**AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_\_\_ \_\_\_\_, 2020, by and between **TINDALE-OLIVER & ASSOCIATES, INC. *dba* Tindale Oliver,** (hereinafter the “Consultant”), with offices located at 1000 North Ashley Drive, Suite 400, Tampa, FL 33602 and **GANNETT FLEMING, INC** (hereinafter the “Sub-Consultant”) with offices located at 207 Senate Avenue, Camp Hill, PA 17011.

WHEREAS, the *Consultant* has entered into a Contract for Professional Services, a copy of which is attached hereto and incorporated herein as **Exhibit A**, to provide professional services to Florida Department of Transportation District 7 (hereinafter the “Client”), for Safety Studies and Minor Design - Continuing – Contract CA722.

WHEREAS, the *Consultant* desires to engage the *Sub-Consultant* to perform certain services for the performance of the above project under the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter provided, the *Consultant* and the *Sub-Consultant* agree as follows.

1. Scope of Agreement. The *Sub-Consultant*’s relationship to the *Consultant* shall be that of *Sub-Consultant*; at all times this relationship shall be governed by and in strict compliance with the terms of this Agreement for Professional Services.

2. Professional Services. The *Sub-Consultant* shall provide the services to the *Consultant* and is bound by the same terms and conditions as the *Consultant* in performance of the *Consultant*’s Contract for Professional Services Agreement, dated \_\_\_\_\_\_\_\_\_\_\_\_\_, 2020 and titled “STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION STANDARD PROFESSIONAL SERVICES AGREEMENT: **CONTRACT NO**. **CA722;** FID NO. 254553 2 32 03”, a copy of which is attached hereto and incorporated herein by reference (hereinafter the “Services”). A copy of the “STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION STANDARD PROFESSIONAL SERVICES AGREEMENT TERMS” dated June 2018 is also attached hereto and incorporated herein by reference (hereinafter the “Terms”).

In the event of a conflict between the terms and conditions of this Agreement and those of *Consultant’s* contract for professional services, the terms and conditions of this Agreement shall prevail.

Task work orders shall be used to describe the parties’ mutual agreement on the Scope of Services, schedule, compensation and other as stated therein. Task work orders shall be in the general form described on page A-1 thru A-39 of Exhibit A “Scope of Services” attached to the Prime Agreement. Task work orders are binding only after acceptance and execution by duly authorized representatives of both parties. Each task work order shall govern the parties’ rights and obligations with respect to each assignment, but all within the framework of this Agreement.

3. Period of Service. The *Sub-Consultant* shall be available to begin its services promptly after receipt of a fully executed copy of this Agreement and will complete the services within the timeframe indicated in individual task work order assignments. However, the times for performance established shall be extended for periods of delay resulting from strikes, natural disasters, delays by the *Consultant*, delays by the Client, and similar circumstances over which the *Sub-Consultant* has no control. The *Sub-Consultant*’s receipt of a fully executed task work order pursuant to this Agreement shall constitute written notice for *Sub-Consultant* to proceed with the Services described in that task work order.

4. Compensation.

a. For the completion of the services as assigned through individual task work orders, the *Sub-Consultant*’s compensation shall be at the rates identified in **Contract CA722 - Table 6 - Loaded Billing Rates for Sub-Consultant GANNETT FLEMING, INC,** for Cost Plus task work orders or for the lump sum amount specified in Lump Sum task work orders.

b. Anything to the contrary notwithstanding, no services undertaken by the *Sub-Consultant* or expenses incurred by the *Sub-Consultant* exceeding the identified fees and expenses shall be the liability of the *Consultant* unless such additional fees and expenses have been approved in writing by the *Consultant* in advance.

c. The Sub-Consultant shall not begin any work prior to receiving a notice to proceed from Consultant either in the form of a signed Notice-To-Proceed or an email confirming authorization and task fee.

5. Additional Services. The *Sub-Consultant* shall provide services in addition to those described in task work orders only upon written request of the *Consultant*. *Sub-Consultant* shall be compensated for all authorized additional services only on the basis agreed upon in writing at the time such services are authorized.

6. Invoices. Invoices will be submitted by the Sub-Consultant upon completion of the work described in Task Work Orders issued by Client and authorized Notice to Proceed. **Invoices shall be submitted on a monthly basis and indicate the breakdown of staff hours for each task and resulting amount billed.** **All invoices must be submitted to the Consultant via email to the Consultant Project Manager which will be notated on the individual task work orders (**[**XXXXX@tindaleoliver.com**](mailto:XXXXX@tindaleoliver.com)**) with a copy to** [**Accounting@tindaleoliver.com**](mailto:Accounting@tindaleoliver.com)**.** Invoices must be received by the third (3rd) day of the month following the last day of the invoice period in order to be included in Consultant’s invoice to the Client for that invoicing period. Payment of each such invoice shall be due within fourteen (14) days of receipt of payment from the Client and shall not be due prior to such payment. All invoices shall be submitted not later than thirty (30) days after performance of the Services reflected thereon unless Tindale Oliver authorizes and extension of time. Invoices received later than thirty (30) days after performance of Services are subject to rejection by Tindale Oliver. **Each invoice must reference FDOT D7 Contract Number (CA722), Tindale-Oliver Project Number and the name of the Consultant’s Project Manager.**

7. Monthly Status Report. The *Sub-Consultant* shall also submit a monthly Status Report describing its services rendered for the month. Said report will show the monthly progress and identify any areas of concern. This report is due to the *Consultant* with the invoice for the work completed the preceding month.

8. Contingent Payment. Notwithstanding anything to the contrary contained herein, it is understood and agreed that the *Consultant* shall have no obligation to pay the *Sub-Consultant* the fee set forth in this Agreement, or any other additional charges or claims, or any installment thereof until *Consultant* has received payment from the Client for *Sub-Consultant*’s services.

9. Termination. The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination the *Sub-Consultant* will be paid as hereinafter provided for all authorized services rendered to the date of such termination. If the *Sub-Consultant*’s compensation hereunder is a lump sum fee, the amount payable to the *Sub-Consultant* in the event of termination will be a pro rata amount of such fee, determined on the basis of the relationship of the amount and value of the work performed prior to the *Sub-Consultant*’s receipt of notice of termination. If the *Sub-Consultant*’s compensation hereunder is determined on an hourly basis pursuant to an amendment to this Agreement, the amount payable to the *Sub-Consultant* for services so rendered shall be established on the basis of the time and authorized expenses actually incurred on the project to the date of its receipt of notice of termination, subject to a determination by the *Consultant* and *Sub-Consultant* that the charges are fair and reasonable in view of the amount and value of the work performed.

10. Insurance. The *Sub-Consultant* shall maintain insurance coverage’s (See EXHIBIT B for Specific Requirements). Said insurance shall be evidenced by (1) delivery to the *Consultant* of a Certificate of Insurance executed by the insurers and listing coverages and limits, expiration dates, and terms of policies and listing all carriers issuing said policies; and (*Sub-Consultant* shall notify *Consultant*, within 30 daysafter receipt of any notices of expiration, cancellation, non-renewal, received by said *Sub-Consultant* from its insurer; and nothing contained herein shall absolve *Sub-Consultant* of this requirement to provide notice. The insurance requirement shall remain in effect throughout the term of the Agreement.

Each insurance policy shall include the following conditions by endorsements to the policy:

a. Companies issuing the insurance policy, or policies, shall have no recourse against *Consultant* for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of *Sub-Consultant*.

b. ***Consultant* and the Client shall be endorsed to the required policy, or policies, as an additional insured, except for Workers Compensation and Professional Liability Insurance**.

11. Indemnification.

a. Hold Harmless. The *Sub-Consultant* shall indemnify and hold Client and *Consultant*, its officers, and employees, harmless from and against (1) personal injury, bodily injury (including death) or property damages (including destruction) received, or (2) any and all losses, penalties, damages, professional fees, including attorney fees and all costs of litigation and judgments arising out of any willful misconduct or any negligent act, error or omission of the *Sub-Consultant*, or its employees arising directly out of the performance of this Agreement or work performed hereunder, including any claims brought against the Client, its officers, employees, agents, or *Consultant*. The *Sub-Consultant*’s obligation under this provision shall not be limited in any way by the agreed upon contract price as shown in this Agreement. Compliance with the insurance requirements in Section 10, Insurance, shall not relieve the *Sub-Consultant* of his liability and obligations under any other portion of this Agreement. This section shall not apply to *Consultant* or *Sub-Consultant* when losses, penalties, damages, professional fees, including attorney’s fees and all costs of litigation and judgments arising out of the performance of this contract are caused by the negligence of the Client.

b. Completeness and Accuracy of Deliverables. The *Sub-Consultant* shall be responsible for the completeness and accuracy of its services, deliverables, plans, supporting data, computer programs and data files and other documents and information prepared or compiled under its direction and control, and shall correct at its expense all errors or omissions therein which may be disclosed. The time, effort, and cost of the work necessary to correct those errors attributable to the *Sub-Consultant* shall be borne by the *Sub-Consultant*. The fact that the *Consultant* has accepted or approved the *Sub-Consultant*’s services shall in no way relieve the *Sub-Consultant* of any of its responsibilities. This provision shall not apply to any maps, official records, contracts, or other data that may be provided by the *Consultant* or public or semi-public agencies which the *Sub-Consultant* should reasonably expect to be accurate and which the *Sub-Consultant* could not reasonably be expected to know to be inaccurate.

c. Claims Against the *Consultant*. The *Sub-Consultant* agrees that no charges or claim for damages shall be made by it for any unreasonable delays or hindrances attributable to the *Consultant* during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by the *Consultant* by an extension of time for a reasonable period for the *Sub-Consultant* to complete the services. Such an agreement shall be made in writing between the parties.

d. PURSUANT TO FLORIDA STATUTE § 558.035, AN INDIVIDUAL EMPLOYEE OR AGENT OF MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF PROFESSIONAL SERVICES RENDERED UNDER THIS PROFESSIONAL SERVICES CONTRACT.

12. Ownership of Documents. All documents including, but not limited to, tracings, drawings, illustrations, computer files and programs, estimates, field notes, investigations, design analysis, studies, and other data or documents which are obtained or prepared in the performance of this Agreement, are to be instruments of service and copies are to be delivered to the *Consultant* before the final payment is made to the *Sub-Consultant.*

13. Non-discrimination.

a. The *Sub-Consultant* agrees that he will not discriminate against any of his employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State Laws regarding non-discrimination. Any violation of such provisions shall constitute a material breach of this Agreement.

b. Immigration Affidavit Certification. Statutes and executive orders require employers to abide by the immigration laws of the United States and to employ only individuals who are eligible to work in the United States.

The E-Verify program, operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA), provides an Internet-based means of verifying employment eligibility verification requirements.

*Sub-Consultants are required to enroll in the E-Verify program within thirty (30) calendar days of contract award, and use E-Verify within thirty (30) calendar days thereafter to verify employment eligibility of their employees assigned to the contract at the time of enrollment in E-Verify. Additionally, Sub-Consultants shall flow down the requirement to use E-verify to their subcontracted vendors.*

*Sub-Consultant* acknowledges and shall be fully responsible for complying with the provisions and regulations relating thereto, as either may be amended. Failure to comply with the laws referenced herein shall constitute a breach of agreement and the client and/or *Consultant* shall have the discretion to unilaterally terminate said agreement immediately.

14. Expenses of Litigation. In the event litigation in any way related to the services performed hereunder is initiated by one party to this Agreement against the other, the prevailing party shall be reimbursed by the other party its reasonable attorneys fees and costs.

15. Controlling Law. This Agreement is to be governed by the laws of the State of Florida, and venue shall rest solely in Hillsborough County, Florida.

16. Hazardous Substances. It is understood and agreed that in seeking the professional services of the *Sub-Consultant* in this Agreement, the *Consultant* does not request the *Sub-Consultant* to undertake uninsurable obligations involving or related in any manner to hazardous substances.

17. Binding Effect. This Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors and assigns.

18. Incorporation of Provisions. From **“STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION STANDARD PROFESSIONAL SERVICES AGREEMENT TERMS”**. The provisions of Paragraphs C through H of Section 9 “Terms for Federal Aid Contracts (Appendix I), are attached and incorporated into this Professional Services Agreement by reference as required in all subcontracts.

19. Merger, Amendment. This Agreement constitutes the entire agreement between the *Consultant* and the *Sub-Consultant*, and all negotiations and oral understandings between the parties are merged herein. This Agreement may be supplemented and/or amended only by a written document executed by both the *Consultant* and the *Sub-Consultant.*

20. Non-assignability. Neither party shall assign any rights or delegate any duties arising under this Agreement without prior written consent of the other party.

21. Severability. Any provision in this Agreement that is prohibited or unenforceable under Florida or federal law shall be ineffective to the extent of such prohibitions or unenforceability, without invalidating the remaining provisions hereof. Also, the non-enforcement of any provision by either party to this Agreement shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or the remainder of this Agreement.

22. Conflict of Interest. The *Sub-Consultant* covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner with the performance of Services. The *Sub-Consultant* further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by *Sub-Consultant*.

The *Sub-Consultant* agrees that it and its employees shall be bound by applicable local, state and federal laws regarding this subject of Conflict of Interest.

**SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the *Consultant* and the *Sub-Consultant* have caused this instrument to be signed by their respective duly authorized officers, all on the day and year first above written.

ATTEST: **TINDALE OLIVER** *(Consultant)*

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print/Type Name Title

ATTEST: **GANNETT FLEMING, INC** *(Sub-Consultant)*

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print/Type Name Title

Please email your Certificate of Insurance and a completed IRS W-9 form (W9 Form applies to New Sub Consultants ONLY) to Angel Acey ([AAcey@TindaleOliver.com](mailto:AAcey@TindaleOliver.com)).

**EXHIBIT A**

**CONTRACT No. CA722**

**BETWEEN**

**FLORIDA DEPARTMENT OF TRANSPORTATION DISTRICT 7 & TINDALE-OLIVER & ASSOCIATES, INC.**

**EXHIBIT B**

**INSURANCE REQUIREMENTS**

Please **See Attached Insurance Requirements.**

**Certificate holder should read as follows:**

*Tindale Oliver, 1000 North Ashley Drive, Suite 400, Tampa, FL 33602.*

In addition, the description box on the General Liability certificate must read,

**RE: FDOT D7: Safety Studies & Minor Design – CA722 (0412000-08.20)**

**Tindale Oliver and Client, and their respective officers, directors, agents, and employees are included as an additional insured with respects to General Liability and Auto Liability. General Liability is primary and non-contributory. Waiver of Subrogation applies to General Liability and Auto Liability.**

**Please send Certificate of Insurance to:** [**aacey@tindaleoliver.com**](mailto:aacey@tindaleoliver.com)

**EXHIBIT C**

**SUB-CONSULTANT SCOPE OF SERVICES**

**\*\*As assigned in each Task Work Order and issued Notice to Proceed\*\***