**DESIGN-BUILD DRAFT TEAMING AGREEMENT**

# between Citnalta Construction Corp. Railroad Construction Corp. TAP Electric a Tri Venture and Gannett Fleming Engineers & Architects, P.C.

This Teaming Agreement (Agreement) is entered into this\_ day of September 2019 by and between Citnalta Construction Corp. & Railroad Construction Corp. & TAP Electric a Tri Venture (hereinafter ""CRT, a Tri Venture" or **"Contractor")** with offices at 1601 Locust Avenue, Bohemia, NY 11716, and Gannett Fleming Engineers & Architects, P.C. with offices at Two Penn Plaza, Suite 552, New York, NY 10121 (hereinafter "Gannett Fleming" or "Designer"), individually referred to as "Party" and collectively referred to as the "Parties" or the "Team."

The Parties agree to the following facts:

1. Long Island Railroad (LIRR) **("Owner")** is currently procuring a New Elmont Station Project to provide LIRR Main Line full-time service in support of the Belmont Park Redevelopment Project **("Project").**
2. The Parties wish to form a team to respond to the Request for Proposal ("RFP") for the Project, and if the Team is selected as the best value or low bidder and awarded the Contract enter into a professional services agreement for said Project.
3. After carefully considering their unique skills and capabilities, the Parties believe that a team effort will enhance the likelihood of their mutual success in obtaining a contract from the Owner and performing the work included in the Project.
4. The Parties agree that the Team structure is to become (by subsequent subcontract agreement): Citnalta Construction Corp. & Railroad Construction Corp. & TAP Electric a Tri Venture as design-builder and Gannett Fleming as the Prime Consultant Engineer and or the Designer.

Accordingly, this Agreement is entered into to establish the rights, interests, and obligations of the Parties in pursing the award of a contract from the Owner for the Project as a Team including preparing and submitting a response to a Request for Proposals ("RFP") from the Owner as follows:

# ARTICLE 1: PROPOSAL EFFORT

CRT and Gannett Fleming shall work together preparing and submitting a Technical Proposal. CRT and Gannett Fleming will each provide qualified personnel to prepare the Technical Proposal. Gannett Fleming shall be responsible for assembling, printing and submitting the RFP and Technical Proposal to the Owner. CRT will provide the required data to Gannett Fleming in a timely manner to meet the Owner's submission dates.

The Parties will review and approve and be solely responsible for the portions of the RFP and Technical Proposal that would be pertinent to their work on the Project.

# ARTICLE 2: RFP AND AGREEMENT FOR PROFESSIONAL SERVICES

Contractor and Gannett Fleming agree to immediately begin good faith negotiations of the PSA with the intention of executing the PSA no later than fifteen (15) business days after notification that Contractor is apparent best value or low bidder. The parties agree that the basis for the PSA shall be the AIA B143 form of agreement and the PSA shall include the standard terms

and conditions set forth in Articles 2, 7 and 8 of this Agreement. Gannett Fleming's scope of work during the pre-bid period shall consist of an agreed upon list of deliverables including specific functional or preliminary design plans and/or design information based on the owner provided documents and joint (Designer and Design Builder) interpretation of the owner provided documents and an agreed list of major design elements to provide estimated quantities for the project and other design work requested by the Contractor. Based on the agreed list of major design elements, Gannett Fleming will provide estimated quantities derived from the functional or preliminary design plans and/or design information to the Contractor. Contractor will complete his own calculation of quantities and develop a bid for the project. In addition, Designer shall provide Design Builder with written assessments of quantity risks associated with each major design element and address the risk of reasonably expected changes for Final Design, the approval process and construction. Based on the quantity and risk information provided by both Design Builder and Designer, Design Builder will determine appropriate contingencies to be included in the Proposal.

The Contractor recognizes that the quantities provided by Gannett Fleming will be based on the functional or preliminary design plans and/or design information for the Project. In performing quantity estimates and other pre-bid services, Designer agrees to comply with the standard of care applicable to pre-bid services. Contractor will be ultimately responsible for the quantities to be included in the bid and shall determine the appropriate amount of contingency to include in the bid to cover variations in quantities and other risk factors it deems prudent to consider.

Gannett Fleming will consult with Contractor in this endeavor to the extent desired by Contractor.

**Schedule Risk** - Gannett Fleming agrees that post-award services will be performed in accordance with a mutually agreed upon deliverables schedule. Gannett Fleming will submit a proposed deliverable schedule no later than forty-five (45) days before the bid proposal due date. The deliverables schedule will be incorporated into Gannett Fleming's schedule under the Contractor's contract with Owner. During the development of the final design, Gannett Fleming shall advise Contractor of all material problems that come to its attention that may, in Gannett Fleming's judgment, cause a delay to the completion of the Project. Gannett Fleming acknowledges and agrees that time is of the essence in the performance of its services under this Agreement and the PSA. Accordingly, the deliverables schedule shall set forth milestones that are integral to the overall Project schedule and establish mutually-agreed upon design review timeframes and shall be adjusted from time to time based on changes and delays not caused by Gannett Fleming. Gannett Fleming agrees that it shall be liable to Contractor for its proportionate share of any liquidated damages collected by Owner as well as any direct impact costs to extent directly caused by Gannett Fleming's negligent performance of its services in accordance with the PSA, subject to the Limit of Liability. This "Schedule Risk" provision shall be deemed to be part of the negotiated terms of the PSA and shall apply to Gannett Fleming's services under the PSA.

**Compensation to Gannett Fleming** - LiRR shall provide a stipend of fifty thousand dollars ($50,000) to Teams that meet the minimum qualifying based evaluation threshold as required in the **RFP** and; that are competitive and reasonable and; that are not awarded the Contract by LIRR. Gannett Fleming shall be entitled to thirty thousand dollars ($30,000) which represents sixty percent (60%) of the stipend, **if** it is paid by LIRR to the Team, for engineering service during the technical proposal phase in support of the pursuit of a project award.

In the event that Contractor requests Gannett Fleming to provide pre-bid design services beyond functional or preliminary design plans and/or design information for which no standard detail that has previously been provided or drafted by Gannett Fleming for any other unrelated project exists, such as for the bridge over the Cross-Island Parkway or the pedestrian overpass, Gannett Fleming shall receive additional compensation. Compensation shall be calculated at a reduced multiplier of 2.0 times Gannett Fleming's salary costs up to a maximum amount of an additional twenty thousand dollars ($20,000) for additional design work but shall be capped at a

maximum of fifty thousand dollars ($50,000) for all design work for engineering service during the technical proposal phase in support of the pursuit of a project award.

In the event the Contractor terminates this agreement and decides not to submit a bid for reasons not associated with Gannett Fleming's services, the Contractor shall compensate Gannett Fleming for all costs associated with the services up to the date of termination.

**Scope of Work for Design Services for Final Construction Plans and Engineering Services during Construction** - The Parties will, as part of the bid proposal, jointly develop a scope of work for the design services for final construction plans and engineering services during construction. Gannett Fleming will provide to the Contractor a lump sum fee based on the scope of work for the design services for final construction plans and for engineering services during construction to include in the Contractor's bid to construct the Project should the Team be the successful bidder.

# ARTICLE 3: EXCLUSIVE DEALING AND CONFLICTS OF INTEREST

Each Party agrees that it will not participate as an offerer, co-venturer, subcontractor or other interested party in any proposal effort involving the Project other than the Proposal effort contemplated by this Agreement during the Agreement term. Each Party warrants that it has no conflict of interest that would disqualify it from participating as proposed in the Project and that no other agreement would cause this Agreement not to be binding upon it. No Party shall solicit for employment or hire the employees of the other Parties who are or have been working on the Project during the Agreement term and for a period of one year thereafter. However, nothing herein shall prevent either party from hiring employees of the other who respond to advertisements or job postings that are made available to the general public.

# ARTICLE 4: COSTS AND EXPENSES

Gannett Fleming will be responsible for its own expenses incurred in preparing, printing, and assembling the RFP for the Parties in response to the RFP.

# ARTICLE 5: AGREEMENT LIMITATIONS

This Agreement is not intended to create or otherwise recognize an agency, partnership, or formal business organization of any kind, other than a team arrangemeht as set forth in this Agreement. No Party has the authority or right, nor will any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of any other Party without the express prior written consent of the other Party.

# ARTICLE 6: CONFIDENTIALITY

During the term of this Agreement, the Parties may exchange proprietary information. Proprietary information received by one Party from any other will not be disclosed, released, discussed, furnished, transferred or otherwise made known to third parties or utilized by the receiving Party other than for the purpose of preparing and negotiating a Proposal for the Project, except such information may be disclosed in confidence to appropriate representatives of the Owner. Proprietary information received by one Party from another shall be marked "Confidential" or "Proprietary" and will be kept and maintained by the receiving Party in a secure location and under the control of an employee with an obligation and responsibility to maintain its secrecy and who will restrict disclosure of and access to such information to persons with a

need to know. The restrictions in this Article will not apply if such information (a) is or becomes in the public domain; or {b) is known to the receiving Party prior to receipt; or (c) is authorized for disclosure by the written approval of the disclosing Party; or (d) is lawfully derived by the receiving Party from a source other than the disclosing Party without restriction as to the use or disclosure of the information. The foregoing restrictions will cease to apply two (2) years after the date of this Agreement. The receiving Party may disclose Proprietary Information as required by court order or other lawful process; *provided, however,* that if the receiving Party becomes legally compelled to disclose any Proprietary Information, the receiving Party shall promptly notify the disclosing Party of such fact so that the disclosing Party may seek an appropriate remedy to prevent such disclosure, and the receiving Party shall request the person demanding such disclosure to allow the disclosing Party a reasonable period of lime to seek such remedy.

The Parties acknowledge that damages may be inadequate compensation for breach of this article. If a Party shows a breach of this confidentiality obligation, the injured Party may restrain, by injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this article.

The Parties acknowledge that no intellectual property rights owned by one Party is transferred to the other Party and that all such rights shall remain the sole property of the owner Party, who shall retain all intellectual property and other rights, title and interest related to them, unless otherwise agreed in writing. The disclosure of intellectual property rights hereunder shall not be construed as granting a Party any license under any intellectual property rights of another Party other than to use such intellectual property rights in the manner and to the extent authorized by this Agreement.

Unless otherwise stipulated in writing and agreed to by the Parties, any inventions made during the term of this Agreement shall be the property of the Party employing the inventor(s). Unless otherwise mutually agreed, inventions made jointly between employees of the two Parties during the term of this Agreement shall be jointly assigned to both Parties, and the filing and prosecution of any patent applications on such inventions shall be equally borne by the Parties. Any rights to inventions as discussed above shall be subject to any greater rights the Owner or the U.S. Government may have in such inventions.

**ARTICLE 7: STANDARD OF CARE AND LIMITATION OF LIABILITY**

**Standard of Care** - Gannett Fleming will perform all design Services hereunder with the skill, care and competence ordinarily exercised by members of the applicable professional discipline currently practicing under similar circumstances in the locality where such services are performed. If the Prime Contract requires a level of performance higher than this Standard of Care, then Designer shall comply with the Prime Contract standard ("Prime Contract Standard"), subject to the limitation of liability.

**Limitation of Liability** - The PSA will include a limitation of liability of the Designer and its sub consultants that the Design Team's liability for damages of any kind including but not limited to tort, breach of contract or warranty, liquidated damages, error, omissions or professional negligence shall not exceed the amount of available insurance proceeds from any Project Specific Insurance Policy procured for the Project, if any, plus 100% of the Design Fee, provided however, this limitation of liability shall not apply to (i) Designer's gross negligence (as defined by New York State law) or willful or intentional misconduct, or (ii) claims initiated by third-parties but only for claims which Designer owes an indemnity obligation under the PSA. This allocation of risk shall be deemed to be part of the negotiated terms of the PSA and shall apply to all of Designer's services during pre-bid and under the PSA.

As an additional cost to the project, Gannett Fleming will provide a project specific professional liability policy in accordance with the requirements of the **RFP** documents, the owner's insurance requirements, or the Contractor's request. The cost of such policy and any required renewals shall be a cost of the Project. This insurance requirement shall be deemed to be a part of the negotiated terms of the PSA.

The PSA will include the following provision: In no event shall either party be liable to the other party for any punitive, exemplary, special, indirect, incidental or consequential damages (including but not limited to lost profits, lost revenues, lost business opportunities, loss of use or equipment down time, and loss of or corruption to data), whether or not such damages are foreseeable, arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the other party has been advised of the possibility of such damages or loss, provided however, the foregoing exclusion shall not apply to liquidated damages or other damages assessed by the Owner for which Designer is determined to be liable pursuant to the "Schedule Risk" provision in the PSA in accordance with the dispute resolution provisions in the PSA (but which shall be subject to the "Limitation of Liability" provision hereof).

**ARTICLE 8: INDEMNIFICATION**

*Indemnity for Claims that do not arise from professional services.* Designer, to the fullest extent permitted by law, shall defend, indemnify, and hold harmless Contractor and its respective officers, directors, employees, affiliates and subsidiaries, and entities that Contractor is required to name as additional insureds under the Prime Contract with Owner (collectively, the "Contractor lndemnitees") from and against all liability, lawsuits, claims, liens, judgments, interest, expenses, losses, and damages, including reasonable attorneys' fees where recoverable by law, to the extent arising out of or resulting from the willful, reckless and/or negligent acts or omissions or breaches of this Agreement of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts Designer may be liable.

*Indemnity for Claims that arise from professional services.* To the fullest extent permitted by law, Designer agrees to indemnify and hold the Contractor lndemnitees harmless from and against liabilities, claims, damages and costs (including reasonable attorney's fees where recoverable by law) to the extent caused by the negligence of Designer in performance of professional services. This indemnification expressly excludes the duty of Designer to defend. However, the absence of the duty to defend shall not preclude the recovery of reasonable attorneys' fees as a part of recoverable damages where and to the extent such fees are caused by Designer's negligence. The parties agree to cooperate in the defense of claims arising out of Designer's professional services and/or the quality or condition of the construction Work itself with Designer taking the lead to defend claims arising out of the design of the Project and Contractor taking the lead to defend claims arising out of the quality or condition of the construction Work itself, provided nothing in this provision shall be construed to create an obligation on the part of the Contractor to provide a defense or indemnify Designer with respect to its defense costs, including attorneys' fees, with respect to claims arising out of the quality or condition of the construction Work itself.

*Contractor Indemnity.* Contractor, to the fullest extent permitted by law, shall defend, indemnify, and hold harmless Designer and its officers, directors, employees, affiliates, and subsidiaries from and against all liability, lawsuits, claims, liens, judgments, interest, expenses, losses, and damages, including reasonable attorneys' fees where recoverable by law, to the extent arising out of or resulting from willful, reckless and/or negligent acts omissions or breaches of this Agreement by the Contractor, provided Contractor's foregoing obligations to indemnify, defend, and hold harmless shall only apply to claims and damages attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself).

# ARTICLE 9: AGREEMENT TERM

This Agreement shall automatically terminate upon the following events, whichever occurs first,

(a) cancellation of the Project; (b) award of the Project to another team and exhaustion of all bid protest rights; (c) Contractor and Gannett Fleming enter into a Professional Services Agreement for the design services for final construction plans and for engineering services during construction; (d) notice from Owner that a Party is unacceptable; (e) a Party's filing or failing to discharge an involuntary petition in bankruptcy or reorganization, making a general assignment to creditors, or becoming insolvent; (f) acquisition by or merger with an entity having a conflict of interest with the Team's "pursuit or prosecution of the Project; (g) mutual agreement of the Parties; (h) upon notice by any Party if such Party determines that a significant Project matter, such as the Project's financing plan, the procurement process, or the terms of the PSA or Proposal has caused the RFP to be unacceptable, and such notice is given no later than 30 days after receipt of the draft RFP that is unacceptable to said Party (the Parties may mutually agree to extend this notice period to include any addenda following the release of the RFP); or

(i) a material default by any Party with respect to its obligations under this Agreement that is not corrected within ten (10) calendar days after receipt of written notice of such default provided by another Party at the discretion of the non-defaulting Party. If termination occurs for the foregoing reasons set forth in (e), (f), (h), or (i) then the Party that has caused the termination (in the case of a termination under subsection (i), the defaulting Party) may not compete for the Project unless otherwise agreed in writing by the Parties.

# ARTICLE 10: MISCELLANEOUS

1. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous oral or written understandings, commitments, or agreements. No changes may be made in this Agreement without the written agreement of duly authorized representatives of each of the Parties.
2. Each Party agrees that it shall not pay, promise, offer or authorize payment of anything of value (in any form) to any person or organization either directly or indirectly (through an agent, representative, subcontractor or other third party) to obtain or retain business without notifying the other Parties in writing; and, in no event whenever such payment, promise, offer or authorization is contrary to applicable law. Each Party agrees to comply with all applicable laws and regulations.
3. Each Party shall keep the other Parties fully and promptly informed of all events and matters affecting or relating to this Agreement and shall promptly give all relevant information and cooperation properly requested by the other Parties.
4. The failure of any Party to enforce or to require performance by any of the other Parties of any of the provisions of this Agreement will not be construed to be a waiver of such provision, affect the validity of this Agreement or any of its parts, or jeopardize the right of any of the parties thereafter to enforce each and every provision of this Agreement.
5. This Agreement is not assignable by any Party without the written consent of the other Party. Each Party binds itself and its respective successors and permitted assigns to the other Parties and their respective successors and permitted assigns.
6. This Agreement shall be governed by and construed under the laws of the State of New York.
7. If any Party has a claim against another Party, such claim shall be resolved through litigation before the Supreme Court of the State of New York, New York County. All Parties consent to jurisdiction of such court. THE PARTIES HERETO RESPECTIVELY WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT. Notwithstanding the foregoing, the Parties shall make reasonable efforts to resolve any such claims through informal negotiations between and among the Parties' respective representatives as well as through non-binding mediation with a mutually acceptable third-party neutral.
8. In the event that a provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions or parts of provisions shall not be affected.

(I} This Agreement may be executed in one (1) or more counterparts, but none of which need contain the signatures of all Parties, each of which shall be deemed an original and all of which together constitute one (1) and the same instrument. Electronic, PDF, and/or facsimile signatures of this Agreement shall be deemed original for all purposes.

The Parties have, through their duly authorized representatives, executed this Agreement effeclive as of the day and year indicated in the first paragraph.

# Contractor: CRT, a Tri Venture

**Citnalta Construction Railroad Construction**

& **TAP Electric a Tri Venture**

# Firm:

**Gannett Fleming Engineers & Architects.**

1. If any Party has a claim against another Party, such claim shall be resolved through litigation before the Supreme Court of the State of New York, New York County. All Parties consent to jurisdiction of such court. THE PARTIES HERETO RESPECTIVELY WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT. Notwithstanding the foregoing, the Parties shall make reasonable efforts to resolve any such claims through informal negotiations between and among the Parties' respective representatives as well as through non-binding mediation with a mutually acceptable third-party neutral.
2. In the event that a provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions or parts of provisions shall not be affected.
3. This Agreement may be executed in one (1) or more counterparts, but none of which need contain the signatures of all Parties, each of which shall be deemed an original and all of which together constitute one (1) and the same instrument. Electronic, PDF, and/or facsimile signatures of this Agreement shall be deemed original for all purposes.

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