

MEMO TO: Chad Orn
Deputy Director for Planning

FROM: Zacher, Wayne A.

DATE: 11/15/2023

SUBJECT: 38231393: SPR-P038(003) (PCN 22244) - Dickinson Transportation Master Plan & Comprehensive Plan

This contract is for the development of the Dickinson Transportation Master Plan and Comprehensive Plan. The last Transportation Master Plan and Comprehensive Plan was adopted in March 2013, so it is due for an update. The study also includes items that are not federally eligible.

If you have questions, contact Wayne Zacher at (701)328-4828.

38/waz

DocuSign Signing Order:
Stacey Hanson;
Paul Benning;
Shannon Sauer;
Mark Anderson, KLJ;
Erika Lorenz, KLJ Witness;
Josh Skluzacek, Dickinson (Specifying recipients);
Dickinson Attorney;
Dickinson Auditor;
Dickinson Mayor/President of Commission;
Wayne Zacher;
Clint Morgenstern;
Chad Orn;
Laurie Martin;
Stacey Hanson

**North Dakota Department of Transportation
STATE PLANNING & RESEARCH AGREEMENT**

Federal Award Information – to be provided by NDDOT

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| ALN No: 20.205 Authorizing Statute: 23 CFR Part 420 <input type="checkbox"/> Subpart A <input type="checkbox"/> Subpart B Award Name: Federal Aid Highway Program NDDOT Program Mgr: Zacher, Wayne A. Pass-through entity: North Dakota Department of Transportation (NDDOT) Contractor Name (must match UEI name): {FIELD:CONTRACTOR_NAME} Federal Award Identification No. (FAIN): {FIELD:FAIN} Period of Performance Start & End Date: {FIELD:PERFORMANCE_START_DATE} to {FIELD:PERFORMANCE_END_DATE} Amount of Federal Funds Obligated by this action: \${FIELD:TOTAL_FEDERAL_FUNDS_OBLIGATED} = Federal \${FIELD:TOTAL_STATE_FUNDS_OBLIGATED} = State \${FIELD:TOTAL_OTHER_FUNDS_OBLIGATED} = Other (Match) \${FIELD:GRAND_TOTAL_OBLIGATED} = Grand Total Total Federal Award Committed to Contractor (includes matching funds): \${FIELD:TOTAL_FEDERAL_FUNDS_COMMITTED} = Federal \${FIELD:TOTAL_STATE_FUNDS_COMMITTED} = State \${FIELD:TOTAL_OTHER_FUNDS_COMMITTED} = Other (Match) \${FIELD:GRAND_TOTAL_COMMITTED} = Grand Total | ALN Title: Highway Planning and Construction Awarding Fed. Agency: Federal Highway Administration (FHWA) Telephone: (701)328-4828 Email: wzacher@nd.gov Type of Award: <input type="checkbox"/> Acquisition Contract <input type="checkbox"/> Research (R&D) Contractor UEI No.: {FIELD:CONTRACTOR_UEI_NUMBER} Federal Award Date (Authorization Date): {FIELD:AUTHORIZATION_DATE} Total Amount of Federal Funds Obligated: \${FIELD:TOTAL_FEDERAL_FUNDS_OBLIGATED} = Federal \${FIELD:TOTAL_STATE_FUNDS_OBLIGATED} = State \${FIELD:TOTAL_OTHER_FUNDS_OBLIGATED} = Other (Match) \${FIELD:GRAND_TOTAL_OBLIGATED} = Grand Total Federal Award Project Description: {FIELD:FEDERAL_AWARD_PROJECT_DESCRIPTION} |
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Notice to Contractors: 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 Name: Dickinson Transportation Master Plan and Comprehensive Plan

Description: Planning Study

Project Number: SPR-P038(003), PCN 22244

This agreement is entered into by and between the State of North Dakota, acting 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 Dickinson, hereinafter referred to as the City, whose address is 38 1st St W, Dickinson, ND 58601, and KLJ, hereinafter referred to as the Contractor, whose address is 4585 Coleman Street, Bismarck, ND 58503-0431.



WHEREAS, NDDOT is the designated state agency for the administration of federal transportation planning and research funds; and

WHEREAS, NDDOT desires professional services for a local transportation planning study; and

WHEREAS, NDDOT has provided State Planning and Research (SPR) funds for the purpose of funding the Dickinson Transportation Master Plan and Comprehensive Plan.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, NDDOT, City and the Contractor agree as follows:

1. **Scope of Work**: The Contractor shall prepare a Dickinson Transportation Master Plan and Comprehensive Plan for the city of Dickinson as described in the Scope of Work, which is attached hereto and made a part hereof.
2. **Period of Performance**: This agreement will begin November 15, 2023 and be completed no later than December 31, 2025.
3. **Costs**: NDDOT shall reimburse the Contractor 80 percent of all eligible costs as identified in the scope of work attachment, up to a maximum of \$280,000. The City shall provide the remaining 20 percent and all cost overruns from non-eligible federal funds. Pay requests must be submitted within 90 days of the termination of this agreement. Reimbursement will be predicated on availability of federal funds.
4. **Payments**: The NDDOT will make all contract payments on behalf of the City. No costs will be incurred by NDDOT for this project. The City will reimburse the NDDOT for payments made less the amount paid by FHWA. Payment will be made upon receipt of the Contractor's request for reimbursement.

If the City fails to reimburse NDDOT within 60 days after billing for funds advanced on behalf of the City, this document will constitute an assignment of funds now or hereafter coming into the hands of the state treasurer, which would otherwise be distributed to the City out of the Highway Tax Distribution Fund, NDCC 54-27-19. The state treasurer is hereby directed to pay NDDOT all such funds until the total equals the sum billed pursuant to this agreement.

5. **Cost Principles**: The Contractor agrees to follow the cost principles and allowable cost guidelines in accordance with 48 CFR 31 and applicable provisions of 2 CFR 200.
6. **Federal Funding**: Federal funds may not be obligated prior to authorization by the Federal Highway Administration.



7. **Terms Extending Beyond Biennium:** Payments by NDDOT beyond the current state biennium shall be contingent on sufficient funds being appropriated by the federal government or state legislature for NDDOT. In the event of insufficient appropriations in future biennium, NDDOT may give a minimum of 30 days' notice to terminate this agreement/contract and have no further obligation to the City or Contractor.
8. **Records:** The City and Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after closeout of the project with FHWA, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied. The City and Contractor agree to conduct records retention and access in accordance with 2 CFR Part 200.334-338, as applicable.
9. **Records Inspection:** NDDOT and FHWA shall at all times during the agreement and for three years after closeout with FHWA be permitted to inspect the work and have access to all books, records, correspondence, instructions, receipts, vouchers, and memorandum pertaining to the work hereunder and copies thereof shall be furnished when requested.
10. **Closeout:** NDDOT, the City, and the Contractor will comply with 2 CFR 200.344 closeout requirements. The contractor shall submit, no later than 90 calendar days after the period of performance end date of this agreement, all financial, performance and other reports as required by terms and conditions of this agreement. The NDDOT will close out the agreement with the federal awarding agency when it determines that all applicable administrative actions and all required work have been completed.
11. **Subcontracting:** The City or Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.
12. **Assignments:** The City or Contractor shall not assign nor transfer the City's and Contractor's interests or duties under this agreement without the express written consent of the state.
13. **Procurement:** The Contractor shall follow the policies and procedures of the state when procuring property and services under a federal award, in accordance with 2 CFR 1201.317.
14. **Equipment:** The Contractor shall follow the policies and procedures of the state with respect to use, management and disposal of equipment acquired under a federal award, in accordance with 2 CFR 1201.313.



15. **Procurement of Recovered Materials:** In accordance with 2 CFR 200.323, the Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

16. **Termination:**

- a. This contract may be terminated by mutual consent of all parties, or by any party upon 30 days' notice, in writing, and delivered by certified mail or in person.
- b. In addition, NDDOT may terminate this contract effective upon delivery of written notice to the City and Contractor, or at such later date as may be established by NDDOT, under any of the following conditions:
 - i. If NDDOT funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
 - ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract;
 - iii. If any license or certificate required by law or regulation to be held by the City or Contractor to provide the services required by this contract is for any reason denied, revoked, or not renewed;

Any such termination of this contract under (i), (ii), or (iii), above, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- a. NDDOT, by written notice to the City and Contractor, may terminate the whole or any part of this agreement:
 - i. If the City or Contractor fails to provide services called for by this contract within the time specified herein or any extension thereof; or
 - ii. If the City or Contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from NDDOT, fails to correct such failures within ten days or such longer period as NDDOT may authorize.

17. **Amendments:** The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.



18. **Civil Rights**: Appendices A and E of the Title VI Assurances, attached, are hereby incorporated into and made a part of this agreement.
19. **Nondiscrimination – Compliance with Laws**: The City and Contractor agree to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.
20. **Disadvantaged Business Enterprise**: It is the policy of NDDOT and Federal Highway Administration that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or part with federal funds, in accordance with 49 CFR Part 26. The City and Contractor agree to ensure that disadvantaged business enterprises have the opportunity, as appropriate.
21. **Disability**: The City and Contractor shall ensure that no qualified disabled individual, as defined in 29 U.S.C. 794 and 49 C.F.R. Part 27 shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance under this agreement.
22. **Audits**: Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with Subpart F, 2 CFR 200. A copy of such audit, covering the term of this agreement, shall be submitted to NDDOT. Entities that expend \$750,000 or less in federal funds, in a fiscal year, from all sources may be subject to reviews by NDDOT at its discretion. Entities must fill out and submit to NDDOT the Single Audit Certification (SFN 60639) and schedule of federal expenditures for their fiscal year end. Single Audits must be submitted to the Federal Audit Clearinghouse within 30 calendar days after the entity received the report from their auditors, or nine months after the end of the audit period, whichever comes first. The requirements are applicable to counties, cities, metropolitan planning organizations, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.
23. **Conflicts of Interest**: No official or employee of a state or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector, or other person performing services for a state or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a state or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a state or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of NDDOT and of such other governmental instrumentality, and such



officer, employee, or person has not participated in such acquisition for and in behalf of the state.

24. **Indemnification**: The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
25. **Debarment and Suspension Clause**: The City and Contractor are advised that their signature on this agreement certifies that the company or any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible 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.
26. **Telecommunications Certification**: By signing this agreement, the Contractor certifies, in accordance with 2 CFR 200.216 and Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), that it will not obligate or expend grant funds to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor will include this requirement in all subcontracts related to this agreement.
27. **Byrd Anti-Lobbying Amendment**: (31 USC 1352) Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up the non-Federal award.
28. **Governing Law and Venue**: Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this contract shall be governed by and construed in accordance with applicable federal law and the laws of the state of North Dakota, at the time this contract was executed. All disputes arising from this agreement shall be brought in the South Central District Court of the state of North Dakota.
29. **Merger and Waiver**: This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this



agreement. The City and Contractor, by the signature below of its authorized representative, hereby acknowledges that the City and Contractor have read this agreement, understands it, and agrees to be bound by its terms and conditions.

- 30. **Ownership of Work Product:** All work products and copyrights of the contract, which result from this contract, are the exclusive property of NDDOT, with an unlimited license for use by the federal government and its assignees without charge.
- 31. **Severability:** If any part of this agreement is determined to be invalid, illegal, or unenforceable, the determination does not affect the validity, legality, or enforceability of any other part of this agreement, and the remaining parts of this agreement shall be carried out by each party.
- 32. **Compliance with Law:** In performance of its obligations under this agreement, the Contractor shall comply with and require each of its subcontractors to comply with all applicable provisions of federal, state, and local laws and regulations.
- 33. **Personnel:** The Contractor assures that personnel will be available to perform the required services. Such personnel shall not be considered employees of NDDOT for any purpose.
- 34. **Notice:** All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at their respective places of business as set forth below or at a place designated hereafter in writing by the parties.

North Dakota Dept. of Transportation

Local Government Division

608 East Boulevard Avenue

Bismarck, ND 58505-0700



CITY VARIABLE

EXECUTED by the city of Dickinson at Dickinson, North Dakota, the date last below signed.

APPROVED:

City of: _____

CITY ATTORNEY (TYPE OR PRINT)

NAME (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

*

TITLE

DATE

ATTEST:

CITY AUDITOR (TYPE OR PRINT)

SIGNATURE

* Mayor or President City Commission

OTHER ENTITY

EXECUTED the date last below signed.

WITNESS:

CONTRACTOR:

NAME (TYPE OR PRINT)

NAME (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

TITLE

DATE



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

WITNESS

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION:

NAME (TYPE OR PRINT)

DIRECTOR (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

DATE

CLA 1011 (Div. 38)
L.D. Approved 10-2-23, 11-23

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE



CERTIFICATION OF CONTRACTOR

I hereby certify that I am the _____ and duly authorized representative of the firm of _____, whose address is _____, and that neither I nor the firm I here represent has:

- A. Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement.
- B. Agreed, as an express or implied condition for obtaining this agreement, to employ, or retain the services of any firm or person in connection with carrying out the agreement.
- C. Paid, or agreed to pay, to any firm, organization, or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for or in connection with, procuring, or carrying out the agreement; except as here expressly stated (if any): _____.
- D. Violated the Copeland "Anti-Kickback Act," 18 USC 874, 29 CFR Part 3. This act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled.

I acknowledge that this certificate is to be furnished to the North Dakota Department of Transportation and the Federal Highway Administration, in connection with this agreement involving participation of federal aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

WITNESS:

CONTRACTOR:

NAME (TYPE OR PRINT)

NAME (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE



CERTIFICATION OF CITY

I hereby certify that I am the _____ of _____, North Dakota, and that the consulting firm or his/her representative has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this agreement to:

- A. Employ or retain, or agree to employ or retain, any firm or person, or
- B. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as here expressly stated (if any) _____.

I acknowledge that this certificate is to be furnished to the Federal Highway Administration, in connection with this agreement involving participation of federal aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

MAYOR/PRESIDENT/CHAIRPERSON:

MAYOR/PRESIDENT/CHAIRPERSON(TYPE OR PRINT)

SIGNATURE

DATE

ATTEST:

AUDITOR

SIGNATURE



CERTIFICATION OF DEPARTMENT OF TRANSPORTATION

I hereby certify that I am the _____ of the North Dakota Department of Transportation and that the consulting firm or his/her representative has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this agreement to:

- A. Employ or retain, or agree to employ or retain, any firm or person, or
- B. Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as here expressly stated (if any) _____.

I acknowledge that this certificate is to be furnished to the Federal Highway Administration, in connection with this agreement involving participation of federal aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

WITNESS:

**NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

NAME(TYPE OR PRINT)

NAME (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE



CERTIFICATION OF LOCAL MATCH

It is hereby certified that the City of _____ will provide non-federal funds, whose source is identified below, as match for the amount the City is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided by City. Please designate the source(s) of funds in the City budget that will be used to match the federal funds obligated for this project through the North Dakota Department of Transportation.

Source:

Executed at _____, North Dakota, the last date below signed.

ATTEST:

APPROVED:

NAME (TYPE OR PRINT)

City of _____

SIGNATURE

NAME (TYPE OR PRINT)

DATE

SIGNATURE

*

TITLE

DATE

*Mayor or President City 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 Nondiscrimination 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

Service Contracts with Private Individuals, Companies, Corporations, Etc.:

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

Contractor 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 are **\$500,000 per person** and **\$2,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The State of North Dakota, its agencies, officers, and employees (State) shall be endorsed as an **additional insured** on the commercial general liability and automobile liability policies. The State of North Dakota 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.
- 4) Said endorsements shall contain a **“Waiver of Subrogation”** in favor of the state of North Dakota.
- 5) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

Contractor shall furnish a certificate of insurance evidencing the requirements in 1, 3, and 4, above to the undersigned State representative prior to commencement of this agreement.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time. Any attorney who represents the State under this contract 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.

When a portion of a Contract is sublet, the Contractor shall obtain insurance protection (as outlined above) to provide liability coverage to protect the Contractor and the State as a result of work undertaken by the Subcontractor. In addition, the Contractor shall ensure that any and all parties performing work under the Contract are covered by public liability insurance as outlined above. All Subcontractors performing work under the Contract are required to maintain the same scope of insurance required of the Contractor. The Contractor shall be held responsible for ensuring compliance with those requirements by all Subcontractors.

Contractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State. Any insurance, self-insurance or self-retention maintained by the State shall be excess of the Contractor's insurance and shall not contribute with it. The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the policy(ies) shall be the sole responsibility of the Contractor. This insurance may be in a 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 State will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above.

RM Consulted 2007
Revised 07-23

