

**North Dakota Department of Transportation  
COST PARTICIPATION AND MAINTENANCE AGREEMENT**

**Federal Award Information – to be provided by NDDOT**

CFDA No: 20.205	CFDA Title: Highway Planning & Construction
Award Name: Federal Aid Highway Program	Awarding Fed. Agency: Federal Highway Admin
NDDOT Program Mgr: Striefel, Ardin L.	Telephone: 328-2559

**Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.**

**Project No.**NHU-4-002(111)148  
**Location:** US 2 - 23rd Street SE to Burdick Expy  
**Type of Improvement:** Lighting and High mast Lighting Project  
**Point of Beginning:** Sta. 7822+13  
**Point of Ending:** Sta. 7961+48

In consideration of the mutual benefits to be derived therefrom, it is agreed between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and the Local Public Agency (LPA) of Minot, North Dakota, hereinafter referred to as the LPA, the project will be constructed in accordance with the current edition of NDDOT’s *Standard Specifications for Road and Bridge Construction* and with the plans incorporated into this agreement by reference.

The LPA

- a. Will pay 0 percent of the cost of rights of way and easements acquired for the project; and
- b. Will pay 0 percent of the total cost of all items which are determined eligible for funding participation. This total cost will include the actual construction cost plus 10 percent for the preliminary and construction engineering; and
- c. Will pay 100 percent of the construction costs plus 10 percent for the preliminary and construction engineering of all items as requested by the LPA for items determined to be non-participating or ineligible for federal aid.

Additional Funding Clause:

The City will be required to pay the electricity for the lighting for feed points C and D as shown in the attached layout. Feed points C & D have 42 EA - 200 watt LED Luminaires.

**PART I**

LPA Obligation:

- 1. The LPA will pay to NDDOT as the work progresses or when completed its share of the total cost of the project as defined above.
- 2. It is specifically agreed that if at any time the LPA fails to pay the amount billed to NDDOT within 60 days after billings, this document shall constitute an assignment of funds derived from the State Highway Tax Distribution Fund now or hereafter coming into the hands of the State Treasurer to the



credit of the LPA, and the State Treasurer is hereby directed to deliver and pay over to NDDOT all funds credited to the LPA until the total thereof equals the sum billed pursuant to this agreement. The preliminary cost estimate of the project is \$2,100,000, with the LPA's estimated share being \$0.

## **PART II**

### Post Construction

After the project is completed the LPA agrees that all signs, signals, markings, and other protective structures erected on or in connection with the project, including those installed at the sole cost and expense of the LPA or by others, shall be approved by NDDOT. All traffic control devices will be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

## **PART III**

### Maintenance

The LPA will, at its own expense, maintain or cause to be maintained, all lighting for feed points C & D of this project. The maintenance will be in a manner satisfactory to NDDOT and FHWA. Exact limits of the project are shown on the attached map. The LPA is responsible for all maintenance activities except those identified as NDDOT responsibilities. The LPA is also responsible for restoring to original condition any cuts in surface initiated by the LPA for utilities, etc. Limits of the LPA's responsibilities are shown on the attached map as the feed point C and D locations.

## **PART IV**

### General:

1. Appendices A and E of the Title VI Assurances, attached, are hereby incorporated into and made a part of this agreement.
2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.
4. The LPA is advised that its signature on this contract or agreement certifies that any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.



5. NDDOT is not responsible for any Property Taxes or Special Assessments on property which has been acquired as part of the roadway reconstruction project. The LPA is responsible to make arrangements for deferral or payment of such Taxes and/or Special Assessments.



Executed by the LPA of \_\_\_\_\_, at \_\_\_\_\_,  
North Dakota, the last date below signed.

APPROVED:

LPA of \_\_\_\_\_

\_\_\_\_\_  
LPA ATTORNEY (TYPE OR PRINT)

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\*  
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

ATTEST:

\_\_\_\_\_  
AUDITOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Executed for the North Dakota Department of Transportation by the Director at Bismarck, North Dakota,  
the last date below signed.

APPROVED as to substance by:

NORTH DAKOTA DEPARTMENT OF  
TRANSPORTATION

\_\_\_\_\_  
DIVISION DIRECTOR(TYPE OR PRINT)

\_\_\_\_\_  
DIRECTOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

\*Mayor or President of Commission

CLA 17058 (Div. 38)  
L.D. Approved 10-17



**AUTHORIZATION**

At a \_\_\_\_\_ meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, it was moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the attached certification and agreement be approved, and that the \* \_\_\_\_\_ and Auditor be authorized to execute in behalf of the LPA of \_\_\_\_\_ and that two executed copies be returned to the NDDOT Director.

Adopted on a vote of \_\_\_\_ aye, \_\_\_\_ nay, \_\_\_\_\_ absent.

ATTEST:

APPROVED:

\_\_\_\_\_  
AUDITOR (TYPE OR PRINT)

LPA of \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (TYPE OR PRINT )

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\*  
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

**CERTIFICATION**

It is hereby certified that the LPA of \_\_\_\_\_ will issue improvement warrants to finance the amounts that the LPA is obligated to pay under terms of the attached agreement with the North Dakota Department of Transportation and that authority to do so has been obtained in accordance with the Section 40-22-06 of the North Dakota Century Code.

Executed at \_\_\_\_\_, North Dakota, the last date below signed.

ATTEST:

APPROVED:

\_\_\_\_\_  
AUDITOR (TYPE OR PRINT)

LPA of \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (TYPE OR PRINT )

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\*  
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\*Mayor or President of Commission



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX A OF THE TITLE VI ASSURANCES**

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

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX E OF THE TITLE VI ASSURANCES**

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

**Pertinent Non-Discrimination Authorities:**

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



## Risk Management Appendix

### **Routine\* Service Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:**

**Parties:** **State** – State of North Dakota, its agencies, officers and employees

**Governmental Entity** – The Governmental Entity executing the attached document, its agencies, officers and employees

**Governments** – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability** and **automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person** and **\$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person** and **\$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

**The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.**

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

\*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007  
Revised 5-09

