

CONTRACT FOR REAL PROPERTY ACQUISITION SERVICES

This Contract for Real Property Acquisition Services ("Contract") is entered into this 27th day of September, 20 22, by and between The City of Oklahoma City, a municipal corporation ("City"), and its successors in interest, and Smith-Roberts Land Services, Inc. ("Real Property Acquisition Consultant").

WITNESSETH:

PROJECT NO. MC-0706-C REAL PROPERTY ACQUISITION SERVICES

WHEREAS, the City requires the services of a real property acquisition consultant to perform negotiations, relocation assistance, condemnation support, and other real property acquisition services ("project"); and

WHEREAS, the Real Property Acquisition Consultant will provide professional services in accordance with this Contract; and

WHEREAS, the Real Property Acquisition Consultant has been selected under the standards adopted and the procedures prescribed by the resolution establishing procedures for selection of architects, engineers and planners adopted by the City Council on July 23, 1974, amended on December 31, 1974, February 21, 1978, January 22, 1980, and November 18, 1986, which resolution, with its amendments, is made a part of this Contract by reference.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter relating to the Contract, the parties agree to the following:

1. **Definitions.** All terms and phrases not expressly defined herein shall have their ordinary meanings, consistent with local and state law, except where the context clearly indicates a different meaning. For purposes of this Contract, the following terms and phrases shall have the meaning subscribed herein:
 - A. *City* The City of Oklahoma City, a municipal Corporation, wherein the term "City" appears in this contract, the same shall also apply (as applicable) to any of the City's Beneficiary Trusts.
 - B. *City Engineer* The officer of the City in charge of engineering, construction and maintenance contracts on public rights-of-way, on public lands and capital improvement projects of his or her designee.
 - C. *Term of Contract* The term of this Contract shall run from the date of execution through June 30, 2025.

D. *Beneficiary Trusts* Any public trust of which The City of Oklahoma City is a beneficiary.

2. **Basic Services.** The Real Property Acquisition Consultant is hereby engaged and employed by the City to perform in accordance with good real property acquisition service practices and in the best interest of the City all of the services as set out herein including negotiations, relocation assistance, condemnation support, and other real property acquisition-related services, and including, but not limited to the following:

A. Negotiation Services

- (1) Provide value find/appraisal waiver for real property acquisitions as necessary.
- (2) Obtain abstracting and title search services through a search of courthouse records to determine ownerships, encumbrances, etc.
- (3) Conduct negotiations, including explanations to each owner regarding the acquisition of the real property interest to be acquired and give the owner the opportunity to donate said real property or interest therein.
- (4) Conduct negotiations with each owner for the acquisition of the real property interest to be acquired and give the owner the opportunity to sell said real property or interest therein.
- (5) Secure all documentation necessary to convey title to the City and coordinate the examination of title with the City's legal counsel.
- (6) If negotiations with the property owner fail, provide an affidavit to the City stating that the property owner has refused the City's offer.
- (7) Process all documentation for closing through the City and coordinate delivery of settlement checks to property owners.
- (8) Coordinate with the City relocation assistance payments and services as deemed appropriate.
- (9) Attendance at meetings as requested by the City to explain any aspect of the real property acquisition process.
- (10) Coordinate relocation of signs, structures, encroachments, etc., from existing right-of-way as necessary.

B. Condemnation Support

- (1) Assist the City's legal counsel in all condemnation actions required to obtain title to the required real property acquisition, including expert testimony as to the fair market value of the property and damages to the remainder, as necessary. This service shall also include all pre- and post-trial activities involved in acquiring title to the property through eminent domain proceedings.

C. Relocation Assistance

- (1) Perform real estate acquisition services as directed by the City. The scope of such services shall be as stipulated by the City in a letter of engagement to the Real Property Acquisition Consultant.
- (2) Provide Letter(s) of Encroachment and/or Notice and Demand to the City as requested

D. Maintenance of Records

- (1) Maintain a Project Database Program of all project real property acquisition services.
- (2) Develop and maintain permanent records and files regarding all real property acquisition activities. All files will be retained and kept in a secure place in the project office of the Real Property Acquisition Consultant until such time as the parcel activities are completed. Upon completion of all parcel activities, the file(s) will be turned over to the City.
- (3) All records and files shall be made available for inspection by authorized representatives of the City at any time.
- (4) Maintain project-scheduling information of all real property acquisition activities to show progress on each parcel and project segment against established Milestone Schedules.
- (5) Develop and maintain detailed information of all costs associated with real property acquisition and project management.
- (6) Upon completion of the project, the Real Property Acquisition Consultant shall provide all project-related documents in an ordered manner and broken down by parcel.

E. Appraisal Services

- (1) Real Property Acquisition Services Consultant may be requested to coordinate and subcontract for a Consulting Appraiser to provide professional appraisal services as may be required by the City and its Beneficiary Trusts.
- (2) Those services may include an appraisal of commercial, residential, and vacant land.
- (3) A specific scope of work for the appraisal services will be provided by the requesting City department or Beneficiary Trusts.

3. Changes in Work.

- (1) In any case where the Real Property Acquisition Services Consultant believes additional compensation and/or time is due for work and services not clearly covered by a project-specific work order, the Real Property Acquisition Services Consultant shall promptly notify the City in writing of its intention to negotiate for such additional compensation and/or time. The Real Property Acquisition Services Consultant shall give this notice prior to exceeding work order compensation and/or time limits. If such notification is not given, no claim for such extra compensation and/or time will be considered. Such notice by the Real Property Acquisition Services Consultant shall not in any way be construed as proving the validity of the claim. The claim must be approved by the City. In such case where the claim is found to be just, it shall be allowed and paid as Extra Work in accordance with the Compensation paragraph of this Contract and hourly rates specifically identified therein.
- (2) Exhaustion of the administrative procedure outlined herein above is a prerequisite of and not a substitute for the right of judicial review of the dispute.

4. No Extra Work. No claims for extra work of any kind or nature or character shall be recognized by or be binding upon the City unless such work or services is first approved in writing by the City Engineer.

5. Compensation. Under the terms of this Contract, the Real Property Acquisition Services Consultant agrees to perform the work described in the Basic Services scope of work, and the City agrees to pay the Real Property Acquisition Services Consultant as compensation for professional services described therein at the following hourly rates:

<u>Employee Classification/Position</u>	<u>Hourly Rate</u>
Project Manager	\$ 130.00
Assistant Project Manager	\$ 118.00
Expert Witness	\$ 150.00

Appraiser	\$150.00 – \$175.00 (depending on complexity)
Acquisition Agent	\$ 110.00
Title Agent	\$ 115.00
Relocation Agent	\$ 115.00
Document Clerk	\$ 95.00
Clerical	\$ 75.00

6. **Payments.**

- A. Invoices shall be submitted monthly. Invoices shall state actual time expended on services performed by the Real Property Acquisition Consultant and shall meet the standards of quality as established under this Contract. The City agrees to pay the Real Property Acquisition Consultant, as compensation for such appraisal services as listed herein in accordance with the hourly rate schedule outlined in the Compensation paragraph of this Contract. Invoices shall be prepared and submitted by the Real Property Acquisition Consultant and be accompanied by all supporting data required by the City. Payment of any invoice for any work or services may not be deemed to be recognition of satisfactory performance of said work or services or a waiver of any right of the City or any obligation of the Real Property Acquisition Consultant should it be determined later that said work or services were negligently performed or provided or were not performed or provided in accordance with the standards required by this Contract.
- B. The Real Property Acquisition Consultant shall present two (2) copies of the invoice with two (2) properly executed claim vouchers to the City for compensation and payment. The City will review the invoice and claim voucher for payment. Should the City question or request additional documentation or disapprove all or a portion of any invoice, the Real Property Acquisition Consultant will be notified so that it may provide additional documentation sufficient to permit the invoice and claim to be paid, in whole or in part.
- C. Final payment shall not be deemed to waive any rights or obligations of the parties to this Contract.

7. **Indemnity.** The Real Property Acquisition Consultant will not be required to indemnify, insure, defend or hold harmless the City or participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the City or participating trusts or their agents, representatives, subcontractors, suppliers or any other entity for whom the Real Property Acquisition Consultant is not otherwise legally responsible.

The Real Property Acquisition Consultant must indemnify the City and participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Real Property Acquisition

Consultant and any person or entity for which the Real Property Acquisition Consultant is legally responsible are adjudicated liable.

8. **Insurance.** Prior to approval of this Contract, the Real Property Acquisition Consultant shall obtain insurance coverage as provided below. The Real Property Acquisition Consultant must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth below. Certified, true and exact copies of all insurance policies required and endorsement pages shall be provided to the City and its Beneficiary Trusts on a timely basis if requested by City staff.

All insurance must be from responsible insurance companies which are authorized to do business in the state of Oklahoma and are acceptable to the City and its Beneficiary Trusts. The required insurance coverage and policies shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this Contract under any other provision of this Contract, including but not limited to any indemnification provision.

- A. All insurance coverage of the Real Property Acquisition Consultant shall be primary to any insurance or self-insurance program carried by the City and its Beneficiary Trusts.

The insurance policy shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

- B. **Deductibles:** All policies must be fully insured with any single policy deductible not exceeding \$25,000 per occurrence. All deductibles must be declared on the certificate of insurance. If no deductible is declared, the Real Property Acquisition Consultant is stating a deductible does not exist and thus a deductible is not approved or accepted. If the Real Property Acquisition Consultant's deductible is higher than declared, then the City and its Beneficiary Trusts will hold an equal amount from pay claims until corrected.

Self-insured retentions will not be accepted unless accompanied by a bond (financial guarantee bond) or irrevocable letter of credit guaranteeing payment of the losses, related investigations, claim administration and defense expenses not otherwise covered by the Real Property Acquisition Consultant's self-insured retention.

- C. **Policy Limits:** The insurance coverage and limits required of the Real Property Acquisition Consultant under this Contract are designed to meet the minimum requirements of the City and its Beneficiary Trusts. Such coverage and limits are

not designed as a recommended insurance program for the Real Property Acquisition Consultant. The Real Property Acquisition Consultant alone shall be responsible for the sufficiency of its own insurance program. Should the Real Property Acquisition Consultant have any question concerning its exposures to loss under this Contract or the possible insurance coverage needed therefore, the Real Property Acquisition Consultant should seek professional assistance.

The minimum aggregate limits of such insurance policy and continuing coverage shall be:

- (1) Professional Liability Insurance. The Real Property Acquisition Consultant shall provide and maintain professional liability insurance coverage in an amount not less than \$1,000,000 aggregate annual limit liability. Such insurance coverage shall be maintained during this Contract and for a period of two (2) years after the expiration of the Contract by the City.
- D. Certificates: The insurance coverage and limits required must be evidenced by properly executed certificate of insurance on the form furnished by The City or on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates have been provided to the City Engineer prior to execution of this Contract and are attached hereto. The certificate(s) must be signed by the authorized representative of the insurance company(s) shown in the certificate(s). The certificate is attached to this Contract and must be extended or replaced prior to expiration or lapse throughout the term of this Contract.
- E. Cancellation. There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage.

The Real Property Acquisition Consultant authorizes the City and its Beneficiary Trusts to confirm all information so furnished as to the Real Property Acquisition Consultant's compliance with its bonds and insurance requirements with the Real Property Acquisition Consultant's insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this Contract is a breach of this Contract for which the Real Property Acquisition Consultant shall repay and reimburse all payment made under the Contract and such other damages, losses, and costs incurred by the City and its Beneficiary Trusts. The City and its Beneficiary Trusts may at their option suspend this Contract until there is full compliance with this paragraph, or may cancel or terminate this Contract and seek damages for the breach of this Contract. The remedies in this paragraph shall not be deemed to waive or release any remedy available to The City and its Beneficiary Trusts. The City and its Beneficiary Trusts expressly reserve the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit below the aggregate limit required to this contract, the Real Property Acquisition Consultant shall immediately notify the City and its Beneficiary Trusts and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City and its Beneficiary Trusts request a written statement from the insurance company(s) as to any impairments to or reduction of the aggregate limit below the aggregate limit required by this contract, the Real Property Acquisition Consultant hereby agrees to promptly authorize and have delivered to the City and its Beneficiary Trusts such statement.

The Real Property Acquisition Consultant must carry and maintain the contract-required insurance coverages and may not cancel, fail to be renewed, nor decrease their limits without thirty (30) calendar days written notice to the City and its Beneficiary Trusts. In the event that a contract-required insurance coverage (policy) is canceled by the Real Property Acquisition Consultant's insurance company and through no fault of the Real Property Acquisition Consultant, the Real Property Acquisition Consultant must immediately provide written notice to the City and its Beneficiary Trusts and immediately provide properly executed Certificate(s) of Insurance evidencing coverage (policy) replacement of the canceled coverage(s). The Certificate(s) of Insurance must specifically indicate (in the remarks section of the form or elsewhere) the project number and project description. An authorized representative of the insurance companies listed on the Certificate(s) of Insurance must sign the Certificate(s).

- F. Duration of Coverage. All insurance coverage required under this Contract except professional liability insurance shall be maintained in full force and effect until completion of the Contract or formal termination of the Contract by the City and its Beneficiary Trusts. The Real Property Acquisition Consultant shall maintain in full force in effect the required professional liability insurance stated above during this Contract, and for a period of two (2) years after completion of the Contract or the final, formal termination of this Contract by the City and its Beneficiary trusts.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Contract.

- G. The Real Property Acquisition Consultant and its insurer will not be required to indemnify, insure, defend or hold harmless the City or participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the City or participating trusts or their agents, representatives, subcontractors, suppliers or any other entity for whom the Real Property Acquisition Consultant is not otherwise legally responsible.

The Real Property Acquisition Consultant and its insurer must indemnify the City and participating trusts against liability for damage arising out of death or bodily

injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Real Property Acquisition Consultant and any person or entity for which the Real Property Acquisition Consultant is legally responsible are adjudicated liable.

9. **Termination for Convenience.** The City may terminate this Contract, in whole or in part, for the City's convenience. The City may terminate by delivery of a notice to the Real Property Acquisition Consultant, pursuant to paragraph "Notices" herein.

Upon receipt of the notice of termination, the Real Property Acquisition Consultant shall (1) immediately discontinue all work and services affected (unless the notice directs otherwise), and (2), upon payment for work performed, deliver to the City all documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated in performing this Contract, whether complete or incomplete unless the notice directs otherwise.

Upon termination for the convenience by the City, the City shall pay the Real Property Acquisition Consultant for all work and services rendered, up to the time of the notice of termination, in accordance with the terms, limits and conditions of this Contract and as further limited by the not to exceed amounts set out in this Contract.

The rights and remedies of the City provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

Termination herein shall not terminate or suspend any of the required provisions of paragraph "Indemnity" or "Insurance" of this Contract.

10. **Notices.** All notices given pursuant to this Contract shall be in writing, delivered or mailed by United States mail, postage prepaid or faxed (with hard copy follow up by mail or delivery) and addressed as follows:

To the City:

The City of Oklahoma City
Department of Public Works
420 West Main Street, Seventh Floor
Oklahoma City, Oklahoma 73102
Attn: Eric J. Wenger, P.E., Public Works Director/City Engineer
Phone Number: (405) 297-2581 Fax Number: (405) 297-2117

To the Real Property Acquisition Consultant:

Smith-Roberts Land Services, Inc.

Attn: Mark W. Bilyeu
4832 Richmond Square
Oklahoma City, OK 73118
Phone Number: (405) 843-7500

The address of any person or party may be changed by notice to the other party, given in the manner described above. All such notices shall be deemed received when delivered.

11. **Stop Work.** Upon notice to the Real Property Acquisition Consultant, the City may issue a stop work order suspending the performance of work and/or services under this Contract. The stop work order shall not terminate or suspend any of the required provisions of paragraph "Indemnity" and/or "Insurance" of this Contract. In the event the City issues a stop work order to the Real Property Acquisition Consultant, the City will provide a copy of such stop work order to the Real Property Acquisition Consultant.
12. **Compliance with Laws, Ordinances, Specifications and Regulations.** The Real Property Acquisition Consultant shall comply with all existing federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the work and/or services provided by this Contract.
13. **Records and Accounts.** During the term of this Contract and continuing for a period longer of five (5) years after the completion of the project or final termination of the Contract by the City, or until the final resolution of any outstanding disputes between the City and the Real Property Acquisition Consultant, the Real Property Acquisition Consultant shall maintain: all documents, notes, drawings, specifications, reports, estimates, summaries, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, computer files and any other materials produced, created or accumulated in performing this Contract that have not been submitted to the City subsequent to final completion of the project and its internal accounting records, and other supporting documents pertaining to the claims and/or invoices for costs of work and/or services of this Contract. The Real Property Acquisition Consultant must maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The Real Property Acquisition Consultant shall permit periodic audits by the City and the City's authorized representative. The periodic audits of the records in support of claims and invoices for the Contract shall be performed at times and places mutually agreed upon by the City and Real Property Acquisition Consultant. Agreement as to the time and place for audits may not be unreasonably withheld.
14. **Reporting to the City.** The Real Property Acquisition Consultant shall report to the City as required.
15. **Prohibition Against Collusion.** The Real Property Acquisition Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Real Property Acquisition Consultant to solicit or secure this

Contract. The Real Property Acquisition Consultant further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Real Property Acquisition Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. In addition, the Real Property Acquisition Consultant must execute the Anti/Non-Collusion Affidavit, attached as Exhibit A, prior to the effective date of this Contract.

16. **Sub-consultant, Subcontractor or Employee Conflict of Interest.** Any work or services performed by the Real Property Acquisition Consultant's employees, sub-consultants or subcontractors on this Contract shall prohibit said persons from contracting with, working for, or otherwise assisting any potential bidder to do any Contract-related work for the bidder which may in any way be (or construed to be) a conflict of interest. It is the responsibility of the Real Property Acquisition Consultant to require all employees, sub-consultants, or subcontractors engaged by the Real Property Acquisition Consultant to advise the City of any business relationship (formal or otherwise) which may pertain directly or indirectly to this Contract and/or which may in any way be (or construed to be) a conflict of interest. The Real Property Acquisition Consultant will also notify the City of any such business relationship and/or conflict of interest. Any conflict of interest discovered by the City may be cause for rejection of the bid in question and/or cancellation of the Real Property Acquisition Consultant's Contract.
17. **Work Orders.** A project-specific work order for each appraisal will be provided to the Real Property Acquisition Consultant by the City Engineer upon written receipt of the Real Property Acquisition Consultant's proposal, time for completion, and estimate of cost for work and services to be performed. The City and the Real Property Acquisition Consultant will determine a mutually agreed upon number of calendar days for completion of each appraisal. The work and services of the Real Property Acquisition Consultant are to commence upon the date set out in the work order and be completed in the number of mutually agreed upon number of calendar days. If the Real Property Acquisition Consultant cannot perform the work and/or services within the time provided, and upon the submission by the Real Property Acquisition Consultant of a request in writing to the City, indicating the length of extension required to perform a task, the City Engineer may grant a reasonable extension of time. The request from the Real Property Acquisition Consultant shall state the reason for the extension request, along with evidence showing that the Real Property Acquisition Consultant is unable to complete this work and services in the time specified in the work order for reasons beyond its control. The Real Property Acquisition Consultant is prohibited from claiming damages for delays and extensions of time.
18. **Ownership of Documents.** All documents, notes, drawings, specifications, reports, estimates, summaries, computer files, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, computer files and any other materials produced, created or accumulated in performing this Contract, are and shall remain the property of the City and may be reproduced, distributed and published in whole or part

without permission or any additional payments or fees to the Real Property Acquisition Consultant. Reuse of said documents by the City shall be at the City's risk and responsibility and not that of the Real Property Acquisition Consultant. The parties may use any portions of said documents at their own risk and responsibility. During preparation of design documents, the Real Property Acquisition Consultant shall do weekly backups of CADD computer files and maintain said backups in a safe and secure off-site location. These back-up CADD computer files are the property of the Real Property Acquisition Consultant.

19. **References Not Incorporated.** The use of language or definitions from the Federal Acquisition Regulations, the ("FAR"), the American Institute of Architects ("AIA") or any other publication, is not intended to adopt by reference or otherwise any or all of the language, definitions, regulations or publications or any interpretation thereof.
20. **Standard of Care.** In providing the work and services herein, the Real Property Acquisition Consultant shall maintain during the course of this Contract the standard of reasonable care, skill, diligence and professional competency for such work and/or services. The Real Property Acquisition Consultant agrees to require all of its consultants, by the terms of its consultants' contracts, to provide services at the same standard of reasonable care, skill, diligence and professional competence required of the Real Property Acquisition Consultant.
21. **Backup Required.** In accordance with good appraisal service practices, the Real Property Acquisition Consultant must back up all data, surveys, tests, work, plans, specifications, notes, calculations, RFI, records, reports, documents (collectively referred to as "data") in the form of an electronic file on a USB drive, data storage, or to an offsite electronic storage facility. Should any data become lost, corrupted, inaccessible, or unusable (collectively "loss"), the Real Property Acquisition Consultant must timely recreate all data within the original time frame of the appraisal contract at its sole cost. No extensions or additional time will be granted the Real Property Acquisition Consultant for loss of data. No additional payment or reimbursement will be made to the Real Property Acquisition Consultant for loss of data. The Real Property Acquisition Consultant will be responsible for any and all costs, expenses, or lost opportunities incurred by The City or Beneficiary Trusts, resulting from the failure to meet schedules, milestones, performance standards, or performance requirements related to loss of data.
22. **Sub-consultants.** The Real Property Acquisition Consultant agrees to submit for approval by the City, prior to their engagement, a list of any sub-consultants or subcontractors the Real Property Acquisition Consultant intends to engage to perform work and/or services related to this Contract. Such approval will not be unreasonably withheld. The Real Property Acquisition Consultant shall notify the City and seek pre-approval of any substitutions or changes in sub-consultants or subcontractors.
23. **Nondiscrimination.** In connection with the performance of work and/or services under this Contract, the Real Property Acquisition Consultant agrees as follows:

- A. The Real Property Acquisition Consultant shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). The Real Property Acquisition Consultant shall take affirmative action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3 (2). Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Real Property Acquisition Consultant shall agree to post Exhibit B.
 - B. In the event of the Real Property Acquisition Consultant's noncompliance with this nondiscrimination clause, this Contract may be suspended, canceled or terminated by the City. The Real Property Acquisition Consultant may be declared by the City ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by the Real Property Acquisition Consultant.
 - C. The Real Property Acquisition Consultant agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this Contract. The Real Property Acquisition Consultant shall also execute the nondiscrimination certificate, attached and incorporated as Exhibit B, prior to the effective date of this Contract.
24. **Assignment.** Inasmuch as this Contract is a personal and professional service agreement which relies upon the personal and professional integrity, financial standing and unique ability and expertise of the Real Property Acquisition Consultant to provide professional and personal services to the City, the parties agree that the Real Property Acquisition Consultant may not assign its obligations, rights or interest in this Contract except as set forth in paragraph "Termination for Default" subparagraph B.
25. **Termination for Default.** The City may cancel this Contract in whole or in part, for failure of the Real Property Acquisition Consultant to fulfill or promptly fulfill its obligations under this Contract.
- A. After due notice and thirty (30) calendar days within which to correct the default, this Contract may be terminated by either party for default upon fourteen (14) calendar days written notice should the other party fail substantially to perform in accordance with the Contract terms through no fault of the party initiating the termination.

- B. If this Contract is terminated by reason of a default of the Real Property Acquisition Consultant prior to the completion of this project, regardless of the reason for said termination, the Real Property Acquisition Consultant shall immediately assign to the City any contracts and/or agreements relative to this project entered into between the Real Property Acquisition Consultant and its subcontractors and sub-consultants, as the City may designate in writing and with the consent of the subcontractors and sub-consultants so designated. With respect to those contracts and/or agreements assigned to and accepted by the City, the City shall only be required to compensate such subcontractors and sub-consultants for compensation accruing to such parties under the terms of their agreements with the Real Property Acquisition Consultant from and after the date of such assignment to and acceptance by the City. All sums claimed by such subcontractors or sub-consultants to be due and owing for services performed prior to such assignment and acceptance by the City shall constitute a debt between the Real Property Acquisition Consultant and the affected subcontractors or sub-consultants, and the City shall in no way be deemed liable for such sums. The Real Property Acquisition Consultant shall include this provision and the City's rights and obligations hereunder in all agreements or contracts entered into with the Real Property Acquisition Consultant's subcontractors and sub-consultants.
- C. Termination herein shall not terminate or suspend any of the required provisions of the paragraph "Indemnity" or "Insurance" of this Contract.
26. **Time Is of the Essence.** Both the City and the Real Property Acquisition Consultant expressly agree that time is of the essence with respect to this Contract, and the time for performance of each task established by the work orders shall be made a part of this Contract and shall be strictly observed and enforced. Any failure on the part of the City to timely object to the time of performance shall not waive any right of the City to object at a later time.
27. **No Damage for Delay.** No payment, compensation or adjustment of any kind (other than an approved extension of time) shall be made to the Real Property Acquisition Consultant for damages because of hindrances or delays from any cause in the progress of the work and services, whether such hindrances or delays be avoidable or unavoidable. The Real Property Acquisition Consultant agrees that it will make no claim for compensation or damages for any such delays and will accept as full satisfaction for such delays the extensions of time.
28. **Severability.** In the event that any provision, clause, portion or section of this Contract is unenforceable or invalid for any reason, such unenforceability or invalidity may not affect the enforceability or validity of any other paragraph or the remainder of this Contract.
29. **Entire Agreement.** This Contract, including its Exhibits and any other documents or certificates incorporated herein by reference, expresses the entire understanding of the City and the Real Property Acquisition Consultant concerning the Contract. Neither the

City nor the Real Property Acquisition Consultant has made or shall be bound by any agreement or any representation to the other concerning this Contract which is not expressly set forth herein.

30. **Amendment.** This Contract may be modified only by a written amendment of subsequent date hereto, approved by the City and the Real Property Acquisition Consultant. In the event the Real Property Acquisition Consultant's scope of work is increased or changed so as to materially increase the need for appraisal services in excess of the not to exceed total compensation, the Real Property Acquisition Consultant may seek to amend this Contract.
31. **Execution in Counterparts.** This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
32. **Descriptive Headings.** The descriptive headings of the sections of this Contract are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Contract.
33. **Construction and Enforcement.** This Contract shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Contract, it shall not be construed for or against any party on the basis that such party did or did not author the same.
34. **Survival of Representations.** All representations and covenants of the parties shall survive the expiration of the Contract.
35. **Parties Bound.** This Contract shall be binding upon and inure to the benefit of all parties. This Contract is solely for the benefit of the parties and their successors in interest, and none of the provisions hereof are intended to benefit third parties.
36. **Venue of Actions.** The parties agree that if any legal action is brought pursuant to this Contract, such action shall be instituted in the district court of Oklahoma County.
37. **Effective Date.** The effective date of this Contract shall be the date of execution of this contract by the City.
38. **Independent Contractor Status**
Subject to the terms and conditions of this Contract, the City retains Real Property Acquisition Consultant, an independent contractor, to provide the services, in accordance with the standards exercised by experts in the field, necessary to provide the City the work and services that meet all the purposes and functionality and purpose of this Contract.

a) The parties hereby acknowledge and covenant that:

- i) Real Property Acquisition Consultant is an independent contractor and will act as an independent contractor and not as an employee of Oklahoma City and/or its Beneficiary Trusts in performing the duties hereunder; and
 - ii) The parties do not intend, and will not hold out that there exists, any corporation, joint venture, partnership, undertaking for a profit or other form of business venture or any employment relationship among the parties other than that of an independent contractor relationship.
- b) All payments to Real Property Acquisition Consultant pursuant to this Contract shall be due and payable in the State of Oklahoma, even if services of Real Property Acquisition Consultant are performed outside the State of Oklahoma.
 - c) As Real Property Acquisition Consultant is an independent contractor, neither the City nor its Beneficiary Trusts will be responsible or liable to withhold or pay any Social Security tax, Medicare tax, Federal Unemployment tax, Federal Income tax, or State Income tax from any compensation paid to Real Property Acquisition Consultant. All such taxes, if due, are the responsibilities of Real Property Acquisition Consultant and will not be charged to Oklahoma City or its Beneficiary Trusts.
 - d) As an independent contractor, Real Property Acquisition Consultant agrees it is not entitled to and hereby waives any claims to any welfare or retirement benefits available to qualified employees of Oklahoma City or its Beneficiary Trusts. Real Property Acquisition Consultant acknowledges that as an independent contractor it is not eligible to participate in any welfare or retirement benefit programs provided by Oklahoma City or its Beneficiary Trusts for its employees.

39. **Application of Oklahoma Law.**

The parties agree that this Contract is subject to and shall be interpreted and enforced in accordance with Oklahoma law.

40. **Term of Contract.**

- A. This Contract authorizes the City Engineer to issue Work Orders under this Contract during the contract term as provided herein and the term of this Contract will be from the effective date through June 30, 2025, plus such extended time as necessary until all Work Orders issued during the contract term are complete.
- B. The City may issue Work Orders under this Contract at any time during the contract term.
- C. The Real Property Acquisition Consultant will provide such services as set forth in any Work Order issued under this Contract and this Contract will be deemed extended for such extended time as may be necessary for the completion of services set forth in any Work Order issued during the contract term under this Contract.

- D. If this Contract is extended for completion of any Work Order, upon completion of all the Work Orders issued under this Contract, the City Engineer will issue a notice to the Real Property Acquisition Consultant denoting the termination of this Contract and any extended time.
- E. The Real Property Acquisition Consultant must provide such services and comply with this Contract until expiration of the contract term or through any extended time, if any, until notification of termination of this Contract from the City Engineer, whichever is later.
- F. The City will not be obligated to pay the Real Property Acquisition Consultant under any Work Order (including any services, expenses, and additional services) until the funds have been encumbered. Any Work Order must not exceed the available funds for the year in which the Work Order was issued. Any extended time to complete the Work Order will not change the available funds for the year in which the Work Order was issued.
- G. If the City should need any additional services or a change of the scope of services in any Work Order issued during the contract term, a new separate Work Order must be issued under a separate contract or an amendment to this Contract. An extended time will not extend the authorization to issue a new Work Order under this Contract after the expiration of the contract term.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, this Contract was executed and approved by the Real Property Acquisition Consultant this 12th day of September, 2022.

SMITH-ROBERTS LAND
SERVICES, INC.

Mark W. Bilyeu
President

ATTEST:

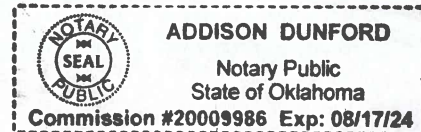
STATE OF Oklahoma)
) SS
COUNTY OF Oklahoma)

This instrument was acknowledged before me on the 12th day of September, 2022, by Mark W. Bilyeu, as President of Smith-Roberts Land Services, Inc.

Addison Dunford
Notary Public

My Commission Expires/Commission Number:

08/17/2024 / #20009986 (Seal)



IN WITNESS WHEREOF, this Contract was approved and executed by The City of Oklahoma City this 27th day of September, 2022.

THE CITY OF OKLAHOMA CITY

ATTEST:

Amy K. Simpson
City Clerk



David Holt
Mayor

REVIEWED for form and legality.

Craig Keith
Assistant Municipal Counselor

EXHIBIT A
ANTI/NON-COLLUSION AFFIDAVIT
PROJECT NO. MC-0706-C
REAL PROPERTY ACQUISITION SERVICES

State of Oklahoma)
)
County of Oklahoma) SS.

The undersigned Real Property Acquisition Consultant, of lawful age, being duly sworn, upon his/her oath, deposes and says: That the undersigned has the lawful authority to execute the within and foregoing proposal for, and on behalf of, the Real Property Acquisition Consultant; that the Real Property Acquisition Consultant has not, directly or indirectly, entered into any agreement, express or implied, with any other architect/engineer(s), having for its object the controlling of the price or amount of the Contract, the limiting of the services of the architect/engineers, the parceling or farming out to any architect/engineer(s) or other persons, of any part of the Contract or any part of the subject matter of the Contract, or of the profits thereof.

The Real Property Acquisition Consultant further states that the Real Property Acquisition Consultant has not been a party to any collusion among other persons, firms or contractors in restraint of freedom of competition, by any agreement to Contract at a fixed price or to refrain from competing; or with any city official, city employee or city agent as to the quantity, quality, or price in the prospective Contract, or any other terms of the said prospective Contract; or in any discussions between the Real Property Acquisition Consultant or city official, city employee or city agent concerning the exchange or money or other thing of value for special consideration in the letting of a Contract. The Real Property Acquisition Consultant states that it has not paid, given or donated or agreed to pay, give or donate to any city official, officer or employee of the City, its Beneficiary Trust, or awarding public agency, any money or other thing of value, either directly or indirectly, in the procuring of the award of this Contract.

Printed name of the Real Property Acquisition Consultant: Smith-Roberts Land Services, Inc.

Signature of executing individual:

Mark W. Bilyeu

Title: President

4832 Richmond Square, Oklahoma City, OK 73118

Address of the Real Property Acquisition Consultant

Zip Code

405.843.7500 (phone) 405.840.0242 (fax)

(A.C.) Tel. Number and FAX Number

Signed and sworn to before me on this 12th day of September, 20 22,

by Mark W. Bilyeu as President.

My Commission Expires/Commission Number:

8/17/2024 / #20009986 (Seal)

Addison Dunford
Notary Public

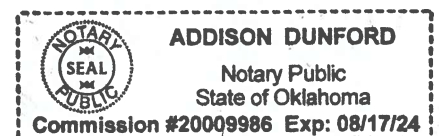


EXHIBIT B
NONDISCRIMINATION CERTIFICATE
PROJECT NO. MC-0706-C
REAL PROPERTY ACQUISITION SERVICES

State of Oklahoma)
)
County of Oklahoma) SS.

In connection with the performance of work under this Contract, the Real Property Acquisition Consultant agrees as follows:

- A. The Real Property Acquisition Consultant agrees not to discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, ancestry, age or disability, as defined by the Americans with Disabilities Act of 1990, Sec. 3(2). The Real Property Acquisition Consultant shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, ancestry, age or disability, as defined by the Americans with Disabilities Act of 1990, Sec. 3(2). Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. The Real Property Acquisition Consultant and sub-consultants shall agree to post this Exhibit B in a conspicuous place, available to employees and applicants for employment.
- B. In the event of the Real Property Acquisition Consultant's noncompliance with this Nondiscrimination Certificate, the Contract may be canceled, terminated or suspended by the City. The Real Property Acquisition Consultant may be declared, by the City, ineligible for further contracts until satisfactory proof of intent to comply shall be made by the Real Property Acquisition Consultant and/or sub-consultants.
- C. The Real Property Acquisition Consultant agrees to include the requirements of this Nondiscrimination Certificate in any subcontracts connected with the performance of this Contract.

I have read the above clause and agree to abide by its requirements.

Printed name of the Real Property Acquisition Consultant: Smith-Roberts Land Services, Inc.

Signature of executing individual: *Mark W. Bilyeu*

Title: President

4832 Richmond Square, Oklahoma City, OK 73118

Address of the Real Property Acquisition Consultant Zip Code

405.843.7500 (phone) 405.840.0242 (fax)

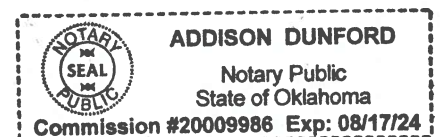
(A.C.) Tel. Number and FAX Number

Signed and sworn to before me on this 12th day of September, 20 22, by

Mark W. Bilyeu as President

My Commission Expires/Commission Number:
08/17/2024 / #20009986 (Seal)

Addison Dunford
Notary Public





SMITLAN01C

MSCHURIG

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/14/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER INSURICA - Oklahoma City 5100 N. Classen Blvd, #300 Oklahoma City, OK 73118	CONTACT NAME: Michelle Schurig PHONE (A/C, No, Ext): (405) 556-2217 FAX (A/C, No): (405) 556-2332 E-MAIL ADDRESS: Michelle.Schurig@INSURICA.com	
	INSURER(S) AFFORDING COVERAGE	
INSURED Smith-Roberts Land Services Inc; SRLS Texas LLC 4832 Richmond Square Oklahoma City, OK 73118	INSURER A: ACE Property & Casualty Insurance Company	
	INSURER B: Great Northern Insurance Co.	
	INSURER C: Executive Risk Indemnity Inc.	
	INSURER D: Travelers Casualty and Surety Company of America	
	INSURER E:	
INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	X	D52176669	12/18/2021	12/18/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 COMBINED AGGREG \$ 6,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	73601115	12/18/2021	12/18/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			D52176700	12/18/2021	12/18/2022	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	71765834	12/18/2021	12/18/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liab			107561259	1/1/2022	1/1/2023	Per Claim 2,000,000
D	Professional Liab			107561259	1/1/2022	1/1/2023	Aggregate 2,000,000


DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project No. MC-0706-C and Real Property Acquisition Services

The City of Oklahoma City and its participating trusts Department of Public Works are an Additional Insured with respect to the General Liability, Automobile Liability and Umbrella policies if required or agreed to in a written contract subject to all provisions and limitations of the policy. A Waiver of Subrogation in favor of Certificate Holder applies to the General Liability, Automobile Liability, Umbrella Liability and Workers Compensation policies if required or agreed to in a written contract subject to all provisions and limitations of the policy. Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail 30 Day Written Notice of Cancellation except 10 Days for Non-Payment of Premium to the Certificate Holder, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives. The policies contain the following SEE ATTACHED ACORD 101

CERTIFICATE HOLDER

CANCELLATION

The City of Oklahoma City Department of Public Works 420 West Main Street, Seventh Floor Oklahoma City, OK 73102	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY INSURICA - Oklahoma City		NAMED INSURED Smith-Roberts Land Services Inc; SRLS Texas LLC 4832 Richmond Square Oklahoma City, OK 73118
POLICY NUMBER SEE PAGE 1		
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:
deductibles General Liability \$0, Auto Liability \$0, Workers Compensation \$0 and Umbrella Liability \$0. The Professional Liability Policy contains a \$10,000 per claim deductible.