**OKLAHOMA DEPARTMENT OF TRANSPORTATION**

**AGREEMENT FOR SUB-CONTRACT PROFESSIONAL SERVICES**

**Project No.:**

**County:**

**Project Description:**

This Agreement for Professional Services, hereafter Sub-Contract, is entered into between **,** hereafter referred to as the Engineer and , referred to as the Sub-Consultant.

**WITNESSETH:**

**WHEREAS,** the Engineer has entered into Contract Identification No.  with the Oklahoma Department of Transportation, hereafter referred to as the Department, for the performance of professional and technical services, referred to as the Prime Contract, for the above described project.

The Parties hereto are desirous of entering into this Sub-Contract whereby Sub-Consultant shall perform certain professional services required of the Engineer under the Prime Contract on the terms and conditions hereafter expressed.

**NOW THEREFORE,** in consideration of the mutual promises and conditions herein contained, the Parties hereto agree as follows:

1. **SCOPE OF CONTRACT: INCORPORATION OF TERMS AND CONDITIONS OF THE PRIME CONTRACT**
2. The Sub-Consultant's relationship to the Engineer shall be that of associate Sub-Consultant and independent consultant. Except as noted below, all terms and conditions of the Engineer's Prime Contract with the Department are incorporated herein by reference. A copy of the Prime Contract has been made available to Sub-Consultant. Sub-Consultant agrees that it has read and understands the terms and conditions of the Prime Contract. Sub-Consultant shall be bound to observe all the terms and conditions of the Prime Contract to the same extent as the Engineer is bound to the Department. Without limiting the generality of the forgoing with respect to this Sub-Contract:
3. Any provision in the Prime Contract imposing an obligation on the Engineer to the Department shall be deemed to impose that obligation on the Sub-Consultant to the Engineer.
4. Any provision in the Prime Contract providing for indemnification or other hold harmless obligations by the Engineer to the Department shall be deemed to be indemnification or hold harmless obligations by the Sub- Consultant to the Engineer and the Department.
5. Any provision in the Prime Contract requiring consent of the Department shall be deemed to require the consent of the Engineer.
6. Any provision in the Prime Contract requiring the Engineer to maintain insurance shall be deemed to require the Sub-Consultant to maintain insurance; and any provision in the Prime Contract requiring the Engineer to name the Department an additional insured party shall be deemed to require the Sub-Consultant to name the Department and the Engineer as additional insured parties.
7. Any provision in the Prime Contract requiring the payment of attorneys' fees by the Engineer in the event of default shall be deemed to require the payment of attorneys' fees by the Sub-Consultant to the Engineer in the event of default by the Sub-Consultant under this Sub- Contract.
8. Any provision in the Prime Contract requiring the Engineer to issue notices to the Department, deliver certificates to the Department, or deliver reports or other data to the Department shall be deemed to require the Sub-Consultant to deliver such notices, certificates, reports or other data to the Engineer.
9. Any provisions in the Prime Contract assigning copyright rights to the Department or designating the Engineer's instruments of service as "works made for hire" shall be deemed to assign the same rights by the Sub- Consultant to the Engineer and the Department and to consider Sub- Consultant's instruments of service as "works made for hire".
10. Any provision in the Prime Contract requiring the Department to consent to any amendments and/or waivers of the provisions of the Prime Contract shall be deemed to require the Engineer's consent to any amendment and/or waivers of the provisions of this Sub-Contract.
11. **PROFESSIONAL SERVICES**
	1. The Sub-Consultant shall collaborate with and furnish services to the Engineer to perform that part of the Engineer’s Prime Contract, which has been assigned to Sub-Consultant. Sub-Consultant shall provide the services set forth in Exhibit A, which is attached hereto and incorporated herein by reference (hereinafter the "Services"). In all respects as to term and scope of the Services, the Sub-Consultant shall be bound to perform the Services for the Engineer in the same manner and to the same extent that the Engineer is bound to perform such Services in the Engineer's Prime Contract with the Department, except that any provision contained in this Sub-Contract in conflict with the Prime Contract shall take precedence. Without limiting the generality of the foregoing:
12. Any "time is of the essence" or similar performance criteria set forth in the Prime Contract is incorporated herein by reference, and shall be binding on the Sub-Consultant.
13. Any term or condition in the Prime Contract requiring the Department to approve any change orders, or to approve any designs or other instruments of Service shall, with respect to this Sub-Contract, require that the Sub-Consultant submit for the Engineer's approval any change order, designs or other instruments of service.
14. **COMPENSATION**
15. For the Services described in Exhibit A hereto, Sub-Consultant's compensation shall be computed on the basis set forth in Exhibit B, which is attached hereto and incorporated herein by reference. The manner in which such compensation shall be paid is also set forth in Exhibit B.
16. If so provided in Exhibit B, Direct Expenses incurred by the Sub-Consultant and specifically authorized in advance by the Engineer in providing the Services described in Exhibit A, shall be reimbursed to the Sub-Consultant. Subject to the foregoing, reimbursable Direct Expenses shall mean the actual approved expenses incurred directly by the Sub-Consultant in connection with performance of the Services, including, but not limited to, reasonable expenses for defined transportation and subsistence incident thereto; authorized toll telephone calls and electronic messaging; and reproduction of reports, drawings, specifications and similar items.
17. In the event that the Sub-Consultant's compensation hereunder is on an hourly basis, rather than a lump sum fee basis, the Parties have estimated costs and expenses for the various portions of the scope of the Services described in Exhibit A, and such costs and expenses are set forth in Exhibit B. In such an event, no Services undertaken by the Sub-Consultant or expenses incurred by the Sub-Consultant exceeding the total cost set forth in Exhibit B, shall be the liability of the Engineer unless such additional fees and costs have been approved in advanced in writing by the Engineer.
18. **ADDITIONAL SERVICES**
19. The Sub-Consultant shall provide services in addition to those described in Exhibit A ("Additional Services") upon and only upon written request of the Engineer. Sub-Consultant shall be compensated for all authorized Additional Services only on the basis agreed upon in writing at the time such Additional Services are authorized.
20. **INVOICES**
21. Invoices will be submitted by the Sub-Consultant to the Engineer on a monthly basis for the value of the Services and Additional Services performed and expenses incurred under this Sub-Contract during the prior month. Invoices received by the 5th day of the subsequent month in which charges were incurred will be included in Engineer's invoice to the Department.
22. **CONTINGENT PAYMENT**
23. Notwithstanding anything to the contrary in this Sub-Contract, it is understood and agreed that the Engineer shall have no obligation to pay the Sub-Consultant the fee set forth in this Sub-Contract, or any other additional charges or claims, or any installment thereof, unless and until, as a condition precedent, the Engineer has received from the Department the fee covering the services performed by Sub-Consultant.
24. **TERMINATION**
25. The obligation to provide further services under this Sub-Contract may be terminated by either Party upon seven (7) days written notice in the event of a material breach of this Sub-Contract, provided that the terminating Party is not itself in material breach of this Sub-Contract. In addition, for the convenience of the Engineer, the Engineer may terminate this Sub-Contract, provided that the Sub-Consultant is paid for its Services as set forth below. Should the Engineer mistakenly terminate this Sub-Contract for a material breach by Sub-Consultant, then at the sole option of the Engineer, such termination may be converted to a convenience termination, with Sub-Consultant to be paid as set forth below. In addition, this Sub-Contract shall terminate (without prior notice) upon termination of the Prime Contract by any party and for any reason, without liability therefor by the Engineer. In the event of any termination, the Sub-Consultant will be paid as provided below (subject to the contingent payment provisions in Section (6) hereof) for all authorized Services satisfactorily completed to the date of such termination. If the Sub-Consultant's compensation hereunder is determined on an hourly basis, the amount payable to the Sub-Consultant for Services rendered shall be established on the basis of the time and authorized expenses actually incurred on the Project to the date of termination. If the Sub-Consultant's compensation hereunder is a lump sum fee, the amount payable to the Sub-Consultant in the event of termination will be a pro rata amount of such fee determined on the basis of the relationship of the amount and value of the Services performed prior to the Sub-Consultant's receipt of Notice of Termination to all of the Services described in Exhibit A. All the Sub-Consultant's compensation associated with termination shall be subject to a determination by the Engineer that the charges are equitable and reasonable in view of the amount and value of the Service performed.
26. **INSURANCE**
27. During the term of this Sub-Contract, the Sub-Consultant shall comply with the following minimum insurance requirements:
28. The Sub-Consultant shall procure and maintain at its sole expense during the continuance of this Sub-Contract a policy of Workers' Compensation Insurance for the protection of its employees, including executive, managerial, and supervisory employees, engaged in all operations hereunder. If the Sub-Consultant is not required by statute to provide Workers' Compensation Insurance, the Sub-Consultant shall execute such letters, forms, or authorizations as is required to relieve the Engineer of any and all such obligations.
29. The Sub-Consultant shall procure and maintain at is sole expense during the continuance of this Sub-Contract a policy of commercial general liability coverage with combined limits of not less than One Million Dollars ($1,000,000.00) insuring against claims for personal injury or property damage. The Sub-Consultant shall cause the Engineer to be designated as an additional insured.
30. The Sub-Consultant shall procure and maintain at its sole expense during the continuance of this Sub-Contract and during the period of any statutes of limitation applicable thereto a policy of professional liability insurance with limits of not less than One Million Dollars ($1,000,000.00) insuring against claims for errors and omissions by Sub-Consultant and its employees.
31. The Sub-Consultant shall procure and maintain at its sole expense during the continuance of this Sub-Contract a policy of automobile liability insurance with bodily injury coverage of at least One Million Dollars ($1,000,000.00) for each individual, One Million Dollars ($1,000,000.00) for each accident, and property damage coverage of at least Two Million Dollars ($2,000,000.00). The Sub-Consultant shall cause the Engineer to be designated as an additional insured.
32. During the term of this Sub-Contract, the Sub-Consultant shall deposit with the Engineer current certificates evidencing the policies and endorsements set forth above and shall provide the Engineer with at least thirty (30) days written notice prior to the modification or cancellation of any insurance policy required under this Section 8. Engineer’s failure to request or Sub-Consultant's failure to provide insurance certificates shall not be a waiver of Sub-Consultant's obligation to obtain such insurances.
33. **INDEMNITY**
34. The Sub-Consultant shall be subject to any indemnification obligations under the Prime Contract, with such terms of the Prime Contract incorporated herein as set forth in Section 1 above. In the event the indemnification provisions of the Prime Contract are not enforceable or not pertinent, Sub-Consultant shall be subject to the following minimum indemnification obligations under this Sub-Contract:
	1. The Sub-Consultant shall indemnify and hold the Engineer and the Engineer's officers and employees harmless from and against damages, losses and judgements arising from claims by third parties, including reasonable attorney fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Sub-Consultant, its employees and its consultants in the performance of professional services under this Sub-Contract.
35. **EXPENSES OF LITIGATIONS OR CLAIMS**
36. In the event that litigation or claims in any way related to the Services performed hereunder are initiated by the Sub-Consultant against the Engineer and such litigation or claims conclude with the entry of a final judgement or award favorable to the Engineer, the Sub-Consultant shall reimburse the Engineer for all of the Engineer's reasonable attorney fees and other expenses related to said litigation or claims.
37. **DISPUTE RESOLUTION**
38. All claims, counterclaims, disputes, and other matters in question between the Engineer and the Sub-Consultant arising out of this Sub-Contract or the breach thereof shall be submitted to mediation before recourse to arbitration or a judicial forum. The mediator shall be mutually agreed upon or, if the Parties fail to agree, shall be appointed by the American Arbitration Association in accordance with its standard procedures. If the dispute is not resolved by mediation, it can be considered for arbitration if mutually agreed upon by both Parties. No arbitration proceeding shall include by consolidation, joinder, arbitration of any claim, counterclaim, dispute or other matter in question shall not be expanded to include any other issue, or any party other than the Department and the Engineer, and the Sub-Consultant. In addition, no punitive damages may be awarded.
39. **CONTROLLING LAW**
40. This Sub-Contract is to be governed by the law of the State of Oklahoma. Venue for litigation, arbitration, and/or mediation shall be Oklahoma County, Oklahoma.
41. **BINDING EFFECT**
42. This Sub-Contract shall bind, and the benefits thereof shall inure to the respective Parties hereto, their legal representatives, executors, administrators, successors and assigns.
43. **MERGER AMENDMENT**
44. This Sub-Contract (together with the terms of the Prime Contract incorporated herein by reference, as set forth in Section 1 above) constitutes the entire Sub-Contract between the Engineer and the Sub-Consultant, and all negotiations and oral understandings between the Parties are merged herein. This Sub-Contract can be supplemented and/or amended only by a written document executed by both the Engineer and the Sub-Consultant.
45. **NON-ASSIGNABILITY**
46. Neither party shall assign any rights or delegate any duties arising under this Sub-Contract without prior written consent of the other Party. Nothing under this Sub-Contract shall be construed to give any rights or benefits in this Sub-Contract to anyone other than the Engineer and the Sub-Consultant.
47. **SEVERABILITY AND WAIVER OF PROVISIONS**
48. Any provisions in this Sub-Contract (together with the terms of the Prime Contract incorporated herein by reference, as set forth in Section 1 above) that are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provision hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
49. **STATUS VERIFICATION SYSTEM**
50. Sub-Consultant certifies that it has registered and fully participates in the Status Verification System, as required by Title 25 O.S. § 1313(B)(1), to verify the work eligibility status of all new employees performing work under the Prime Contract and require compliance by lower-tier Sub-Consultants as well. Sub-Consultant agrees to provide evidence of compliance with its provision upon request by Engineer.
51. **FHWA CONTRACT REQUIREMENTS**
52. The Prime Contract provision containing Federal Highway Administration Contract Requirements are required by federal law and the terms are specifically agreed to by Sub-Consultant. Sub-Consultant shall comply with each and every provision and require compliance by a lower-tier Sub-Consultant as well. Sub-Consultant agrees to provide evidence of compliance with its provisions upon request by Engineer and/or Department.
53. **PROMPT PAYMENT**
54. Sub-Consultant shall be paid or retainage released for satisfactory performance of this Sub-Contract no later than fifteen (15) days after receipt of payment of Engineer's invoice according to the Oklahoma Department of Transportation Disadvantage Business Enterprise Program Manual, 49 CFR part 26, and the ODOT Prompt Payment requirements.
55. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUB-CONSULTANT SUBSTITUTION/REPLACEMENT**
56. As per Title 49 CFR 26.53 and DBE Program Manual, the Engineer may not terminate for convenience a DBE (or an approved substitute DBE firm) listed in their Sub-Contract and then perform the work of the terminated Sub-Contract with its own forces or those of an affiliate, without Department's prior written consent. The Engineer will notify the DBE Sub-Consultant in writing as to reasons for termination and/or substitution. The DBE Sub-Consultant will have five (5) days to respond to the Engineer with any objection to termination and/or substitution. The Engineer must then submit a request with documentation to the Department's Civil Rights Division for approval before proceeding with termination and/or substitution.
57. **CONSULTANT EEO REQUIREMENTS**
58. Sub-Consultant shall have a written Equal Employment Opportunity (EEO) Policy, including designation of an EEO Officer. The EEO Officer shall conduct an EEO meeting at the start of the project and then not less often than once every six (6) months.

**IN WITNESS WHEREOF,** the Engineer and the Sub-Consultant have caused this instrument to be signed by their respective duly authorized officers and their respective corporate seals to be hereto affixed.

SUB-CONSULTANT:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title Date

Attest:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Secretary (If CORP) Date

ENGINEER:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title Date

Attest:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Secretary (If CORP) Date

(IF CORPORATION, AFFIX CORPORATE SEAL)

**OKLAHOMA DEPARTMENT OF TRANSPORTATION**

 **AGREEMENT FOR SUB-CONTRACT PROFESSIONAL SERVICES**

**EXHIBIT A**

**SUB-CONSULTANT SERVICES**

**OKLAHOMA DEPARTMENT OF TRANSPORTATION**

**AGREEMENT FOR SUB-CONTRACT PROFESSIONAL SERVICES**

**EXHIBIT B**

**SUB-CONSULTANT COMPENSATION**

**OKLAHOMA DEPARTMENT OF TRANSPORTATION**

**EXHIBIT C**

**TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

**ASSURANCES**

 (hereinafter referred to as the Consultant) HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations), and other pertinent directives to the end that, in accordance with the Act, regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Consultant receives Federal financial assistance from the Department of Transportation, including the Federal Highway Administration; and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by Subsection 21.7(a) (1) of the Regulations, a copy of which is attached.

More specifically and without limiting the above general assurance, the Consultant hereby gives the following specific assurances with respect to its Federal-aid Highway Program:

1. That the Consultant agrees that each “program” and each “facility,” as defined in Subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a “program”) conducted or will be (with regard to a “facility”) operated in compliance with all requirements imposed by or pursuant to the Regulations.
2. That the Consultant shall insert the following notification in all solicitations for bids for work or materials subject to the regulations made in connection with the Federal-aid Highway Program and, in adapted form, in all proposals for negotiated agreements:

in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4, and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted Programs of the Department of Transportation, issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

1. That the Consultant shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
2. That the clauses of Appendix B of this assurance shall be included, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
3. That where the Consultant receives federal financial assistance to construct a facility or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
4. That where the Consultant receives federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over, or under such property.
5. That the Consultant shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Consultant with other parties (a) for the subsequent transfer of real property acquired or improved under the Federal-aid Highway Program; and (b) for the construction or use of, or access to space on, over, or under, real property acquired or improved under the Federal-aid Highway Program.
6. That this assurance obligates the Consultant for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein, or structures or improvements thereon; in which case the assurance obligates the Consultant or any transferee for the longer of the following periods: (a) the period during which the property used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; of (b) the period during which the Consultant retains ownership or possession of the property.
7. The Consultant shall provide for such methods of administration for the program as are found by the Secretary of Transportation, or the official to whom he or she delegates specific authority, to give reasonable guarantee that it, other recipients, sub-grantees, consultants, sub-consultants, transferees, successors in interest; and other participants of federal financial assistance under such program will comply with all requirements imposed by or pursuant to the Act, the Regulations, and this assurance.
8. The Consultant agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts, or other federal financial assistance extended after the date hereof to the Consultant by the Department of Transportation under the federal-aid Highway Program and is binding on it, other recipients, sub-grantees, consultants, sub-consultants, transferees, successors in interest, and other participants in the federal-aid Highway Program. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Consultant.

Attachments:

Appendices A, B, C, D and E

**APPENDIX A**

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

**1. Compliance with Regulations:** The consultant (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 (FHWA), 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 consultant, 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 Sub-Consultants, including procurements of materials and leases of equipment. The consultant 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 consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential sub-consultant or supplier will be notified by the consultant of the consultant’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 consultant 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 FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions.  Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish the information, the consultant will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

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

a. withholding payments to the consultant under the contract until the consultant complies; and/or

b. cancelling, terminating, or suspending a contract, in whole or in part.

**6. Incorporation of Provisions:** The consultant 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 consultant will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance.  Provided, that if the consultant becomes involved in, or is threatened with litigation by a Sub-Consultant, or supplier because of such direction, the consultant may request the Recipient to enter into any litigation to protect the interests of the Recipient.  In addition, the consultant may request the United States to enter into the litigation to protect the interests of the United States.

**APPENDIX B**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW, THEREFORE,** the U.S. Department of Transportation as authorized by law and upon the condition that the Grantee will accept title to the lands and maintain the project constructed thereon in accordance with the Consolidated and Further Continuing Appropriations Act, 2013 (Pub. L. 113-6, March 26, 2013), the Regulations for the Administration of  FY 2013 TIGER Discretionary Grant Program**,** and the policies and procedures prescribed by the Federal Highway Administration (FHWA) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Grantee all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

**(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto Grantee and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Grantee, its successors and assigns.

The Grantee, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the Grantee will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.

**APPENDIX C**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Grantee pursuant to the provisions of Assurance 7(a):

1. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:

A. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Grantee will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*

3. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Grantee will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Grantee and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

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**APPENDIX D**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Oklahoma Department of Transportation pursuant to the provisions of Assurance 7(b):

1. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
2. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non­ discrimination covenants, Oklahoma Department of Transportation will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
3. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Oklahoma Department of Transportation will there upon revert to and vest in and become the absolute property of Oklahoma Department of Transportation and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**APPENDIX E**

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

Pertinent Non-discrimination Authorities:

1. 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 49CFR Part 21.
2. 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);
3. Federal-Aid highway Act of 1973, (29 U.S.C. § 324 *et seq.*),(prohibits discrimination on the basis of sex);
4. 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;
5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq*.), (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
7. 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 consultants, whether such programs or activities of the Federal-aid recipients, sub-recipients and consultants, whether such programs or activities are Federally funded or not);
8. 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;
9. 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);
10. 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;
11. 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);
12. 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.).