Central Dakota MPO Policy Board Meeting
Thursday, May 23, 2024, at 4:30 PM
3rd Floor Executive Conference Room, City Hall (10 3rd Ave SW)
Any person needing special accommodation for the meeting is requested to notify the City Clerk's office at 857-4752.

1. ROLL CALL

2. APPROVAL OF MINUTES

   2.1. REVIEW AND APPROVAL OF MINUTES

   It is recommended the Central Dakota MPO Policy Board approve the minutes of the April 25, 2024 regular meeting and the April 29, 2024 special meeting.

3. INTRODUCTION OF NEW MPO EXECUTIVE DIRECTOR

4. OLD BUSINESS

   4.1. REVIEW/APPROVAL OF THE UPWP CONTRACT

      1. **Overview of contract.**
      2. **Local Match Discussion**
      3. **City of Minot will be subrecipient, but added signature blocks for Policy Board to sign also.**

   4.2. CDMPO 2050 MTP UPDATE

   4.3. MPO TO DO LIST UPDATE

5. NEW BUSINESS

6. UPCOMING INFORMATION

   6.1. NEXT SCHEDULED MEETING - JUNE 27, 2024 AT 4:30 PM IN THE 3RD

FLOOR EXECUTIVE CONFERENCE ROOM AT CITY HALL.

7. ADJOURNMENT

CENTRAL DAKOTA METROPOLITAN PLANNING ORGANIZATION
MEETING MINUTES
April 25, 2024 at 4:30 PM
3rd Floor Executive Conference Room, City Hall (10 3rd Ave SW)

Chair Fjeldahl called the meeting of the Central Dakota MPO to order at 4:31 pm, the following were present:

Burlington City- Zach Walker
Minot City- Harold Stewart, Alternate Carrie Evans
Surrey City- Michael Thiesen
Ward County- Bucky Anderson, John Fjeldahl

Others Present: Dana Larsen, Wayne Zacher, Lance Meyer, Stacey Hanson, David Lakefield, and Mikayla McWilliams

Review/Approval of February Policy Board Meeting Minutes
The March 28, 2024 meeting minutes were presented for review and approval. Zach Walker moved to approve the March 28, 2024 meeting minutes. The motion was seconded by Bucky Anderson and carried the following vote: ayes: Anderson, Evans, Fjeldahl, Stewart, Thiesen, Walker; nays: none.

Discussion City Finance/Human Resource Integration with MPO
Lance Meyer presented a memo to the board, which is attached to the agenda, outlining the options and discussion on how the money will flow through the different agencies and the oversight of the different agencies. Lance had a recommendation of the board approving alternative 1.

This option would be similar structure to the MPL due to how it is run by its own board and supported by city staff. The City of Minot would be the subrecipient for the contracts with the NDDOT, the MPO would use the City of Minot Tax ID number, and the staff would be a City of Minot employee for payroll and benefits. The employee would still report to the policy board and the board can decide conditions of staffing such as accruals/policies.

The bylaws might need to be updated for clarity. The budget/UPWP will be presented to the policy board and each entity's governing body would need to include the match in the budget. The final UPWP would go to the NDDOT for final approval. The entire budget would end up in the City of Minot's final budget for its revenues and expenses, but it will be its own fund and the policy board will decide how the money is spent. Budget year 2025, the estimated amount from the federal government is $499,228 and with the 20% local match the total for the year would be $624,036.

Paul Benning arrived at the meeting at 4:49 pm.

Mike Thiesen moved the policy board approve alternate #1. The motion was seconded by Carrie Evans and carried the following vote: ayes: Anderson, Evans, Fjeldahl, Stewart, Thiesen, Walker; nays: none.

David Lakefield provided a point of clarification on the insurance. The City of Minot has a $10 million liability policy with NDIRF, which could cover the MPO with alternative 1 and the governance liability could be included. For the $2 million liability insurance, it would cost the MPO about $2,000-$5,000 annually. Lance believed the bylaws could wait for the update until the Executive Director position is fulfilled. Wayne will work on the contract process.

UPDATE ON EXECUTIVE DIRECTOR

Since the last meeting, the City of Minot has received one new application once the job listing was reposted. This applicant has an extensive background in planning. A special meeting can be called to keep the momentum on hiring the Executive Director position. HR also solicited 3 quotes for recruiting services and received 2 proposals.

Carrie Evans moved the policy board interview the applicant as soon as possible, have the board decide on the hiring of the applicant, and if not hired move forward with the recruiter quotes. The motion was seconded by Mike Thiesen and carried the following vote: ayes: Anderson, Evans, Fjeldahl, Stewart, Thiesen, Walker; nays: none.

A special meeting will be set up for Monday, April 29, 2024 at 8:00 am to interview applicant. Mikayla McWilliams, City Clerk, will post the meeting and send the committee the resume of applicant and the recruiter proposals. Harold Stewart will work on developing the interview questions and will send them out to the committee as soon as possible.

TITLE VI PLAN REVIEW, DISCUSSION, AND POTENTIAL APPROVAL

Lance discussed how the Central Dakota MPO can develop a Title VI plan over time, because it is necessary to have its own stand-alone plan. By adopting the City of Minot Title VI plan, it will give the CDMPO the time it needs to develop one.

Mike Thiesen moved the policy board adopt the City of Minot Title VI plan as approved by City Council until the CDMPO can finalize their own. The motion was seconded by Carrie Evans and carried the following vote: ayes: Anderson, Evans, Fjeldahl, Stewart, Thiesen, Walker; nays: none.

CDMPO 2050 MTP RFP REVIEW, DISCUSSION, AND POTENTIAL APPROVAL

Dana Larsen discussed the MTP RFP and how a bulk of the information is required by the federal and state government regulations. The RFP lays out items such as:

- Creating a public participation plan
- Project Management
- Section Committee makeup and how the committee will produce a recommendation to the policy board
- Timeline on the RFP process
- Budget of $520,000

The RFP will be sent out to the qualification base. The firm's proposals will vary in scope depending on what they can provide within the budgeted amount. This is a qualification-based process, so there will be a sealed cost estimate that will only be opened if the firm is selected.

Harold Stewart moved the policy board approve the RFQ as presented. The motion was seconded by Mike Thiesen and carried the following vote: ayes: Anderson, Evans, Fjeldahl, Stewart, Thiesen, Walker; nays: none.

MPO TO DO LIST UPDATE

Updates include:

- Remove the Tax ID – MPO will use the City of Minot Tax ID number
- MTP – RFP is approved
- Functional Roadway Class – NDDOT will look it over and staff will work on spreadsheet.

Next Scheduled Meeting

The next Policy Board meeting is scheduled for May 23, 2024 at 4:30 pm in the 3rd Floor Executive Conference Room at City Hall.

Adjournment

There being no further business, Carrie Evans motioned the board meeting be adjourned. Motion was seconded by Mike Thiesen and carried unanimously. The meeting adjourned at 6:01 pm.

CENTRAL DAKOTA METROPOLITAN PLANNING ORGANIZATION
MEETING MINUTES
April 29, 2024 at 8:00 AM
3rd Floor Executive Conference Room, City Hall (10 3rd Ave SW)

Chair Fjeldahl called the meeting of the Central Dakota MPO to order at 7:59 am, the following were present:

Burlington City- Zach Walker
Minot City- Mark Jantzer, Harold Stewart, Alternate Carrie Evans
Surrey City- Michael Thiesen
Ward County- Bucky Anderson, John Fjeldahl

Others Present: Mikayla McWilliams

<u>Interview of Application for Executive Director Position with the Central Dakota MPO</u>
The interview of applicant, John Van Dyke, for the Executive Director position began at 8:00 am. The Central Dakota MPO Policy board asked a series of 16 interview questions. The actual interview ended at 8:38 am with the applicant.

<u>Discussion and Potential Action on Executive Director Position</u>
The policy board felt the applicant had good experience, was professional, and is a thoughtful thinker. The board discussed the position was posted with the salary range of $100,000-$125,000.

Mike Thiesen moved the policy board offer John Van Dyke the Executive Director position with a starting rate of $118,000 and requiring the applicant to respond to the offer by the end of day.

The motion was seconded by Zach Walker and carried the following vote: ayes: Anderson, Evans, Fjeldahl, Jantzer, Stewart, Thiesen, Walker; nays: none.

John Van Dyke accepted the position with a May 20, 2024, start date.

<u>Discussion and Potential Action of Executive Director Recruiter Proposals</u>
Harold Stewart moved the policy board pull item #3 from agenda.

The motion was seconded by Mike Thiesen and carried the following vote: ayes: Anderson, Evans, Fjeldahl, Jantzer, Stewart, Thiesen, Walker; nays: none.

<u>Adjournment</u>

There being no further business, Harold Stewart motioned the board meeting be adjourned. Motion was seconded by Mike Thiesen and carried unanimously. The meeting adjourned at 9:08 am.

MEMO TO: Ron Henke
Director

FROM: Zacher, Wayne A.

DATE: 05/17/2024

SUBJECT: 38231485: Central Dakota MPO 2024 UPWP Contract

This is Central Dakota MPO's first UPWP Contract, which expires 12/31/24. We will enter into a new contract with the MPO for 2025. The approved UPWP is for 2024 only. We will encourage the MPOs to still consider a rolling 2-year UPWP.

There were 3 one-time changes in this UPWP Contract. I changed the Period of Performance from beginning January 1st to May 1st, but we will still be held to the federal authorization date in the top table. I also added signature blocks for the MPO to sign this agreement even though the City of Minot is the Subrecipient.

If you have any questions, please contact me at 701-328-4828.

38/waz

DocuSign signature tree:
Stacey Hanson;
Paul Benning;
Shannon Sauer;
Lance Meyer, City of Minot (CDMPO);
CDMPO Policy Board Chairperson
City of Minot Mayor/President of Commission;
City of Minot witness;
Wayne Zacher;
Clint Morgenstern;
Chad Orn;
Stacey Hanson

North Dakota Department of Transportation
METROPOLITAN PLANNING ORGANIZATION AGREEMENT

Federal Award Information – to be provided by NDDOT

Assistance Listing No.: 20.205, 20.505

Assistance Listing Title: Highway Planning & Construction, Metropolitan Transportation Planning & State & Non-Metropolitan Planning & Research

Award Name: Federal-Aid Highway Program

Awarding Federal Agency: Federal Highway Administration (FHWA), Federal Transit Administration (FTA)

Pass-through entity: North Dakota Department of Transportation (NDDOT)

NDDOT Program Mgr.: Zacher, Wayne A. Telephone: 701-328-4828

Subrecipient/LPA Name:

Subrecipient Unique Entity Identifier (UEI) No.:

Federal Award Identification No. (FAIN):

Federal Award Date:

Subaward Period of Performance Start & End Date:

Subaward Budget Period Start & End Date:

Amount of Federal Funds Obligated by this action: $

Total Amount of Federal Funds Obligated to the subrecipient: $

Total Federal Award: $

Federal Award Project Description:

Research and Development Activities:

Indirect Cost Rate (ICAP):

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.

Entity: City of Minot (Central Dakota Metropolitan Planning Organization)
Description: Unified Planning Work Program
Duration: 2024

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 Minot, hereinafter referred to as the Subrecipient, whose address is 10 3rd Ave SW, Minot, ND 58701.

WHEREAS, Federal Law 23 U.S.C., Section 134, requires that a continuing, comprehensive, and cooperative (3-C) transportation planning process be carried out between state and local governments in urbanized areas, and

WHEREAS, the Subrecipient has been designated by the Governor of North Dakota as the Metropolitan Planning Organization responsible, together with NDDOT, for carrying out the provisions of 23 U.S.C. 134, and

WHEREAS, Section 5303 Federal Transit Administration (FTA) and PL Federal Highway Administration (FHWA) funding, hereinafter referred to as Consolidated Planning Grant (CPG) funds will be administered by NDDOT for the purpose of transportation planning in urbanized areas, and

WHEREAS, the Subrecipient is eligible to receive CPG funds from both FHWA and FTA under 23 U.S.C. 104(f) and 49 U.S.C. 5305(d), and

WHEREAS, the Subrecipient has prepared and approved a Unified Planning Work Program (UPWP) in accordance with the guidelines set forth by the FHWA and FTA for utilization of available CPG funds.

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

1. **SCOPE OF WORK:** The Subrecipient shall perform, in a satisfactory and timely manner, those tasks and activities as outlined in the Subrecipient's UPWP and approved by NDDOT, FHWA, and FTA, a copy of which is attached hereto and made a part hereof. The Subrecipient shall follow NDDOT policies and procedures, as outlined in the NDDOT Local Government Manual, in the completion of the UPWP and abide by all applicable federal regulations, including 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

2. **PERIOD OF PERFORMANCE**: The period of performance will be from May 1, 2024 to December 31, 2024.

3. **COMPENSATION**:

    - NDDOT shall reimburse the Subrecipient 80 percent of all eligible costs as presented in the budget section of the UPWP, up to a maximum of $443,482.47. The Subrecipient shall provide the remaining 20 percent and all cost overruns from non-federal funds. Budget transfers among cost categories shall comply with 2 CFR 200.

- The Subrecipient will make all contract payments. No costs will be incurred by NDDOT for this project. NDDOT will reimburse the Subrecipient for the federal aid eligible amount. Payment will be made upon receipt of the Subrecipient's request for reimbursement.
- The Subrecipient shall provide monthly billing to NDDOT. To be eligible, costs must be limited to those costs that are allowed under federal regulations (2 CFR 200). Monthly billings will include the submittal of a report documenting the tasks completed in the billing period.
- All requests for reimbursement must be submitted to NDDOT within 90 days of the period of performance end date of this agreement. NDDOT may take actions as outlined in 2 CFR 200.339, such as withholding payments, pending correction of non-compliance with this agreement. All invoices are subject to audit, at NDDOT's discretion.
- Payments under this agreement will be made from federal funds obtained through the Infrastructure Investment and Jobs Act of 2021, Public Law 117-58, 23 U.S.C. 104. The Subrecipient is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by Subrecipient's failure to comply with federal requirements. Reimbursement will be predicated on availability of federal funds. The Subrecipient further agrees to pay any and all lawful claims arising out of or incidental to the performance of the work covered by this agreement, if not eligible for federal funds.
- All work provided by the Subrecipient under this agreement must be performed to NDDOT's satisfaction and in accordance with all applicable federal, state, and local laws and regulations. The Subrecipient will not receive payment for work found by NDDOT to be unsatisfactory or performed in violation of federal, state, or local law.

4. **INDIRECT COST RATE PROVISION:** Federal agencies and NDDOT shall review and approve the negotiated indirect cost rate, unless there is a federal statute that states otherwise, or a federal agency head has made other approved provisions. Any rate approved by a federal agency, or a cognizant agency must be approved by NDDOT.

   If the subrecipient does not have a federally negotiated indirect cost rate, the NDDOT can either:
   - negotiate an indirect rate with the subrecipient.
   - allow the de minimis 10% flat rate (the de minimis rate, is not applicable in certain cases (200.414(f); Appendix VII.D.1.B).) This rate may be used indefinitely, until the subrecipient seeks to formally negotiate a rate. If the de minimis rate is used, the NDDOT does not need to review and approve.

5. **COST PRINCIPLES**: The Subrecipient agrees to follow the cost principles and allowable cost guidelines in accordance with 2 CFR Part 200, Subpart E. The Subrecipient will maintain a financial management system that complies with the minimum requirements of 2 CFR Part 200.

6. **FEDERAL FUNDING:** This contract is subject to a financial assistance contract between the state of North Dakota, the Federal Highway Administration, and the USDOT. Federal funds may not be obligated prior to authorization by FHWA.

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, NDDOT may give a minimum of 30 days' notice to terminate this agreement/contract and have no further obligation to the Subrecipient.

8. **RECORDS AND INSPECTION**: The Subrecipient shall maintain all accounting and project records NDDOT may require. NDDOT and the Federal Government shall at all times 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. 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 the closure of the consolidated planning grant, 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 Subrecipient agrees to conduct records retention and access in accordance with 2 CFR Part 200.334-338, as applicable.

9. **SUBCONTRACTING**: The Subrecipient 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. If a subcontract is made, the Subrecipient must follow procedures outlined in 2 CFR 200.331.

10. **SUBCONTRACT PROVISIONS:** The Subrecipient shall include the following statement of financial assistance in any advertisement or invitation to bid for any procurement under this agreement:

    "This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT."

11. **ASSIGNMENTS**: The Subrecipient shall not assign nor transfer the Subrecipient's interests or duties under this agreement without the express written consent of the state.

12. **RISK ASSESSMENTS:** The NDDOT conducts pre-award risk assessments prior to issuing a subaward contract. The Subrecipient shall conduct risk assessments of their sub awardees either before or after making the award to determine the appropriate level of monitoring. The contractor shall document its procedures for assessing risk and have them available upon NDDOT request.

13. **RISK BASED MONITORING:**

a. The NDDOT has conducted a risk assessment, as required by 2 CFR 200.332, and has determined the following risk-based monitoring requirements for this award:

- All payments are on a reimbursement basis.
- Require submittal of Title VI pre-authorization paperwork.
- Require submittal of FFATA form.
- Annual Mid-Year Review.
- Require submittal of quarterly progress reports.
- Perform site visit or desk review of select area as deemed necessary.
- Require training in area deemed necessary.

Risk assessments may be repeated throughout the period of performance and monitoring requirements adjusted based on level of risk.

b. In the event of noncompliance or failure to perform, the NDDOT has the authority to apply remedies, in accordance with 2 CFR 200.339, including but not limited to temporarily withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by the subrecipient, debarment or other remedies including civil and/or criminal penalties, as appropriate and in accordance with 2 CFR 200.332.

14. **PROCUREMENT:** The Subrecipient 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.

15. **EQUIPMENT:** The Subrecipient 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.

16. **PROCUREMENT OF RECOVERED MATERIALS:** In accordance with 2 CFR 200.323, the Subrecipient and its contractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

17. **TERMINATION**:

a. This contract may be terminated by mutual consent of both parties, or by either 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 Subrecipient, 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 Subrecipient 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 Subrecipient, may terminate the whole or any part of this agreement:

i. If the Subrecipient fails to provide services called for by this contract within the time specified herein or any extension thereof; or

ii. If the Subrecipient 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.

18. **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.

19. **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.

20. **CLOSEOUT:** NDDOT and the Subrecipient 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 the 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 and the agreement has reached its period of performance end date.

21. **CIVIL RIGHTS**: Appendices A and E of the Title VI Assurances, attached, are hereby incorporated into, and made a part of this agreement.

22. **NONDISCRIMINATION – COMPLIANCE WITH LAWS**: The Subrecipient agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

23. **AFFIRMATIVE ACTION PROGRAMS:** The Subrecipient and subcontractors shall develop and maintain an affirmative action program, as defined in 49 CFR Part 21 and a Minority Business Enterprise Action Program in accordance with 49 CFR Part 26, as appropriate; to ensure that persons and businesses are not discriminated against because of race, religion, color, national origin, disability, age, sex, political opinions or affiliations, or status with regard to marriage or public assistance, in programs, projects and activities.

    Should the Subrecipient fail to comply with any Federal civil rights statute, or any order or regulation issued under such statute, NDDOT shall notify the Subrecipient of the determination and shall direct the Subrecipient to take the action that may be necessary to ensure compliance. If, within a reasonable period of time, after receiving notification the Subrecipient fails or refuses to take action required by the notice, NDDOT shall take action as may be determined to be appropriate, including but not limited to the withholding of payments to the Subrecipient under the agreement in whole or in part.

24. **DISADVANTAGED BUSINESS ENTERPRISE**: In the performance of this agreement, the Subrecipient shall cooperate with NDDOT in meeting its commitments and goals with regard to the maximum utilization of disadvantaged business enterprises and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum practical opportunities to compete for subcontract work under this agreement. The Subrecipient shall comply with the requirements of 49 CFR Part 26.

    The Subrecipient shall not discriminate on the basis of race, color national origin, or sex in the award and performance of any USDOT assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Subrecipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Subrecipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. seq.)

    The Subrecipient will include the following paragraph verbatim in any subcontracts they sign relative to this project:

    The Subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Subrecipient shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Subrecipient to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the NDDOT deems appropriate.

25. **PROMPT PAYMENT**: Payment of invoices by the Subrecipient shall be within 20 days of Receipt, as required for NDDOT's DBE program.

26. **DISABILITY**: The Subrecipient 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 this 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.

27. **DRUG-FREE WORKPLACE:** The Subrecipient shall comply with the requirements for drug-free workplace, in accordance with 49 CFR 32, Subpart B.

28. **AUDITS:**

    a. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 CFR Part 200, Subpart F. 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. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.
    b. The Subrecipient must fill out and submit to NDDOT the Single Audit Certification (SFN60639) and a schedule of federal expenditures for their fiscal year end. The Subrecipient must submit their Single Audit to NDDOT as well as the Federal Audit Clearinghouse. This audit report must be submitted within 30 calendar days after the Subrecipient receives the report from their auditors, or nine months after the end of the audit period, whichever comes first.

29. **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.

30**. INDEMNIFICATION**: The Risk Management Appendix, attached, is hereby incorporated, and made a part of this agreement.

31**. PERSONNEL:** The Subrecipient assures that personnel will be available to perform the required services. Such personnel shall not be considered employees of NDDOT for any purpose.

32**. DISCLAIMER:** The Subrecipient must include the following statement in all plans, studies, and reports funded under this contract: "The preparation of this report has been funded in part by the US Department of Transportation, Federal Highway Administration and Federal Transit Administration. The contents of this document reflect the views of the authors who are responsible for the facts or accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the US Department of Transportation. The report does not constitute a standard, specification, or regulation."

33**. COMPLIANCE WITH LAW:** In performance of its obligations under this agreement, the Subrecipient shall comply with and require each of its subcontractors to comply with all applicable provisions of Federal, State, and local laws and regulations. The provisions of this agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns. The failure of the state to enforce any provisions of this contract shall not constitute a waiver by the State of that or any other provision.

34**. TELECOMMUNICATIONS CERTIFICATION:** By signing this agreement, the Subrecipient 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 Subrecipient will include this requirement in all subcontracts related to this agreement.

35**. BYRD ANTI-LOBBYING AMENDMENT:** (31 USC 1352) Subrecipients that apply or bid for an award exceeding $100,000 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 to the non-Federal award.

36. **DEBARMENT AND SUSPENSION**: The Subrecipient is 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. For all bids or proposals of third-party contracts and subcontracts, the Subrecipient shall:

   a. Obtain from all bidders a signed Certification of Primary Participant Regarding Debarment, Suspension, and Other Responsibility Matters, as provided in 2 CFR 180 and 2 CFR 1200.
   b. Check the Excluded Parties Listing System (EPLS) at www.sam.gov to ensure the selected vendor or contractor has not been excluded from doing business with the federal government. The Subrecipient shall document the search results and include as part of the third-party contract.
   c. Add a clause to the subcontract that the subcontractor shall maintain active registration in the System for Award Management at www.sam.gov.

37. **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.

38. **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 Subrecipient, by the signature below of its authorized representative, hereby acknowledges that the Subrecipient has read this agreement, understands it, and agrees to be bound by its terms and conditions.

39. **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. The Subrecipient shall furnish to NDDOT copies of all data and other items prepared or developed as a part of the contract.

40. **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

41**. ADDITIONAL FEDERAL CLAUSES**: The Contractor must comply with all provisions in Appendix B, which is attached and incorporated by reference herein.

EXECUTED the date last below signed.

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

DATE

SUBRECIPIENT:

NAME (TYPE OR PRINT)

SIGNATURE

*

TITLE

DATE

MPO Approved as to substance by:

NAME (TYPE OR PRINT)

SIGNATURE

**

TITLE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION:

DEPUTY DIRECTOR FOR PLANNING (TYPE OR PRINT)

SIGNATURE

DATE

* Mayor/President of Commission

** Policy Board Chairperson

CLA 1029 (Div. 38)
L.D. Approved 10-28-14; 11-23; C.M. 05/17/2024

NDDOT North Dakota Department of Transportation

CERTIFICATION OF LOCAL MATCH

It is hereby certified that the ________________________ will provide non-federal funds, whose source is identified below, as match for the amount the Subrecipient 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 Subrecipient. Please designate the source(s) of funds in the Subrecipient 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:

____
MPO (TYPE OR PRINT)

____
SIGNATURE

____
DATE

MPO Review:

____
NAME (TYPE OR PRINT)

____
SIGNATURE

**______________________________
TITLE

____
DATE

APPROVED:

Subrecipient of ____________________

____
NAME (TYPE OR PRINT)

____
SIGNATURE

*______________________________
TITLE

____
DATE

*Mayor/President of Commission

**Policy Board Chairperson

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*).

Federal Clauses

Buy America requirements – 23 CFR 635.410

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section. However, nothing in this section shall be construed to be contrary to the requirements of § 635.409(a) of this subpart.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:

(1) The project either: (i) Includes no permanently incorporated steel or iron materials, or (ii) if steel or iron materials are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.

(2) The State has standard contract provisions that require the use of domestic materials and products, including steel and iron materials, to the same or greater extent as the provisions set forth in this section.

(3) The State elects to include alternate bid provisions for foreign and domestic steel and iron materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel and iron materials which is acceptable to the Division Administrator may be used. The contract provisions must (i) require all bidders to submit a bid based on furnishing domestic steel and iron materials, and (ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel and iron materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel and iron materials by more than 25 percent.

(4) When steel and iron materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.

(c)(1) A State may request a waiver of the provisions of this section if;

(i) The application of those provisions would be inconsistent with the public interest; or

(ii) Steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

(2) A request for waiver, accompanied by supporting information, must be submitted in writing to the Regional Federal Highway Administrator (RFHWA) through the FHWA Division Administrator. A request must be submitted sufficiently in advance of the need for the waiver in order to allow time for proper review and action on the request. The RFHWA will have approval authority on the request.

(3) Requests for waivers may be made for specific projects, or for certain materials or products in specific geographic areas, or for combinations of both, depending on the circumstances.

(4) The denial of the request by the RFHWA may be appealed by the State to the Federal Highway Administrator (Administrator), whose action on the request shall be considered administratively final.

(5) A request for a waiver which involves nationwide public interest or availability issues or more than one FHWA region may be submitted by the RFHWA to the Administrator for action.

(6) A request for waiver and an appeal from a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal will be in

writing and made available to the public upon request. Any request for a nationwide waiver and FHWA's action on such a request may be published in the **Federal Register** for public comment.

(7) In determining whether the waivers described in paragraph (c)(1) of this section will be granted, the FHWA will consider all appropriate factors including, but not limited to, cost, administrative burden, and delay that would be imposed if the provision were not waived.

(d) Standard State and Federal-aid contract procedures may be used to assure compliance with the requirements of this section.

Equal Employment Opportunity Clause – 41 CFR 60-1.4(a) and 2 CFR Part 200 Appendix II (C)

41 CFR 60-1.4(a)

(a) *Government contracts.* Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract):during the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the secretary of labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the secretary of labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the secretary of labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the secretary of labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the secretary of labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the secretary of labor as a means of enforcing such provisions including sanctions for noncompliance: *provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the united states to enter into such litigation to protect the interests of the United States.

2 CFR Part 200 Appendix II (C)

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

USDOT Disadvantaged Business Enterprise Program Requirements – 49 CFR 26

Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

THE RECIPIENT SHALL NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, OR SEX IN THE AWARD AND PERFORMANCE OF ANY DOT-ASSISTED CONTRACT OR IN THE ADMINISTRATION OF ITS DBE PROGRAM OR THE REQUIREMENTS OF 49 CFR PART 26. THE RECIPIENT SHALL TAKE ALL NECESSARY AND REASONABLE STEPS UNDER 49 CFR PART 26 TO ENSURE NONDISCRIMINATION IN THE AWARD AND ADMINISTRATION OF DOT-ASSISTED CONTRACTS. THE RECIPIENT'S DBE PROGRAM, AS REQUIRED BY 49 CFR PART 26 AND AS APPROVED BY DOT, IS INCORPORATED BY REFERENCE IN THIS AGREEMENT. IMPLEMENTATION OF THIS PROGRAM IS A LEGAL OBLIGATION AND FAILURE TO CARRY OUT ITS TERMS SHALL BE TREATED AS A VIOLATION OF THIS AGREEMENT. UPON NOTIFICATION TO THE RECIPIENT OF ITS FAILURE TO CARRY OUT ITS APPROVED PROGRAM, THE DEPARTMENT MAY IMPOSE SANCTIONS AS PROVIDED FOR UNDER PART 26 AND MAY, IN APPROPRIATE CASES, REFER THE MATTER FOR ENFORCEMENT UNDER 18 U.S.C. 1001 AND/OR THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986 (31 U.S.C. 3801 *ET SEQ.*).

Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

THE CONTRACTOR, SUB RECIPIENT OR SUBCONTRACTOR SHALL NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, OR SEX IN THE PERFORMANCE OF THIS CONTRACT. THE CONTRACTOR SHALL CARRY OUT APPLICABLE REQUIREMENTS OF 49 CFR PART 26 IN THE AWARD AND ADMINISTRATION OF DOT-ASSISTED CONTRACTS. FAILURE BY THE CONTRACTOR TO CARRY OUT THESE REQUIREMENTS IS A MATERIAL BREACH OF THIS CONTRACT, WHICH MAY RESULT IN THE TERMINATION OF THIS CONTRACT OR SUCH OTHER REMEDY AS THE RECIPIENT DEEMS APPROPRIATE.

Sanctions and Penalties for Breach of Contract – 2 CFR Part 200 Appendix II (A)

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Termination for Cause and Convenience – 2 CFR Part 200 Appendix II (B)

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Rights to Inventions Made Under a Contract or Agreement – 2 CFR Part 200 Appendix II (F)

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Debarment and Suspension - 2 CFR Part 200 Appendix II (I)

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Byrd Anti-Lobbying Amendment - 2 CFR Part 200 Appendix II (J)

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 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 U.S.C. 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 to the non-Federal award.

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 **$406,250 per person and $1,625,000 per occurrence**. The minimum limits of liability required of the State are **$406,250 per person and $1,625,000 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 $500,000 per person and $2,000,000 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 11-23

NDDOT
North Dakota
Department of Transportation

CDMPO To Do List				
Task	Start Date	Due Date	Complete date	Comments
Bylaws			10/28/2023	Approved at Oct PB Mtg.
MPO ED Job Posting	1/31/2024	Open until filled	4/29/2024	Hired 4/29/24 and is expected to start around May 20th
UPWP			3/11/2024	
3C Agreement		11/30/2023	12/20/2023	
Title VI Process				Approved by City Commission 5/6. to be submitted to NDDOT once all signatures have been obtained
Boundaries		12/29/2023	11/9/2023	Letter sent from Governor 11/9/23 the letter to the Governor included the Map. UZA approved by FHWA 12/5
Designation by Governor		12/29/2023	11/9/2023	
MPO Contract		12/31/2023		Zacher to walk through UPWP Contract. DocuSign process started 5/17.
SPR Contract with City of Minot			1/19/2024	Intended to get MPO up and running.
Rdwy Functional Class Update		12/29/2025		Roadway functional class updates for Census defined urban boundaries. Letter will be sent to jurisdictions requesting they update functional class after UZA approval. Goal to have completed by 12/29/24
Public Participation Plan				Will need to have in place sooner than later
TIP		12/29/2026		Goal is to have official TIP by 7/2026 to get projects in the STIP. Need to have MTP completed before we can have TIP because MTP feeds the TIP
Internal policies & procedures	on going			This will be ongoing for the ED once on board
MTP	1/1/2024	12/29/2026		Proposals due 5/22 (Can't sign this contract until MPO Contract is complete). Consultant recommended by interview committee will be presented at June PB
Website				Agendas can currently be found on City of Minot Website
Sam.gov registration			4/25/2024	This is no longer needed at this time based on decision at 4/25/24 PB meeting to route Contract through City of Minot
Tax ID			12/5/2023	Mike T., PB Chair, got EIN set up as of 12/5/23 and is 93-4698426. Name change was completed. Mike did comment at 4/25/24 PB meeting that he wants to get his name off of this UEI.
MPO Insurance			4/25/2024	Will need to have insurance for MPO Contract. Minimum $2,000,000/occurrence and $500,000/person. Contract will be through the City of Minot, so the insurance will be as well.