

HAIGHT ENGINEERING, PLLC

P.O. BOX 1166, 181 WATSON ROAD
DOVER, NH

TEL: (603) 750-4266, FAX: (603)749-7348

April 10, 2015

REVISED 4/14/15

Shaun Mulholland, Town Administrator
Allenstown Town Hall
12 School Street
Allenstown NH 03275

Re: **Allenstown "STRS" #15991 – Phase I
Safe Routes to Schools Grant, Round 2
Route 3/Granite Street to Parkwood Drive**
Allenstown, New Hampshire 03275

Contract Amendment to combine SRTS 15775 and SRTS 15991 into one project SRTS 15991.

Dear Mr. Mulholland:

Haight Engineering, PLLC presents this contract modification Letter/Proposal for Professional Engineering Consultation Services to the Town of Allenstown in support of your **Safe Routes to Schools Grant, Round 2**– "Allenstown "STRS" #15991.

It is our understanding that your SRTS projects #15775 and #15991 have been combined into one project. The project will start several hundred feet east of the Rte 3 intersection on Granite Street and will extend across Rte 3 and end approximately 1,100 feet east of the intersection at Parkwood Drive

NOTE: This is an amendment to include additional services to the original Engineering Proposal and Entitled "ALLENSTOWN SRTS PHASE I SAFE ROUTES TO SCHOOL GRANT, ROUND 2, EXECUTED BY THE TOWN OF ALLENSTOWN ON April 26, 2010. This contract modification is intended to be a supplement to the contract currently in place and is based on our conversations with the Town as well as NHDOT.

CONSTRUCTION PHASE SERVICES

Construction phase services described herein involve aspects of construction administration and resident project representative inspection services. Haight Engineering, PLLC offers these services under the direction of a Professional Engineer licensed in the State of NH.

Construction administration tasks will typically include the following:

- Schedule and moderate a preconstruction conference with a prepared agenda.
- Review and comment on contractors initial construction CPM Schedule.

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- Monitor the progress of the work and review the contractors' updates to their CPM schedule.
- Review and acceptance of Contractor's SWPPP submittal and monitor the results of the actions under the SWPPP.
- Notice of Proceed from Town after NHDOT approval
- Shop drawing review and approval.
- Contract clarification(s) as necessary.
- Construction observation/resident project representative services to monitor work associated with the contract.
- Measure and record payment items as basis of Contractors payment requisitions.
- Daily records, field observation reports and worker-class field audits in accord with the LPA manual.
- Check line and grade of the installation to check on the conformity with the plans. These records will be included in the Daily Report for each day the line and grade is checked.
- Preparation and review of change orders (as necessary) and prepare the independent government estimates (IGE) (as necessary).
- Review and approval of payment applications.
- Schedule, moderate, and document regular construction meeting.
- Materials-testing for soils, concrete and asphalt will be in accordance with the Quality Assurance & Materials Testing requirements of the NHDOT's LPA Manual. This effort will require the addition of an independent testing laboratory to provide these services which would be carried as an allowance under our Construction Phase Services Contract.
- As built plans shall be maintained by the Contractor to reflect the as-built conditions on the site, and will be made available for review by the Town or the Engineer upon request. The as-built plans shall be a complete set of plans that reflect what is built. The plans to include the words "AS-BUILT" in the lower right corner of each sheet, along with the date of as-built, and the company who prepared the as-built plans. As-built plans can be a red-lined plan markup or a reproducible marked up drawing with the changes. The as-built plans shall be submitted to the Engineer within 10 days after the completion of the project. The Engineer will review the plans prior to submission to the NHDOT and the Town.

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EXCLUSIONS

- No survey services are included.
- Any legal and/or appraisal support for the development and recording of any temporary or permanent easements that may be required will be provided by the Town.

FEES FOR CONSULTING SERVICES

We propose that our fees for consulting services be on an hourly basis, plus reimbursable expenses all in accordance with the attached Exhibit 1- Construction Engineering Budget, Exhibit 2 -Rate Sheet, and Exhibit 3-General Provisions.

Fees and expenses for the phases outlined above are based solely on the scope of work identified in each phase. These are good faith estimates based on the scope of services anticipated. Although we have attempted to anticipate all the work necessary to accomplish the tasks outlined above, we cannot anticipate other issues and concerns/requirements that may arise during construction and or site conditions that are unknown at this time.

As such, the suggested Budgets are only estimates of the basic services anticipated and can not be considered a "Fee not to exceed". We will not exceed the budget amounts established without your prior authorization. Out-of-scope work will be billed on an hourly basis for the actual number of hours spent by the Team, and sub consultants, as applicable, on the project, plus reimbursable expenses. This letter/agreement and the attachments represent the entire understanding between the Client and Haight Engineering, PLLC and may only be modified in writing agreed to by all parties.

If this letter satisfactorily sets forth your understanding of our agreement, please sign the enclosed copy and return it to us. The signed letter will act as our Authorization to Proceed to schedule the work. If you have any questions or need additional information please feel free to contact me.

Thank you for the opportunity to submit this proposal. We look forward to working with you on this project.

Very truly yours,
Haight Engineering, PLLC



Stephen J. Haight, P.E.

Accepted this _____ day of _____, 2015.

By: _____.

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Shaun Mulholland, Town Administrator, Allenstown NH
Authorized Signature

“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DEPARTMENT-assisted contracts. Failure by the contractor 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 recipient deems appropriate. “

This agreement by reference also includes the relevant parts of Executive Order 11246 and 41 Code of Federal Regulations Chapter 60 (as they relate to Consulting Engineering services for this project) the provisions of which are attached to this contract.

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Exhibit 1 – CONSTRUCTION ENGINEERING BUDGET

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EXHIBIT 2 - SRTS RATE SHEET

<u>TITLE</u>	<u>RATES</u>		
	<u>HOURLY</u>	<u>OVERHEAD PROFIT</u>	
Principal	\$50	\$59.54	\$10.95
Project Engineer	\$45	\$53.58	\$ 9.86
Staff Engineer I	\$40	\$47.63	\$ 8.76
Staff Engineer II	\$25	\$29.77	\$ 5.48
Technician	\$34	\$40.48	\$ 7.45
Admin	\$25	\$29.77	\$ 5.48

Subcontractor Fees will be billed	At Cost
Meetings (billed hourly and are portal to portal)	Hourly
Mileage, Prints, Photographs, postage	At Cost
Application Fees	By Client

Fees for pretrial conferences, preparation and expert testimony will be billed at 2 times the rates detailed in the proposal. Travel time to and from meetings will be billed at the standard rates.

We will bill you monthly for our fees, plus reimbursable expenses. Payment will be due within fifteen (15) days of date of invoice. A service charge per month will be applied to the unpaid balance after 30 days as allowable by Federal Law.

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EXHIBIT 3 - GENERAL PROVISIONS HAIGHT ENGINEERING, PLLC

SCOPE OF SERVICES

1.1 Services not set forth within the Scope of Services of this Agreement are specifically excluded from the scope of our consulting services. Haight Engineering, PLLC (Consultant) assumes no responsibility to perform any services not specifically listed in the Scope of Services.

FEES FOR SERVICES

2.1 Fees for Consulting Services

Fees for consulting services are based on the fees detailed in the proposal, unless otherwise noted.

2.2 Reimbursable Expenses:

Direct Expenses - Direct expenses shall be negotiated as a not-to-exceed amount for each Task Order and reimbursed at actual cost. Reimbursable direct expense items include work such as borings, laboratory tests, field survey, special electronic computer services, services of other specialists, printing, photogrammetry, traffic counts, reproductions, and travel not included in normal overhead expenses whether performed by the CONSULTANT or other parties and shall be billed at actual cost. The reimbursable costs for mileage and for per diem (lodging and meals) shall be that allowed by the CONSULTANT'S established policy but shall not exceed that allowed in the Federal Acquisition Regulations (Subpart 31.205-46) and in the Federal Travel Regulations. The General Services Administration (GSA), Regulation 41 CFR Part 301-4, specifies the FTR automobile mileage reimbursement. Mileage and per diem costs shall be subject to approval by the DEPARTMENT.

Reimbursable Expenses

Reimbursable expenses when applicable will be billed at cost. Reimbursable expenses include:

1. Transportation and living expenses incurred for assignments outside the seacoast New Hampshire area, which are not suited to daily travel.
2. Automobile expenses for vehicles at the standard mileage rate per IRS for travel from our Dover office to the Project and return and for travel at the job in conduct of work.
3. Printing, reproduction and shipping charges for reports, specification, drawings, equipment, cell phone charges, etc.
4. Rental of specialized equipment, if required and approved by the Client.
5. Photographs, video supplies and electronic media for submission of drawings, specifications or reports.

2.3 Services of Others

If we engage the services of sub consultants or other companies to participate in a project, these firms or other consultants will be billed at cost.

2.4 Permit Fees

Permit application fees shall be paid directly by the applicant, unless specifically included in the proposal, or otherwise requested by the Client. If permit fee are included in the proposal then these fees will be billed at cost

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PAYMENT TERMS

3.1 Invoices

Invoices for professional engineering services will be submitted monthly or upon task completion. Payment will be due within ten (10) days of invoice. If Client objects to all or any portion of an invoice, Client shall notify Haight Engineering, PLLC in writing within seven (7) calendar days of the invoice date, to identify the cause of disagreement, and pay when due that portion of the invoice not in dispute.

Note: interest payments made under this CONTRACT are not an eligible federal reimbursement expense. In the event that it is necessary for Haight Engineering PLLC to maintain a collection action against Client, and Haight Engineering prevails in such action, then, Client shall pay all reasonable attorneys' fees and costs of collection.

3.2 Payment

If payment is not made within ten (10) days of payment due date, we may, after giving seven (7) days written notice, suspend services under this Agreement until we have been paid in full for services and expense charges. Suspension of work will cause an adjustment in the schedule of work.

PRETRIAL, TRIAL & EXPERT TESTIMONY SERVICES

4.1 Pretrial and Expert Testimony

Fees for pretrial conferences and expert testimony will be billed at two (2.0) times the rates detailed in the proposal.

INDEMNIFICATION AND INSURANCE

Claims and Indemnification

Non-Professional Liability Indemnification

The CONSULTANT agrees to indemnify and hold harmless the Client and all of its officers, agents, and employees from and against any and all claims, liabilities, or suits arising from (or which may be claimed to arise from) any (i) acts or omissions of the CONSULTANT or its subconsultants in the performance of this AGREEMENT allegedly resulting in property damage or bodily injury, and/or, (ii) misconduct or wrongdoing of the CONSULTANT or its subconsultants in the performance of this AGREEMENT.

Professional Liability Indemnification

The CONSULTANT agrees to indemnify and hold harmless the Client and all of its officers, agents, and employees from and against any and all claims, liabilities, or suits arising from (or which may be claimed to arise from) any negligent acts or omissions of the CONSULTANT or its sub consultants in the performance of professional services covered by this AGREEMENT.

c. These covenants shall survive the termination of the AGREEMENT.

Insurance

a. Required Coverage

The CONSULTANT shall, at its sole expense, obtain and maintain in force the following insurance: Commercial or comprehensive general liability insurance, including Product completed, Contractual coverage, for all claims of bodily injury, death, or property damage, in policy amounts of not less than \$250,000 per occurrence and \$1,000,000 in the aggregate (Client to be named as an additional insured); and

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comprehensive automobile liability insurance covering all motor vehicles, including owned, hired, borrowed, and non-owned vehicles, for all claims of bodily injury, death, or property damage, in policy amounts of not less than \$500,000 combined single limit; and \$1,000,000 aggregate, and Professional liability (errors and omissions) insurance coverage of not less than \$1,000,000 in the aggregate. If coverage is claims made, the period to report claims shall extend for not less than three years from the date of substantial completion of the construction contract. No retention (deductible) shall be more than \$20,000; and Workers' compensation and employer's liability insurance as required by law.

b. Proof of Insurance

The policies described in paragraph 5.2 (a) of this section shall be in the standard form employed in the STATE, issued by underwriters licensed or approved by the Department of Insurance of the STATE. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than 30 days, or 10 days in cases of non-payment of premium, after written notice thereof has been received by the STATE. The CONSULTANT shall provide to the Client and NHDOT a certificate of insurance evidencing the required coverages, retention (deductible), and cancellation clause prior to submittal of the AGREEMENT to NHDOT for approval and shall have a continuing duty to provide new certificates of insurance as the policies are amended or renewed.

ON-SITE CONSTRUCTION OBSERVATION SERVICES (should these services be provided)

6.1 On-Site Services during Project Construction Should our services be provided on the job site during project construction, it is understood that, in accordance with generally accepted construction practices, the Construction Contractor is solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work and compliance with OSHA and other applicable regulations and that these requirements will apply continuously and not be limited to normal working hours. Any monitoring of the Contractor's performance conducted by our personnel does not include review of the adequacy of the Contractor's safety measures in, on, or near the construction site. It is further understood that field services provided by our personnel will not relieve the Contractor of its responsibilities of performing the work in accordance with applicable laws and regulations, and with the construction contract, drawings and specifications.

RIGHT OF ENTRY

7.1 Rights of Entry

Unless otherwise agreed, the Client will furnish right of entry on the land/facility for us to make the planned investigations. If the Client does not own the site, the Client shall provide evidence that the owner grants permission for Haight Engineering, PLLC to enter the site and perform the work requested. We will take reasonable precautions to minimize damage to the land/facility from our operations, but have not included in our fee the cost of restoration of damage that may result from our operations. Any expense associated with damage restoration will be borne by the Client.

MISCELLANEOUS

8.1 Documents are owned by the Client

The contract shall also include language with regard to ownership of plans and other documentation prepared by consultants. Documents that have been prepared for federally funded projects become the property of the Client. Below is standard language that goes into NHDOT contracts that can be used as a guide: (For CLIENT read Client)

All data, plans, drawings, tracings, estimates, specifications, proposals, sketches, diagrams, calculations, reports or other documents collected, prepared, or undertaken either manually or electronically by the CONSULTANT, under the provisions of this AGREEMENT, immediately shall become the property of

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the CLIENT, and, when completed, shall bear the CONSULTANT'S endorsement. The CONSULTANT shall surrender to the CLIENT, upon demand at any time, or submit to its inspection, any data, plan, drawing, tracing, estimate, specification, proposal, sketch, diagram, calculation, report or document which shall have been collected, prepared, or undertaken by the CONSULTANT, pursuant to this AGREEMENT, or shall have been hitherto furnished to the CONSULTANT by the CLIENT. The CONSULTANT shall have the right, with the written approval of the CLIENT, to use any of the data prepared by it and hitherto delivered to the CLIENT at any later stage of the project contemplated by this AGREEMENT.

8.2 Opinions of Cost

Since Haight Engineering, PLLC has no control over the cost of labor, materials, equipment or services furnished by others or over the Contractor(s) methods of determining prices or over competitive bidding or market conditions, Haight Engineering, PLLC opinions of probable Project Costs and Estimated Construction Costs, provided for herein, are made on the basis of the best judgment of experienced and qualified professional engineers, familiar with the construction industry; but Haight Engineering, PLLC cannot and does not guarantee that proposals, bids or actual Project or Construction Costs will not vary from opinions of probable cost prepared by Haight Engineering, PLLC. If prior to the Bidding or Negotiating Phase, the Client wishes greater assurance as to Project or Construction Costs, the Client shall employ an independent cost estimator.

8.3 Termination

The obligation to provide further service under this Agreement may be terminated by either party upon 24 hours written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, Haight Engineering, PLLC will be paid for all services rendered to the date of termination, including all reimbursable expenses and termination expenses.

8.4 Controlling Law

This Agreement is to be governed by the laws of the State of New Hampshire where the work is performed.

8.5 Successors and Assigns

8.5.1 This Agreement binds you and your partners, successors, and assigns, executors, administrators, and legal representatives.

8.5.2 Neither the Client nor Haight Engineering, PLLC shall assign, sublet or transfer any rights under or interest in (including, but without limitations, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Haight Engineering, PLLC from employing such independent professional associates and consultants at Haight Engineering, PLLC may deem appropriate to assist in the performance of services hereunder.

8.5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and Haight Engineering, PLLC and all duties and responsibilities

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undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and Haight Engineering, PLLC and not for the benefit of any other party.

8.6 Mediation

In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and the Consultant agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The cost of mediation shall be borne equally by both parties. This process shall be considered as a condition precedent to moving to a move formal or judicial process.

8.7 Arbitration

8.7.1 No arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, any person or entity, who is not a party to this Agreement.

8.8 Severability and Reformation

Any provision or part thereof of this Agreement held to be void or unenforceable under any law shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

AGREEMENT MODIFICATION

The assignment of the CONSULTANT, generally established by the scope of work in this AGREEMENT, shall not be modified in any way without prior approval of the NHDOT.

9.0 Standard of Care

Service performed by Haight Engineering, PLLC under this Agreement will be conducted in a manner consistent with that level of care and skill that is ordinarily exercised by members of the engineering profession. No other representation to the Client, expressed or implied, and no warranty or guarantee is included or intended in this agreement, or in any correspondence, report, document, or other communications.

10.0 Fiduciary Responsibility

The Client confirms that neither Haight Engineering, PLLC nor any of their sub consultants or subcontractors has offered any fiduciary service to the Client and no fiduciary responsibility shall be owed to the Client by Haight Engineering, PLLC or any of its sub consultants or subcontractors, as a consequence of Haight Engineering, PLLC entering into this agreement with the Client

11.0 Procurement Services

SUBLETTING

The CONSULTANT shall not sublet, assign, or transfer any part of the CONSULTANT'S services or obligations under this AGREEMENT without the prior approval and written consent of the Town and the New Hampshire Department Of Transportation (NHDOT).

All subcontracts shall be in writing and those exceeding \$10,000 shall contain all provisions of this AGREEMENT, including "Certification of CONSULTANT/Subconsultant". For subconsultants working on wetland evaluations, mapping, noise studies and air-quality studies, the minimum limits of their professional liability (errors and omissions) insurance coverage shall be not less than \$1,000,000 in the

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aggregate. If coverage is claims made, the period to report claims shall extend for not less than three years from the date of substantial completion of the construction contract. No retention (deductible) shall be more than \$25,000. A copy of each subcontract shall be submitted for the NHDOT'S files.

H. GENERAL COMPLIANCE WITH LAWS, ETC.

The CONSULTANT shall comply with all Federal, STATE, and local laws and ordinances applicable to any of the work involved in this AGREEMENT and shall conform to the requirements and standards of STATE, municipal, railroad, and utility agencies whose facilities and services may be affected by the construction of this project. The services shall be performed so as to cause minimum interruption to said facilities and services.

I. BROKERAGE

The CONSULTANT warrants that it 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 it 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, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

J. CONTRACTUAL RELATIONS

1. Independent Contractor

The CONSULTANT agrees that it is as an independent contractor and not as an agent or employee of the Client.

2. No Third-Party Rights

It is not intended by any of the provisions of the AGREEMENT to make the public, or any member thereof, a third-party beneficiary of the AGREEMENT, or to authorize anyone not a party to this AGREEMENT to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract. The duties, obligations, and responsibilities of the parties to this AGREEMENT with respect to third parties shall remain as imposed by law. No portion of this AGREEMENT shall be understood to be a waiver of the Client's sovereign immunity.

3. Construction of AGREEMENT

This AGREEMENT is executed in a number of counterparts, each of which is an original and constitutes the entire AGREEMENT between the parties. This AGREEMENT shall be construed according to the laws of the STATE.

If Haight Engineering, PLLC is required to perform procurement services, procurement of products, materials and/or equipment, or the coordination of such items on behalf of the Client, then Haight Engineering, PLLC shall not, under any circumstance, be responsible for material or product quality, the correction of any defective workmanship or material in connection with said items, nor be responsible for any consequential or incidental damages, including but not limited to loss of use or anticipated profits, for any reason, resulting from any said defect in material or workmanship.

12.0 Indemnifications

The Consultant and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damage, liability or cost (including reasonable attorneys' fees and defense costs) to the extent caused by their own negligent acts, errors or omissions and those of anyone for whom they are legally liable, and arising from the project that is subject to this agreement. Neither party is obligated to indemnify the other in any manner whatsoever for the other's negligence.

13.0 Delays

Neither party shall hold the other responsible for damages or delays in performance caused by acts of God or other circumstances beyond the control of the other party, and which could not reasonably have been

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prevented or anticipated. Should such circumstances occur, the Client and the Consultant shall utilize their best efforts to overcome the resulting difficulties and resume conduct of services called for herein as soon as reasonably possible. Delays within the scope of this provision that cumulatively exceed forty-five (45) calendar days shall, at the option of either party, make this Agreement subject to renegotiation or termination.

EXTENSION OF COMPLETION DATE(S)

If, during the course of the work, the CONSULTANT anticipates that one or more of the completion dates specified in this AGREEMENT cannot be complied with, it shall be the CONSULTANT'S responsibility to notify the CLIENT AND NHDOT in writing at least thirty (30) days prior to the completion date(s) in question. The CONSULTANT shall state the reasons that a completion date(s) cannot be met and request a revised date(s) for consideration by the Client and NHDOT.

14.0 Codes and Design Standards

The Consultant's professional services shall be consistent with sound engineering practices and shall incorporate regulations, codes, policies and standards that are apparent at the time of the Consultant agreement. If there is a change in laws, regulations, codes, policies or standards; or a demand for different standards by the Client or regulatory agencies, which influence this project, then the Consultant shall inform the Client of the change and its impact on work already done or to be done, the additional fees and costs and schedule modifications required. If the Consultant believes the change requires a renegotiation of this agreement, then a good faith fee and or schedule adjustment may be requested to maintain this agreement.

15.0 Permitting Assistance

When the scope of services includes preparation of regulatory permit applications or permitting assistance with The Clients proposed project, The Client understands that permit applications may be delayed or even denied by the regulatory agencies. The delay or denial of a permit application by a regulatory agency in no way excuses The Client from payment of agreed consulting fees for the work performed.

Federal Assistance Contracts

TITLE VI (NONDISCRIMINATION OF FEDERALLY-ASSISTED PROGRAMS) COMPLIANCE

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

(1) Compliance with Regulations: The CONSULTANT shall comply with Title VI of the Civil Rights Act of 1964 regulations relative to nondiscrimination in federally-assisted programs of the DEPARTMENT, such regulations entitled Title 49 Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the REGULATIONS), and which are herein incorporated by reference and made a part of this AGREEMENT.

(2) Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, religion, age, sex, handicap, sexual orientation, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment specific to this project. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.

Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment specific to the project,

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each potential subconsultant or supplier 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, color, religion, age, sex, handicap, sexual orientation, or national origin.

(4) Information and Reports: The CONSULTANT 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 DEPARTMENT or the Federal Highway Administration to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the Client and NHDOT, as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the CONSULTANT'S noncompliance with nondiscrimination provisions of this AGREEMENT, the Client via the NHDOT shall impose sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies; and/or cancellation, termination or suspension of the AGREEMENT, in whole or in part.

(6) 23 CFR 710.405(b) and Executive Order 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in Department of Labor REGULATIONS (41 CFR Part 60), shall be applicable to this AGREEMENT and any subagreements hereunder.

(7) Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (7) in every subcontract, including procurements of materials and leases of equipment specific to the project, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

In accordance with EXECUTIVE ORDER 11246, the DEPARTMENT has the authority and responsibility to notify the Office of Federal Contract Compliance Programs of the United States Department of Labor if they become aware of any possible violations of Executive Order 11246 and 41 CFR Part 60. The Office of Federal Contract Compliance Programs is solely responsible for determining compliance with Executive Order 11246 and 41 CFR Part 60 and the CONSULTANT should contact them regarding related compliance issues.

DISADVANTAGED BUSINESS ENTERPRISE POLICY AGREEMENT REQUIREMENTS

1. Policy. It is the policy of the United States Department of Transportation (USDOT) to ensure nondiscriminatory opportunity for Disadvantaged Business Enterprises (DBE's), as defined in 49 Code of Federal Regulations (CFR) Part 26, to participate in the performance of agreements and any subagreements financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

2. Disadvantaged Business Enterprise (DBE) Obligation. The STATE and its CONSULTANTS agree to ensure nondiscriminatory opportunity for disadvantaged business enterprises, as defined in 49 CFR Part 26, to participate in the performance of agreements and any subagreements financed in whole or in part with Federal funds. In this regard, the STATE and its CONSULTANTS shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the opportunity to compete for and perform work specified in the agreements. The STATE and its CONSULTANTS shall not discriminate on the basis of race, color, religion, age, sex, handicap, sexual orientation, or national origin in the award and performance of agreements financed in whole or in part with Federal funds.

Sanctions for Non-Compliance. The CONSULTANT is hereby advised that failure of the CONSULTANT, or any Subconsultant performing work under this AGREEMENT, to carry out the requirements set forth in paragraphs 1 and 2 above, shall constitute a breach of agreement and, after the

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notification of the United States Department of Transportation, may result in termination of this AGREEMENT by the STATE or such remedy as the STATE deems appropriate.

O. DOCUMENTATION

The CONSULTANT shall document the results of the work to the satisfaction of the DEPARTMENT and the Federal Highway Administration. This shall include preparation of progress reports, plans, specifications, and estimates and similar evidences of attainment of objectives called for in this AGREEMENT.

P. CLEAN AIR AND WATER ACTS

If the amount of the AGREEMENT or subcontract thereunder exceeds \$100,000, the CONSULTANT or subconsultant shall comply with applicable standards, orders, or requirements issued under Section 306 of the Federal Clean Air Act (43 U.S.C. 1857(h)), Section 508 of the Federal Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The CONSULTANT or subconsultant shall report violations to the FHWA and to the U. S. Environmental Protection Agency Assistant Administrator for Enforcement (EN-329).