

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: \_\_\_\_\_

Meeting Type: Regular

Meeting Date: Sep 25, 2014

Action Requested By: Engineering

Agenda Type: Resolution

Subject Matter:

Appraisal Review Services for Zierdt Road Improvements

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement with A&S Appraisal Company, L.L.C. for Appraisal Review Services for Zierdt Road Improvements, State Project No. STPHV-8507(600) & 65-06-RD01

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Professional appraisal review services allows for appraisal reviews necessary to follow State and Federal guidelines during the right-of-way acquisition process for the Zierdt Road Improvements project. Contract Amount - \$31,325.00. Account No. 23-6500-3098-8120

Associated Cost: \$31,325.00

Budgeted Item: \_\_\_\_\_

MAYOR RECOMMENDS OR CONCURS: \_\_\_\_\_

Department Head: Kathy Marti

Date: 9/18/14

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# ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **9/25/2014**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Appraisal Services**

Document Name: **Zierdt Road Improvements, Project No. STPHV-8507(600) &  
65-06-RD01**

City Obligation Amount: **\$31,325.00**

Total Project Budget: **\$31,325.00**

Uncommitted Account Balance: **0**

Account Number: **23-6500-<sup>0813</sup>3098-8120**

## Procurement Agreements

<b>Not Applicable</b>	<b>Not Applicable</b>
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## Grant-Funded Agreements

<b>Not Applicable</b>	<b>Grant Name:</b>
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Department	Signature	Date
1) Originating	<i>Lynn Majors</i>	9/18/14
2) Legal	<i>Marybeth Cates</i>	9/18/14
3) Finance	<i>[Signature]</i>	9/19/14
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

**RESOLUTION NO. 14-**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into an agreement with A&S Appraisal Company, L.L.C., in the amount THIRTY-ONE THOUSAND THREE HUNDRED TWENTY-FIVE AND NO/100 DOLLARS (\$31,325.00) for Appraisal Review Services for Zierdt Road Improvements, State Project No. STPHV-8507(600) & City Project No. 65-06-RD01 in Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that document attached hereto and identified as "Agreement between City of Huntsville and A&S Appraisal Company, L.L.C. for Appraisal Review Services for Zierdt Road Improvements, State Project No. STPHV-8507(600) & City Project No. 65-06-RD01 consisting of a total of fifteen (15) pages plus twelve (12) additional pages consisting of Attachments 1-6, and the date of September 25, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

**ADOPTED** this the 25th day of September, 2014.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 25th day of September, 2014.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

**AGREEMENT BETWEEN  
CITY OF HUNTSVILLE, ALABAMA  
AND  
A&S APPRAISAL COMPANY, L.L.C.  
FOR  
APPRAISAL REVIEW SERVICES  
FOR  
ZIERDT ROAD IMPROVEMENTS**

**State Project No. STPHV-8507(600) &**

**City Project No. 65-06-RD01**

**September 25, 2014**

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President of the City Council of the City  
of Huntsville, AL  
Date: September 25, 2014

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REQUIREMENTS

**AGREEMENT BETWEEN  
CITY OF HUNTSVILLE, ALABAMA  
AND  
A&S APPRAISAL COMPANY, L.L.C.  
FOR  
APPRAISAL REVIEW SERVICES  
FOR  
ZIERDT ROAD IMPROVEMENTS  
State Project No. STPHV-8507(600) & City Project No. 65-06-RD01**

THIS AGREEMENT made as of the 25th day of September in the year 2014, by and between the CITY OF HUNTSVILLE, ALABAMA (hereinafter called OWNER), and A&S APPRAISAL COMPANY, L.L.C., (hereinafter called CONSULTANT).

WITNESSETH, for the considerations hereinafter set forth, the parties hereto agree as follows:

**ARTICLE 1 - ENGAGEMENT OF THE CONSULTANT**

The OWNER hereby engages the CONSULTANT, and the CONSULTANT hereby accepts the engagement to provide general APPRAISAL SERVICES as a representative of the OWNER to include the following:

- 1.1 Professional Appraisal Review Services for Zierdt Road Improvements, as further described in ARTICLE 2, and hereinafter called PROJECT.
- 1.2 By executing this Agreement, the CONSULTANT represents to the OWNER that the CONSULTANT is a professional qualified to act as the CONSULTANT for the PROJECT and is licensed and certified to practice by all public entities having jurisdiction over the CONSULTANT and the PROJECT. The CONSULTANT further represents to the OWNER that the CONSULTANT will maintain all necessary licenses, certifications, permits or other authorizations necessary to act as the CONSULTANT for the PROJECT until the CONSULTANT's remaining duties hereunder have been satisfied. The CONSULTANT shall assign only qualified personnel to perform any service concerning the PROJECT. All services rendered by the CONSULTANT for the PROJECT shall be performed by or under the immediate supervision of experienced and qualified professionals licensed, certified, and registered as appropriate in the State of Alabama possessing the expertise in the discipline of the service being rendered. The CONSULTANT assumes full responsibility to the OWNER for the negligent acts, errors and omissions of its consultants or others employed or retained by the CONSULTANT in connection with the PROJECT.
- 1.3 Execution of this Agreement by the CONSULTANT constitutes a representation that the CONSULTANT has become familiar with the PROJECT site and the local conditions under which the PROJECT is to be implemented. The CONSULTANT agrees to provide all necessary CONSULTANT services required to professionally accomplish the CONSULTANT's defined scope of services.

## **ARTICLE 2 –SERVICES OF THE CONSULTANT**

- 2.1** CONSULTANT shall provide for OWNER professional services for appraisal reviews required by this project. These services shall include consultation and advice and appraisal, as outlined herein and further described in the SCOPE OF SERVICES, ATTACHMENT 1.
- 2.2** The CONSULTANT shall serve as the OWNER's professional representative in those portions of the PROJECT to which this Agreement applies and shall consult with and advise the OWNER during the performance of these services.
- 2.3** The CONSULTANT shall promptly correct, or have corrected, any errors, omissions, deficiencies or conflicts in the CONSULTANT's work product or that of his sub-contractors/sub-consultants, without additional compensation for time, reproduction or distribution.
- 2.4** All appraisal work provided under this contract will be conducted in accordance with the Alabama Department of Transportation (ALDOT) Real Property Appraisal Manual and on the appropriate ALDOT forms.

## **ARTICLE 3 – CONSTRUCTION ADMINISTRATION SERVICES**

OMITTED

## **ARTICLE 4 - ADDITIONAL SERVICES**

The following services of the CONSULTANT are not included in Articles 2. Nevertheless, the CONSULTANT shall provide such services if authorized in writing by the OWNER, and they shall be paid for by the OWNER as provided in Article 7, unless otherwise noted.

- 4.1** Making revision in documents when such revisions are inconsistent with written direction by the OWNER previously given, are required by the enactment of revision of codes, laws or regulations subsequent to the preparation of such documents and not reasonably anticipated, or are due to other causes not within the control or responsibility of the CONSULTANT, either in whole or in part.
- 4.2** Preparing supporting data in connection with change orders, provided that such change orders are issued by the OWNER due to causes not within the control or responsibility of the CONSULTANT, either in whole or in part.
- 4.3** Providing additional services for repair or replacement of work damaged by acts of God or other cause during construction provided that such services are required by causes not the responsibility of the CONSULTANT, either in whole or in part.
- 4.4** Providing services not otherwise required herein which are made necessary solely by the default of the Contractor or major defects or deficiencies in the work of the contractor. Services shall be provided with no increase in the contract amount and will not be compensable on an hourly basis.
- 4.5** Providing expert witness services and other services arising out of claims. Initial

appraisal fee as listed under "Fee Quote" column per appraisal for Owners of Record. Any Circuit Court Testimony fee will be \$150.00/hr.

## **ARTICLE 5 - RESPONSIBILITIES OF OWNER**

The OWNER, without cost to the CONSULTANT, will perform the following in a timely manner so as not to delay the services of the CONSULTANT:

- 5.1 Assist CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the PROJECT including previous reports and any other data relative to the PROJECT.
- 5.2 Assist the CONSULTANT as necessary in acquiring access to and making all provisions for the CONSULTANT to enter upon public and private lands as required for the CONSULTANT to perform the work under this agreement.
- 5.3 Designate in writing a person to act as the OWNER's representative with respect to the work to be performed under this Agreement, such person to have complete authority to transmit instructions, receive information, interpret and define the OWNER's policies and decision with respect to materials, equipment elements and systems pertinent to the work covered by this Agreement. Examine all reports presented by CONSULTANT, obtain advice of an attorney, insurance counselor and other consultants as OWNER determines appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the CONSULTANT.
- 5.4 The OWNER shall intercede on the CONSULTANT'S behalf when data from, or review by third parties is not on schedule through no fault of the CONSULTANT.
- 5.5 The OWNER's review of any documents prepared by the CONSULTANT or its consultants shall be solely for the purpose of determining whether such documents are generally consistent with the OWNER's intent. No review of such documents shall relieve the CONSULTANT of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its work product.

## **ARTICLE 6 - PERIOD OF SERVICES**

- 6.1 All work will be done in a timely fashion and the parties hereto acknowledge that time is of the essence in the performance of services pursuant to this contract. Earliest commencement date of services to this agreement is October 1, 2014. The final completion date for the completion of services outlined in Article 2 shall be December 31, 2014.

The CONSULTANT shall perform these services with reasonable diligence and expediency consistent with sound professional practices. The CONSULTANT shall include in his schedule an allowance for time required for OWNER's review of submissions and for approvals of authorities having jurisdiction over the PROJECT. When approved by the OWNER, the schedule shall not be exceeded by the CONSULTANT, except for cause.

If the CONSULTANT becomes aware of delays due to time allowances for review and approval being exceeded, delay by the OWNER, the OWNER's consultants, or any other reason beyond the CONSULTANT's control, which may result in the schedule of performance of the CONSULTANT's services not being met, the CONSULTANT shall

promptly notify the OWNER. If the OWNER becomes aware of any delays or other causes that will affect the CONSULTANT's schedule, the OWNER shall promptly notify the CONSULTANT. In either event, the CONSULTANT's schedule for performance of its services shall be equitably adjusted.

## **ARTICLE 7 - PAYMENT TO THE CONSULTANT**

### **7.1 BASIC SERVICES**

The OWNER shall compensate the CONSULTANT for services rendered pursuant to this Agreement per schedule shown on Attachment 1 for services described in Article 2.

### **PAYMENT SUMMARY**

Appraisal Services

**\$31,325.00**

## **ARTICLE 8 - GENERAL PAYMENT PROCEDURE**

### **8.1 INVOICES**

Payment will be made upon delivery of appraisals included in this project and receipt of a bill totaling no more than the amount stated in Article 7.1.

### **8.2 TIME FOR PAYMENT**

The OWNER shall make payment for services in Articles 2 within 60 days of receipt of valid invoice.

### **8.3 OWNER'S RIGHT TO WITHHOLD PAYMENT**

In the event the OWNER becomes credibly informed that any representations of the CONSULTANT are wholly or partially inaccurate, the OWNER may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, and the cause thereof, is corrected to the OWNER's reasonable satisfaction. Additionally, failure by the CONSULTANT to supply substantiating records shall be reason to exclude related costs from the amounts which might otherwise be payable by the OWNER to the CONSULTANT.

## **ARTICLE 9 - GENERAL CONSIDERATIONS**

- 9.1** OWNER and CONSULTANT agree that the following sections and provisions shall apply to the work to be performed under this Agreement and that such provisions shall supersede any conflicting provisions of this Agreement.
- 9.2** If reviewing agencies raise questions regarding the work of the CONSULTANT, OWNER will participate in such meetings as deemed necessary to explain and clarify this work.
- 9.3** This Agreement may be canceled by either party in the event of default or violation of any of the provisions of this Agreement by the other party, by written notice delivered to the address of record by registered mail giving ten (10) days advance notice of the intention to

cancel. In the event of cancellation of this Agreement, CONSULTANT shall be paid for all work performed to date of cancellation, less any loss, damage, or liability incurred by reason of default of the CONSULTANT and all records, data, parameters, design calculations and other information collected or obtained in the performance of this Agreement shall be delivered to OWNER.

#### **9.4 SUCCESSORS AND ASSIGNS**

OWNER and CONSULTANT each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, with respect of all covenants of this Agreement; except as above, neither OWNER nor CONSULTANT shall assign, sublet or transfer his interest in this Agreement without written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body that may be party hereof, nor shall it be construed as giving any rights or benefits hereunder to anyone other than OWNER and CONSULTANT.

#### **9.5 CHANGES**

**9.5.1** The OWNER may, at any time by written order, make changes within the general scope of the Agreement in the services to be provided. If such changes cause an increase or decrease in CONSULTANT's cost of, or time required for performance of any services, whether or not changed by any order, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Upon notification of change, CONSULTANT must assert any claim of CONSULTANT for adjustment in writing within 30 days from the date of receipt unless OWNER grants a further period of time.

**9.5.2** If findings in any phase of this PROJECT significantly alter the scope of work for subsequent phases, or if regulations are changed resulting in a scope of work change for any phase, CONSULTANT fees set forth in Article 7 may be renegotiated by the OWNER and CONSULTANT.

#### **9.6 CONSULTANT'S RECORDS**

Documentation accurately reflecting services performed and the time expended by the CONSULTANT and his personnel and records of reimbursable expenses shall be prepared concurrently with the performance of the services and shall be maintained by the CONSULTANT. The CONSULTANT shall maintain record copies of all written communications, and any memoranda of verbal communications related to the PROJECT. All such records and documentation shall be maintained for a minimum of five (5) years after the PROJECT date of final completion or for any longer period of time as may be required by law or good practice. If the CONSULTANT receives notification of a dispute or of pending or commencement of litigation during this five-year period, the CONSULTANT shall continue to maintain all PROJECT records until final resolution of the dispute or litigation. The CONSULTANT shall make such records and documentation available to the OWNER upon notice and shall allow the authorized representative(s) of the OWNER to inspect, examine, review and copy the CONSULTANT's records at the OWNER's reasonable expense.

## **9.7 SEAL ON DOCUMENTS**

- 9.7.1** Final plans and drawings shall be marked "ISSUED FOR CONSTRUCTION". When a firm, partnership, or corporation performs the work, each drawing shall be sealed and signed by the licensed engineer or engineers who were in responsible charge of the work.
- 9.7.2** When plans and drawings issued for construction were not performed by a firm, partnership, or corporation, the first sheet or title page shall be sealed, dated, and signed by the engineer who was in responsible charge. Two or more licensed professional engineers may affix their signatures and seals provided it is designated by a note under the seal the specific subject matter for which each is responsible. In addition, each drawing shall be sealed and signed by the licensee or licensees responsible for each sheet.
- 9.7.3** When plans or drawings are a site adaptation of a standard design or plan or make use of a standard drawing of others, the ENGINEER shall take measures to assure that the site adaptation, standard drawing, or plan is appropriate and suitable for the use proposed by the ENGINEER including meeting the specific site conditions, functionality, design criteria, safety considerations, etc. After taking such measures, the ENGINEER shall seal the standard drawing or plan as shown above in sections 9.8.1 and 9.8.2. The ENGINEER shall not utilize standards of others without their written consent where written consent is required or implied.
- 9.7.4** Each sheet of documents, specifications, and reports for engineering practice and of maps, plats, charts, and reports for land surveying practice, shall be signed, sealed, and dated by the licensed engineer or land surveyor who prepared the documents or under whose responsible charge the documents were prepared. Where more than one sheet is bound together in one volume, including but not limited to reports and specifications, the licensee who prepared the volume, or under whose responsible charge the volume was prepared, may sign, seal, and date only the title or index sheet, provided that this sheet clearly identifies all of the other sheets comprising the bound volume, and provided that any of the other sheets which were prepared by, or under the responsible charge of, another licensee, be signed, sealed, and dated by the other licensee.

## **9.8 USE AND OWNERSHIP OF DOCUMENTS**

All rights of ownership, copyrights, construction documents, including all drawings, specifications and other documents, electronic media, or things prepared by or on behalf of the CONSULTANT for the PROJECT are hereby transferred to the OWNER and shall be the sole property of the OWNER and are free of any retention rights of the CONSULTANT. The CONSULTANT hereby grants to the OWNER an unconditional right to use or to refer to, for any purpose whatsoever, the construction documents and any other documents or electronic media prepared by or on behalf of the CONSULTANT for the PROJECT, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents. The CONSULTANT shall be permitted to retain copies thereof for its records. The CONSULTANT's documents and other work products are not intended or represented to be suitable for re-use by OWNER or others on extensions of the PROJECT or on any other PROJECT. Any re-use without specific written verification or adaptation by CONSULTANT will be at OWNER's sole risk and without liability or legal exposure to CONSULTANT, and OWNER shall indemnify and hold harmless CONSULTANT from all claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, such reuse by the OWNER; provided however, that this agreement to indemnify and save harmless shall not apply to any reuse of documents retained by, or through, the contractor.

**9.9 TERMINATION FOR CAUSE**

This Agreement may be terminated by either party upon seven (7) days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination.

**9.10 TERMINATION BY THE OWNER WITHOUT CAUSE**

The OWNER may terminate this Agreement without cause upon seven (7) days' written notice to the CONSULTANT. In the event of such a termination without cause, the CONSULTANT shall be compensated for all services performed prior to termination, together with Reimbursable Expenses incurred. In such event, the CONSULTANT shall promptly submit to the OWNER its invoice for final payment and reimbursement which invoice shall comply with the provisions of Paragraph 8.1.

**ARTICLE 10 - INDEMNITY AND INSURANCE**

**10.1 INSURANCE**

The ENGINEER shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. The ENGINEER shall procure and maintain for the duration of the job until final acceptance by the OWNER, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the ENGINEER, his agents, representatives, employees or subcontractor.

**10.2 MINIMUM SCOPE OF INSURANCE:**

**A. General Liability:**

Insurance shall be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the OWNER's approval. The same insurance company should write General Liability Coverage and OWNERS ENGINEERS Protective Insurance.

**B. Commercial General Liability**

Products and Completed Operations  
Contractual  
Personal Injury  
Explosion, Collapse and Underground  
Broad Form Property Damage

**C. Professional Liability:**

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, errors or omissions in the performance of professional services. Coverage shall be maintained for a discovery and reporting period of no less than five (5) years after completion of the professional services and Certificates of Insurance shall be submitted to the OWNER on a yearly basis during this time frame. Coverage shall be no less comprehensive than that which is carried by at least 25% of the registered engineers or

engineering firms contracting in the State of Alabama. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject PROJECT. The professional liability insurance shall contain contractual liability coverage.

**D. Automobile Liability:**

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

**E. Workers' Compensation Insurance:**

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. "Waivers of Subrogation" in favor of the OWNER shall be endorsed to Workers' Compensation Insurance.

**F. Employers Liability Insurance:**

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

**10.3 MINIMUM LIMITS OF INSURANCE:**

**A. General Liability:**

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 2,000,000 General Aggregate Limit  
\$ 2,000,000 Products - Completed Operations Aggregate  
\$ 1,000,000 Personal & Advertising Injury  
\$ 1,000,000 Each Occurrence

**B. Professional Liability:**

Insurance may be made on a "claims-made" basis:

\$ 500,000 Per Claim - Land Surveyors  
\$ 1,000,000 Per Claim - Other Professionals

**C. Automobile Liability:**

\$ 1,000,000 Combined Single Limit per accident for bodily injury and property damage.

**D. Workers' Compensation:**

As required by the State of Alabama Statute

**E. Employers Liability:**

\$ 1,000,000 Bodily Injury by Accident or Disease  
\$ 1,000,000 Policy Limit by Disease

#### **10.4 OTHER INSURANCE PROVISIONS:**

The OWNER is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the OWNER's best interest. If the insurance requirements are not adjusted by the OWNER prior to the OWNER's release of specifications with regard to the PROJECT in question, then the minimum limits shall apply. The City of Huntsville/OWNER shall be named on the policies of general liability and automobile insurance and on the certificate of insurance as an Additional Insured. Additional Insured status on the Commercial General Liability policy shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent and coverage shall be afforded on a primary basis.

The policies are to contain, or be endorsed to contain, the following provisions:

##### **A. All Coverage:**

The ENGINEER is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewal or materially changed by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the OWNER. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the OWNER.

#### **10.5 ACCEPTABILITY OF INSURERS:**

Insurance is to be placed with insurers authorized by the State of Alabama with an A. M. Best rating of A-V or better.

#### **10.6 VERIFICATION OF COVERAGE:**

The OWNER shall be indicated as a Certificate Holder and the ENGINEER shall furnish the OWNER with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf and must be an original signature. Certificates signed using digital signatures will not be accepted. Certificates signed using digital signatures will not be accepted unless accompanied by a written statement from the insurance/surety company indicating that their electronic signature is intended as their signature. All certificates are to be received and approved by the OWNER before work commences. The OWNER reserves the right to require complete, certified copies of all required insurance policies at any time.

#### **10.7 CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR THE ENGINEER:**

The ENGINEER shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant showing insurance of the same type or types and to the extent of the coverage set forth in this Article 10.

#### **10.8 HOLD HARMLESS AGREEMENT:**

##### **A. Other Than Professional Liability Exposures:**

The ENGINEER, to the fullest extent permitted by law, shall indemnify and hold harmless the OWNER, its elected and appointed officials, employees, agents, and representatives against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the work, provided that any such

claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting there from, and (2) is caused by any negligent act or omission of the ENGINEER or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described in this paragraph.

**B. Professional Liability:**

The ENGINEER agrees, to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless the OWNER, its elected and appointed officials, officers, directors, employees, agents, and representatives from and against any and all liability, claims, demands, damages, loss, costs, fees, and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) actually or allegedly arising out of, or resulting from, the professional services of the ENGINEER or the ENGINEER's consultants, subcontractors, or suppliers, including, without limitation, any breach of contract or any negligent acts, errors, or omissions in the performance of the professional services provided pursuant to or as a result of this Agreement. Neither, the OWNER nor the ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other parties own negligence.

To the fullest extent permitted by law, the ENGINEER shall defend, protect, indemnify, and hold harmless the OWNER, its elected and appointed officials, officers, directors, employees, agents, and representatives from and against any and all liability, claims, demands, damages, loss, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the OWNER in writing. If the ENGINEER has reason to believe the use of a required design, process or product is an infringement of a patent, the ENGINEER shall be responsible for such loss unless such information is promptly given to the OWNER.

## **ARTICLE 11- MISCELLANEOUS PROVISIONS**

### **11.1 GOVERNING LAW**

This Agreement shall be governed by the law of the State of Alabama.

### **11.2 INTENT AND INTERPRETATION**

**11.2.1** The intent of this contract is to require complete, correct and timely execution of the work. Any work that may be required, implied or inferred by the contract documents, or any one or more of them, as necessary to produce the intended result shall be provided by the CONSULTANT.

**11.2.2** This contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one contract document shall be considered as required by the contract.

**11.2.3** When a word, term or phrase is used in this contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the APPRAISER AND CONTRACT MANAGEMENT industry; and third, if there is no generally accepted meaning in

the APPRAISER AND CONTRACT MANAGEMENT industry, according to its common and customary usage.

**11.2.4** The words "include", "includes", or "including", as used in this contract, shall be deemed to be followed by the phrase, "without limitation".

**11.2.5** The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this contract.

**11.2.6** Words or terms used as nouns in this contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

### **11.3 TIME IS OF THE ESSENCE**

Time limitations contained herein, or provided for hereby, are of the essence of this Agreement. The CONSULTANT understands and acknowledges that time is of the essence in completion of the PROJECT and that the OWNER will incur damages if the PROJECT is not completed on time.

### **11.4 SUCCESSORS AND ASSIGNS**

The CONSULTANT shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the OWNER. Subject to the provisions of the immediately preceding sentence, the OWNER and the CONSULTANT, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

### **11.5 THIRD-PARTY BENEFICIARIES**

The State of Alabama is considered to be a third party beneficiary to this Agreement. Otherwise, this Agreement shall inure solely to the benefit of the parties hereto and their successors and assigns. Nothing contained herein is intended to or shall create a contractual relationship with, or any rights in favor of, or any cause of action in favor of, any third party, other than the State of Alabama against the OWNER or the CONSULTANT

### **11.6 INTELLECTUAL PROPERTY/ CONFIDENTIALITY**

All information, documents, and electronic media furnished by the OWNER to the CONSULTANT belong to the OWNER, are considered proprietary and confidential, unless otherwise indicated by the OWNER, and are furnished solely for use on the OWNER's PROJECT. Such information, documents, and electronic media shall be kept confidential by the CONSULTANT, shall only be released as necessary to meet official regulatory requirements in connection with the PROJECT, and shall not be used by the CONSULTANT on any other PROJECT or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter, other than services rendered to the OWNER hereunder is specifically authorized in writing by the OWNER in advance. This Section 11.6 shall survive the expiration of this Agreement.

#### **11.7 SUBCONTRACT REQUIREMENTS**

The CONSULTANT shall include the terms and conditions of Articles 10 and 11 of this Agreement in every subcontract or agreement with a consultant for this PROJECT so that these terms and conditions shall be binding upon each subcontractor or consultant.

#### **11.8 NOTICES**

Unless otherwise provided, all notices shall be in writing and considered duly given if the original is hand delivered; if delivered by telex, facsimile, or tele-copy; or is sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices, hand delivered or delivered by telex, facsimile, or tele-copy shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

#### **11.9 FEDERAL IMMIGRATION LAW**

By signing this Agreement, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

#### **11.10 STRICT COMPLIANCE**

No failure of the OWNER to insist upon strict compliance by the CONSULTANT with any provision of this Contract for Professional Services shall operate to release, waive, discharge, modify, change or affect any of the CONSULTANT's obligations.

#### **11.11 WAIVER**

No provision of this Agreement may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement.

#### **11.12 SEVERABILITY**

If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions of this Agreement shall remain valid and enforceable.

#### **11.13 ETHICS**

The CONSULTANT shall not offer or accept any bribes or kickbacks from or to any manufacturer, consultant, trade contractor, subcontractor, supplier or any other individual or entity in connection with the PROJECT. The CONSULTANT shall not confer on any governmental, public or quasi-public official having any authority or influence over the PROJECT any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised. The CONSULTANT shall not, without the express written permission of the OWNER, engage or recommend to the OWNER engagement of any consultant, trade contractor, subcontractor, or supplier to provide services on behalf of the CONSULTANT, OWNER or PROJECT in which the CONSULTANT has a direct or indirect proprietary or other pecuniary interest; or call for the use of or by exclusion require or recommend the use of products, materials,

equipment, systems, processes or procedures in which the CONSULTANT or in which any consultant, trade contractor, subcontractor, or supplier of the CONSULTANT has a direct or indirect proprietary or other pecuniary interest. Without prior notification and written approval of the OWNER, the CONSULTANT and the CONSULTANT'S subconsultants shall not offer services to the OWNER'S contractor

**11.14 ENTIRE AGREEMENT**

This Agreement represents the entire agreement between the OWNER and the ENGINEER and supersedes all prior communications, negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both OWNER and ENGINEER.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**OWNER:  
CITY OF HUNTSVILLE**

**CONSULTANT:  
A&S APPRAISAL COMPANY, L.L.C.**

BY: \_\_\_\_\_  
Tommy Battle

BY: Thomas M. Armstrong  
Thomas M. Armstrong

TITLE: \_\_\_\_\_  
Mayor

TITLE: \_\_\_\_\_  
Owner

ATTEST: \_\_\_\_\_

ATTEST: Jeresa Mills

Given under my hand this \_\_\_\_\_ day

Given under my hand this 19<sup>th</sup> day

Of \_\_\_\_\_, 2014.

Of September, 2014.

\_\_\_\_\_  
Notary Public

Wynne Holcomb  
Notary Public

My commission expires \_\_\_\_\_

My commission expires 3/28/15

**ATTACHMENT 1**  
**SCOPE OF SERVICES**

**(Refer to letter dated August 19, 2014, from Thomas M. Armstrong, MAI, to Kelly Davis).**



August 19, 2014

  
Mrs. Kelly Davis  
City of Huntsville, Real Estate Division  
P.O. Box 308  
Huntsville, AL 35804

**RE: Proposal for Appraisal Reviews: Zierdt Road Improvement Project  
ALDOT Proj. No. STPHVF-8507(600); COH Proj. No. 65-06-RD01  
Huntsville, Madison County, Alabama**

Dear Mrs. Davis,

I appreciate the opportunity to submit a proposal to complete appraisal "reviews" for the above-referenced project. As requested, I reviewed the provided documentation pertaining to the above referenced road project for the purpose of estimating appropriate appraisal "review" fees on a per tract basis for the 34 tracts which require appraisals on this project.

Based on requirements designated by the Alabama Department of Transportation (ALDOT) as referenced in the Real Property Appraisal Manual, the "review" assignment shall examine the presentation and analysis of market information in all submitted appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a) (3) and criteria for appraisals found in 49 CFR 24.103 and other applicable requirements to include ALDOT's policies and Standard 3 of USPAP. Each tract would be inspected and a final review report, which would include ALDOT Form A-16, for each tract would be submitted.

Based on the complexity of appraisal "review" work and time required to complete each assignment, the appraiser's proposed fees are listed on the following page along with a summary description of each tract to be reviewed.

Page 2

Appraisal Review Proposal Letter – August, 2014  
City of Huntsville, Alabama

TRACT NO.	OWNER OF RECORD	PROP. APPRAISAL REVIEW FEE	Type of Property	Parcel Size Before	COMMENTS
2	Williams	\$1,500	Vacant Land	56.17	ROW, U & D Easement; TC Easement
3	Williams Oil	\$1,875	C-store	1.62	ROW, U & D Easement; TC Easement
4	MZ Land	\$1,250	Vacant Land	22.35	ROW and TC Easement
5	Dickens	\$350	SFR	1.03	TC Easement
6	Asbury Woods Apt	\$1,000	Apartments	23.36	TC Easement
7	Gulf Coast Dev.	\$1,375	HOA w/ Improve.	6.55	ROW and TC Easement
8	Metropolis Assc.	\$500	Apartments	32.02	TC Easement
9	CMF 7 Portfolio	\$1,000	Apartments	39.28	TC Easement
10	Labrado Coast LLC	\$450	Vacant Land	4.59	TC Easement
11	Edgewater HOA	\$2,500	Vacant Land	48.00	ROW, U & D Easement; TC Easement
12	Wayne Bonner	\$1,375	Vacant Land*	1.19	ROW, U & D Easement; TC Easement
13	Ernesto Cardenas	\$500	SFR	0.33	ROW, U & D Easement; TC Easement
14	Sandra Ratley	\$500	SFR	0.39	ROW, U & D Easement; TC Easement
15	Mills	\$500	SFR	0.40	ROW and TC Easement
16	Hawg & Fang	\$500	SFR	0.48	ROW and TC Easement
17	Feebles	\$625	SFR*	0.49	ROW and TC Easement
18	Agape of N. Ala	\$450	Church	1.44	TC Easement
19	Old Town Invest.	\$2,500	Vacant Land	262.82	ROW and TC Easement
20	Brown	\$1,000	Vacant Land	0.27	ROW and TC Easement
23	7800 Madison	\$1,250	Office Bldg.	2.98	ROW and TC Easement
24	Madisonville Prop.	\$1,750	Office/Whse.	56.73	ROW and TC Easement
25	Park Properties	\$500	Beltower HOA	1.74	TC Easement
26	Arbor Hill HOA	\$500	Arbor Hill HOA	1.32	TC Easement
27	Madison Water & Waste	\$350	Vacant Land	1.14	TC Easement
28	Mountain Brook HOA	\$350	Mountain Brk. HOA	0.98	TC Easement
29	Tysen	\$350	SFR	0.45	TC Easement
30	Boyer, John L	\$350	SFR	0.55	TC Easement
31	Boyer, Richard	\$350	SFR	0.56	TC Easement
32	Boyer, Joe L	\$350	SFR	0.46	TC Easement
33	Gilland	\$350	SFR	0.62	TC Easement
34	27 Investments 11, LLC	\$750	SFR	92.30	TC Easement
35	Wesley Partners, LLC	\$1,625	Vacant Land	1.30	ROW and TC Easement
36	IRT Alabama, Inc	\$1,250	Retail-Publix Strip	9.43	ROW
37	Vincent Stone	\$1,500	Vacant Land	5.83	ROW
34	Totals	\$31,325			

The above indicated fees are estimates and are subject to revision based on map/tract assignment changes, additional requirements discovered after the inspection or other factors that change the assignment requirements or scope of appraisal review.

I appreciate this opportunity to be of service and look forward to working with you. In the event that any questions arise regarding this proposal, or if I can be of further assistance, please do not hesitate to call me at 256-585-3935 or 684-6606.

Respectfully submitted,

*Tom Armstrong*

Thomas M. Armstrong, MAI  
State Certified General Real  
Property Appraiser, G00479



**ATTACHMENT 2 - ALABAMA IMMIGRATION ACT - REPORT OF OWNERSHIP FORM**

**CITY OF HUNTSVILLE, ALABAMA REPORT OF OWNERSHIP FORM**

A. General Information. Please provide the following information:

- Legal name(s) (include "doing business as", if applicable): A & S Appraisal Company, LLC
- City of Huntsville current taxpayer identification number (if available): \_\_\_\_\_  
(Please note that if this number has been assigned by the City and if you are renewing your business license, the number should be listed on the renewal form.)

B. Type of Ownership. Please complete the un-shaded portions of the following chart by checking the appropriate box below and entering the appropriate Entity I.D. Number, if applicable (for an explanation of what an entity number is, please see paragraph C below):

Type of Ownership (check appropriate box)	Entity I. D. Number & Applicable State
<input type="checkbox"/> Individual or Sole Proprietorship	Not Applicable
<input type="checkbox"/> General Partnership	Not Applicable
<input type="checkbox"/> Limited Partnership (LP)	Number & State:
<input type="checkbox"/> Limited Liability Partnership (LLP)	Number & State:
<input type="checkbox"/> Limited Liability Company (LLC) (Single Member)	Number & State:
<input checked="" type="checkbox"/> LLC (Multi-Member)	Number & State: <u>491-415; Alabama</u>
<input type="checkbox"/> Corporation	Number & State:
<input type="checkbox"/> Other, please explain:	Number & State (if a filing entity under state law):

C. Entity I.D. Numbers. If an Entity I.D. Number is required and if the business entity is registered in this state, the number is available through the website of Alabama's Secretary of State at [www.sos.state.al.us/](http://www.sos.state.al.us/), under "Government Records". If a foreign entity is not registered in this state please provide the Entity I.D. number (or other similar number by whatever named called) assigned by the state of formation along with the name of the state.

D. Formation Documents. Please note that, with regard to entities, the entity's formation documents, including articles or certificates of incorporation, organization, or other applicable formation documents, as recorded in the probate records of the applicable county and state of formation, **are not required unless:** (1) specifically requested by the City, or (2) an Entity I.D. Number is required and one has not been assigned or provided.

Please date and sign this form in the space provided below and either write legibly or type your name under your signature. If you are signing on behalf of an entity please insert your title as well.

Signature: Thomas Armstrong Title (if applicable): Owner / Partner

Type or legibly write name: Thomas Armstrong Date: 9/18/14

**ATTACHMENT 3 – CONSULTANTS PERSONNEL FEE SCHEDULE**  
**(Article 7.1)**

**OMITTED**

**ATTACHMENT 4 - CONTRACT DOCUMENT REQUIREMENTS LIST**

<b>REQUIREMENT</b>	<b>SUBMIT TO</b>	<b>SUBMITTAL REQUIREMENT DATE</b>	<b>NUMBER OF COPIES</b>	<b>REFERENCE SECTION OF CONTRACT AND COMMENTS</b>
Deviations from OWNER's standards.	OWNER	Prior to incorporating deviations.	N/A	
Approval of CONSULTANT's Request for Payment.	OWNER	Within ten (10) days of receipt of the request from the contractor.	4	Article 8.1
Approval of CONSULTANT submittals	OWNER	So as to cause no delay to the contractor or the PROJECT.	1	Article 8.1
Any information pertaining to any claim.	OWNER	Immediately	4	Article 10.2
Information pertinent to the PROJECT, all criteria and full information as to OWNER's requirements, copies of all design and construction standards.	CONSULTANT	So as to not delay the services of the CONSULTANT	N/A	
Notification of delays.	CONSULTANT; OWNER	Promptly	4	Article 6.1
CONSULTANT's monthly invoices.	OWNER	Monthly	N/A	
Consultant progress report.	OWNER	Monthly	N/A	
Records, data, parameters, design calculations and other information.	OWNER	Cancellation of contract.	2	Article 9.6
Any claim of CONSULTANT for adjustment as a result of a contract change.	OWNER	Within 30 days from notification of change.	4	Article 9.5.1 & 9.5.2
Documentation, records of reimbursable expenses, record copies of all written communications, and any memoranda of verbal communications related to the PROJECT.	OWNER	Upon notice from the OWNER.	2	Article 9.6
Termination notification.	OWNER or CONSULTANT	7 days prior to termination.	4	Article 9.9 & 9.10
Certificate of Insurance for	OWNER	At 0% design	N/A	

CONSULTANT.		conference		
Insurance cancellation, suspension, or reduction in coverage or limits.	OWNER	30 days prior to effective date except for cancellation which is 10 days notification.	N/A	

## **ATTACHMENT 5 - REQUIREMENTS FOR DOCUMENT SUBMITTALS DRAWINGS**

All drawings shall be sized 24" x 36", unless otherwise approved by the OWNERS Project Engineer.

Title blocks shall as a minimum, contain the name of the project, date, city project number, and ENGINEER's name. The title block of drawings shall contain a space for the names of the preparer and the reviewer and/or checker. These blocks shall be signed on each submittal (See Attachment "11" for sample standard drawing format). Drawings shall contain alphanumeric revision designations. Drawings issued for review shall be issued with alpha revision designation and the revision letter shall be changed for each submittal containing drawing changes. Drawings issued for construction shall be issued with numeric designation at revision level "0" and described as "Issued for Construction" in the revision description block. Subsequent drawing changes require the revision level to be raised using successively higher numbers and the changes to be marked by circling and briefly described in a revision block.

All drawings shall be prepared in Micro station .DGN format, unless otherwise approved by the OWNERS Project Engineer. Transmittal letters shall consist of a list of files being submitted, a description of the data in each file, and a level/layer schematic of each design file. DGN design files shall have working units as follows: master units in feet, no sub-units, and 1,000 positional units. All data submitted shall use NAD 1983 Alabama East Zone horizontal datum and NAVD 88 vertical datum coordinates.

Unless otherwise specified by the Owners Project Engineer, all drawings for review submittals shall be full or half-size copies. All documents shall be clearly marked in a revision block indicating the applicable submittal milestone, i.e. 30%, 60%, 90%, etc.

### **OTHER DOCUMENTS**

Submittals required by the State of Alabama for their review, bidding, etc., shall be of the size, form and numbers of copies as the state may require even though such submittals may differ from the submittals set forth as being required elsewhere in this Agreement.

Digital files shall be submitted by 4-3/4" CD ROM, DVD, 3 and 1/2 inch floppy disk, flash drive, or to the City of Huntsville F.T.P. site.

All print copies shall be first generation copies.

All text documents shall be prepared in Microsoft Word 2010 format.

All spreadsheets shall be in Microsoft Excel 2010 format.

All PDF files shall be searchable.

Schedules shall be in Microsoft Projects format, unless otherwise approved by the OWNERS Project Engineer.

Aerial photography files shall be in Intergraph (.COT) or (.tiff) format.

All mapping shall meet National Map Accuracy Standards unless otherwise noted. If National Map Accuracy Standards are not met, the accuracy of the map shall be identified to the Owners Project Engineer and on the maps derived from the aerial survey. National Map Accuracy Standards are shown below. This and other map standards are shown in Department of the Army, US Army Corps of Engineers standard, "EM 1110-1-1000, Engineering and Design - Photogrammetric Mapping".

All final drawings, specifications, plans, calculations, letters containing Engineering or Surveying recommendations or other Engineering or Land Surveying papers or documents involving the practice of

engineering or land surveying as defined by Code of Alabama, Title 34, Chapter 11 shall be sealed, dated, and bear the signature of the person who prepared or approved them.

Working drawings or other documents shall contain a statement to the effect "Preliminary-Not for construction, recording purposes or implementation."

All services performed by the **CONSULTANT** on projects with Federal Funds involved will be performed in accordance with the current amendments of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*.

The **OWNER** anticipates there will be a need for the **CONSULTANT** to provide services such as appraisals, appraisal review, negotiations, relocation assistance, and any other necessary efforts to acquire rights-of-way and/or easements for various projects for the **OWNER**.

The **CONSULTANT** and its employees, agents and sub-contractors shall refrain from soliciting business from landowners contacted as a result of **CONSULTANT'S** negotiating on behalf of the **OWNER** and the **CONSULTANT**, its employees, agents and sub-contractors will be prohibited from engaging in business related to any parcels or tracts of land negotiated for the course of this contract for a period of 90 days following the finalization of the acquisition of the right-of-way for a particular parcel of land.

## ATTACHMENT 6

### EQUAL RIGHTS PROVISIONS (FOR ALL PROJECTS ASSIGNED TO CONSULTANT WITH FEDERAL FUNDS INVOLVED).

- a. Compliance with Regulations: The **CONSULTANT** will comply with the Regulations of the **OWNER** relative to non-discrimination in federally-assisted programs of the **OWNER** (Title 49, Code of Federal Regulations, Part 21, as amended by CRF 710.405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. Non-discrimination: The **CONSULTANT**, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the basis of race, color, religion, sex, or national origin in the selection and retention of **SUBCONSULTANTS**, including procurement of materials and leases of equipment. The **CONSULTANT** will 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. The **CONSULTANT** will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, and the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.
- c. Solicitations: In all solicitations, either by competitive bidding or negotiation made by the **CONSULTANT** for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential **SUBCONSULTANT**, supplier or lessor shall be notified by the **CONSULTANT** of the **CONSULTANT**'s obligations under this contract and the Regulations relative to non-discrimination on grounds of race, color, religion, sex, or national origin.
- d. Information and Reports: The **CONSULTANT** 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 **OWNER** 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 **OWNER** or the Federal Highway Administration, as appropriate, and shall set forth what efforts he has made to obtain the information.
- e. Sanctions for Non-compliance: In the event of the **CONSULTANT**'s non-compliance with the non-discrimination provisions provided for herein, the **OWNER** 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 **CONSULTANT** under the contract until the **CONSULTANT** complies and/or
  - b. cancellation, termination, or suspension of the contract, in whole or in part.
- f. Incorporation of Provisions: The **CONSULTANT** will include the foregoing provisions a. through e. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders or instructions issued pursuant thereto. The **CONSULTANT** will take such action with respect to any subcontract, procurement, or lease as the **OWNER** of the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided however that in the event of a **CONSULTANT** becomes involved in, or is threatened with, litigation with **SUBCONSULTANTS**, supplier or lessor as a result of

such direction, the **CONSULTANT** may request the **OWNER** and, in addition, the **CONSULTANT** may request the United States to enter into such litigation as to protect the interests of the United States.

2. **PARTICIPATION BY MINORITY BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAMS  
(FOR ALL PROJECTS ASSIGNED TO CONSULTANT WITH FEDERAL FUNDS INVOLVED)**

**Policy:** It is the policy of the U.S. Department of Transportation that Minority Business Enterprises, as defined in 49 CFR, Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of 49 CFR, Part 23, apply to this agreement.

**MBE Obligation:** The recipient of funds under the terms of this agreement agrees to ensure that Minority Business Enterprises, as defined in 49 CFR, Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, such recipient shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23, to ensure that Minority Business Enterprises have the maximum opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin or sex in the award and performance of U.S. Department of Transportation-assisted contracts. Failure of the recipient of funds under the terms of this agreement, or failure of its **SUBCONSULTANT** (if a **SUBCONSULTANT** is authorized) to carry out the MBE requirements of this agreement, shall constitute a breach of contract and may result in termination of the contract by the **OWNER** or such other remedy may be undertaken by the **OWNER** as deems appropriate.