City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Mike Pogge-Weaver, City Manager MJPW

FROM: Randall M. Krauel, Director of Public Works RMK

DATE: February 6, 2019

SUBJECT: Water Storage Tower Rehabilitation - 2019
Professional Services Agreement

On November 8, 2018, the Department of Natural Resources (DNR) sent the results of a Municipal Water Supply Sanitary Survey. One of the requirements of the Survey was to submit a Preliminary Engineering Report by July 1, 2019, on facilities to maintain chlorine residuals in the water distribution system.

The March 20, 2018, Water Distribution Modeling and Evaluation included a recommendation to add a hydrodynamic mixing system to the interior of the Water Tower. The mixing system was recommended to promote consistent water quality in the Tower. The addition of the mixing system has been discussed with the DNR as a step to maintaining chlorine residuals.

Installation of a mixing system requires work in the interior of the Tower tank. The work will damage the interior coating system. The coating can either be spot repaired or completely replaced. The Tower coating is approximately 20 years old; near the end of its life. It is recommended to replace the entire Tower coating, interior and exterior, along with the installation of a mixing system.

Installation of a mixing system and Tower painting is not included in the current Budget. Funding to initiate the project has been recommended in the F.Y. 18-19 Re-estimated Budget proposal.

To begin compliance with the DNR requirement, a Professional Services Agreement has been requested from JEO Consulting Group, Inc. The conditions of the Agreement are detailed therein, copy attached, and summarized as follows:

		Estimated Time Frame	
Scope of Work	Fee	Days	Approx. Date
Project Management	$ 3,500 (LS)		11-2019
Preliminary Design	$12,300 (LS)	45	04-01-19
Final Design	$10,800 (LS)	30+	05-01-19
Bidding	$ 2,800 (LS)	60+	07-01-19
Total Estimated Fee	$29,400		

Two Scope of Work items are not included in the proposed Agreement as follows:

1. The DNR has not fully defined the scope of the Preliminary Engineering Report. The current anticipation is that the Water Distribution Modeling and Evaluation report will satisfy that submittal requirement. If not, additional Professional Services may be necessary to be added to the Agreement by amendment.

2. Construction Services and Resident Project Representation (RPR) services are being prepared. The RPR services are anticipated to be provided by a subcontractor. Discussions with a subcontractor are not finalized at this time. Those services will be recommended to be added by addendum.

RECOMMENDATION: Mayor and City Council consideration and passage and approval of the Resolution approving the Agreement with JEO Consulting Group, Inc. for Professional Services for the Water Storage Tower Rehabilitation – 2019 project.

RMK:ds

attachments (2)

RESOLUTION NO. _____

RESOLUTION APPROVING THE AGREEMENT WITH JEO CONSULTING GROUP, INC. FOR PROFESSIONAL SERVICES FOR THE WATER STORAGE TOWER REHABILITATION – 2019 PROJECT.

WHEREAS, Chapter 17 of the Code of Ordinances of the City of Carroll, Iowa, provides that contracts made by the City be approved by the City Council; and,

WHEREAS, a Professional Services Agreement for the development of the Water Storage Tower Rehabilitation – 2019 project has been prepared with JEO Consulting Group, Inc.; and,

WHEREAS, the City Council has determined that the Professional Services Agreement is in the best interests of the City and the residents thereof.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carroll, Iowa, that the Professional Services Agreement with JEO Consulting Group, Inc. for the Water Storage Tower Rehabilitation – 2019 project is approved and the Mayor is authorized to execute the Agreement on behalf of the City.

Passed and approved by the Carroll City Council this 11th day of February, 2019.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By: _____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of February 11, 2019 ("Effective Date") between the City of Carroll, Iowa ("Owner") and JEO Consulting Group, Inc. ("Engineer").

Owner's project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Water Storage Tower Rehabilitation – 2019 ("Project").

Owner and Engineer further agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 Owner Responsibilities

A. Owner responsibilities are outlined in Section 3 of Exhibit B.

ARTICLE 3 - Compensation

3.01 Compensation

A. Owner shall pay Engineer as set forth in Exhibit A and per the terms in Exhibit B.

B. The fee breakdown for the Project shall be as follows:

a. Project Management:	$	3,500 (lump sum)
b. Preliminary Design Phase:	$	12,300 (lump sum)
c. Final Design Phase:	$	10,800 (lump sum)
d. Bidding and Negotiation Phase:	$	2,800 (lump sum)
Total Fee:	$	29,400

C. The Standard Hourly Rates Schedule shall be adjusted annually (as of approximately January 1st) to reflect equitable changes in the compensation payable to Engineer. The current Standard Hourly Rate Schedule is shown in Exhibit C.

ARTICLE 4 - EXHIBITS AND SPECIAL PROVISIONS

4.01 Exhibits

Exhibit A – Scope of Services
Exhibit B – General Conditions
Exhibit C – Hourly Rate Schedule
Exhibit D – Non-Discrimination Assurances

5.02 Total Agreement

A. This Agreement (consisting of pages 1 to 2 inclusive, together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

This Agreement will be effective on February 11, 2019 (which is the Effective Date of the Agreement).

Owner: City of Carroll, Iowa

By: Dr. Eric Jensen

Title: Mayor

Date Signed: February 11, 2019

Address for giving notices:

City of Carroll

112 E. 5th Street

Carroll, IA 51401

Engineer: JEO Consulting Group, Inc.

By: Blake Birkel, PE

Title: Project Manager

Date Signed: February 5, 2019

Address for giving notices:

JEO Consulting Group, Inc.

11717 Burt Street; Ste 210

Omaha, NE 68154-1510

Exhibit A

JEO Consulting Group, Inc.
SCOPE OF SERVICES

PROJECT DESCRIPTION:

The project involves the rehabilitation of the existing 500,000-gallon elevated water storage tank located near the intersection of N. Court Street and E. 14th Street. The proposed rehabilitation consists of cleaning and repainting of the tank interior and exterior along with the installation of a new hydrodynamic mixing system on the tank inlet piping.

The work to be performed by JEO (Engineer) shall generally encompass and include the development of front-end contract documents, technical specifications and plans detailing the necessary work, services, materials, equipment and supplies necessary to complete the design of the project, as well as, to provide bidding assistance.

The improvements will be constructed by a Contractor under a separate construction contract with the Owner, which will be awarded through a formal bidding process. It is anticipated that there will be one (1) Prime Contractor working to complete the project.

BASIC SCOPE OF SERVICES

PROJECT MANAGEMENT:

A. Provide project management oversight over all facets and phases of the project. Project management shall include the following services:
   a. Coordination of design disciplines including facilitating communication and transfer of documents between disciplines to minimize errors in the plans and specifications as well as ensure a timely project design.
   b. Provide timely and coordinated communication to and from the Owner for requests for information, providing progress updates, scheduling meetings, and receiving and providing feedback.
   c. Provide oversight, monitor staff, and ensure proper staffing levels are maintained to ensure scope of services and schedule are met.
   d. Review billed hours by design team and prepare invoice statements for Owner.

PRELIMINARY DESIGN PHASE:

30% Design Process:

A. Attend and facilitate one (1) project kickoff meeting with Owner to review the project scope, schedule, and project requirements.

B. Create an electronic drawing illustrating elevation, site features, and existing utilities resulting from the topographic survey performed as part of water main replacement project.

C. Coordinate with City staff to obtain original construction drawings (if available), previous inspection reports, technical specifications or construction shop drawing submittals from most recent recoating project and any other information that are to be relied upon for the design of proposed improvements.

D. Coordinate with paint manufacturer representatives and tank painting contractors to evaluate possible coating systems as it relates to surface prep, application procedures and requirements (coating thickness, curing times, etc.), estimated costs and product life expectancy. Prepare summary of evaluation and provide recommendations for the proposed coating system to be used. Submit to Owner for review and input.

E. Coordinate with manufacturer representatives to obtain the necessary installation details, specifications, CFD modeling, costs and expected equipment performance of the proposed tank mixing system.

F. Prepare a site plan that identifies physical constraints of the storage tank site including adjacent structures, existing utilities, property/ROW boundaries, site elevation, etc.
G. Create a detail of the existing elevated storage tank structure.
H. Coordinate with City staff to obtain an inventory of existing communication equipment currently located on the tank and any contract(s) with respective utilities for installation of equipment on the City's tank.
I. Contact each utility with infrastructure on the tank to determine purpose of existing infrastructure, ability to be relocated and any future changes they have planned.
J. Create a 30% plan set that includes a title sheet, abbreviations/symbols, location map, reference notes, existing site plan and detail sheet(s) for the water storage tank improvements.
K. Conduct an internal 30% QA/QC of the plan set.
L. Conduct a 30% review meeting with Owner.

FINAL DESIGN PHASE:

60% Design Process

A. Revise design plans following receipt of 30% review comments from internal QA/QC and comments from Owner's representatives.
B. Coordinate with City staff regarding the proposed logo and size/orientation on the tank.
   a. *City to be responsible for providing digital image of proposed logo.*
C. Develop and write technical specifications for the project.
D. Develop a construction phasing plan.
E. Conduct an internal 60% QA/QC of the updated plan set and technical specifications.

90% Design Process:

A. Revise design plans and technical specifications following receipt of 60% QAQC review comments.
B. Develop and write bidding documents and contractor contract documents.
C. Create a 90% plan and specification set.
D. Prepare a 90% engineer's opinion of probable cost.
E. Conduct an internal 90% QA/QC review of the plans, specifications and cost estimate.
F. Conduct a 90% review of the plans, opinion of probable cost, technical specifications, bidding documents, and contract documents with the Owner's representatives at (1) meeting.

Design Finalization Process:

A. Receive 90% comments and revise plans and specifications.
B. Create final plan and specification set and sign and seal by engineer registered in the State of Iowa.
C. Prepare a final engineer's opinion of probable cost.
D. Prepare IDNR permit schedules and coordinate construction permit submittal. Owner to pay review fees.

BIDDING AND NEGOTIATION PHASE:

A. Provide assistance with authorizing the advertisement for bids and setting the bid date, location, and time. It is expected that there will be one (1) bid opening for the project.
B. Supply the Invitation to Bidders to the Owner for publication in the official media outlet(s).
C. Furnish copies of the plans, specifications, and contract documents of the project to prospective bidders, materials suppliers, and other interested parties upon their request.
D. Respond to inquiries from prospective bidders, prepare any addenda required.

JEO Consulting Group, Inc.
SCOPE OF SERVICES

MEETINGS INCLUDED WITHIN SCOPE OF SERVICES:

A. Preliminary Design Phase:
   1. Project Kickoff Meeting
   2. 30% Design Review / Plan-in-hand Meeting

B. Final Design Phase
   3. 90% Design Review Meeting

C. Bidding and Negotiation Phase:
   1. None

ADDITIONAL SERVICES, NOT INCLUDED:

A. Environmental permitting not outlined in the scope of services.
B. Environmental assessment report.
C. Geotechnical investigation, report, and testing services.
D. Services of specialty contractor to conduct tank inspection.
E. CFD modeling of tank mixing equipment (to be provided by manufacturer)
F. Design of tank lighting system.
G. Temporary easement preparation and negotiation.
H. Negotiation with impacted utilities.
I. Payment of review and permitting fees.
J. Attendance at bid opening.
K. Preparation and execution of Construction Contracts.
L. Construction administration and RPR inspection services.
M. Construction materials testing and verification.
N. SWPPP Inspections and Reporting
O. Preparation of as-built drawings.
P. Meetings not outlined in the scope of services.

ESTIMATED TIME FRAME:

A. Project Management – for the duration of the contract
B. Preliminary Design Phase – 45 days from effective date of agreement
C. Final Design Phase – 30 days from Owner review of preliminary plans.
D. Bidding Phase – estimated 60 days from Owner authorization to bid the project.

Exhibit B

JEO Consulting Group, Inc.
GENERAL CONDITIONS

1. SCOPE OF SERVICES: JEO Consulting Group, Inc. (JEO) shall perform the services described in Exhibit A. JEO shall invoice the owner for these services at the fee stated in Exhibit A.

2. ADDITIONAL SERVICES: JEO can perform work beyond the scope of services, as additional services, for a negotiated fee or at fee schedule rates.

3. OWNER RESPONSIBILITIES: The owner shall provide all criteria and full information as to the owner's requirements for the project; designate and identify in writing a person to act with authority on the owner's behalf in respect to all aspects of the project; examine and respond promptly to JEO's submissions; and give prompt written notice to JEO whenever the owner observes or otherwise becomes aware of any defect in work.

Unless otherwise agreed, the owner shall furnish JEO with right-of-access to the site in order to conduct the scope of services. Unless otherwise agreed, the owner shall also secure all necessary permits, approvals, licenses, consents, and property descriptions necessary to the performance of the services hereunder. While JEO shall take reasonable precautions to minimize damage to the property, it is understood by the owner that in the normal course of work some damage may occur, the restoration of which is not a part of this agreement.

4. TIMES FOR RENDERING SERVICES: JEO's services and compensation under this agreement have been agreed to in anticipation of the orderly and continuous progress of the project through completion. Unless specific periods of time or specific dates for providing services are specified in the scope of services, JEO's obligation to render services hereunder shall be for a period which may reasonably be required for the completion of said services.

If specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or date are changed through no fault of JEO, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If the owner has requested changes in the scope, extent, or character of the project, the time of performance of JEO's services shall be adjusted equitably.

5. INVOICES: JEO shall submit invoices to the owner monthly for services provided to date and a final bill upon completion of services. Invoices are due and payable within 30 days of receipt. Invoices are considered past due after 30 days. Owner agrees to pay a finance charge on past due invoices at the rate of 1.0% per month, or the maximum rate of interest permitted by law.

If the owner fails to make any payment due to JEO for services and expenses within 30 days after receipt of JEO's statement, JEO may, after giving 7 days' written notice to the owner, suspend services to the owner under this agreement until JEO has been paid in full all amounts due for services, expenses, and charges.

6. STANDARD OF CARE: The standard of care for all services performed or furnished by JEO under the agreement shall be the care and skill ordinarily used by members of JEO's profession practicing under similar circumstances at the same time and in the same locality. JEO makes no warranties, express or implied, under this agreement or otherwise, in connection with JEO's services.

JEO shall be responsible for the technical accuracy of its services and documents resulting therefrom, and the owner shall not be responsible for discovering deficiencies therein. JEO shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in owner furnished information.

7. REUSE OF DOCUMENTS: Reuse of any materials (including in part plans, specifications, drawings, reports, designs, computations, computer programs, data, estimates, surveys, other work items, etc.) by the owner on a future extension of this project, or any other project without JEO's written authorization shall be at the owner's risk and the owner agrees to indemnify and hold harmless JEO from all claims, damages, and expenses including attorney's fees arising out of such unauthorized use.

8. ELECTRONIC FILES: Copies of Documents that may be relied upon by the owner are limited to the printed copies (also known as hard copies) that are signed or sealed by JEO. Files in electronic media format of text, data, graphics, or of other types that are furnished by JEO to the owner are only for convenience of the owner. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk.

a. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it shall perform acceptance tests or procedures within 30 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 30 day acceptance period shall be corrected by the party delivering the electronic files. JEO shall not be responsible to maintain documents stored in electronic media format after acceptance by the owner.

b. When transferring documents in electronic media format, JEO makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by JEO at the beginning of the project.

c. The owner may make and retain copies of documents for information and reference in connection with use on the project by the owner.

d. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

e. Any verification or adaptation of the documents by JEO for extensions of the project or for any other project shall entitle JEO to further compensation at rates to be agreed upon by the owner and JEO.

9. SUBCONSULTANTS: JEO may employ consultants as JEO deems necessary to assist in the performance of the services. JEO shall not be required to employ any consultant unacceptable to JEO.

10. INDEMNIFICATION: To the fullest extent permitted by law, JEO and the owner shall indemnify and hold each other

harmless and their respective officers, directors, partners, employees, and consultants from and against any and all claims, losses, damages, and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) to the extent such claims, losses, damages, or expenses are caused by the indemnifying parties' negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of JEO and the owner, they shall be borne by each party in proportion to its negligence.

11. INSURANCE: JEO shall procure and maintain the following insurance during the performance of services under this agreement:

a. Workers' Compensation: Statutory
b. Employer's Liability
  i. Each Accident: $500,000
  ii. Disease, Policy Limit: $500,000
  iii. Disease, Each Employee: $500,000
c. General Liability
  i. Each Occurrence (Bodily Injury and Property Damage): $1,000,000
  ii. General Aggregate: $2,000,000
d. Auto Liability
  i. Combined Single: $1,000,000
e. Excess or Umbrella Liability
  i. Each Occurrence: $1,000,000
  ii. General Aggregate: $1,000,000
f. Professional Liability:
  i. Each Occurrence: $1,000,000
  ii. General Aggregate: $2,000,000
g. All policies of property insurance shall contain provisions to the effect that JEO and JEO's consultants' interests are covered and that in the event of payment of any loss or damage the insurers shall have no rights of recovery against any of the insureds or additional insureds thereunder.
h. The owner shall require the contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause JEO and JEO's consultants to be listed as additional insured with respect to such liability and other insurance purchased and maintained by the contractor for the project.
i. The owner shall reimburse JEO for any additional limits or coverages that the owner requires for the project.

12. TERMINATION: This agreement may be terminated by either party upon 7 days prior written notice. In the event of termination, JEO shall be compensated by owner for all services performed up to and including the termination date. The effective date of termination may be set up to thirty (30) days later than otherwise provided to allow JEO to demobilize personnel and equipment from the site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble project materials in orderly files.

13. GOVERNING LAW: This agreement is to be governed by the law of the state in which the project is located.

14. SUCCESSORS, ASSIGNS, AND BENEFICIARIES: The owner and JEO each is hereby bound and the partners, successors, executors, administrators and legal representatives of the owner and JEO are hereby bound to the other party to this agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, with respect to all covenants, agreements and obligations of this agreement.

a. Neither the owner nor JEO may assign, sublet, or transfer any rights under or interest (including, but without limitation, monies that are due or may become due) in this agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under this agreement.
b. Unless expressly provided otherwise in this agreement: Nothing in this agreement shall be construed to create, impose, or give rise to any duty owed by the owner or JEO to any contractor, contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
c. All duties and responsibilities undertaken pursuant to this agreement shall be for the sole and exclusive benefit of the owner and JEO and not for the benefit of any other party.

15. PRECEDENCE: These standards, terms, and conditions shall take precedence over any inconsistent or contradictory language contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding JEO's services.

16. SEVERABILITY: Any provision or part of the agreement held to be void or unenforceable shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the owner and JEO, who agree that the agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

17. NON-DISCRIMINATION CLAUSE: Pursuant to Neb. Rev. Stat. § 73-102, the parties declare, promise, and warrant that they have and will continue to comply fully with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.A § 1985, et seq.) and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. § 48-1101, et seq., in that there shall be no discrimination against any employee who is employed in the performance of this agreement, or against any applicant for such employment, because of age, color, national origin, race, religion, creed, disability or sex.

18. E-VERIFY: JEO shall register with and use the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986, to determine the work eligibility status of new employees physically performing services within the state where the work shall be performed. Engineer shall require the same of each consultant.

Exhibit C

JANUARY 1, 2019

JEO CONSULTING GROUP INC.
CURRENT HOURLY RATE SCHEDULE RANGE

ACTUAL HOUR BASIS

Project Managers:	$145.00	-	$265.00
Project Engineers/Architects:	$125.00	-	$210.00
Project Engineers (E.I.):	$96.00	-	$120.00
Engineering/Surveying/ Architectural/Planning/GIS Technicians:	$75.00	-	$155.00
Office/Administrative:	$85.00	-	$120.00
Principals:	$180.00	-	$275.00

NOTE: Cost of telephone calls, copying, postage, travel expenses, mileage, meals, lodging, etc. are included in our hourly rates and fees, and not charged separately.

Exhibit D

Title VI/Non-Discrimination Assurances

APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation **Federal Highway Administration,** as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CRF Part 21.

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

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives 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 Recipient or the **Federal High Administration** to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Highway Administration,** as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Highway Administration** may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration** may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Exhibit D

Title VI/Non-Discrimination Assurances

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - - 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).