

**North Dakota Department of Transportation**  
**WIRELESS TELECOMMUNICATION FACILITIES ON NDDOT RIGHT OF WAY WITHIN LPA**  
**JURISDICTION**

This agreement is 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 city of Minot, hereafter referred to as the LPA (Local Public Agency), whose address is 515 2<sup>nd</sup> Avenue Southwest, Minot, North Dakota 58702.

NDDOT and LPA hereby agree that the LPA will coordinate and facilitate the installation of wireless telecommunication facilities within NDDOT right of way consistent with the provisions contained in local ordinances and NDDOT policies. The LPA may assign portions of the work under this agreement or execute a subcontract as per any LPA policy or ordinance. Any agreement with a wireless telecommunication utility company does not create a contractual relationship between NDDOT and the wireless telecommunication utility company. The LPA's authority under this agreement covers the corporate boundary of the LPA.

The LPA, on behalf of the NDDOT, shall exercise ownership of transportation infrastructure that has a wireless telecommunication facility installed on it within NDDOT right of way. The term of the LPA's assigned ownership will coincide with an in-place agreement with a wireless telecommunication utility company. If the wireless telecommunication facility is no longer needed and has been removed by the wireless telecommunication utility company then ownership of the transportation infrastructure will revert back to NDDOT.

Maintenance responsibilities for the transportation infrastructure with the wireless telecommunication facility attached will be the responsibility of the LPA.

1. The LPA will provide applicable policies, ordinances and any agreements related to wireless telecommunication facilities to NDDOT prior to the first installation of each wireless telecommunication utility company facility or as changes occur. The LPA shall prepare, or have prepared, maps and records showing the size, type, location and ownership of all wireless telecommunication facilities located within NDDOT right of way. Such maps and records shall be retained by the LPA for future reference and provided at the request of the NDDOT.
2. All temporary work zone traffic control done on highway right-of-way must conform to the Manual on Uniform Traffic Control Devices (MUTCD), NDDOT design standards applicable to temporary work zone traffic control and to the reasonable requirements of NDDOT's District Engineer for all work completed in the NDDOT right-of-way. The LPA shall provide reasonable notice to the District Engineer in advance of any work/closure. For highway closure, the LPA shall set up a proper, adequate, and safe detour. The LPA shall be solely responsible for planning, constructing, maintaining, policing, and removal of the detour.
3. The LPA shall comply with the procedures outlined in local ordinances and in the current edition of NDDOT's A Policy for Accommodation of Utilities on State Highway Right of Way. The LPA local ordinances may be more restrictive as to the wireless telecommunication utility owners so long as they still conform or are otherwise not prohibited by the NDDOT Utility Accommodation Policy. NDDOT shall provide the LPA written notice of any changes to NDDOT's A Policy for Accommodation of Utilities on State Highway Right of Way that affect facilities permitted pursuant to this agreement at least 90 days prior to any change becoming effective.
4. The LPA will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this installation, such as inconvenience to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance; in accordance with all applicable laws and



regulations.

5. The LPA shall be required to wear an ANSI/ISEA 107-2004 Class II high visibility garment while within the highway right-of-way as per the requirements of 23 CFR 634.
6. The LPA will arrange disposition of any removed transportation infrastructure with the NDDOT District Engineer.
7. The LPA acknowledges that the NDDOT has no duty to and will not provide for the supervision of activities associated with the installation or removal.
8. The LPA will advise any entity installing or operating telecommunications infrastructure that the wireless telecommunication utility company is responsible for securing any necessary permits that may be required.
9. The Risk Management Appendix, attached, is hereby incorporated into and made a part of this agreement.
10. This agreement may be terminated or amended by either party by giving 60 days written notice to the other party. Changes to the terms and conditions of this agreement must be mutually agreed to in writing. Any termination or amendment to this agreement will need to address or accommodate wireless telecommunication facilities permitted as part of the existing agreement.
11. The LPA, for him or herself, his or her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree 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 LPA will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as 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 set forth in this Assurance.

That in the event of breach of any of the above Non-discrimination covenants, NDDOT will have the right to terminate this agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said agreement had never been made or issued.



Executed the last date below signed.

APPROVED:

\*LPA of: \_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

ATTEST:

\_\_\_\_\_  
LPA AUDITOR

\_\_\_\_\_  
SIGNATURE

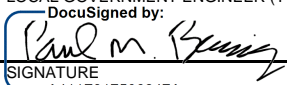
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APPROVED as to substance by:

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

Paul Benning  
\_\_\_\_\_  
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

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

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\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

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DATE

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DATE

\*Mayor, President or Chair of LPA Commission

CLA 10095 (Div. 38)  
L.D. Approved 12-20



## 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. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. 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 11-19

