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: October 17, 2018

SUBJECT: Corridor of Commerce
Downtown Streetscape Phase 11
Design Services Agreement

A proposed Design Services Agreement for the Corridor of Commerce Downtown Streetscape Phase 11 project has been prepared with Confluence. The proposed Agreement includes services necessary to develop the design for the following Phase 11 project:

Location	From	To
US 30	US 71	West Street
US 30	Clark Street	Grant Road

The proposed Agreement includes the following general Scope of Services. The Services are detailed in the proposed Agreement, a copy is attached.

A. Final Design Development
B. Construction Documents, Plans and Specifications
C. Letting Services

Construction Services are not included in the Scope of Services. It is anticipated that City personnel will perform the majority of the construction review with some services to be separately contracted and provided by Confluence.

Fees included in the proposed Agreement for the Scope of Services identified are proposed to be compensated on an hourly basis with a not-to-exceed cost of $118,775.00. Reimbursable expenses identified in the Scope are included in the fee. The fee is based on a $1,600,000.00 construction project. Construction Service fees are not included in the proposed Agreement but will be required at the time of construction.

The time of completion of the work included in the proposed Agreement is as follows:

Begin Design Development	March, 2019
Complete Design Development	June, 2019
Complete Construction Documents	December, 2019
Bid Letting	March, 2020
Start Construction	May, 2020

RECOMMENDATION: Mayor and City Council consideration and passage and approval of the Resolution Accepting the Design Services Agreement with Confluence for the Downtown Streetscape Phase 11 project.

RMK:ds

attachments (2)

RESOLUTION NO. _____

RESOLUTION ACCEPTING THE DESIGN SERVICES AGREEMENT WITH CONFLUENCE FOR THE CORRIDOR OF COMMERCE DOWNTOWN STREETSCAPE PHASE 11 PROJECT.

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

WHEREAS, a Design Services Agreement for the development of the Corridor of Commerce Downtown Streetscape Phase 11 project has been prepared with Confluence; and,

WHEREAS, the City Council has determined that the Design 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 Design Services Agreement with Confluence for the Corridor of Commerce Downtown Streetscape Phase 11 project is accepted, and the Mayor is authorized to execute the Agreement on behalf of the City.

Passed and approved by the Carroll City Council this 22nd day of October, 2018.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By: _____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

DESIGN SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this 22nd day of October, 2018, by and between the City of Carroll, a municipal corporation, hereinafter referred to as the City, and CONFLUENCE, of Des Moines, Iowa, hereinafter referred to as the Consultant.

WHEREAS, the City desires the services of a consulting firm to prepare final design work, construction plans, specifications, and bidding phase services for Phase-11 of the Corridor of Commerce Downtown Streetscape Project.

NOW THEREFORE, it is agreed by and between the parties hereto that the City does now contract with the Consultant to provide services as set forth herein.

I. SCOPE OF SERVICES

Consultant agrees to perform the following services for the City, and to do so in a timely and satisfactory manner.

PHASE-11 CORRIDOR OF COMMERCE DOWNTOWN STREETSCAPE PROJECT

A. FINAL DESIGN DEVELOPMENT

The specific, detailed elements of US 30 between US 71 and West Street, and US 30 between Clark Street and Grant (see attached Exhibit 'B'), as established by the Corridor of Commerce Phases 1-10 Plans, will be further refined to facilitate preparation of the construction documents and more accurate cost opinions. Three technical review meetings with the City staff will be required during this process. CONFLUENCE will utilize JEO Engineering for survey preparation and as the lead electrical engineer and civil engineer. CONFLUENCE can also address the City Council with an update of the project toward the end of this stage, if needed. Phase 11 does not include the design or construction of work for Highway 30 roadway. The project area outlined above includes only the area from edge of new gutter to building face or City Right-of-Way. No full street replacement is included in this project.

B. CONSTRUCTION DOCUMENTS, PLANS AND SPECIFICATIONS

Public Meeting
Prepare a preliminary layout plan sheet that is overlain on an aerial photo to be used to solicit resident and business owner input.

Cover / Title Sheet
Prepare a cover plan sheet for the plan set. The cover sheet will be in a format suitable to the City and will include the following: project title, sheet index, city name, certifications, location map and legend.

Tabulation of Estimated Quantities and Construction Notes
Prepare a plan or plans indicating in tabular format the final bid items, quantity, size, etc. to be included in the project and a listing of key general construction notes.

Construction Staging, Sequencing and Traffic Control Plans
This item consists of design and drafting of a plan or plans indicating the recommended project staging and sequencing of construction. Minimizing disturbance to businesses and the general public will be a key element in generating these plans.

Demolition / Removal Plans
Prepare final plans showing existing project area conditions at a minimum scale of 1" = 40' and indicating by notes and symbols the items to be removed, salvaged and / or protected.

Layout Plan
Prepare final layout plans at a minimum scale of 1" = 40' indicating the proposed location to the nearest tenth of a foot of the proposed streetscape elements.

Grading Plan
Prepare final grading plans at a minimum scale of 1" = 40' indicating the proposed spot elevations to the nearest hundredth of a foot.

Construction Details
Prepare enlarged detail drawings in plan, cross section and / or isometric view to illustrate and explain the installation, fabrication and construction of the proposed elements.

Site Furnishing and Hardscape Plan
Prepare final plans at a minimum scale of 1" = 40' indicating the proposed location of site furnishings and hardscape elements.

Planting Plans
Prepare plans at a minimum scale of 1" = 40' illustrating the design and placement of new plantings with plant lists indicating plant species, size, quantity and root type.

Utility Plans and Details
No utility design is anticipated for this phase, but adjustment of targeted storm sewer curb intakes may be necessary.

Electrical Plans and Details
This will consist of the design and preparation of plans and details for pedestrian and street lighting for the project area based on fixture types established in Phases 1 - 10, and exterior receptacles.

Project Manual
Prepare a Project Manual for the project including notice of hearing and bid advertisement, instructions to bidders, bid forms, bond forms, construction contract forms, general conditions of the construction contract, supplementary general conditions and detailed, special provisions. The City's standard format "front end" documents will be used. The City will provide a sample electronically in Microsoft Word.

Technical review meetings with City staff will be held during this process at the 50%, 95%, and 100% completion stages.

CONFLUENCE can, if needed, help facilitate a public review session of the 95% plan improvement package. This could be done as either a formal presentation or informally as a public "open house". CONFLUENCE will also continue to meet with and inform the Carroll Chamber of Commerce representatives as needed.

C. LETTING SERVICES

CONFLUENCE will bid the project in one letting. However, if schedule requires, the consultant can bid the project in multiple lettings with a maximum of two lettings.

Printing
CONFLUENCE will coordinate the printing and distribution of the construction drawings and project manual and these costs shall be borne by the City. A list of possible bidders will be provided to the City. CONFLUENCE will provide one complete mylar set of construction drawings of the bid package and one loose copy of the project manual for the City's records.

Notice of Project
CONFLUENCE will assist in the preparation of the advance notice to bidders and formal notices of hearing and letting. Publication costs shall be borne by the City. A list of possible bidders will be provided to the City.

Contractor Questions and Addenda
CONFLUENCE will be available to answer questions from contractors prior to the letting and shall prepare addenda as appropriate to interpret, clarify or expand the bidding documents. CONFLUENCE will facilitate a pre-bid meeting in Carroll for the Project.

Letting Bid Tabulation and Award Recommendation
CONFLUENCE will review and tabulate the bids for the City, advise the City on the responsiveness of the bidders and assist the City in making the decision for award of contract. After the award is made, CONFLUENCE will assist in assembling the contract documents for the project included herein.

D. PROJECT DELIVERABLES

Preliminary layout plan overlain on aerial photo for resident / business owner meeting and input.

Construction documents including electronic master drawing files and project manual.

Three (3) half-size plan sets, one (1) full size plan set and three (3) project manuals.

Final itemized Consultants opinions of construction costs for the project.

Project Meeting and Presentations consisting of the following:

- Three technical review meetings and one public review meeting during final design, consisting of four trips to Carroll.
- One public hearing meeting, consisting of one trip to Carroll.

II. FEES

Basic Services, as outlined in items I.A-D, shall be compensated on an hourly basis, not to exceed, One Hundred Four Thousand Seven Hundred Thirty Five Dollars ($104,735.00). In addition, JEO will prepare a survey of the project area for a fixed fee of Fourteen Thousand Forty Dollars ($14,040.00). Total project billing will not exceed One Hundred Eighteen Thousand Seven Hundred Seventy Five Dollars ($118,775.00), without prior authorization by the Owner. Reimbursable expenses as identified in the scope outlined are included in the fee and additional items will be billed as outlined on attached Exhibit A. Printing and distribution costs for bidding are excluded, and the City will pay those. This fee is based on a total construction budget of $1,600,000.00. Consultant reserves the right to re-negotiate the contract if the construction budget increases by more than five percent (5%).

III. TIME OF COMPLETION

CONFLUENCE will work to meet the City's required schedule and prepare the work described herein per the following approximate timetable:

Begin Design Development	March 2019
Complete Design Development	June 2019
Complete Construction Documents	December 2019
Bid Letting	March 2020
Start Construction	May 2020

IV. EXCLUSIONS

A. Architectural services.
B. Construction observation.
C. Waterline and sanitary sewer design.
D. Permitting.
E. Street Design, other than required for sidewalk.

V. GENERAL TERMS

A. The Consultant shall not commit any of the following employment practices and agrees to prohibit the following practices in any subcontracts.

1. To discharge or refuse to hire any individual because of their race, color, religion, sex, nation origin, disability, age, marital status, sexual orientation or gender identity.

2. To discriminate against any individual in terms, conditions, or privileges of employment because of their race, color, religion, sex, national origin, disability, age, marital status, sexual orientation or gender identity.

B. Should the City terminate this Agreement, the Consultant shall be paid for all work and services performed up to the time of termination. However, such sums shall not be greater than the "hourly not to exceed" amount listed in Section III. The City may terminate this Agreement upon seven (7) calendar days' written notice to the Consultant.

C. This Agreement shall be binding upon the successors and assigns of the parties hereto, provided that no assignment shall be without the written consent of all Parties to said Agreement.

D. It is understood and agreed that the retention of the Consultant by the City for the purpose of the Project shall be as an independent contractor and shall be exclusive, but the Consultant shall have the right to employ such assistance as may be required for the performance of the Project.

E. It is agreed by the City that all records and files pertaining to information needed by the Consultant for the project shall be available by said City upon reasonable request to the Consultant. The City agrees to furnish all reasonable assistance in the use of these records and files.

F. It is further agreed that no Part to this Agreement shall perform contrary to any state, federal, or local law or any of the ordinances of the City of Carroll, Iowa.

G. At the request of the City, the Consultant shall attend such meetings of the City Council relative to the work set forth in this Agreement. Any requests made by the City shall be given with reasonable notice to the Consultant to assure attendance.

Offered by:	Accepted by:
Confluence	**City of Carroll**
Jim Host 10/22/18	10/22/18
Jim Host, Associate (date)	Eric P. Jensen, Mayor (date)

GENERAL CONDITIONS

1. PARTIES AND SCOPE OF WORK: Confluence (hereinafter referred to as "Confluence") shall perform professional services as set forth in Confluence's proposal, the Client's acceptance thereof if accepted by Confluence, and these General Conditions. "Client" refers to the person or business entity ordering the professional services to be done by Confluence. The Client shall designate representatives who are authorized to make all decisions on the Client's behalf when requested to do so by Confluence. If the Client is ordering professional services on behalf of another, the Client represents and warrants that the Client is the duly authorized agent of said party for the purpose of ordering and directing said professional services. Unless otherwise stated in writing, the Client assumes sole responsibility for determining whether the quantity and the nature of the professional services ordered by the Client is adequate and sufficient for the Client's intended purpose. Client shall communicate these General Conditions to each and every third party to whom the Client transmits any part of Confluence's work. Confluence shall have no duty or obligation to any third party greater than that set forth in Confluence's proposal, Client's acceptance thereof and these General Conditions. The ordering of professional services from Confluence shall constitute acceptance of the terms of Confluence's proposal and these General Conditions.

2. SCHEDULING OF WORK: Confluence will perform professional services with due and reasonable diligence consistent with sound professional practices. If Confluence is required to delay commencement of professional services or if, upon embarking upon its professional services, Confluence is required to stop or interrupt the progress of its professional services as a result of changes in the scope of the professional services requested by the Client, to fulfill the requirements of third parties, interruptions in the progress of construction, or other causes beyond the direct reasonable control of Confluence, additional charges will be applicable and payable by Client.

3. ACCESS TO SITE: Client will arrange and provide such access to the site as is necessary for Confluence to perform professional services. Confluence shall take reasonable measures and precautions to minimize damage to the site and any improvements located thereon as the result of its professional services or the use of its equipment; however, Confluence has not included in its fee the cost of restoration of damage which may occur. If Client desires or requires Confluence to restore the site to its former condition, upon written request Confluence will perform such additional professional services as is necessary to do so and Client agrees to pay Confluence the cost thereof.

4. CLIENTS DUTY TO NOTIFY LANDSCAPE ARCHITECT: Client represents and warrants that he has advised Confluence of any known or suspected hazardous materials, utility lines and pollutant at any site at which Confluence is to do professional services hereunder, and unless Confluence has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits. Client agrees to defend, indemnify and save Confluence harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to Confluence's performance of its professional services and resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof was not revealed to Confluence by Client.

5. RESPONSIBILITY: Confluence's professional services shall not include determining, supervising or implementing the means, methods, techniques, sequences or procedures of construction. Confluence shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare. Confluence's professional services or failure to perform same shall not in any way excuse any contractor, subcontractor or supplier from performance of its work in accordance with the contract documents. Confluence has no right or duty to stop the contractor's work.

6. STANDARD OF CARE: Confluence's professional services will be performed in accordance with this agreement and with generally accepted principles and practices. In performing its professional services, Confluence will use that degree of care and skill ordinarily exercised under similar circumstances by members of its profession.

~~**7. LIMITATION OF LIABILITY:** Should Confluence or any of its professional employees be found to have been negligent in the performance of its professional services, or to have made and breached any express or implied warranty, representation or contract, Client, all parties claiming to have in any way relied upon Confluence's professional services agree that the maximum aggregate amount of the liability of Confluence, its officers, employees, agents, and sub-consultants shall be limited to $_____.~~
~~Initials CONFLUENCE_____ CLIENT_____~~

8. PRICING ESTIMATES: Neither Confluence nor Client has any control over the costs of labor, materials, equipment, over contractors' methods of determining bid prices, or over competitive bidding, market or negotiation conditions. Accordingly, Confluence cannot and does not warrant or represent those bids or negotiated prices will not vary from any established budgetary constraints. Client may perform its own cost analysis or retain its own cost consultant and shall be solely responsible for the accuracy and preparation of cost estimates at each appropriate stage of the project. Confluence will cooperate and work closely with any cost consultant to help ensure that the project can be constructed within any appropriate budgetary constraints.

9. ADDITIONAL SERVICES: Client may request or it may become necessary for Confluence to perform Additional Services in order to further the objectives of the project. Whenever reasonably possible, Confluence will notify Client in advance of Confluence's intention to perform the particular Additional Service, and Client's failure to instruct Confluence not to perform the Additional Service shall be considered Client's acquiescence to the performance of the Additional Service and agreement to pay for it. Notwithstanding any other description of Basic or Additional Services, any services which Client requests Confluence to perform after final payment has been made to the contractor(s) or more than sixty (60) days after the project has been certified to be substantially complete shall be considered Additional Services. Any modifications or changes requested by Client inconsistent with Client's prior approval(s) shall be considered Additional Services. Confluence shall be entitled to rely on the accuracy of any drawings or other information supplied to it by Client, its employees, representatives or other consultants, and any services necessitated because of an error or omission in any drawing or other information supplied by Client, its employees, representatives or other consultants shall be an Additional Service. Additional Services shall be billed at Confluence's normal hourly rates, and Client shall pay such charges above and beyond any charges for Basic Services set forth in the Proposal.

10. CONSTRUCTION ADMINISTRATION: Confluence shall have no responsibility for construction administration unless explicitly described in the Proposal. If construction observation services are performed, Confluence shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work, for any defects, deficiencies or other acts or omissions of the contractor or any other persons performing any of the construction work or for the failure of any of them to carry out the work in accordance with the plans and specifications, and Confluence visits to the construction site shall be for the purpose of becoming generally familiar with the progress and the quality of the construction work and to determine in general if the work when completed will be in accordance with the plans and specifications, and Confluence is not authorized to stop the construction work or take any other action relating to job site safety. If Confluence reviews contractors' applications for payment, such reviews shall be made to the best of Confluence's knowledge, information and belief based on Confluence's limited observation of the construction work, and Confluence shall be entitled to rely on documentation submitted by the contractor(s) or others which is not inconsistent with Confluence's own observations. If the Client requests in writing that Confluence provide any specific construction phase services and if Confluence agrees in writing to provide such services, then Confluence shall be compensated for Additional Services.

11. CLAIMS: Client acknowledges that Confluence is a corporation and agrees to make any claim arising out of or relating to the project against Confluence only, and not against any of Confluence's directors, officers, employees or agents.

12. INSURANCE: Confluence shall keep and maintain its current insurance policies, including professional liability insurance and comprehensive general liability insurance, for the duration of the project. If Client desires additional insurance, Confluence shall use its best efforts to obtain the additional insurance, but Client shall reimburse Confluence for any additional premium or other related costs that Confluence thereby incurs. Client will use its best efforts to ensure that the construction contractor(s) name Confluence as an additional insured on their comprehensive general liability insurance policies and agree to indemnify Client and Confluence in language reasonably satisfactory to both Client and Confluence.

13. TERMINATION: Either party upon seven day's prior written notice may terminate this Agreement. In the event of termination, Confluence shall be compensated by Client for all services performed up to and including the termination date, including reimbursable expenses, and for the completion of such services, records and reports as are necessary to place Confluence's files in order and/or protect its professional reputation.

14. WITNESS FEES: Confluence's employees shall not be retained as expert witnesses except by separate, written agreement. Client agrees to pay Confluence's legal expenses, administrative costs and fees pursuant to Confluence's then current fee schedule for Confluence to respond to any subpoena.

15. PAYMENT: Client shall be invoiced as professional services are completed and reported at Confluence's option, either monthly or at end of project. Client agrees to pay each invoice within thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause in writing within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law), until paid. Client agrees to pay Confluence's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees. Confluence shall not be bound by any provision or agreement requiring or providing for arbitration of disputes or controversies arising out of this agreement, and provision wherein Confluence waives any rights to a mechanics' lien, or any provision conditioning Confluence's right to receive payment for its professional services upon payment to Client by any third party. These General Conditions are notice, where required, that Confluence shall file a lien whenever necessary to collect past due amounts. Failure to make payment within 30 days of invoice shall constitute a release of Confluence from any and all claims which Client may have, either in tort or contract, and whether known or unknown at the time.

16. LATE PAYMENTS: Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% on the then unpaid balance (18.0% true annual rate), at the sole election of Confluence, in the event any portion or all of an account remains unpaid 90 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

17. ENTIRE AGREEMENT: This agreement constitutes the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. This agreement may be amended, modified or terminated only in writing, signed by each of the parties hereto.

18. INDEMNIFICATION: The Client shall indemnify and hold harmless Confluence and all of its personnel from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the performance of professional services, provided that any such claim, damage, loss or expense is caused in whole or in part by the negligent act, omission, and/or strict liability of the Client, anyone directly or indirectly employed by the Client (except Confluence), or anyone for whose acts any of them may be liable.

19. MISCELLANEOUS: To the extent within Client's control, Confluence shall have the right to take photographs, and make other reasonable promotional use of the project, and Confluence shall be given appropriate credit on all construction signs or other promotional materials concerning the project. Client may accept Confluence's Proposal either by signature, or oral assent, authorizing Confluence to commence providing professional services or making any payments to Confluence in consideration of professional services, and any of the above modes of acceptance shall be deemed to incorporate these Business Terms into the contract between the parties thereby formed.

20. OWNERSHIP OF DOCUMENTS: All documents produced by Confluence under this agreement shall remain the property of Confluence and may not be used by the Client for any other endeavor without written consent.

EXHIBIT 'A'

CONFLUENCE

STANDARD HOURLY RATES

Senior Principal	$160.00 - $200.00 per hour
Principal	$140.00 - $185.00 per hour
Associate Principal	$130.00 - $160.00 per hour
Associate	$110.00 - $150.00 per hour
Senior Project Manager	$100.00 - $140.00 per hour
Project Manager	$90.00 - $110.00 per hour
Senior Landscape Architect	$90.00 - $110.00 per hour
Landscape Architect	$80.00 - $100.00 per hour
Senior Project Planner	$90.00 - $110.00 per hour
Planner II	$80.00 - $100.00 per hour
Planner I	$70.00 - $90.00 per hour
Landscape Architect-In-Training	$70.00 - $90.00 per hour
Landscape Architect Intern	$60.00 - $75.00 per hour
Draftsperson	$50.00 - $75.00 per hour
Graphic Designer	$70.00 - $90.00 per hour
Clerical / System Staff	$42.00 - $70.00 per hour

REIMBURSABLE EXPENSES

Filing Fees	1.15 x cost
Long Distance Telephone Calls	1.15 x cost
Materials and Supplies	1.15 x cost
Meals and Lodging	1.15 x cost
Mileage	$.535 per mile
Postage	1.15 x cost
Printing by Vendor	1.15 x cost
B/W Photocopies/Prints 8½ x 11	$.05 each
B/W Photocopies/Prints 11x17	$.09 each
Color Photocopies/Prints 8½ x 11	$.65 each
Color Photocopies/Prints 11x17	$1.50 each
Large Format Plotting – Bond	$2.50/SF
Large Format Plotting - Mylar	$4.50/SF
Large Format Plotting - Photo	$5.00/SF
Compact Discs	$2.50 each
Booklet Binding (cover, coil, back)	$4.50 each
Foam Core	$8.00 each
Easel Pads	$32.75 each
Electronic Files	$50.00 Each
Online Meeting Service	$35.00 Each

Effective 1/1/2017

EXHIBIT B

CARROLL CORRIDOR OF COMMERCE PHASE 11

CONFLUENCE

CARROLL, IOWA

OCTOBER 8, 2018

Exhibit C

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 CFR 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 Highway 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 C

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 C.F.R. 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).