the Services in accordance with the requirements of the Prime Agreement and generally. Subconsultant warrants that title to all Services (including all Materials) will pass to Client, free and clear of all liens, claims, security interests or encumbrances upon incorporation into the Project or submission to the Client, whichever occurs first.

11.COMPLIANCE WITH APPLICABLE LAWS

- a. Compliance with Applicable Laws. Subconsultant, its employees, representatives, subconsultants, and those for which it is legally responsible during the Project shall at all times comply with all Applicable Laws. Subconsultant represents and warrants that it holds all licenses required by such Applicable Laws. Subconsultant shall procure and pay for all licenses, inspections and permits required by any governmental authority or any Applicable Law which are the subject of or apply to Subconsultant's Services and shall and provide timely proof of such procurement to Client and/or Gannett Fleming upon request, unless expressly stated otherwise herein. During the performance of this Agreement, Subconsultant agrees to comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and where applicable, the provisions of [DOT Order No. 1050.2A - attachment](#); each of which are incorporated by reference into this Agreement.
- b. Subconsultant Business Classifications. If Subconsultant claims status as a disadvantaged business enterprise, including, without limitation, a minority business enterprise, veteran or service disabled veteran business enterprise, women's business enterprise, disabled persons business enterprise, HUB Zone small business, or any other specialized status or protected class recognized by applicable Law and as indicated by Subconsultant in *Exhibit A* herein, then upon the request of Client and/or Gannett Fleming, Subconsultant shall provide certification or other proof of such status (including confirmation of the current status claimed): (i) with each application for payment; and (ii) within two (2) business days of a separate request made by Gannett Fleming. The certification or such other proof of status shall be in such form and content as required by Client and/or Gannett Fleming and shall include a statement certifying that Subconsultant is performing a commercially useful function as defined by applicable Law including 49 C.F.R. 26.55 (c)(1), as amended. If Subconsultant claims such status but such status is subsequently denied or revoked by any agency or entity having authority to do so, then Subconsultant shall immediately provide written notice to Gannett Fleming of such loss of status together with the written determination of such agency or entity communicated to Subconsultant.

12.CHANGES TO THE SERVICES

Gannett Fleming may, at any time or from time to time, order additions, deletions, or revisions in the Services to be performed ("**Change(s)**"). Such Changes may include any kind of addition, deletion, or modification of scope, for any purpose, and regardless of whether the Change impacts the existing design or adds a new element to the Services. The scope of any Change shall be defined in a written order issued by Gannett Fleming ("**Change Order(s)**"). Where a Change involves deletion or reduction to the scope of Services not yet performed, the Change Order will identify any reduction in compensation or the time for performance commensurate with the reduction in Services. Where the Change Order requires performance of Additional Services or modifications which, in Subconsultant's opinion, warrant an increase in compensation or time for performance, Gannett Fleming and Subconsultant will negotiate and execute an amendment in accordance with the requirements of Section 4(b) of this Agreement.

13.BOOKS, RECORDS, AND AUDIT

Subconsultant shall adhere to all provisions in the Prime Agreement with respect to Subconsultant's books, records, audit obligations, the Materials, or any other matter relating thereto. Gannett Fleming shall have the same rights as Client towards Subconsultant as Client, or a higher-tiered consultant has towards Gannett Fleming. If the Prime Agreement is silent with respect to the foregoing or its provisions are incomplete, then Subconsultant shall keep accurate records and documentation showing all charges, disbursements, or expenses, including but not limited to personnel, payroll, or other costs for performance of the Services, along with any records or documentation required to be kept under Applicable Laws or in connection with the Prime Agreement for three (3) years following the date of termination of this Agreement, or the period of time otherwise required under Applicable Law, whichever is greater. Gannett Fleming shall have the right, upon reasonable prior notice, to audit at any time up to three (3) years following final payment hereunder, or at any time without limitation in connection with any charge, Claims, liability, or government inquiry arising from, or related to, the Services, or this Agreement.

14. INDEPENDENT CONTRACTORS

In no event shall any employee, representative, contractor, agent, subconsultant or other party performing the Services for a Party under this Agreement be construed to create a partnership, joint venture, an employment-relationship or an agency relationship with the other Party. Neither Subconsultant nor any of its employees, representatives, agents, subconsultants, or otherwise shall have any authority to bind Gannett Fleming to any contract, action, inaction, or obligation unless authorized by Gannett Fleming in writing.

15. LIMITATION OF LIABILITY FOR INDIVIDUAL EMPLOYEES OR DESIGNATED AGENTS - FLORIDA

In the event any portion of the Services are to be performed or become subject to the jurisdiction of the State of Florida, then the following provision shall be incorporated into this Agreement as a special condition, as follows: **PURSUANT TO SECTION 558.0035, F.S. (AS IS CURRENTLY AMENDED, IF APPLICABLE), AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT OR SUBCONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OR RELATED TO THIS AGREEMENT AND THE SERVICES PROVIDED.**

16. FORCE MAJEURE

To the extent Gannett Fleming is entitled to claim relief from delay or breach under the provisions of the Prime Agreement due to events arising from factors unanticipated at the time of making this Agreement and reasonably outside of the Parties' control, which include, but are not limited to, acts of God, pandemic, insurrection, war, fires, explosions, flooding, or other natural disasters, contamination or hazard, threats or acts of terrorism, embargo, acts or orders of a government agency, including travel restrictions, or Applicable Laws becoming effective during the Term that render a portion of the Services illegal and/or impossible ("**Force Majeure Event**"), Subconsultant shall to that same extent be entitled to claim a Force Majeure Event hereunder. In the absence of provisions regarding a Force Majeure Event in the Prime Agreement and to the extent the Prime Agreement does not prohibit or limit a Party from claiming a Force Majeure Event therein, neither Party shall be considered in breach of this Agreement to the extent that the performance of the Party's respective obligations (excluding payment obligations) is delayed or rendered impossible by a Force Majeure Event which arises following the Effective Date of this Agreement.

17. NOTICES

- a. Legal Notices. All written notices pertaining to this Agreement, contractual or Project disputes, or those which are of a legal nature that are required or permitted to be given under this Agreement shall be delivered by registered or certified mail with postage prepaid, unless the Parties agree to another method of delivery in a signed writing.

Notice shall be effective when a Party receives confirmation of delivery from the other Party or from the courier of the notice. All notices shall be addressed and sent as follows: **(i) If to Gannett Fleming:** Gannett Fleming, Inc., 207 Senate Avenue, Camp Hill, PA 17011, Attn: General Counsel, and by email to LegalDept@gfnet.com; and **(ii) If to Subconsultant:** Address listed on page 1 of this Agreement or

☐ Other: _____

- b. Project Notices. For all Project-related notices that are not subject to the requirements set forth in Section 17 (a) above, notice shall be given in writing to the individual designated in the applicable Work Order.

18. ENTIRE AGREEMENT

This Agreement, along with all exhibits and any executed Work Orders, and other documents or provisions expressly incorporated herein, constitutes the entire agreement for the Services and the Project and supersedes all prior understandings or agreements between the Parties, whether written or oral. Any different or additional provisions contained in Subconsultant's proposal or any commercial document issued by Subconsultant at any time prior to or during the Term are rejected and shall be of no force and effect. No amendment, modification, replacement or deletion of any provision of this Agreement shall be valid, except by written instrument executed by an authorized representative of each Party.

19. SEVERABILITY

If any provision in this Agreement is rendered invalid, illegal, or unenforceable in any manner whatsoever by an anti-indemnity statute or any other Applicable Law, or case having or coming to have precedent during the Term, then the Parties agree to amend the offending provision to the minimum extent required to render such provision valid, legal, and enforceable to the maximum extent possible under Applicable Laws. The remaining provisions shall be unaffected and remain in full force and effect to the fullest extent permitted under Applicable Laws.

20. WAIVER, SURVIVAL

No waiver by either Party of any Default, misrepresentation, breach of duty, or obligation in this Agreement ("**Waiver**"), whether or not intentional, shall be deemed to extend to any prior or subsequent Waiver, or affect in any way any rights that may later arise due to any prior Waiver. The provisions in this Agreement, which by their terms extend beyond the termination or nonrenewal of this Agreement, shall survive and remain in force beyond termination or nonrenewal.

21. NON-SOLICITATION OF PROJECT EMPLOYEES

During the Term, the Subconsultant shall not, without Gannett Fleming's prior written consent, directly or indirectly solicit or encourage any person employed by Gannett Fleming or its affiliates who has performed Services on the Project to leave his or her employment, or intentionally interfere with the employment relationship. Notwithstanding the foregoing, Subconsultant shall not be in breach of this Section if an employee of Gannett Fleming or its affiliates who performs Services on the Project responds to a general advertisement or independently contacts Subconsultant for employment opportunities without Subconsultant's solicitation or encouragement.

22. ASSIGNMENT

Subconsultant shall not assign or transfer this Agreement, in whole or in part, or delegate any right, duty, obligation, under this Agreement to any other party, including an affiliated company, without the written consent of Gannett Fleming and, if applicable, the Client.

Gannett Fleming may, in its sole discretion, assign or transfer this Agreement and delegate any right, duty, obligation hereunder, for any reason permitted under Applicable Laws.

23.DISPUTE RESOLUTION AND JURY TRIAL WAIVER

This Agreement and Subconsultant's performance of the Services shall be governed by the Prime Agreement as set forth therein with respect to disputes, forum, venue, and any matters arising therefrom or subject thereto. In the event a Claim is not subject to the requirements of Prime Agreement with respect to disputes, forum, venue, and any matters arising therefrom or relating thereto ("**GF-Sub Dispute**"), then the GF-Sub Dispute shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any choice of law provisions and must be brought exclusively in the state or federal courts in Pennsylvania. In the event of any dispute or any Claims to enforce this Agreement, the Parties will first attempt to settle the matter through discussions as agreed between the Parties in good faith. If no agreement can be reached, then the Parties may, upon mutual agreement, submit to mediation. The cost for a mediator shall be shared equally by the Parties. **TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS AND TO THE EXTENT NOT INCONSISTENT WITH THE APPLICABLE REQUIREMENTS IN THE PRIME AGREEMENT: EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING OUT OF OR RELATING TO THE SERVICES OR THE AGREEMENT.**

24.COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument. The delivery of a copy of this Agreement bearing the signature of a Party, by facsimile transmission or electronic means, will have the same effect as would physical delivery of the Agreement bearing that Party's original signature.

25.HEADINGS AND CONSTRUCTION

All headings herein are solely for convenience of reference and shall not in any way affect the interpretation of this Agreement. Each Party had reasonable opportunity to review this Agreement with the advice of counsel and no Party may construe the interpretation of this Agreement against the drafter.

26.AUTHORITY

Each of the undersigned individuals personally represents and warrants that he or she is a duly authorized signatory with the authority to bind and sign on behalf of that Party by his or her signature below.

AGREED:

GANNETT FLEMING

SUBCONSULTANT

Signature

Signature

Typed or Printed Name

Title

Date

Typed or Printed Name

Title

Date

EXHIBIT A - SUBCONSULTANT CLASSIFICATION

Subconsultant shall certify to Gannett Fleming below its classification and the most recent certification date under any of the following classifications or those which are applicable to the Services. Multiple classifications may be selected. In the event any of the status of any of the classifications selected below change or are achieved during the Term, then Subconsultant shall inform Gannett Fleming in writing in not less than two (2) days, or sooner, if required under the Prime Agreement or Applicable Laws.

☐ **DBE**
 ☐ **WBE**
 ☐ **SBE**
 ☐ **MBE**
 ☐ **SBA**
 ☐ **SDB**
 Other Applicable
 Disclosure: _____

If SBE checked, check applicable:
 Disabled Veteran Enterprise ☐
 Other: _____

If MBE checked, check applicable:
 Asian/Pacific Islander ☐
 Black/African-American ☐
 Hispanic/Latino ☐
 Native American ☐
 Other: _____

If SBA checked, check applicable:
 WOSB ☐
 Economically Disadvantaged ☐
 VOSB ☐

If SDB checked, check applicable:
 Asian/Pacific Islander ☐
 Black/African-American ☐
 Hispanic/Latino ☐
 Native American ☐
 Other: _____

EXHIBIT B - INSURANCE REQUIREMENTS

1. **General Requirements.** Subconsultant shall designate the applicable Gannett Fleming Project number on the face of any certificates of insurance, unless instructed otherwise in writing. Subconsultant's insurance policies shall comply with the provisions set forth below, as follows: (i) **Additional Insured. Insurance to which this subsection applies: All, excluding PL, WC. The policies required to adhere to this requirement shall contain provisions providing that the insurance shall be primary and non-contributory to any insurance maintained by Gannett Fleming, Client or any other indemnified party. Client, Gannett Fleming, and any other indemnified party, along with each of their respective directors, officers, agents and employees shall be named as additional insured.** (ii) **Waiver of Subrogation. Insurance to which this subsection applies: All, excluding PL. As permitted by applicable law, Subconsultant waives all rights against Gannett Fleming, Client and any other indemnified party for any damages or losses that are covered under any insurance required herein.** (iv) **Cross Liability. Insurance to which this subsection applies are: All, excluding WC, PL. The policies required to adhere to this requirement shall contain provisions providing that the insurance applies separately to each insured.**
2. **Professional Liability and/or Errors & Omissions ("PL") - \$3,000,000 per claim/\$3,000,000 aggregate.** The PL policy shall contain coverage insuring Subconsultant and each of its employees performing Services under this Agreement on the Project, which includes: (i) The retroactive date shall coincide with (or be prior to) the Subconsultant's start of Services (including subsequent purchased as renewals or replacements); (ii) The policy shall allow for the reporting of circumstances or incidents that might arise to future claims; and (iii) **Subconsultant will maintain similar insurance for at least ~~three~~ (3) five (5) years following completion of the Services; provided that if such insurance is discontinued, then extended reporting period coverage must be maintained for a period of at least three (3) years.**
3. **Commercial General Liability ("CGL") - \$2,000,000 per occurrence/\$2,000,000 aggregate.** CGL policy shall contain coverage insuring Subconsultant and each of its employees performing Services under this Agreement on the Project, which includes: (i) **Coverage applicable on a Per-Project or Per Location basis for bodily injury and property damage,** including with respect to loss of use and any other consequential damages which Subconsultant's insurance provider permits it to cover, but only to the extent permitted under Applicable Laws; and (ii) **coverage for independent contractors, personal injury, advertising injury, product and completed operations, premises and operations, collapse and underground, broad form contractual liability, explosion, and product and completed operations.**
4. **Workers' Compensation and Employers' Liability ("WC") - WC policy shall comply with statutory requirements of the jurisdiction(s) in which the Services will be performed. Employer's liability insurance coverage insuring all employees performing any portion of the Services under this Agreement or on the Project and any operations in connection therewith, which includes Employers' Liability insurance with a limit not less than \$1,000,000 each accident or illness/per disease-each employee/ per disease-policy aggregate.**
5. **Business Automobile Liability ("BAP") - \$2,000,000/\$2,000,000.** When applicable, **BAP shall contain insurance coverage insuring all owned, non-owned, hired, borrowed, or leased motor vehicles both onsite and offsite, which includes: (i) Combined single limit for bodily injury and property damage for all vehicles set**

forth above or in the Prime Agreement, as applicable; and (ii) In the event Services include hazardous substances and/or transportation thereof, then MCS-90 endorsements and Motor Carriers Act of 1980 coverage, or substantially similar legislation in the applicable jurisdiction.

6. Umbrella/Excess Liability ("**UMB**") - \$5,000,000 per occurrence/~~\$510,000,000~~ aggregate. **UMB policy shall contain insurance coverage which may be utilized to meet the limitations for the following policies under its terms for CGL, BAP, and WC.**
7. Cyber ("**CYBER**") - ~~\$510,000,000~~ per event/aggregate/~~\$10,000,000~~.—Whenever Subconsultant shall utilize computers or the network of either Gannett Fleming or Client in its performance of the Services or in connection with this Agreement, then Subconsultant shall procure CYBER. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Subconsultant in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
8. **When Applicable:** (a) Contractors Pollution Liability ("**POL**") - \$1,000,000/\$2,000,000: No exclusion for Asbestos, Lead, and/or Mold Liability Insurance; (ii) Pollution Legal Liability and/or Environmental Impairment Insurance, Errors and Omissions (if Project involves environmental hazards of owned locations). This coverage can be included or as part of the Professional Liability policy referenced above; (b) Marine Protection and Indemnity ("**MPI**"), Charterer's Liability ("**CLI**") - \$1,000,000 per occurrence: If Subconsultant utilizes property or vehicles that could otherwise be insured under either an MPI or CLI policy, then Subconsultant shall procure MPI and CLI which includes collision and Jones Act coverage; (c) Unmanned Aircraft Liability ("**UAS**") - \$1,000,000/\$2,000,000: On an "occurrence" basis, including products and completed operations, property damage, bodily injury, which may be met by endorsement to CGL.

{END OF AGREEMENT - ATTACH PRIME AGREEMENT BELOW}