

P E R M I T

The City of Minot, hereinafter called the Permittee, is hereby granted permission from the North Dakota Department of Transportation, hereinafter called the NDDOT, to enter the US 83 right of way between the NW ¼ of Section 36, Township 155N, Range 83W, for the purpose of discharging drainage from a storm drain into an existing NDDOT highway ditch. An 18" HDPE will be installed on the NDDOT right of way to discharge the control structure to the existing highway ditch. The installation of the 18" HDPE on the NDDOT right of way shall conform to the plan sheet (C07) submitted by Ackerman Estvold, dated March 19, 2021, incorporated by reference herein, and the following provisions:

1. The Permittee shall sponsor the project and guarantee that all environmental issues are addressed. The Permittee shall comply with federal, state, and local laws together with ordinances and regulations applicable to the work.
2. The Permittee shall be responsible for all costs incurred for all items of work, complete in place, and shall include the furnishing of all labor, equipment, and relocation of utilities, if necessary.
3. In no case shall any construction activities occur within the US 83 clear zone without prior consent from the NDDOT Minot District Engineer. At this location the US 83 clear zone is 16 feet from the edge of the nearest driving lane.
4. Excess excavation material shall be wasted outside of the US 83 right of way and all graded and disturbed areas shall be reseeded according to the NDDOT seed mixture specifications. Erosion control devices shall be installed prior to construction and maintained until 70% of the vegetation is reestablished, the Permittee shall then remove the devices.
5. The Permittee shall be responsible for erosion and sedimentation on the NDDOT right of way. The Permittee shall make immediate repairs for erosion and remove silt, when needed.
6. The Permittee shall notify the NDDOT Minot District Engineer, forty-eight (48) hours prior to the beginning of the work. Immediately following the final cleanup of the area, the Permittee shall again notify the district engineer.
7. All work on the US 83 right of way shall be done in a neat and professional manner, subject to inspection and approval by the NDDOT Minot District Engineer.
8. Traffic Control must be provided and maintained by the Permittee and must be in accordance with the "Manual on Uniform Traffic Control Devices," 2009 edition.
9. The Permit does not convey any property interest in the US 83 right of way and is solely a license interest.

10. The NDDOT specifically reserves the right to revoke or change the terms and conditions of this Permit with or without cause and upon notice to the Permittee.

The Permittee may terminate the Permit upon 30 days, notice to the District Engineer. The Permittee shall remove any equipment and return NDDOT right of way to pre-construction condition, prior to termination.

11. Any violation of any of the conditions in this permit will void the permit and no further activities of this permit may continue. The NDDOT has the sole discretion to interpret all of these terms and conditions and to determine whether the terms of this permit have been violated.

12. The Permittee, 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 Permittee 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 Nondiscrimination covenants, the NDDOT will have the right to terminate this Permit and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Permit had never been made or issued.

13. The Risk Management Appendix (RMA), attached, is hereby incorporated into this Permit by reference.
14. By entering upon the US 83 right of way to perform the work authorized by this permit and thereby accepting the benefits of this permit, the Permittee agrees to be bound by all the terms and conditions of this permit.

Executed the date last below signed.

APPROVED AS TO SUBSTANCE

Jon Ketterling, P.E. - Bridge Engineer

Date

WITNESS

PERMITTEE

Name (Print or Type)

Name (Type or Print)

Signature

Signature

Date

WITNESS

APPROVED

Name (Print or Type)

Deputy Director for Engineering (Type or Print)

Signature

Signature

Date

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

