

## **AGREEMENT BETWEEN [PRIME'S NAME] AND [SUBCONSULTANT'S NAME]**

THIS AGREEMENT is entered into between [PRIME] and [Subconsultant] for the following reasons:

1. [PRIME] has entered into an agreement dated [MM/DD/YY] (Prime Agreement, Subconsultant Contract No. [MDOT contract no. / Authorization no], with the Michigan Department of Transportation (Owner), to perform or provide [TYPE OF SERVICES] for the [project name description] CS [#####] - JN [#####] & [#####], identified as [PRIME] Project Number [#####] (the Project); and,
2. [PRIME] requires certain services in connection with the Project (the Services); and,
3. Subconsultant is prepared to provide the [services subconsultant will be providing].

In consideration of the promises contained in this Agreement, [PRIME] and [Subconsultant] agree as follows:

### **ARTICLE 1 - EFFECTIVE DATE**

The effective date of this Agreement shall be [MM/DD/YY]. The Agreement will expire on [MM/DD/YY].

### **ARTICLE 2 - GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Michigan as set forth in the Prime Agreement.

### **ARTICLE 3 - SCOPE OF SERVICES**

Subconsultant shall provide the Services described in Attachment A, Scope of Services. [PRIME] shall be the general administrator and coordinator of Subconsultant's services and shall facilitate the exchange of information among the other independent subconsultants (if any) engaged by [PRIME] as necessary for the coordination of their services. All Project communications shall be made through or with the prior written approval of [PRIME]. Owner and [PRIME] shall have the right to observe performance of the Services and to review Subconsultant's files and records relating to the Project.

### **ARTICLE 4 - SCHEDULE**

Subconsultant shall provide the Services pursuant to the Schedule set forth in Attachment B, Schedule. Subconsultant recognizes that the services of [PRIME] and others involved in the Project are dependent upon the complete, accurate and timely performance of Subconsultant's Services. Unless otherwise provided in this Agreement, Subconsultant shall perform such Services in the same character, timing, and sequence as [PRIME] is required to perform the services under the Prime Agreement. Subconsultant's failure to so perform shall be considered a material breach of this Agreement.

### **ARTICLE 5 - COMPENSATION**

**A.** [PRIME] shall pay Subconsultant on the basis of [PAYMENT METHOD – example cost plus fixed fee], in accordance with Attachment C, Compensation; the agreement maximum is \$00.00 which includes fixed fee amount [if applicable] is \$0.00.

**B.** Subconsultant shall submit periodic invoices for

Services rendered. At a minimum, all invoices shall include (1) the [PRIME] Project number, (2) a unique invoice number, (3) an itemized statement of the Services performed for the invoiced period, and (4) a statement of amounts previously invoiced, amount of the current invoice, and total amount billed to date. Subconsultant is advised that additional documentation may be necessary if required by Owner or [PRIME] in order to validate invoiced amounts. If [PRIME] objects to any invoice submitted by Subconsultant, [PRIME] shall so advise Subconsultant in writing giving reasons therefore within fourteen calendar days of receipt of such invoice. If no such objection is made, the invoice will be considered acceptable to [PRIME].

**C.** [PRIME] shall invoice Owner on account of Subconsultant's Services and shall pay Subconsultant within ten (10) calendar days of the time [PRIME] receives payment from Owner on account thereof. Invoices must be received prior to [PRIME's] monthly closing date to be considered with the current month's invoice to the Owner. It is a condition precedent to [PRIME's] payment to Subconsultant that [PRIME] have received corresponding payment from Owner. Payments to Subconsultant will be reduced by any amounts withheld by Owner. Upon the release to [PRIME] of any amount which includes payments due Subconsultant, [PRIME] will forward to Subconsultant its portion of such payment.

### **ARTICLE 6 - PRIME AGREEMENT**

A copy of the Prime Agreement is attached as Attachment D. All portions thereof are incorporated herein and made binding on Subconsultant. In the event of a conflict between the terms and conditions of this Agreement and those of the Prime Agreement, the terms and conditions of this Prime Agreement shall prevail.

### **ARTICLE 7 - QUALITY MANAGEMENT**

**A.** Within 30 calendar days of execution of this Agreement, Subconsultant shall develop and submit to [PRIME] a draft Quality Assurance/Quality Control (QA/QC) Plan specifically for this Project. Subconsultant and [PRIME] shall collaborate to develop a final Subconsultant QA/QC Plan which,

upon acceptance by both parties, shall become part of this Agreement.

**B.** The Subconsultant shall execute the QA/QC Plan throughout the course of the Services and provide to [PRIME] periodic documentation, or other mutually acceptable records, demonstrating Subconsultant's compliance with the Plan. In addition, Subconsultant agrees to allow [PRIME] to conduct a "Quality Management Audit" on Subconsultant's premises, or other mutually acceptable location, on a periodic basis as may be necessary to ascertain Subconsultant's compliance with the QA/QC plan. Any non-compliance shall be addressed to [PRIME's] reasonable satisfaction by the Subconsultant within a mutually agreed upon time period. Consistent non-compliance or any failure to correct non-compliance to [PRIME's] reasonable satisfaction shall be considered a material breach of this Agreement.

**C.** Neither [PRIME's] acceptance of the Subconsultant's QA/QC Plan nor any "Quality Management Audit" shall relieve the Subconsultant of sole responsibility for the professional quality and technical accuracy of all Services under this Agreement.

#### **ARTICLE 8 – INDEMNIFICATION**

**A.** Subconsultant shall indemnify and hold harmless [PRIME] and Owner and is subject to the same indemnification and duties to defend as required under the Prime Agreement attached hereto and incorporated herein.

**B.** To the fullest extent permitted by law, and without limiting the generality of the foregoing, this indemnification obligation shall extend to and include any actions brought by, or in the name of, any employee of Subconsultant or others for whom the Subconsultant is legally liable.

**C.** The terms and conditions of this Article shall survive completion of all Services, obligations, and duties provided for in this Agreement, or the termination of this Agreement for any reason.

#### **ARTICLE 9 – INSURANCE**

**A.** During the performance of the Services under this Agreement, Subconsultant shall maintain the following insurance with carriers having a Best's rating of at least B+ and authorized to do business in the state in which the Services are being performed:

- (1) General Liability Insurance on a coverage form equal to ISO CG 00 01, on an occurrence basis, with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate, including a per-project endorsement.
- (2) Automobile Liability Insurance to include coverage for all hired, owned and non-owned vehicles, with a combined single limit of not less than \$1,000,000.
- (3) Workers' Compensation Insurance, in accordance with the laws of the state in which

the Services are being performed, and Employers' Liability Insurance with limits according to such statutory requirements, or \$500,000 for each accident, whichever is greater. Where Services fall within the authority of the United States Longshoreman's and Harbor Workers Compensation Act, or the Jones Act, Subconsultant's insurance shall include such Acts.

- (4) Professional Liability Insurance with limits of not less than \$1,000,000 per claim and annual aggregate.

- (5) Subconsultant shall provide and maintain the following if applicable to the Services:

a. When operations related to the Services hereunder will involve subsurface investigation (such as soil samples, core drilling, test wells, etc.), Subconsultant, or its subcontractor(s) as applicable, shall maintain Contractor's Pollution Liability Insurance, including bodily injury, property damage and cleanup costs, with limits of not less than \$1,000,000 per occurrence and annual aggregate.

b. When necessary for Subconsultant to use watercraft for the performance of the Services under this Agreement, and if excluded by Subconsultant's General Liability policy, Subconsultant shall maintain a Watercraft Liability policy with a minimum limit of \$1,000,000 per occurrence for bodily injury and property damage, including protection & indemnity where applicable. Coverage will apply to owned, non-owned and hired watercraft.

c. When necessary for Subconsultant to use aircraft (fixed-wing or rotary) for the performance of the Services under this Agreement, Subconsultant shall maintain Aircraft Liability with a minimum limit of \$1,000,000 per occurrence for bodily injury and property damage, including passenger liability. Coverage will apply to owned, non-owned and hired aircraft.

**B.** The policies shall provide, or be endorsed to provide, that: (a) at least thirty (30) days' advance written notice shall be given to [PRIME] prior to cancellation or non-renewal, (b) [PRIME], its parent company, affiliated and subsidiary entities, directors, officers and employees, and the Owner shall be added as additional insureds under policies listed under (1), (2) and (5) above, (c) on those policies where [PRIME] and the Owner are additional insureds, such insurance shall be primary and any insurance maintained by [PRIME] or the Owner shall be excess and not contribute with it, and (d) Subconsultant and its insurer(s) waive their rights of subrogation against [PRIME] and Owner.

**C.** Subconsultant shall furnish [PRIME] certificates of insurance which evidence the requirements of this Article prior to performing any Services under this

Agreement. Subconsultant further agrees to file new certificates showing renewal of coverage and limits at least thirty (30) days prior to the expiration of the current policies. Certificates shall include reference to [PRIME's] Project Number as first stated above.

#### **ARTICLE 10 - INDEPENDENT CONTRACTOR**

**A.** Subconsultant undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance. Subconsultant has complete and sole responsibility for its employees, agents, subcontractors or any other persons or entity that Subconsultant hires to perform or assist in performing the Services hereunder.

**B.** Subconsultant is solely responsible for (a) payment of wages, benefits, and other compensation to or for its employees, (b) payment of applicable payroll, unemployment, and other taxes and withholding of applicable social security (FICA) and income taxes with respect to its employees, and (c) compliance with applicable Workers' Compensation laws with respect to maintenance of workers' compensation...and employer's liability insurance coverages.

#### **ARTICLE 11 - COMPLIANCE WITH LAWS**

**A.** In performance of the Services, Subconsultant shall comply with applicable regulatory requirements including federal, state, and local laws, rules, regulations, orders, codes, criteria, and standards.

**B.** When applicable to this Agreement as determined by federal or state laws, or if required by the Prime Agreement, Subconsultant shall comply with Executive Order 12989 requiring the use of the federal "E-Verify" system to verify its employees' eligibility to work in the United States.

**C.** Subconsultant shall procure the permits, certificates, and licenses necessary to allow Subconsultant to perform the Services. Subconsultant shall not be responsible for procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Subconsultant in Attachment A, Scope of Services.

#### **ARTICLE 12 - [PRIME's] RESPONSIBILITIES**

**A.** [PRIME] shall perform the following in a timely manner so as not to delay the Services of Subconsultant:

- (1) Provide criteria and information pertinent to Subconsultant's Services as to Owner's and [PRIME's] requirements for the Project, including design objectives and constraints, space, capacity, and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner and [PRIME] will require to be included in the drawings and specifications to be furnished by

Subconsultant under this Agreement, if any.

- (2) Make available to Subconsultant drawings, specifications, schedules, and other information, interpretations, and data which are prepared by [PRIME], or by others, which [PRIME] knows are reasonably available to [PRIME], and which [PRIME] and Subconsultant consider pertinent to Subconsultant's responsibilities hereunder.
- (3) Request Owner to arrange for access to and to make provisions for Subconsultant to enter upon public and private property as required for Subconsultant to perform the Services.
- (4) Give prompt notice to Subconsultant whenever [PRIME] observes or otherwise becomes aware of any development that affects the scope or timing of Subconsultant's Services.

**B.** Unless otherwise provided in the Agreement, the information and services to be provided by [PRIME] under this Article will be without cost to Subconsultant.

#### **ARTICLE 13 - OWNERSHIP OF DOCUMENTS**

All documents, including, but not limited to, drawings, specifications, computer software and other such instruments of service prepared by Subconsultant pursuant to this Agreement, whether completed or in progress, are the property of [PRIME]. Ownership shall transfer to Owner if or as required by the Prime Agreement. Intellectual property rights shall assign and transfer to Owner if or as required by the Prime Agreement. Any use except for the specific purpose intended by this Agreement will be at the user's sole risk and without liability or legal exposure to Subconsultant.

#### **ARTICLE 14 - TERMINATION AND SUSPENSION**

**A.** This Agreement will terminate automatically upon termination of the Prime Agreement. [PRIME] will promptly notify Subconsultant of such termination.

**B.** [PRIME] may terminate or suspend performance of all or any part of this Agreement for [PRIME's] convenience upon written notice to Subconsultant. Upon receipt of notice, Subconsultant shall terminate or suspend performance of the Services on a schedule acceptable to [PRIME]. Subconsultant's sole remedy shall be payment for Services performed in accordance with this Agreement up to the effective date of termination or suspension. Nothing in this Article shall prohibit or limit [PRIME] from recovering its costs, losses and damages (direct, indirect, and consequential) arising out of or resulting from Services provided by Subconsultant prior to [PRIME's] termination or suspension for convenience.

**C.** [PRIME] may terminate this Agreement upon written notice in the event of substantial failure by Subconsultant to perform in accordance with this Agreement; provided, however, Subconsultant shall have 14 calendar days from receipt of the termination notice to cure or to submit a plan for

cure reasonably acceptable to [PRIME]. In the event of such termination, [PRIME] may complete the Services as [PRIME] deems appropriate, withholding any further payment to Subconsultant until the Services have been completed. If the unpaid balance of Subconsultant's compensation earned to the date of termination exceeds all costs, losses, and damages (direct, indirect, and consequential) sustained by [PRIME] arising out of or resulting from Subconsultant's termination and [PRIME's] completion of the Services, such excess will be paid to Subconsultant. If such costs, losses, and damages exceed such unpaid balance, Subconsultant shall pay the difference to [PRIME].

**D.** Subconsultant may terminate this Agreement upon written notice in the event of substantial failure by [PRIME] to perform in accordance with this Agreement; provided, however, [PRIME] shall have 14 calendar days from receipt of the termination notice to cure or to submit a plan for cure reasonably acceptable to Subconsultant. In the event of termination, [PRIME] will pay Subconsultant for Services performed in accordance with this Agreement to the date of termination.

**E.** Throughout the term of this Agreement, Subconsultant shall maintain, in legible and organized form, all information, work papers, and design calculations relating to the Services. Upon termination of this Agreement for any reason, Subconsultant will promptly provide same to [PRIME], along with all documents or other instruments of service, whether completed or in progress, that have been prepared or furnished by Subconsultant in the performance of the Services hereunder, and will reasonably cooperate with [PRIME] and/or any replacement subconsultant to facilitate transfer of Subconsultant's responsibilities hereunder.

#### **ARTICLE 15 - PROPRIETARY INFORMATION**

**A.** Subconsultant shall treat as proprietary all information provided by [PRIME] and Owner and all drawings, reports, studies, design calculations, specifications, and other documents or information, in any form or media, resulting from the Subconsultant's performance of the Services. Subconsultant shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of [PRIME].

**B.** The preceding restriction shall not apply to information which is in the public domain, was previously known to Subconsultant, was acquired by Subconsultant from others who have no confidential relationship to [PRIME] with respect to same, or which, through no fault of Subconsultant, comes into the public domain. Subconsultant shall not be restricted from releasing information, including proprietary information, in response to a subpoena, court order, or other legal process. Subconsultant

shall not be required to resist such subpoena, court order, or legal process, but shall promptly notify [PRIME] in writing of the demand for information before Subconsultant responds to such demand. [PRIME] may, at its sole discretion, seek to quash such demand.

#### **ARTICLE 16 - NOTICES**

**A.** Any notices required by this Agreement shall be made in writing to the address specified below:

[PRIME]:

(Fax #, Ph. #)

Subconsultant:

(Fax #, Ph. #)

**B.** Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of [PRIME] and Subconsultant.

#### **ARTICLE 17 - DELAY IN PERFORMANCE**

**A.** Neither [PRIME] nor Subconsultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state or federal agency for any of the supplies, materials, accesses, or services required to be provided by either [PRIME] or Subconsultant under this Agreement.

**B.** Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party, describing the circumstances preventing continued performance and the efforts being made to resume performance.

#### **ARTICLE 18 - DISPUTES**

**A.** In the event of a dispute between [PRIME] and Subconsultant arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation.

**B.** In the event that problems arise with the services that may be the result of errors and/or omissions by the Subconsultant or a failure of the Subconsultant to otherwise perform in accordance with this Agreement, the Subconsultant and [PRIME] will follow and abide by a decision reached by the Department's dispute resolution process (DRP), as set forth in Exhibit C of the Prime Agreement, dated Month Day, Year (Attachment D). See page \_\_\_\_, Item \_\_\_\_ and Exhibit C of the Prime Agreement.

**C.** During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

#### **ARTICLE 19 - RECORDS**

Subconsultant's records pertaining to compensation and payments under this Agreement shall be kept in accordance with generally accepted accounting principles. Such records shall be subject to audit by [PRIME], during normal business hours at Subconsultant's place of business, or Subconsultant shall provide a copy of same to [PRIME] at [PRIME's] expense. Subconsultant shall not dispose of the originals of such records for a minimum of 3 years from final payment.

#### **ARTICLE 20 - EQUAL EMPLOYMENT OPPORTUNITY**

**A.** The Subconsultant hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable regulations.

**B.** Subconsultant affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is Subconsultant's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment.

**C.** Subconsultant further affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-100 reports, and maintenance of a current Affirmative Action Plan if required by Federal regulations.

#### **ARTICLE 21 - WAIVER**

A waiver by either [PRIME] or Subconsultant of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

#### **ARTICLE 22 - SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or

enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. [PRIME] and Subconsultant further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

#### **ARTICLE 23 - INTEGRATION**

This Agreement, including Attachments A, B, C, and D, and the Subconsultant's QA/QC Plan, all incorporated by this reference, represents the entire and integrated agreement between [PRIME] and Subconsultant. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be amended only by a written instrument signed by both [PRIME] and Subconsultant.

#### **ARTICLE 24 - SUBCONTRACTING**

Subconsultant shall not engage independent subconsultants, associates, or subcontractors to assist in the performance of Subconsultant's Services without the prior written consent of [PRIME].

#### **ARTICLE 25 - SUCCESSORS AND ASSIGNS**

[PRIME] and Subconsultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives, and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party, in respect to all provisions of this Agreement.

#### **ARTICLE 26 - ASSIGNMENTS**

Neither [PRIME] nor Subconsultant shall assign any rights or duties under this Agreement without the prior written consent of the other party; provided, however, Subconsultant may assign its rights to payment without [PRIME's] consent. Unless otherwise stated in the written consent, no assignment will release or discharge the assignor from any obligation under this Agreement.

#### **ARTICLE 27 - THIRD PARTY RIGHTS**

The Services provided for in this Agreement are for the sole use and benefit of, and nothing in this Agreement shall be construed to give any rights or benefits to, anyone other than Owner, [PRIME], and Subconsultant.

## ARTICLE 28 - CERTIFICATION

By signing below, Subconsultant certifies that all costs reported and invoiced to [PRIME] and the Owner on this Project represent only those items which are properly chargeable in accordance with this Agreement and the Prime Agreement, and that Subconsultant has read all the terms of this Agreement and the Prime Agreement and has made

itself aware of the applicable laws, regulations and terms that apply to the reporting and invoicing of costs incurred under the terms of this Agreement and the Prime Agreement. Subconsultant further certifies that it agrees to use the E-Verify system to verify that all persons hired during the contract term by the Subconsultant are legally present and authorized work in the United States.

IN WITNESS WHEREOF, [PRIME] and Subconsultant have executed this Agreement. The individuals signing this Agreement represent and warrant that they have the power and authority to enter into this Agreement and bind the parties for whom they sign.

[PRIME]

[SUBCONSULTANT]

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2010

Date: \_\_\_\_\_, 2010

Fed. Tax I.D. No. \_\_\_\_\_

**Attachment A**

**Scope of Services**

Consisting of \_\_\_\_ Pages

SAMPLE

**Attachment B**

**Schedule**

**Consisting of \_\_\_\_ Pages**

SAMPLE



**Attachment C**

**Compensation**

**Consisting of \_\_\_\_ Pages**

SAMPLE

**Attachment D**

**Prime Agreement**

**Consisting of \_\_\_\_ Pages**

SAMPLE