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 MJP-W

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

DATE: February 20, 2019

SUBJECT: Middle Raccoon River Streambed Stabilization Professional Services Agreement

The F.Y. 19-20 proposed Budget includes funding for the construction of a Middle Raccoon River streambed stabilization structure. A structure is proposed for construction to protect a currently exposed sanitary sewer river crossing in Rolling Hills Park.

To initiate the project, a Professional Services Agreement has been prepared with JEO Consulting Engineers, Inc. The conditions of the proposed Agreement are detailed therein, copy attached, and summarized as follows:

Scope of Work	Fee	Estimated Time Frame Approx. Date
Topographic Survey	$ 7,800.00 (LS)	March 29, 2019
Preliminary Design	$12,500.00 (LS)	May 17, 2019
Environmental Review	$ 5,200.00 (LS)	
Final Design	$10,100.00 (LS)	June 28, 2019
Bidding	$ 4,250.00 (LS)	August 1, 2019
Construction Service	Hourly	2019
Total	$39,850.00 + Hourly	

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 Middle Raccoon River Streambed Stabilization project.

RMK:ds

attachments (2)

1869 Carroll 2019 150 YEARS

RESOLUTION NO. _____

RESOLUTION APPROVING AN AGREEMENT WITH JEO CONSULTING GROUP, INC FOR PROFESSIONAL SERVICES FOR THE MIDDLE RACCOON RIVER STREAMBED STABILIZATION 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 Middle Raccoon River Streambed Stabilization 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 Middle Raccoon River Streambed Stabilization 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 25th 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 25, 2019 ("Effective Date") between 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:

Middle Raccoon River Streambed Stabilization ("Project").

JEO Project Number: 160468

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 6 of Exhibit A and 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 for the Project is: Per Section 3 of Exhibit A.

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 hourly rate schedule can be provided upon request.

ARTICLE 4 - EXHIBITS AND SPECIAL PROVISIONS

4.01 Exhibits

Exhibit A – Scope of Services
Exhibit B – General Conditions
Exhibit C – Current Hourly Rate Schedule Range
Exhibit D – Title VI Assurance

4.02 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.

Owner: City of Carroll, Iowa	Engineer: JEO Consulting Group, Inc.
	Cody Forch
By: Eric P. Jensen	By: Cody Forch, PE
Title: Mayor	Title: Project Manager
Date Signed: 2/25/2019	Date Signed: 2/14/19
Address for giving notices:	Address for giving notices:
City of Carroll	JEO Consulting Group, Inc.
510 N. Carroll St., Suite 2	724 Simon Avenue
Carroll, IA 51401	Carroll, IA 51401

EXHIBIT A
Scope of Services
Middle Raccoon River Streambed Stabilization
City of Carroll, Iowa
JEO Project No. 160468.00

PROJECT UNDERSTANDING:

The primary objective of this project is to protect critical infrastructure within Rolling Hills Park along the Middle Raccoon River from ongoing streambed erosion. A proposed grade stabilization weir is to be designed and constructed downstream of existing sanitary sewer collection and water main distribution/transmission crossings. Current SUDAS design standards, specifications, Carroll Supplemental Specifications, and applicable Iowa Department of Transportation Standard Specification sections included as special provisions will provide the design guidelines for this locally funded project.

SCOPE OF SERVICES:

1 **DESIGN SERVICES:**

1.1 **TOPOGRAPHIC SURVEY**

a. Make Iowa One Call and plan for and complete the necessary field surveys and other field investigations. Preliminary survey to include:
   i. Establishment of horizonal and vertical control. Set two horizonal control points with 5/8-inch rebar and two benchmarks on stable, permanent objects.
   ii. Topographic survey at the location of the proposed grade stabilization weir. Survey limits shall extend from stream bank to stream bank downstream 250-feet from southernmost utility crossing.
   iii. Detailed elevation and location of upstream sanitary sewer/water main infrastructure crossings.
   iv. Location and elevation of upstream grade stabilization structure.
   v. Survey of existing private utility lines as marked by utility owner, as identified in City records, and as provided by utility companies.
   vi. Prepare existing site plan from survey data. Create TIN file in Microstation OpenRoads format.

1.2 **PRELIMINARY DESIGN**

a. Conduct kick-off meeting with Owner and review project requirements and goals.
b. Perform an initial field review of the project location.
c. Review existing information provided by Owner and advise Owner if additional information or data is needed.
d. Determine design criteria or design methods required by Owner, assumed SUDAS with City of Carroll Supplemental Specifications and Hungry Canyons Alliance guidance.
e. Perform hydraulic calculations to determine backwater, critical and supercritical flow ranges. Hydraulic models used to create effective FEMA Flood Insurance Rate Map to be provided by Owner or obtained from FEMA Engineering Library.
f. Layout proposed grade stabilization weir and perform design computations.

g. Prepare and furnish preliminary design phase documents using SUDAS design guidelines.
h. Conduct internal QC of preliminary design phase documents.
i. Meet with Owner's designated representative to review preliminary design phase documents.
j. Revise preliminary design phase documents following QC and Owner reviews.
k. Attend up to two (2) total meetings during preliminary design phase.

1.3 **ENVIRONMENTAL REVIEW AND PERMITTING**

a. Waters of the US Delineation
   i. Data collection and base map preparation:
      1. Review existing documents including soil maps, aerial photos, USGS topographic quadrangle maps, and National Wetlands Inventory (NWI) maps to make preliminary determination of the location and size of Waters of the United States (WOUS) and/or wetlands in the project area.
      2. Analyze information prior to fieldwork for WOUS/wetlands indicators including hydric soils, water control features, blue-line streams, and NWI mapped wetlands to aid in field investigations.
   ii. Field work:
      1. Locate and delineate the location and boundary of WOUS (including all streams) and/or wetlands within right-of-way limits.
      2. Collect soil information and check soil for indicators of hydric soils.
      3. Examine subject area for the presence of hydrophytic vegetation and wetland hydrology.
      4. Record wetland boundaries and other features with GPS.
   iii. Document preparation:
      1. Prepare and provide a report that discusses findings regarding the presence of WOUS and/or wetlands. Report will include:
         a. Results of preliminary analysis.
         b. Field methodology.
         c. Field photographs and conclusions on the presence, location, and area of WOUS and/or wetlands and potential impact of proposed development on WOUS/wetlands (if present).
         d. Figure showing limits of the field survey and, if present, the location and area of WOUS/wetlands.
      2. Prepare and submit permit application to the USACE. It is assumed that wetland impacts will be less than 0.1 acre and not include wetland mitigation.
b. Threatened and Endangered Species Survey
   i. Conduct informal endangered species consultation in accordance with the Endangered Species Act's Section 7 requirements of the United States Fish & Wildlife Service (USFWS). This process includes:
      1. Identification of listed, proposed, and candidate species.

2. Presence of critical habitats.
3. Potentially a biological assessment (if both species and habitat are present) to identify any adverse effects on species or critical habitat.
4. Consultation with the USFWS seeking concurrence with the findings.

c. NPDES Permit
   i. Complete the requirements for submitting the NPDES permit application to Iowa DNR. Ensure plan set is in compliance with permit requirements.
   ii. Ensure proper bid item and contract documents are sufficient to provide the required erosion and sediment control.

d. Floodplain
   i. The project is located within a FEMA mapped floodplain and floodway. Hydraulic modeling completed in the design phases will be used to prove no adverse impacts to the floodplain according to regulations (No Rise in the floodway).

1.4 FINAL DESIGN

a. Procure additional field information for design, if necessary.
b. Perform detailed design computations and prepare detailed final design phase documents. Plan sheets prepared in the preliminary design phase to be further developed and refined.
c. Prepare special provisions, if necessary.
d. Perform internal QC review of the final design phase documents.
e. Furnish final design phase documents, including plans, special provisions, and contract documents to Owner for review and approval.
f. Revise final design phase documents after QC and Owner reviews.
g. Prepare opinion of probable construction costs.
h. Prepare documents required for receiving bids.
i. Attend utility coordination meeting.
j. Attend public notice meeting/hearing.
k. Attend up to three (3) total meetings during final design phase.

1.5 BIDDING AND NEGOTIATIONS

a. Assist Owner in securing construction bids for the project.
b. Send Notice to Bidders to builders' bureaus, plan houses, and potential contractors engages in similar work.
c. Provide reproductions of plans, special provisions, and bidding documents and distribute to interested parties.
d. Issue addenda as appropriate to clarify, correct, or change the bidding documents.
e. Assist Owner at the bid opening and award of contract.

2 CONSTRUCTION RELATED SERVICES

2.1 GENERAL

a. Attend a preconstruction conference to be scheduled and coordinated by Owner.
b. Make site visits as requested by the Owner or respond to questions during construction.
c. Interpret plans and specifications with Contractor and Owner.
d. Preparation of record drawings (as-builts).

2.2 **CONSTRUCTION STAKING (REQUIRES 72 HOURS' NOTICE)**

a. Mark removals, utility adjustments and provide for other construction staking as requested by the Owner.
b. Stake proposed grade stabilization weir location.

3 **FEE:**

3.1 The cost to provide the above-mentioned services will be a lump sum fee of $39,850.00 plus hourly construction.

3.2 This fee includes JEO's billable time and overhead expenses including telephone calls, copying, postage, travel and meals that are included in our hourly rates and fees. Any additional services beyond the Scope of Service will be provided on a billable time basis in accordance with our standard Hourly Rate Schedule.

3.3

	FEE PER PHASE OR TASK	FEE
a.	Topographic Survey	$ 7,800.00
b.	Preliminary Design	$12,500.00
c.	Environmental Review & Permitting	$ 5,200.00
d.	Final Design	$10,100.00
e.	Bidding and Negotiations	$ 4,250.00
f.	Construction Related Services	Hourly

4 **PAYMENT:**

4.1 We will invoice you monthly for work completed to date, payment is due upon receipt. Invoices unpaid after 30 days will accrue interest at 12% per annum (1.0%/month).

5 **ESTIMATED FRAME:**

5.1 The following is the estimated time frame for this project. All calendar days are estimated, subject to acceptance day with City of Carroll.

a. Notice to Proceed – February 25, 2019
b. Topographic Survey – March 29, 2019
c. Preliminary Design – May 17, 2019
d. Final Design – six (6) weeks from receipt of City review comments, estimated June 28, 2019
e. Bidding – per Iowa Code Chapter 26, anticipated letting August 1, 2019
f. City Award of Contract – August 12, 2019
g. Construction – as construction proceeds in 2019

6 **OWNER RESPONSIBILITY:**

6.1 The Owner must provide the following information to the Engineer/Consultant:

a. Access to all project sites.
b. Copies of the most current water, sanitary sewer and base maps.

c. Hydraulic models used to create the floodplain/floodway shown on effective Flood Insurance Rate Map.
d. Payment of any permit fees or fees associated with recovering hydrologic and hydraulic data for current Flood Insurance Study.

7 EXCLUSIONS:

7.1 Geotechnical investigation of subsurface soils conditions.
7.2 Acquisition plats and easement descriptions.
7.3 Any permit fees associated with permit applications
7.4 Special meetings and meetings not outlined in the Scope of Services
7.5 Updates to water, sanitary sewer and electrical distribution plat maps (existing and proposed).
7.6 Development of hydraulic models, other than those provided by the Owner, to satisfy Floodplain permitting.

8 GENERAL CONDITIONS

8.1 JEO's general conditions are attached as Exhibit B.

JEO CONSULTING GROUP INC ■ JEO ARCHITECTURE INC
GENERAL CONDITIONS

1. SCOPE OF SERVICES: JEO Consulting Group, Inc. (JEO) shall perform the services described in Exhibit A. JEO shall invoice the client 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. CLIENT RESPONSIBILITIES: The client shall provide all criteria and full information as to the client's requirements for the project; designate and identify in writing a person to act with authority on the client'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 client observes or otherwise becomes aware of any defect in work.

Unless otherwise agreed, the client shall furnish JEO with right-of-access to the site in order to conduct the scope of services. Unless otherwise agreed, the client 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 client 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 client 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 client 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. Client 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 client 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 client, suspend services to the client 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 client 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 client 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 client on a future extension of this project, or any other project without JEO's written authorization shall be at the client's risk and the client 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 client 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 client are only for convenience of the client. 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 client.

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

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 client 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 client 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 client, 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 client 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 client shall reimburse JEO for any additional limits or coverages that the client 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 client 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 client and JEO each is hereby bound and the partners, successors, executors, administrators and legal representatives of the client 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 client 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 client 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 client 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 client 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. 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.*).