

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** March 7, 2022

**SUBJECT:** **Agreement with Vaughn & Melton Consulting Engineers, Inc.  
Henderson County Rail Trail Project**

**PRESENTER:** Marcus Jones, P. E.

**ATTACHMENTS:** Yes  
1. Proposed Agreement with Vaughn & Melton Consulting Engineers, Inc.

#### **SUMMARY OF REQUEST:**

With the selection of Vaughn & Melton Consulting Engineers, Inc. (V&M) as the most qualified responding Engineering firm for the subject project during the Board's December 6, 2021 meeting, staff has negotiated a proposed agreement with V&M for \$447,651.09 attached. The scope of the agreement is to perform the engineering services for the subject project through 30% design. The engineering services from 30% design through bidding will fall under a separate agreement to be negotiated when the scope of work needed to improve or replace the bridge structures is known. The bridges will be evaluated during first phase. The second phase is estimated to be \$460,000 which includes design of full bridge replacement.

The greenway project scope is from Kanuga Road to US 64 in Horseshoe and fully funded by a federal grant administered through NC Department of Transportation. The total grant is for \$6,344,023 with the 20% local match (\$1,268,804) coming from private donations.

**BOARD ACTION REQUESTED:** Authorize the County Engineer to execute the proposed agreement with Vaughn & Melton, Inc. for \$447,651.09.

#### **Suggested Motion:**

*I move that the Board authorize the County Engineer to execute the proposed agreement with Vaughn & Melton, Inc. for \$447,651.09*

## ENGINEERING AGREEMENT

THIS AGREEMENT, made and entered into this 12th day of May, 2021 by and between HENDERSON COUNTY, NC (hereinafter called the "COUNTY") and **Vaughn & Melton Consulting Engineers, Inc.** (hereinafter called the "CONSULTANT" or "Prime Consultant"), whose primary offices are located at **1318-F Patton Avenue, Asheville, NC 28806**

### GENERAL RECITALS

WITNESSETH:

WHEREAS, the COUNTY desires the assistance of a CONSULTANT in the performance of certain professional services; and

WHEREAS, the CONSULTANT has exhibited evidence of experience, ability, competence, and reputation to perform such professional services; and

NOW THEREFORE, the COUNTY and the CONSULTANT, for consideration hereinafter stipulated, mutually agree as follows:

All professional engineering services will be performed in the United States of America. No work will be allowed to be outsourced outside of the United States of America. The CONSULTANT agrees to perform the required professional engineering services, including field survey data necessary to design and prepare right of way plans and Construction Plans, Contract Documents and any special provisions for STIP Project BL-0007, Ecusta Rail-Trail from Kanuga Road in Hendersonville to Brevard Road in Horse Shoe.

### **ARTICLE I - SCOPE OF WORK**

I.A. Description of Work Required

I.A.1. Prepare right of way and construction plans as outlined in the detailed estimate contained in **ATTACHMENT B** to include the following tasks:

- Completion of location and survey maps
- Preliminary evaluations and designs for bridges, road and highway crossings, and streambank restorations
- Preliminary greenway designs
- Environmental analysis and documentation

- Prepare preliminary construction cost estimates
- Conduct meetings with appropriate COUNTY personnel and the Henderson County Rails to Trails Committee

I.A.2. The CONSULTANT shall perform site investigations and hydrological and hydraulics design studies and field surveys as necessary to determine the requirements for all hydraulics related structures to be replaced.

I.A.3. Where alternate designs appear warranted, the CONSULTANT shall prepare designs in sufficient detail to permit a decision on the most desirable alternative. These designs should include profiles, grades, proposed retaining walls, construction quantities and any other pertinent information that will facilitate the selection of the recommended alternative.

I.A.4. The CONSULTANT shall prepare the work per the Estimate included in **ATTACHMENT B**.

I.B. Subconsultant Utilization

The CONSULTANT shall only utilize subconsultants and/or subfirms that are prequalified by NCDOT to perform the specified professional or specialized services needed.

The CONSULTANT shall utilize the subconsultant(s) and/or subfirm(s) as proposed in the Scope of Services or project proposal to the COUNTY regarding the requested services. The CONSULTANT shall indicate the proposed utilization (CONSULTANT name and percentage) for both the Prime Consultant and any/all subconsultant(s) firms in the LOI on the appropriate FORM RS-2(s), as included in ATTACHMENT C.

The CONSULTANT shall insure that any/all subconsultant(s) or subfirms(s) shall comply with the terms and conditions set forth in this AGREEMENT.

I.C. Subcontracts

I.C.1. The CONSULTANT and/or subconsultant will not sublet any portion of the work covered by this AGREEMENT without prior written approval by the COUNTY.

I.C.2. The CONSULTANT will be responsible for the schedule of any work sublet to others to assure that the overall schedule of the project is maintained.

I.C.3. The CONSULTANT will be responsible for the completeness, accuracy and presentation of all data, and for the review of any work sublet to others.

I.D. Work Standards

The CONSULTANT will perform the studies, prepare documents and reports, and develop plans in accordance with all applicable State and Federal regulations and safety guidelines.

I.E. Deliverables

The CONSULTANT will submit to the COUNTY the work products outlined in the detailed SCOPE OF WORK developed for each task. All deliverables will be in accordance with guidelines of the COUNTY and NCDOT.

I.F. Guidelines

All work under this contract shall be performed in accordance with all applicable guidelines published by the COUNTY, and in accordance with the SCOPE OF WORK developed for each task.

I.G. When performing field work on or adjacent to public streets or highways, it shall be the responsibility of the CONSULTANT to provide traffic control including flagmen and/or any other necessary devices in accordance with the "Manual on Uniform Traffic Control Devices" (Current Edition), the "N. C. Department of Transportation - Construction and Maintenance Operations Supplement to the M.U.T.C.D." and the "North Carolina Survey Crew Safety Supplement" to protect workers, equipment, and the traveling public.

**ARTICLE II - DATA AND SERVICES TO BE PROVIDED BY THE COUNTY**

II.A. Data and Services

II.A.1. The staff person assigned shall serve as the COUNTY's Project Manager for this AGREEMENT.

II.A.2. The COUNTY shall make reasonable efforts to provide available data and information, as applicable to the detailed SCOPE OF WORK developed for each task, which may include but is not limited to, the following:

- Guidelines for any applicable discipline; and
- All data possessed by the COUNTY that can be released that would assist the CONSULTANT in the accomplishment of the work.



### ARTICLE III - TIME OF BEGINNING AND COMPLETION

- III.A. Work will begin immediately following written Notice of Execution of this AGREEMENT and authorization to begin work. The work will be completed as follows:
- Completion of the Revised Federal Categorical Exclusion by September 2, 2022. Schedule of other project tasks are included in the Scope included in **ATTACHMENT B**.
- III.B. Upon receiving notice to proceed, the COUNTY will provide the CONSULTANT with a schedule for the project. It is the CONSULTANT's responsibility to implement and monitor this schedule.
- III.C. If additional tasks beyond the agreed-upon scope of work are required to complete the assignment, then a new written amended scope of work will be developed for the additional services. The CONSULTANT shall notify the COUNTY's Project Manager as soon as additional services beyond agreed upon scope of work appear to be warranted.
- III.D. Consultant may request extensions to the agreed upon schedule in the event of unavoidable delays, which requests should not be unreasonably denied by the County. If the duration of the agreement is extended more than twelve months beyond the scheduled completion date due to no fault of the CONSULTANT, they may present written documentation of the delay and the increased cost and request a supplemental agreement adjusting the compensation. If the request is approved, the increase in compensation shall be determined by the mutual agreement of both parties.

### ARTICLE IV - COMPENSATION AND PAYMENTS

- IV.A. Fees and Costs
- IV.A.1 The method of compensation is to be direct labor costs with additives for overhead, fixed fee, and cost of capital plus reimbursement of eligible expenses (Cost Plus) using NCDOT processes and procedures.
- As complete compensation for all Engineering services described above, and in the scope of work and estimate included in ATTACHMENT B, the CONSULTANT will be paid for actual time worked and eligible reimbursable expenses up to the maximum of **\$447,651.09** (Four-Hundred Forty-Seven Thousand, Six-Hundred and Fifty-One Dollars, and Nine Cents). Any services within the Scope of Services shall be completed with compensation not to exceed **\$447,651.09**.

IV.B. Progress Report/Project Schedule

The CONSULTANT shall prepare a written progress report as required by the COUNTY's Project Manager during work which is in progress under this AGREEMENT. The progress report shall discuss accomplishments to date, provide percent of tasks completed, provide current and updated project schedules, and identify outstanding issues or problems. Subsequent to the preparation of each progress report, the CONSULTANT may be requested to meet with the COUNTY to discuss project progress. The progress report and an updated project schedule will be submitted to the COUNTY's Project Manager.

IV.C. Payment and Retainage

Monthly payment for the time worked and eligible reimbursable expenses not exceeding up to the total maximum amount will be made to the CONSULTANT upon submission of a Progress Report/Project Schedule, an invoice stating the percent of completion of each task, and appropriate supporting documentation. Invoices shall be in the NCDOT's Cost Plus format.

The CONSULTANT shall pay subconsultants for work performed within seven (7) days after CONSULTANT receives payment from the COUNTY for work performed by the subconsultant. This requirement must be incorporated into all subconsultant agreements. Failure to comply with the seven (7) day requirement may cause the COUNTY to withhold payments to the CONSULTANT and the COUNTY may suspend work until the subconsultant is paid.

It shall be the responsibility of the CONSULTANT and all subconsultants to keep records of all payments requested and the dates received. The COUNTY may request copies of this information in the form of a report.

Reporting Subconsultant(s) and/or Subfirm(s)

When payments are made to Subconsultant(s) and/or Subfirm(s), including material suppliers, Firms at all levels (CONSULTANT, subconsultant, or second tier subconsultant) shall provide the COUNTY's Project Manager or Contract Administrator with an accounting of said payments. This accounting shall be furnished to the COUNTY's Project Manager or Contract Administrator for any given month by the end of the following month. Failure to submit this information accordingly may result in: (1) withholding of money due in the next partial pay estimate; or (2) removal of an approved CONSULTANT from the prequalified vendors list or the removal of other entities from the approved subconsultants list. The accounting shall list for each payment made to a Subconsultant(s) and/or Subfirm(s) the following:

DOT Project Number  
Payer CONSULTANT Name and Federal Taxpayer ID  
Receiving Subconsultant or Material Supplier and Federal Taxpayer ID  
Amount of Payment  
Date of Payment  
This document shall be on the Department's Subconsultant Payment Information Form.

A responsible fiscal officer of the payee CONSULTANT, subconsultant, or second tier subconsultant who can attest to the date and amounts of the payments shall certify that the accounting is correct. A copy of an acceptable report may be obtained from the COUNTY's Project Manager or Contract Administrator.

IV.D. Maintenance of Information and Reports

IV.D.1. NCDOT Information

IV.D.1.a. All work will be administered and performed in accordance with Federal Aid Policy Guide - 23 CFR 172, the North Carolina Administrative Code, all relevant North Carolina General Statutes and all United States Statutes.

IV.D.1.b. Subcontracts exceeding \$2,500 which involve the employment of mechanics or laborers shall require the subconsultant to comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC Chapter 37) as supplemented by Department of Labor regulations (29 CFR, Part 5).

IV.D.1.c. Subcontracts exceeding \$10,000 shall require the subconsultant to comply with all Federal and State Statutes and regulations required in the AGREEMENT.

IV.D.2. Availability of Information

IV.D.2.a. The CONSULTANT will maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred on this project and to make such materials available at its offices at all reasonable times during the contract period and for three (3) years from the date of final payment for inspection by the COUNTY, the Federal Highway Administration or any other authorized representative of the

COUNTY or Federal Highway Administration. Copies thereof will be furnished to the COUNTY and/or Federal Highway Administration if requested. The CONSULTANT and any or all subconsultants will use cost principles as described in Federal Acquisition Regulation (48 CFR 1-31), Subpart 1-31.2.

IV.D.2.b. The CONSULTANT will require all subconsultants to whom a portion of this contract may be sublet to maintain all such books, documents, papers, accounting records, and other information pertaining to cost, and further to require that said subconsultants make these materials available to the COUNTY and/or Federal Highway Administration at all reasonable times during the contract period and for three (3) years from date of final payment, and to require said subconsultants to furnish copies of such documents to the COUNTY and/or Federal Highway Administration upon request. The CONSULTANT will affirmatively enforce this provision of this contract with the subconsultant upon request of the COUNTY or the Federal Highway Administration.

IV.D.2.c. The CONSULTANT shall notify the COUNTY in writing of significant changes within the CONSULTANT's firm (e.g., change of name, address, telephone number, project-related personnel changes, etc.). This responsibility includes ensuring the CONSULTANT's qualification paperwork and registration information is current in the COUNTY's files.

IV.E. North Carolina E-Verify Compliance for COUNTY Contracts

As a condition of payment for services rendered under this agreement, CONSULTANT shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONSULTANT provides the services to the County utilizing a subconsultant, CONSULTANT shall require the subconsultant to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well CONSULTANT shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.

## ARTICLE V - MISCELLANEOUS PROVISIONS

### V.A. Conferences, Visits to Sites, Inspection of Work

The CONSULTANT will be represented by a responsible member of the firm at any meetings, hearings, consultations, and field conferences deemed necessary by the COUNTY or the CONSULTANT.

### V.B. CONSULTANT'S Responsibility

The CONSULTANT shall be fully and totally responsible for the accuracy and completeness of all work performed under this contract and shall indemnify and save harmless the COUNTY and shall be fully liable for any additional costs and all claims against the COUNTY which may arise due to errors, omissions, or negligence of the CONSULTANT or any subconsultants in performing the work required by this AGREEMENT, including but not limited to any and all costs and damages for defending actions or claims under the National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act of 1971.

The CONSULTANT shall defend, indemnify and hold harmless the North Carolina Department of Transportation, its officers and employees from any claim, demand, suit, liability, judgment and expense (including attorney's fees and other costs of litigation) arising out of or relating to injury, disease, or death of persons or damage to or loss of property resulting from or in connection with the negligent performance of this AGREEMENT by the CONSULTANT, its agents, employees, and subconsultants or any one for whom the CONSULTANT may be responsible. The obligations, indemnities and liabilities assumed by the CONSULTANT under this paragraph shall not extend to any liability caused by the negligence of the COUNTY or its employees. The CONSULTANT'S liability shall not be limited by any provisions or limits of insurance set forth in this contract in Section V.F.2. PROFESSIONAL LIABILITY INSURANCE.

The CONSULTANT shall indemnify and hold harmless the COUNTY from any claim, demand, suit, liability, judgment, and expense (including attorney's fees and other costs of litigation) involving damage or loss to the CONSULTANT'S equipment (including vandalism, theft, fire and acts of God) arising out of or relating to work performed under this AGREEMENT. The obligations, indemnities and liabilities assumed by the CONSULTANT under this paragraph shall not extend to any liability caused by the negligence of the COUNTY or its employees. The CONSULTANT'S liability shall not be limited by any provisions or limits of insurance set forth in this contract.

If, during the duration of this AGREEMENT, the CONSULTANT receives instructions or directions which are considered beyond the scope of work outlined in this AGREEMENT, all work shall be suspended until the matter is resolved. The CONSULTANT shall immediately notify the COUNTY'S Project

Manager in writing with a description and justification for the claim of extra work. The CONSULTANT shall not continue work until written notice to proceed is given.

If the CONSULTANT receives incorrect instruction or direction as it relates to the individual scope of work for an assignment, the CONSULTANT will contact the COUNTY's Project Manager with the details of the work beyond the negotiated Scope of Work herein. The CONSULTANT and COUNTY's Project Manager will mutually agree upon what direction to pursue before any additional work is undertaken for that specific assignment. If additional services are required, then a new scope of work and estimate will be prepared. The CONSULTANT shall not continue work until a written notice to proceed for the agreed upon services is given.

V.C. Relationship with Others

The CONSULTANT will cooperate fully with the COUNTY with municipalities and local government officials, Federal and state environmental resource and regulatory agencies, and with any others as may be directed by the COUNTY. This shall include attendance at meetings, workshops, and hearings and also includes provision of project development, human and natural environmental and engineering information to all parties as may be requested by the COUNTY. The CONSULTANT will also cooperate fully with the COUNTY and other agencies on adjacent projects.

V.D. The Professional services provided by the CONSULTANT under this AGREEMENT will be performed, findings obtained, and recommendations prepared in accordance with generally accepted industry principles and practices.

V.E. All work shall be administered and performed in accordance with Federal-Aid Highway Program Manual Volume 1, Chapter 7, Section 2 and the relevant parts of North Carolina Administrative Code and General Statutes.

V.F. ADDITIONAL PROVISIONS

V.F.1. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any consideration, contingent upon or resulting from the award or making of this

contract. For breach or violation of this warranty, the COUNTY shall have the right to annul this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

V.F.2. PROFESSIONAL LIABILITY INSURANCE

The CONSULTANT will provide to the COUNTY a valid and current Certificate of Professional Liability Insurance for a minimum of \$1,000,000 prior to the execution of this AGREEMENT, unless waived in writing by the contracting officer.

Pursuant to N.C.G.S. § 97-19, ANY CONSULTANT of the COUNTY is required, prior to beginning services, to show proof of coverage issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance for a self-insured CONSULTANT, stating that it has complied with N.C.G.S. § 97-93, irrespective of whether the CONSULTANT has regularly in service fewer than three employees in the same business within the State of North Carolina, and each CONSULTANT shall be hereinafter liable under the Workers' Compensation Act for payment of compensation and other benefits to its employees for any injury or death due to an accident arising out of and in the course of performance of the work insured by the CONSULTANT.

V.F.3. DESIGN

Unless covered elsewhere in this AGREEMENT, design standards are to be as furnished by the COUNTY.

V.F.4. OWNERSHIP OF ENGINEERING DOCUMENTS

All tracings, documents, technical reports, charts, plans, specifications, photographic negatives, survey notes, computations, and maps and other data prepared or obtained under the terms of the contract shall be delivered to and become the property of the COUNTY without restriction or limitation on their use. However, in the event of any reuse or alteration of any documents furnished to the COUNTY, such alteration or reuse shall be at the COUNTY'S sole risk. In the case of an agreement involving preliminary plans only, no commitment is stated or implied that would constitute a limitation on the subsequent use of the plans or ideas



incorporated therein for preparation of construction plans. These items could become the property of the COUNTY, if the COUNTY so elects.

V.F.5. CHANGES IN WORK

All changes in the work will be included in supplemental agreements, which will be executed prior to beginning of such supplemental work. The supplemental work will be approved by the COUNTY prior to doing the work.

V.F.6. DELAYS AND EXTENSIONS

Reasonable extension of time for unforeseen delays may be made by mutual written consent of all parties involved.

V.F.7. TERMINATION OR ABANDONMENT

The COUNTY may terminate this Agreement for any reason, or for no reason, whatsoever upon thirty days written notice to the CONSULTANT. In such an event, the COUNTY will furnish thirty (30) days written notice thereof to the CONSULTANT. CONSULTANT shall immediately terminate work upon receipt, however, CONSULTANT shall also bring to a reasonable stage of completion those items whose value would be otherwise lost without such necessary further work, as may be directed by the COUNTY, and will turn over to the COUNTY all data, environmental documents, technical reports, charts, survey notes, figures, drawings, and other records or information collected or secured herein, whether partial or complete. Upon such termination, the fee to be paid the CONSULTANT will be equitable to cover all services rendered, using a proportional amount of the total fee based on a ratio of the amount of work done to the total amount of work which was to have been performed, less prior partial payments which have been made and also pursuant to an accounting by the COUNTY and upon approval of the Contract Administrator.

V.F.8. DISPUTES

Mediation

1. Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition



precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the HENDERSON County Bar Association shall name a mediator to hear the matter.

2. The parties shall equally share the mediator's fee. The mediation shall be held in Hendersonville at a location designated by the mediator selected to hear the matter.

### Governing Law

This Agreement shall be governed by the laws of the State of North Carolina and should any claim or dispute arise between the Parties that cannot be resolved amicably, then any action to enforce or interpret its terms shall be brought in the General Court of Justice of HENDERSON County, North Carolina which shall have venue and jurisdiction over the subject matter and the Parties. All rights and remedies of County under this Agreement shall be cumulative, and none shall exclude any other rights or remedies allowed by law or by equity. The Parties hereby agree that this paragraph establishes exclusive and sole venue and jurisdiction for any legal proceeding in HENDERSON County, North Carolina.

### V.F.9. GENERAL COMPLIANCE WITH LAWS

The CONSULTANT will comply with all laws, ordinances and regulations, Federal, State and local, applicable to the work. Specific attention is directed to North Carolina General Statutes 14-100 (Obtaining Property by False Pretenses) and 136-13.2 (Falsifying Highway Inspection Reports).

#### 1. Selection of Labor

During the performance of this AGREEMENT, the CONSULTANT will not discriminate against labor from any other COUNTY, possession, or territory of the United States.

#### 2. Employment Practices

During the performance of this AGREEMENT, the CONSULTANT agrees to comply with all applicable provisions of 49 CFR Part 21, 23 CFR Part 200 and Part 230 and the Civil Rights Act of 1964 as amended, and agree as follows:

- a. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national

origin, sex, age, handicap and/or disability. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex, age, handicap or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the COUNTY setting forth the provisions of this nondiscrimination clause.

- b. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, religion, creed, color, national origin, sex, age, handicap and/or disability.
- c. The CONSULTANT will send to each labor union or representative of workers with which the CONSULTANT has a collective bargaining agreement or other contract or understanding, a notice to be provided by the COUNTY, advising the labor union or workers' representatives of the CONSULTANT'S commitments under this AGREEMENT and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The CONSULTANT will comply with all provisions of U.S. Presidential Executive Order No. 11246 as amended by Executive Order 11375, and other Orders and as supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60).
- e. The CONSULTANT will furnish all information and reports required by Executive Order No. 11246 as amended by Executive Order 11375, and other Orders, and as supplemented in U.S. Department of Labor regulations (41 CFR

Chapter 60), and will permit access to his books, records, and accounts by the U.S. Secretary of Labor or Labor Officials for purposes of investigations to ascertain compliance with such rules, regulations and orders.

- f. In the event of the CONSULTANT'S noncompliance with the nondiscrimination clauses of this AGREEMENT or with any of rules, regulations, or orders referenced hereinabove this AGREEMENT may be canceled, terminated, or suspended in whole or in part, and the CONSULTANT may be declared ineligible for further Government contracts or Federally-assisted construction agreements in accordance with procedures authorized in Executive Order No. 11246 as amended by Executive Order 11375 and other Orders and as supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60) and such other sanctions may be imposed and remedies invoked as provided in the aforementioned U.S. Presidential Executive Order and regulations or as otherwise provided by law.
- g. The CONSULTANT will include the provisions of the paragraphs under Section V.F.9.2 of this AGREEMENT in every subcontract or purchase order so that such provisions will be binding upon each subconsultant or vendor unless specifically exempted by rules, regulations, or orders of the U.S. Secretary of Labor issued pursuant to Section 204 of the U.S. Presidential Executive Order No. 11246.

3. Selection of Subconsultant or Subcontractor, Procurements of Material and Leasing of Equipment

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest (herein referred to as the "CONSULTANT") agrees as follows:

a. Compliance with Regulations:

The CONSULTANT will comply with the Regulations of the COUNTY relative to nondiscrimination in Federally assisted programs of the U.S. Department of Transportation (Title

49, Code of Federal Regulations, Part 21 and 23 CFR Part 200 and Part 230, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this AGREEMENT.

b. Nondiscrimination:

The CONSULTANT, with regard to the work performed by them after award and prior to completion of the AGREEMENT work, will not discriminate on the ground of race, religion, creed, color, national origin, sex, age, handicap and/or disability in the selection and retention of subconsultants, including procurements of material and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by 49 CFR Section 21.5 of the Regulations, including employment practices when the AGREEMENT covers a program set forth in Appendix B of 49 CFR Part 21.

The CONSULTANT and their subconsultants will not discriminate on the basis of race, religion, creed, color, national origin, sex, age, handicap and/or disability in the performance of this contract. The CONSULTANT will carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the COUNTY deems appropriate.

c. Solicitations:

In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a subcontract, including procurement of material or leases of equipment, each potential subconsultant, supplier, or lessor shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, religion, creed, color, national origin, sex, age, handicap and/or disability.

d. Information and Reports:

The CONSULTANT and subconsultants will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONSULTANT, subconsultant, or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT will so certify to the COUNTY as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance:

In the event of the CONSULTANT'S, subconsultant's, or Contractor's non-compliance with the nondiscrimination provisions of this AGREEMENT, the COUNTY shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
- (2) cancellation, termination or suspension of the CONSULTANT in whole or in part.

f. Incorporation of Provisions:

The CONSULTANT will include the provisions of paragraph V.F.9.3 of this AGREEMENT in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The CONSULTANT or subconsultant will take such action with respect to any subcontract, procurement or leases as the COUNTY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the CONSULTANT become involved in, or

is threatened with litigation with a subconsultant, or lessor as a result of such direction, the CONSULTANT may request the COUNTY to enter into such litigation to protect the interests of the COUNTY, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States. The CONSULTANT shall advise the COUNTY and United States in writing of such potential or actual litigation. However, the COUNTY and United States are not required to enter into such litigation by law. The CONSULTANT shall be responsible for paying all litigation expenses, including but not limited to attorney's fees and costs, incurred by the COUNTY and United States defending such litigation.

- g. For contracts and subcontracts of amounts in excess of \$100,000.00, the CONSULTANT or subconsultant will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 7606), Section 508 of the Clean Water Act (33 USC 1368), U.S. Presidential Executive Order 11738, and U.S. Environmental Protection Agency (EPA) regulations, which prohibit, under nonexempt Federal contracts, grants or loans, the use of facilities included on the EPA List of Violating Facilities. The CONSULTANT or subconsultant will report violations to the grantor agency and to the U.S. Environmental Protection Agency, U.S. Assistant Administrator for Enforcement.

4. Title VI Assurances

During the performance of this AGREEMENT, the CONSULTANT will comply with the following Standard DOT Title VI and 49 CFR Part 21.7 Assurances:

The North Carolina Department of Transportation (hereinafter referred to as the "Recipient") hereby agrees to comply with the following Federal statutes, U.S. Department of Transportation and Federal Highway Administration Regulations, and the policies and procedures promulgated by the Federal Highway Administration, as a condition to receipt of Federal funds.

**a. Title VI of the Civil Rights Act of 1964**

Title VI of the Civil Rights Act of 1964, as amended, provides that no person on the ground of race, color, national origin, sex, age, and handicap/disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Civil Rights Restoration Act of 1987 amended Title VI to specify that entire institutions receiving Federal funds – whether schools and colleges, government entities, or private employers – must comply with Federal civil rights laws, rather than just the particular programs or activities that receive the funds.

Nondiscrimination programs require that Federal-aid recipients, sub-recipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally-funded or not. If a unit of State or local government is extended Federal-aid and distributes such aid to another governmental entity, all of the operations of the recipient and sub-recipient are covered. Corporations, partnerships, or other private organizations or sole proprietorships are covered in their entirety if such entity received Federal financial assistance (FHWA Notice N 2720.6, September 2, 1992).

**b. Assurances, 49 CFR Part 21.7**

The North Carolina Department of Transportation, hereby gives assurances: That no person shall on the grounds of race, color, national origin, sex, age, and handicap/disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the recipient regardless of whether those programs and activities are federally-funded or not.

**c. Standard DOT Title VI Assurances**

The CONSULTANT or subconsultant will comply with the Standard DOT Title VI Assurances which



are attached to this AGREEMENT (see ATTACHMENT A).

V.F.10. DISADVANTAGED BUSINESS ENTERPRISE

(a) Policy

It is the policy of the North Carolina Department of Transportation that small businesses shall have an equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by federal and state funds.

The Department is committed to its annual aspirational goal(s) set on all federally-assisted and state funded contracts. Professional Services Contracts are race and gender neutral and do not contain goals. However, the CONSULTANT is encouraged to give every opportunity to allow Disadvantaged, Minority-Owned and Women-Owned Business Enterprises (DBE/MBE/WBE) subconsultant participation on all contracts and supplemental agreements.

(b) Obligation

In compliance with *Title VI, 23 CFR 200, 230, 635, 117 (d) and (e) and 49 CFR Parts 21 and 26*, the CONSULTANT and subconsultant shall not discriminate on the basis of race, religion, color, creed, national origin, age, disability or sex in the performance of this contract. Failure by the CONSULTANT to comply with these requirements is a material breach of this contract, which will result in the termination of this contract or such other remedy, as the North Carolina Department of Transportation deems necessary.

(c) Reporting Participation

When payments are made to subconsultants, including material suppliers, firms at all levels (CONSULTANT, subconsultant or subfirm) shall provide the Contract Administrator with an accounting of said payments. This accounting shall be furnished to the Contract Administrator for any given month, by the end of the following month. Failure to submit this information accordingly may result in (1) withholding of money due in the next partial pay estimate; or (2) removal of an approved CONSULTANT from the pre-qualified list or



the removal of other entities from the approved subconsultants list. The accounting shall be listed on the Department's Subcontractor Payment Information Form (Form DBE-IS). In the event the CONSULTANT has no subconsultant participation, the firm shall indicate this on the Form DBE-IS by entering the word 'None' or the number 'zero' and the form shall be signed.

A responsible fiscal officer of the payee CONSULTANT, or subconsultant, who can attest to the date and amount of the payments shall certify that the accounting is correct on the Form DBE-IS by affixing his/her signature. This information shall be submitted as part of the requests for payments made to the North Carolina Department of Transportation. A copy of the Form DBE-IS may be found on the NCDOT website.

V.F.11. SMALL PROFESSIONAL SERVICES FIRM

(a) Program

The Small Professional Services Firm (SPSF) Program was developed to provide consultant opportunities for firms that meet the eligibility criteria to compete against other consultant firms that are comparably positioned in their industries. The North Carolina Department of Transportation is committed to providing contractual opportunities to qualified firms and believes that the total quality of a professional or specialized services team is enhanced by the inclusion of qualified subconsultants.

The SPSF program is a race, ethnic, and gender-neutral program designed to increase the availability of contracting opportunities for small businesses on federal, state, or locally funded contracts. SPSF participation is not contingent upon the funding source.

Participation credit cannot be counted unless the firm is certified as a SPSF at the time a letter of interest is submitted for the proposed work.

A firm certified as a Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), and/or Women's Business Enterprise (WBE) may automatically be certified, based on North American Industrial Classification System (NAICS) code classification, as an

SPSF and does not need to obtain further SPSF certification.

(b) Replacement of SPSF contractors

The Prime Consultant must not terminate a SPSF listed in the Consultant's Letter of Interest, See Section I.B., for convenience and then perform the work of the terminated subcontract with its own forces, or those of an affiliate, without the Department's prior written consent.

When a SPSF subconsultant is terminated or fails to complete its work on the contract for any reason, the Department encourages the Prime Consultant to make an earnest effort to find another SPSF subconsultant to substitute for the original SPSF. These efforts shall be directed at finding another SPSF to perform at least the same amount of work under the contract as the SPSF that was terminated.

(c) Counting SPSF Participation toward meeting the proposed SPSF Utilization

If a Firm is determined to be an eligible SPSF Firm and certified by the Department, the total dollar value of the participation by the SPSF will be counted toward the utilization. The total dollar value of participation by a certified SPSF will be based upon the value of work actually performed by the SPSF and the actual payments to SPSF Firms by the Consultant.

V.F.12. SUBLETTING, ASSIGNMENT, OR TRANSFERS

There shall be no assignment, subletting or transfer of the interest of the CONSULTANT in any of the work covered by the AGREEMENT without the written consent of the COUNTY, except that the CONSULTANT may, with prior notification of such action to the COUNTY, sublet property searches and related services without further approval of the COUNTY.

V.F.13. CONSULTANT'S ENDORSEMENT OF PLANS, ETC.

The CONSULTANT will sign, and professional seal all environmental documents, reports, surveys, computations,

maps, plans, specifications, estimates, and engineering data furnished by it.

V.F.14. CONTROL OF WORK

All work by the CONSULTANT or subconsultant is to be done in a manner satisfactory to the COUNTY and in accordance with the established customs, practices, and procedures of the North Carolina Department of Transportation and in conformity with the Standards adopted by the American Association of State Highway Transportation Officials (AASHTO), and approved by the Secretary of Transportation as provided in Title 23, U. S. Code, Section 109(b). The decision of the COUNTY is to control in all questions regarding location, type of design, dimension of design, and similar questions.

V.F.15. APPROVAL OF PERSONNEL

The COUNTY shall have the right to approve or reject the CONSULTANT's or subconsultant's project manager, project engineer, design engineer, technicians, and other technical or supervisory personnel assigned to a project.

In the event of engagement, the CONSULTANT or their subconsultant shall restrict such person or persons from working on any of the CONSULTANT'S contracted projects in which the person or persons were formerly involved while employed by the COUNTY. This restriction period shall be for the duration of the contracted project with which the person or persons was involved. "Involvement" shall be defined as active participation in any of the following activities:

- Drafting the planning, environmental and/or engineering agreement;
- Defining the scope of the contracted work;
- Selection of the CONSULTANT for service;
- Negotiation of the cost of the CONSULTANT'S services (including calculating work days or fees); and
- Administration of the contract.

An exception to these terms may be granted when recommended by the Secretary of Transportation and approved by the Board of Transportation.

Failure to comply with the terms stated above shall be grounds for termination of this contract and/or not being considered for selection of work on future contracts for a period of one year.

V.F.16. GIFTS AND FAVORS

By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor ( i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.

V.F.17. CONFLICT OF INTEREST

The CONSULTANT does hereby certify that they have not entered into and, during the lifetime of the AGREEMENT, will not enter into any agreement with a third-party affording the CONSULTANT, or any Subcontractors that they may hire, with any direct or indirect financial interest in the outcome of the project, except with regard to the project development, human and natural environmental and/or engineering services associated with this AGREEMENT.

Pursuant to N.C.G.S. § 133-1, the CONSULTANT will not knowingly specify building materials, equipment, or other items that are manufactured, sold or distributed by any firm or corporation in which the designer has a financial interest. Pursuant to N.C.G.S. § 133-2, the CONSULTANT will not employ or allow manufacturers or their representatives or agents to write, plan, draw, or make specifications for such public works.

The CONSULTANT does hereby certify that it does not have any potential conflict of interest with any entity involved with the project. Any potential conflict of interest shall be disclosed immediately to the COUNTY.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated:

EXECUTED by the COUNTY this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

SEAL: COUNTY OF HENDERSON

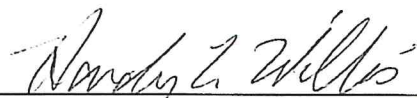
By: \_\_\_\_\_

EXECUTED BY the CONSULTANT this 22<sup>th</sup> day of February, 2022.

SEAL: FIRM NAME: Vaughn & Melton Consulting Engineers, Inc.

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

Title: Regional Vice President

Attests By:  \_\_\_\_\_

Title: Office Leader

## CERTIFICATION OF CONSULTANT

Reece Schuler, PE, PLS, being duly sworn, certify that I am the Vice-President and duly authorized representative of Vaughn & Melton Consulting Engineers, Inc., whose address is 1800-E Associates Lane Charlotte, NC 28217 and that neither I nor the above firm I represent or any of its principals:

- (a) has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above firm) to solicit or secure this agreement;
- (b) has agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the agreement, or
- (c) has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above firm) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out the agreement;
- (d) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (e) has within a three-year period preceding this agreement been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
- (f) is presently indicted for or otherwise criminally or civilly charged by governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph e. of this certification; and
- (g) has within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

except as here expressly stated (if any):

I acknowledge that this certification is executed according to EXHIBIT A, which is also a part of this agreement, and that if future certifications are required of subconsultants and suppliers, under US DOT Order 4200.5E and 2 CFR Part 180, I shall obtain them.

I acknowledge that this certificate is to be furnished to the North Carolina Department of Transportation and the Federal Highway Administration, U. S. Department of Transportation, in connection with this agreement and is subject to applicable State and Federal laws, both criminal and civil.

2/21/22  
(Date)                      Nioma Lawson  
(Signature)

Subscribed and sworn to before me this the 21<sup>st</sup> day of February, 2022

Nioma Lawson  
Notary

My Commission Expires: 12/03/2023





## EXHIBIT A

### Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions

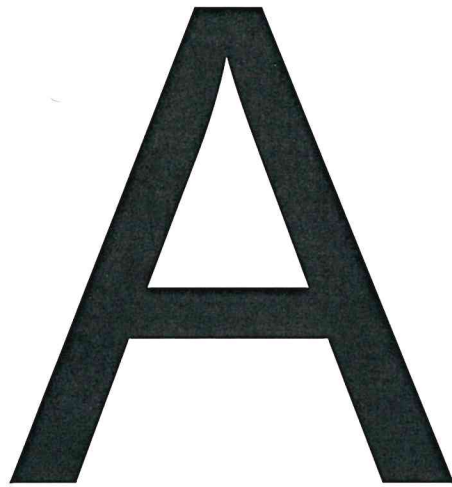
#### Instructions for Certification

1. By signing and submitting this AGREEMENT, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this AGREEMENT is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "agreement," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this agreement is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this AGREEMENT that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this AGREEMENT that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instruction, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

**ATTACHMENT A**

**TITLE VI ASSURANCES (WITH APPENDIX)**



## Standard DOT Title VI Assurances

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The North Carolina Department of Transportation (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the US Department of Transportation it will comply with the Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation. Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, age, national origin or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation, including the Federal Highway Administration, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the Regulations.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its Federal-Aid Highway Program:

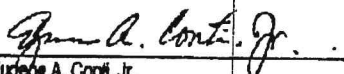
1. That the Recipient agrees that each "program" and each "facility" as defined in subsections 21.23 (b) and 21.23 (e) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations made in connection with the Federal-Aid Highway Program and, in adapted form in all proposals for negotiated agreements:

The (State highway department) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
4. That the Recipient shall insert the clauses of Appendix B of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under the Federal-Aid Highway Program; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under the Federal-Aid Highway program.
8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient Department of Transportation under the Federal-Aid Highway Program and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the Federal-Aid Highway Program. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient.

  
\_\_\_\_\_  
Eugene A. Conti, Jr.  
Secretary, NC Department of Transportation

3/22/2010  
\_\_\_\_\_  
Date



## APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) **Compliance with Regulations:** The contractor shall 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, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, age, sex, color, disability, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on grounds of race, color, or national origin.

(4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the North Carolina Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the North Carolina Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the North Carolina Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the North Carolina Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the North Carolina Department of Transportation to enter into such litigation to protect the interests of the North Carolina Department of Transportation, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**ATTACHMENT B**

CONSULTANT & SUBCONSULTANTS (IF APPLICABLE) APPROVED ESTIMATE

**B**