

CONTRACT APPROVAL

SUGGESTED MOTION:

Move to approve the following contracts* submitted by respective department head, subject to state's attorney approval, and authorize the chairman to sign.

Received as of October 15, 2013:

- North Dakota Department of Transportation—traffic safety grant in the amount of \$19,925 for seatbelt and alcohol enforcement (no local match required);
- North Dakota Department of Transportation—construction and maintenance agreements for a bituminous overlay project from I-29 east to County Highway 81 for two miles; bituminous overlay project from Fargo city limits south to County Highway 81 for 2½ miles; and bituminous overlay project from 76th Avenue South to Cossette Drive South for 1½ miles;
- North Dakota Department of Transportation—maintenance and encroachment agreement for Cass County Highway 81 paving project from 76th Avenue to Cossette Drive;
- CBM Managed Services—contract amendment to increase jail inmate meals by 2.5% for the period of March 1, 2014, through February 28, 2015.



North Dakota Department of Transportation Safety Division

Grant Levi, P.E.
Director

Jack Dalrymple
Governor

September 12, 2013

Corporal Dean Haaland
Cass County Sheriff's Department
Post Office Box 488
Fargo, ND 58107

RECEIVED

SEP 19 2013

CASS COUNTY COMMISSION

TRAFFIC SAFETY CONTRACT #12131663, THREE PROJECTS

The contract that has been awarded to the Cass County Sheriff's Department is enclosed. Please read the **entire contract with appendices**, as new information is provided and/or requested. Not fulfilling these requirements may delay processing or lead to a cancellation of the contract.

1. The contract **must** be signed by a person with **contracting authority** (e.g., mayor; commissioner).
2. A witness **must** sign to the **left** of the contractor's signature.
3. **Return the ENTIRE ORIGINAL CONTRACT, INCLUDING ALL APPENDICES.**
4. A **complete** and **executable** copy of the contract will be emailed to you.
5. You must review the requirements listed on the enclosed **Risk Management Appendix**.
6. A copy of your current **Certificate of Liability Insurance** information may be required.
 - If your agency is a state agency insured through the **North Dakota Insurance Reserve Fund (NDIRF)** or is a political subdivision (county/city agencies), do not submit insurance information now; however, you may be asked for confirmation of coverage at a later date.
 - If your agency is not insured through NDIRF, your **insurance certificate(s) must name the state as an additional insured and a waiver of subrogation must be provided.**
7. As a contractor, your agency is a sub-recipient of federal funds and therefore subject to the reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA). Please complete or have your county auditor complete the Sub-Recipient Information (SFN 60019) on-line at www.nd.gov/forms/sfn60019.pdf and forward the completed form to me.

Key Notes:

- **CFDA No. 20.616 is included in the contract. This relates to Map 21 funding (section 405), which will be used after other funding is depleted.**
- Periodic desk and onsite monitoring by program managers are required.
- Progress reports, if necessary, are required to be submitted prior to reimbursement.
- Per OMB Circular A-133, Subpart B, §_200; Non-federal entities that expend \$500,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year.

We look forward to the many safety benefits your program will provide to the state of North Dakota. If you have any questions, feel free to contact me by email at lharsche@nd.gov or by phone at 328-2402.

LORY HARSCHÉ – CONTRACT MANAGER

12/kf

Enclosure

608 East Boulevard Avenue • Bismarck, North Dakota 58505-0700

Information: (701) 328-2500 • FAX: (701) 328-0310 • TTY: 1-800-366-6888 • www.dot.nd.gov

**North Dakota Department of Transportation
TRAFFIC SAFETY CONTRACT**

Federal Award Information – to be provided by NDDOT

CFDA No.: 20.600 &
CFDA No.: 20.616

CFDA Title: State & Community Highway Safety &
CFDA Title: National Priority Safety Programs

Award Name: Click It or Ticket

Awarding Fed. Agency: National Highway Traffic Safety Administration

NDDOT Program Mgr.: Carol Thurn

Telephone: 701-328-4354

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.

Federal Award Information – to be provided by NDDOT

CFDA No.: 20.601 &
CFDA No.: 20.616

CFDA Title: Alcohol Highway Safety &
CFDA Title: National Priority Safety Programs

Award Name: Alcohol Enforcement

Awarding Fed. Agency: National Highway Traffic Safety Administration

NDDOT Program Mgr.: Sandy Wilson

Telephone: 701-328-2899

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.

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and Cass County Sheriff's Department, hereinafter referred to as the Contractor, whose address is Post Office Box 488, Fargo, North Dakota 58107.

WHEREAS, NDDOT has been delegated the responsibility to administer the state's Annual Highway Safety Plan as authorized in Section 54-07-05 of the North Dakota Century Code; and

WHEREAS, the Contractor requests participation in the state's Annual Highway Safety Plan;

THEREFORE, in consideration of the mutual promises herein set forth, NDDOT and the Contractor agree:

I.

The Contractor shall perform the project(s) set forth in Appendix A, a copy of which is attached hereto and made a part hereof.

The Contractor shall comply with the provisions of Appendix B, a copy of which is attached hereto and made a part hereof.



II.

The term of this contract shall begin October 1, 2013, and shall end September 30, 2014.

III.

NDDOT shall reimburse the Contractor for costs incurred under the terms of this contract, not to exceed \$19,925. Reimbursement of all costs under this contract is contingent on federal participation. Expenses incurred by the Contractor for travel, meals, and lodging, shall be reimbursed according to applicable state rates. Allowable costs are covered under 49 CFR Part 18.22. All requests for reimbursement must be submitted to NDDOT within 45 days of the termination date of this contract.

IV.

Equipment acquired under this agreement for use in highway safety program areas shall be used and kept in operation for highway safety purposes by the Contractor; or the Contractor, by formal agreement with appropriate officials of a political subdivision or State agency, shall cause such equipment to be used and kept in operation for highway safety purposes. (Reference: 23 CFR 1200.21 and 49 CFR 18.32)

V.

Appendix A of the Title VI Assurances, attached, is hereby incorporated into and made a part of this agreement.

VI.

The Contractor agrees to 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 practicable opportunity to compete for subcontract work under this agreement. The Contractor shall comply with requirements of 49 CFR Part 26.

VII

The Contractor shall ensure that no qualified handicapped individual, as defined in 29 USC 794 and 49 CFR Part 27 shall, solely by reason of this handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives benefits from the assistance under this agreement.

VIII.

Grants or services that generate revenues as a result of funding through the National Highway Traffic Safety Administration (NHTSA) must be reported. Written notification of the source and amount of such income must be made to the NDDOT at the earliest opportunity. A separate account must be maintained for the collection, expenditure, and disposition of program income. Program income generated shall be used to further the objectives of the grant or service or reduce current grant or service costs. Records shall be maintained in accordance with state and federal guidelines.

IX.

The Contractor certifies that it will comply with the retention and access requirements for records established by 49 CFR Part 18.42. The required records and documentation relating to the grant and/or



subcontract shall be retained for a minimum of three years after the starting date of the retention period as defined in Section 18.42. The NDDOT or their authorized representative shall have the right of access to any books, documents, papers, or other records of grantees, contractors, or subcontractors which are pertinent to the grant and/or contract, in order to make audits, examinations, excerpts and transcripts. The right of access is not limited by the required retention period and shall last as long as the records are retained.

The Contractor will comply with all applicable state, local, and federal procurement procedures and will maintain a financial management system that complies with the minimum requirements of 49 CFR 18.20.

X.

The Contractor must have a seat belt use policy in place before requesting reimbursement for any work completed under this agreement. The NDDOT's Traffic Safety Office's (TSO) program managers will locate and review the policy during scheduled on-site monitoring visits, if applicable. Absence of a policy may result in the NDDOT withholding payment until a policy is in place.

All contracted personnel are required to wear seat belts and obey traffic laws while on official business of this project.

XI.

Termination:

- a. This contract may be terminated by mutual consent of both parties, or by either party, upon 30 days' notice in writing or delivered by certified mail or in person.
- b. In addition, NDDOT may terminate this contract effective upon delivery of written notice to the contractor, or at such later date as may be established by NDDOT, under any of the following conditions:
 - i. 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 contractor to provide the services required by the 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.

- c. NDDOT, by written notice to the contractor, may terminate the whole or any part of this agreement:



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

XII.

The 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.

XIII.

The Contractor agrees that NDDOT and NHTSA, or their designated representative(s), shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. The Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interview of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this agreement.

Audits must be in accordance with OMB Circular A-133, as amended on June 24, 1997. The Contractor shall submit copies of audits covering the term of this agreement to NDDOT. This requirement is applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and nonprofit businesses.

XIV.

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

XV.

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

XVI.

The Contractor is advised that his or her signature on this contract 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.



XVII.

The Contractor shall not assign nor transfer the Contractor's interest in this agreement without the express written consent of the state.

XVIII.

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.

XIX.

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.

XX.

All notices, certificate, 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.

Cass County Government
NAME AND ADDRESS
P.O. Box 2806
Fargo ND 58108-2806

XXI.

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.

XXII.

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.



EXECUTED the date last below signed.

WITNESS:

CONTRACTOR:

NAME (TYPE OR PRINT)

NAME (TYPE OR PRINT)

SIGNATURE

SIGNATURE

To be signed by **Owner; Partner; Corp. Pres., Vice Pres., or other authorized Corp. Officer.** (If signed by other authorized Corp. Officer, please attach copy of Power of Attorney or other documentation showing authority to sign.)

TITLE

DATE

WITNESS:

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

NAME (TYPE OR PRINT)

DIRECTOR (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

APPROVED as to substance by:

Karin Mongeon
TRAFFIC SAFETY MANAGER (TYPE OR PRINT) FOR THE
DIRECTOR OF SAFETY DIVISION

Karin Mongeon
SIGNATURE

9-12-13
DATE

CLA 16870 (Div. 12)
L.D. Approved 7-17-89; 8-13



**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 shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
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 shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status.**
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the North Dakota Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the North Dakota Department of Transportation, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the North Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as the North Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the North Dakota Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.



Risk Management Appendix

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

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

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

Governments – State and Government Entity, as defined above

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

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

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

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

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

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

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

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

RM Consulted 2007
Revised 5-09



**AGREEMENT FOR PARTICIPATION
IN THE NORTH DAKOTA
HIGHWAY SAFETY PLAN**

APPENDIX A CONTENTS

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BACKGROUND

The Traffic Safety Office (TSO) of the North Dakota Department of Transportation's (NDDOT) Safety Division receives federal funds through the National Highway Traffic Safety Administration (NHTSA). Funding is provided to local entities to assist the NDDOT to achieve the traffic safety goals identified in the annual Highway Safety Plan.

- Decrease the number of people killed in motor vehicle crashes.
- Decrease the number of alcohol- and drug-related motor vehicle fatalities.
- Decrease the number of speed-related fatalities.
- Increase seat belt use.

Note: Refer to the Fiscal Year 2014 North Dakota Highway Safety Plan for actual performance goals based on five-year trend data.

The purpose of this contract is to provide funding to the **Cass County Sheriff's Department** (hereinafter referred to as Contractor) to:

- Participate in statewide occupant protection (OP) enforcement programs (see page 2 of 7 for program requirements)
- Participate in statewide impaired driving (ID) enforcement programs including sobriety checkpoints and saturation patrols (see page 3 of 7 for program requirements).
- Participate in statewide underage drinking (UA) enforcement programs (see page 4 of 7 for program requirements)

OCCUPANT PROTECTION (OP) ENFORCEMENT

PROJECT NO. PHSTOP1405-05-33

SCOPE OF WORK

The *Click It or Ticket (CIOT)* enforcement campaign exists to increase OP use for both adults and children through heightened enforcement of OP laws in the state. The campaign's success is built upon the strategy that education, along with highly visible and consistent enforcement, is an effective means to change driver behavior and increase OP use.

Participating law enforcement agencies are required to work overtime during scheduled CIOT campaigns to achieve high visibility within their jurisdictions to deter motorists from driving or riding in a motor vehicle without using an OP device (i.e., seat belt or child passenger safety seat).

The Contractor may **only** work during the following scheduled CIOT enforcement periods and must submit reports to the TSO per the following schedule:

Enforcement Dates

November 1 - 30, 2013

January 1 - 31, 2014

May 19 - June 1, 2014

July 1 - 31, 2014

Voucher/Report Due Dates

December 30, 2013

February 28, 2014

July 4, 2014

August 30, 2014

During the contract period, the Contractor must:

- Conduct high visibility enforcement within corridors and at times (including nighttime) where the occurrence of unbelted serious injury and fatal crashes is greatest.
- Issue Citations – **not warnings** – for failure to use an OP device. This is to assure the integrity of the *CIOT* message to the public. Each stop is an opportunity to educate the public on taking personal responsibility on driving behaviors.
- Maintain the statewide average of occupant protection citations per hour of .30.
- Conduct a highly-publicized earned media campaign within the Contractor's jurisdiction to assure the public's awareness of the *CIOT* enforcement campaign to encourage the public's use of seat belts and child passenger safety seats. TSO will assist in the media plan as needed.

During the contract period, the Contractor is:

- Encouraged to work with other law enforcement within the jurisdiction to conduct multi-agency enforcement to maximize the visibility of law enforcement during the *CIOT* enforcement period.
- Encouraged to use speed as a trigger violation to stop vehicles for seat belt and child passenger safety seat compliance.

IMPAIRED DRIVING (ID) ENFORCEMENT

PROJECT NO. PHSPID1410-03-33

SCOPE OF WORK

The *Drive Sober or Get Pulled Over (DSOGPO)* enforcement campaign exists to deter impaired driving (ID) through heightened enforcement of ID laws in the state. The campaign's success is built upon the strategy that education, along with highly visible and consistent enforcement, is an effective means to change driver behavior.

The Contractor may work during the following scheduled ID enforcement periods and must submit quarterly vouchers/reports to the TSO per the following schedule:

<u>Quarter Breakdown</u>	<u>Voucher/Report Due Dates</u>
Quarter 1 (October 1 – December 31, 2013)	January 31, 2014
Quarter 2 (January 1 – March 31, 2014)	April 30, 2014
Quarter 3 (April 1 – June 30, 2014)	July 15, 2014
Quarter 4 (July 1 – September 30, 2014)	November 10, 2014
<u>National Crackdown Dates</u>	<u>Log Sheets Due</u>
August 16 – September 1, 2014	September 4, 2014

Contractors must report the number of: (1) enforcement hours, (2) dates and times of enforcement, (3) number and type of citations issued, and (4) number of enforcement contacts made.

During the contract period, the Contractor must:

- Conduct a minimum of one regional enforcement event per quarter in quarters one through three – minimum of two shifts per regional event (see Attachment 1 for calendar of scheduled enforcement activity)
- Conduct a minimum of five shifts during the fourth quarter National Labor Day *Drive Sober or Get Pulled Over* campaign, August 16 – September 1, 2014.
- Maintain the statewide average of impaired driving citations per hour of .08.

With each planned enforcement period, the Contractor must:

1. Conduct required quarterly enforcement activities during the times determined by the region.
2. Determine the best enforcement strategy (e.g., sobriety checkpoints vs. saturation patrols, time of day, locations, etc.) that will most effectively deter ID within the Contractor's jurisdiction.
3. Conduct high visibility enforcement within corridors and times where the occurrence of injury and death from ID is greatest.
4. Coordinate with the TSO to complete earned media requirements (e.g., provide statistics from the enforcement period for a post-enforcement news release, etc.)
5. Complete an enforcement log for each enforcement shift conducted with traffic safety overtime for ID and submit that log with the reimbursement request.

The Contractor may conduct additional enforcement activity beyond the required regional calendar requirements events within their own jurisdiction, if the budget allows.

UNDERAGE DRINKING (UA) LAWS ENFORCEMENT

PROJECT NO. PHSPID1410-03-86

SCOPE OF WORK

The Underage Drinking Laws enforcement program supports and enhances efforts by law enforcement to reduce the availability of alcohol to minors. Tragic social consequences can result when youth use alcohol, including youth traffic injuries and fatalities. The objective of the program is to prohibit the sale and consumption of alcoholic beverages to minors. (For the purpose of this solicitation, "minors" are defined as individuals under the age of 21.)

*Please note that funds for operations may be utilized to cover the costs of overtime for officers, stipends for underage buyers, and direct expenses for server training (printing, postage, and other approved direct expenses). **These funds may not be used for food or refreshment.***

Activities under this program may include:

- **Compliance Checks and/or Server Training** — Compliance Checks utilize an underage buyer working under the direction of a law enforcement agency. The underage buyer enters a licensed liquor establishment and attempts to purchase alcoholic beverages. This operation may be conducted at on-premise sites (bars, restaurants, clubs, etc.) and off-premise businesses (convenience stores, grocery stores, gas stations).
Server Training — training provided to servers, sellers, and consumers of alcohol to prevent intoxication, drunk driving, and underage drinking.
- **Party Prevention Patrols/Controlled Party Dispersal** — Party Prevention Patrols consist of officers patrolling communities at times when youth activities that may be a catalyst for underage drinking parties may occur. This may be youth activities such as prom, homecoming, graduation, school carnivals, etc. Controlled Party Dispersal goes hand in hand with Party Prevention Patrols. If the patrol encounters an underage drinking party, the officers call for backup and then use proper party dispersal protocol.
- **Bar Patrols** — Bar Patrols consist of utilizing officers to patrol on-site liquor establishments (bars, restaurants, clubs, etc.) to ensure that underage youth are not being served by the establishment. This operation may consist of officers checking IDs of patrons to verify legal age has been attained. Law enforcement officers will want to maintain a good working relationship with the businesses, so certain protocol for such operations must be followed.
- **Special Events Management/Task Force Operations** — This purpose area consists of the implementation of procedures to address underage drinking at large scale events. These events may be concerts, holiday activities such as Mardi Gras or Fourth of July festivities, or other events that bring an influx of people into a local jurisdiction. The operations focus on limiting the time of the function, designating areas for consumption of alcohol, and training vendors on the laws concerning alcohol consumption. Enforcement techniques to spot underage drinkers and transactions are also utilized. Emphasis may be placed on developing multi-jurisdictional task forces to deal with these events since they generally draw attendees from several regions and the local law enforcement agencies are often not equipped to handle the increased population.

With each planned enforcement period, the Contractor must:

1. Determine the best enforcement strategy (e.g., saturation patrols, bar patrols, or compliance checks, etc.) that will most effectively deter underage access and consumption of alcohol within the Contractor's jurisdiction.
2. Coordinate with the TSO to issue earned media releases (e.g., provide statistics from the enforcement period for a post-enforcement news release, etc.).
3. Complete a quarterly report/voucher provided by the TSO.

GOAL DEVELOPMENT AND EVALUATION / ALL PROJECTS

Performance Based Goals

1. During FFY 2014 the Contractor in coordination with TSO and/or law enforcement liaison (LEL) will develop a goal of meeting or increasing citations compared to the statewide average baseline statistics. (Example: increase OP or ID citations by ____.)
2. ***THIS ITEM IS ONLY FOR OP.*** The deputies who are working the OP grant and are below the state average will be required to take the TOPS training prior to the May National CIOT Campaign.
3. During FFY 2014 the Contractor, in coordination with TSO/LEL will develop a plan for a data-driven, place-based enforcement strategy. To develop this goal an analysis of data specific to the injury and fatal crashes will be conducted to identify location(s), day(s) and time(s) of day, and heavy traffic trends.
4. Maintain a record of performance goals and schedules for place-based enforcement plans developed. The Contractor must be able to produce these records upon request.

Administration Evaluation

Evaluation activities will be conducted after each required enforcement campaign (OP and ID) to ensure that the grant objectives are being met. TSO will provide an evaluation template to be used during Administration Evaluation. (See Attachment 2.) The Contractor must maintain a record of completed Administration Evaluations for each required enforcement shift (OP and ID).

1. Discuss agency's purpose.
 - a. Do the officer's citations reflect the source of the grant contract funds? Such as, seat belt citations or alcohol-related citations/arrests.
 - b. Did the supervisor share the goals of the grant with the officer prior to enforcement shifts?
 - c. Did officer take the opportunity to educate enforcement contacts about driving behavior?
2. Discuss enforcement strategies
 - a. What locations were identified for enforcement?
 - b. Was that location based on data? If not, provide reasoning why alternate location was selected.

3. Discuss outcomes
 - a. Warnings vs. citations. (Discourage verbal warnings.)
 - b. Was there a reduction in crashes and injuries during enforcement efforts?
 - c. Is officer citation average for overtime shifts equivalent, above, or below agency average? (Further address with individual officer if below average.)

REPORTING, REIMBURSEMENT, AND OTHER REQUIREMENTS / ALL PROJECTS

Reporting

Vouchers and reports for all projects must be submitted to the TSO prior to reimbursement. Late reports may result in a delay in processing or a reduction in payment.

The Contractor must submit the voucher/report and log sheet(s) to the TSO per the schedule referenced in the previous OP and ID enforcement sections. These documents are furnished by the TSO.

Enforcement contacts are any contacts or interaction with a driver of a motor vehicle while conducting overtime enforcement under contract with NDDOT.

Because the OP and ID enforcement programs are statewide efforts, participation by each contracted entity is critical to the success of the campaigns. If the Contractor is unable to fulfill any portion of the contractual scope of work, they must contact the TSO immediately.

Reimbursement

This contract will reimburse allowable expenses up to each project's total budget for costs incurred through completion of the scope of work and/or at the direction of the program manager. The TSO reserves the right to deny payment for unallowable expenses identified in the applicable cost principles.

Overtime wages will be reimbursed at the agency-approved overtime rate and mileage, if applicable, will be reimbursed at the state-approved rate (56.5 cents per mile).

At the close of the state fiscal year, which is June 30, reports and vouchers must be submitted no later than July 15 for any services or purchases that took place on or before June 30. Vouchers received after July 15 may not be reimbursed. Please note: only equipment that has been received by June 30 is affected by this due date.

The final reports/vouchers for all projects are due no later than November 14, 2014. ***Vouchers received after November 14, 2014 will not be reimbursed.***

Other Requirements

The Contractor is encouraged to follow the guidelines for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect.

OCCUPANT PROTECTION (OP) ENFORCEMENT BUDGET**PROJECT NO. PHSPOP1405-05-33****DIRECT COSTS**

Overtime wages		\$ 7,425
Mileage		\$ 0
PROJECT TOTAL		<u>\$ 7,425</u>

Participation

Federal	100%	\$ 7,425
State	-	
Local	-	

IMPAIRED DRIVING (ID) ENFORCEMENT BUDGET**PROJECT NO. PHSPID1410-03-33****DIRECT COSTS**

Overtime wages		\$ 7,500
Mileage		\$ 0
PROJECT TOTAL		<u>\$ 7,500</u>

Participation

Federal	100%	\$ 7,500
State	-	
Local	-	

UNDERAGE DRINKING (UA) LAWS ENFORCEMENT BUDGET**PROJECT NO. PHSPID1410-03-86****DIRECT COSTS**

Overtime wages		\$ 5,000
Mileage		\$ 0
PROJECT TOTAL		<u>\$ 5,000</u>

Participation

Federal	100%	\$ 5,000
State	-	
Local	-	

GENERAL TERMS, CONDITIONS, CERTIFICATIONS AND ASSURANCES

Buy America Act

The Contractor will comply with the provisions of the Buy America Act (49 U.S.C. 5323(j)), which contains the following requirements:

Only steel, iron and manufactured products produced in the United States may be purchased with Federal funds unless the Secretary of Transportation determines that such domestic purchases would be inconsistent with the public interest; that such materials are not reasonably available and of a satisfactory quality; or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. Clear justification for the purchase of non-domestic items must be in the form of a waiver request submitted to and approved by the Secretary of Transportation.

Debarment and Suspension

Instructions for Primary Certification

1. By signing this agreement, the Contractor certifies the following.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverage sections of 49 CFR Part 29. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of Parties Excluded from Federal Procurement and Non-procurement Programs.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meanings set out in the Definition and Coverage sections of 49 CFR Part 29. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. (See below.)
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Drug-Free Workplace Act of 1988 (41 U.S.C. 8103)

The Contractor will comply with the requirements of the Drug-Free Workplace Act of 1988 by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing a drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace.
 - b. The grantee's policy of maintaining a drug-free workplace.
 - c. Any available drug counseling, rehabilitation, and employee assistance programs.
 - d. The penalties that may be imposed upon employees for drug violations occurring in the workplace.
3. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a).
4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - a. Abide by the terms of the statement.
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

5. Notifying the agency within ten days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction.
6. Taking one of the following actions, within 30 days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination.
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

Environmental Impact

Signatories to this agreement hereby declare that no significant environmental impact will result from implementing this grant or service. If, under a future revision, this grant or service is modified in a manner that could result in a significant environmental impact and trigger the need for an environmental review, the North Dakota Department of Transportation (NDDOT) has certified to the National Highway Traffic Safety Administration (NHTSA) that it is prepared to take the action necessary to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500-1517).

Federal Funding Accountability and Transparency Act

The Contractor will report for each **sub-grant** awarded:

- Name of the entity receiving the award;
- Amount of the award;
- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
- A unique identifier (DUNS);
- The names and total compensation of the five most highly compensated officers of the entity if:
 - (i) the entity in the preceding fiscal year received:
 - (I) 80 percent or more of its annual gross revenues in Federal awards;
 - (II) \$25,000,000 or more in annual gross revenues from Federal awards; and
 - (ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;

- Other relevant information specified by Office of Management and Budget guidance.

Lobbying Restrictions

Federal Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The Contractor certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Contractor shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

State Lobbying

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

Non-Discrimination

The Contractor will comply with all Federal statutes and implementing regulations relating to nondiscrimination. These include but are not limited to:

1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin (and 49 CFR Part 21);
2. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex;
3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the Americans with Disabilities Act of 1990 (PL 101-336), as amended (42 U.S.C. 12101, *et seq.*), which prohibits discrimination on the basis of disabilities (and 49 CFR Part 27);
4. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age;
5. The Civil Rights Restoration Act of 1987 (P.L. 100-259), which requires Federal-aid recipients and all subrecipients to prevent discrimination and ensure nondiscrimination in all of their programs and activities;
6. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
7. The comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
8. Sections 523 and 527 of the Public Health Service Act of 1912, as amended (42 U.S.C. 290dd-3 and 290ee-3), relating to confidentiality of alcohol and drug abuse patient records;
9. Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601, *et seq.*), relating to nondiscrimination in the sale, rental or financing of housing;
10. Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
11. The requirements of any other nondiscrimination statute(s) which may apply to the application.

Policy on Banning Text Messaging While Driving

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, Contractors are encouraged to:

Adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving:

1. Company-owned or rented vehicles, or Government-owned, leased or rented vehicles;
or
2. Privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government.
3. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

Political Activity (Hatch Act)

The Contractor will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508) which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Regional Enforcement Efforts For FFY 2014

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
NW - WI	Oct. 1-31, 2013	Mar. 1-31, 2014	Jun. 1-30, 2014	DSOGPO , Aug. 15 - Sep. 1, 2014
NW - MI	Oct. 1-31, 2013	Mar. 1-31, 2014	Jun. 1-30, 2014	DSOGPO , Aug. 15 - Sep. 1, 2014
NE - DL	Oct. 1-31, 2013	Mar. 1-31, 2014	Jun. 1-30, 2014	DSOGPO , Aug. 15 - Sep. 1, 2014
NE - GF	Oct. 1-31, 2013	Mar. 1-31, 2014	Jun. 1-30, 2014	DSOGPO , Aug. 15 - Sep. 1, 2014
SE - FA	Oct. 1-31, 2013	Feb. 1-28, 2014	Jun. 1-30, 2014	DSOGPO , Aug. 15 - Sep. 1, 2014
SE - JA	Oct. 1 - Nov. 2, 2013	Mar. 1-31, 2014	Jun. 1-30, 2014	DSOGPO , Aug. 15 - Sep. 1, 2014
SW - BI	Oct. 1-31, 2013	Mar. 1-31, 2014	Jun. 1-30, 2014	DSOGPO , Aug. 15 - Sep. 1, 2014
SW - DI	Oct. 1-31, 2013	Mar. 1-31, 2014	Jun. 1-30, 2014	DSOGPO , Aug. 15 - Sep. 1, 2014

Each agency is required to provide two shifts during all events with the exception of the DSOGPO campaign.

Each agency is required to provide five shifts during the DSOGPO campaign.

LAW ENFORCEMENT ADMINISTRATION EVALUATION

Date:

FOR THE QUARTER/YEAR:

Agency:

Grant Coordinator:

Occupant Protection: Impaired Driving:

Enforcement Evaluation	
Purpose	
<input type="checkbox"/>	Do the officer's citations reflect the source of the grant contract funds? Such as, seat belt citations or alcohol-related citations/arrests.
Discussion Notes:	
<input type="checkbox"/>	Did the supervisor share the goals of the grant with the officer prior to enforcement shifts?
Discussion Notes:	
<input type="checkbox"/>	Did officer take the opportunity to educate enforcement contacts about driving behavior?
Discussion Notes:	
Strategies	
<input type="checkbox"/>	What locations were identified for enforcement?
Discussion Notes:	
<input type="checkbox"/>	Was that location based on data? If not, provide reasoning why alternate location was selected.
Discussion Notes:	
Outcomes	
<input type="checkbox"/>	Warnings vs. citations. (Discourage verbal warnings)
Discussion Notes:	
<input type="checkbox"/>	Was there a reduction in crashes and injuries during enforcement efforts?
Discussion Notes:	
<input type="checkbox"/>	Is officer citation average for overtime shifts equivalent, above, or below agency average? (Further address with individual officer if below average.)
Discussion Notes:	

Instructions: A Law Enforcement Administration Evaluation (LEAE) form must be completed within two weeks after each overtime enforcement campaign conducted. The LEAE form must be retained by agency and be made available upon request or produced during annual on-site visit.

To complete the LEAE form:

1. Complete top portion of form and identify if occupant protection or impaired driving
2. Check off each discussion item as completed and,
3. Provide discussion notes for each question
4. Maintain a copy of completed report in file



North Dakota Department of Transportation

Grant Levi, P.E.
Interim Director

Jack Dalrymple
Governor

September 18, 2013

RECEIVED

SEP 20 2013

VERN BENNETT, CHAIRPERSON
BOARD OF COUNTY COMMISSIONERS
C/O CASS COUNTY AUDITOR
PO BOX 2806
FARGO, ND 58108

CASS COUNTY COMMISSION

SC-0946(063) - CASS COUNTY
CMC 0946 - I-29, WEST TO CMC 0957
BITUMINOUS OVERLAY - 1.731 MI

Attached is the Construction and Maintenance Agreement for this project.

Please sign the document, date it, and return it to our office. **We need the Construction and Maintenance Agreement returned no later than October 18, 2013,** to be able to program the project for federal funds from Federal Highway Administration. You may fax a copy of the agreement to us at 701-328-0310, attention Sara, and mail the original. After the bid opening, a signed copy of the agreement will be returned to you for your records.

This project is scheduled for the November 15, 2013, bid opening.

Please return this promptly after your next meeting so that we may proceed with the bid opening process.

A handwritten signature in blue ink that reads "Paul M. Benning".

PAUL M. BENNING, P.E., LOCAL GOVERNMENT ENGINEER

blf/sp
Enclosure
c: Cass County Engineer

**North Dakota Department of Transportation
CONSTRUCTION AND MAINTENANCE AGREEMENT
COUNTY FEDERAL AID PROJECT**

Federal Award Information – to be provided by NDDOT

CFDA No.: 20.205	CFDA Title: Highway Planning and Construction
Award Name: Federal Aid Highway Program	Awarding Fed. Agency: Federal Highway Admin.
NDDOT Program Mgr.: Bryon Fuchs	Telephone: (701) 328-2516

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.

For NDDOT use only.

FHWA Authorization date:

Project No. SC-0946(063)

CASS County

Location: I-29 WEST TO CMC 0957

Type of Improvement: HBP OVERLAY

Length: 1.731 MI

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and Cass County, North Dakota, hereinafter referred to as the County, who hereby agree that:

It is in the best interest of both parties to have the County construct and maintain this project according to the terms and conditions set forth in this agreement. NDDOT will assist the County with the preparation and distribution of the bid documents and include the project in a scheduled bid opening.

The County agrees to the terms and conditions required for the project by the Federal Highway Administration (FHWA).

NDDOT will procure federal funds for the construction of the project, pursuant to Title 23 of the United States Code. Federal funds will be provided under item b:

- a. Federal funds obligated for this project shall not exceed NA percent of the total eligible project cost up to a maximum of \$NA.
- b. Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project cost. The total estimated project cost is \$515,653, with the County's estimated share being \$98,335.

The balance of the project cost is the obligation of the County. The total eligible project costs include the cost of those items shown in the engineer's detailed estimate as approved for federal funds and any project changes approved by NDDOT for the use of federal funds.



Federal funds may not be obligated by the County, prior to Federal Highway Administration approval of the program documents for the project.

PART I

County Obligation:

1. To comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The County 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 County 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 County of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. seq.).

Include the following paragraph verbatim in any subcontracts they sign relative to this project:

- a. The contractor 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 USDOT-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 NDDOT deems appropriate.
2. To comply with requirements of 23 CFR Part 633, Required Contract Provisions, and 23 CFR Part 635, Construction and Maintenance.
 3. To construct the project in conformity with the construction contract. Changes to the plans shall meet the requirements of the current edition of NDDOT's *Local Government Manual* and 23 CFR Part 625, Design Standards for Highways.
 4. To construct the project in conformity with the approved environmental documents, and implement any measures mitigating the environmental impact of the project.
 5. To comply with the procedures outlined in the current edition of NDDOT's *Local Government Manual*.
 6. To comply with the current edition of NDDOT's *Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects*.
 7. The County will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this project, such as changes in the grades of streets, inconvenience to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance.
 8. To comply with the requirements of Appendix A of the Title VI Assurances, attached and incorporated by reference herein.



PART II

Contracting and Construction:

1. On behalf of the County, NDDOT will:
 - a. Prepare the bid proposals, print and distribute the proposals and plans, solicit proposals and include the project in a scheduled bid opening, as provided in NDCC Chapter 24-02.
 - b. Evaluate the bids as to the sufficiency of Disadvantaged Business Enterprise (DBE) participation and the bidders good faith efforts in satisfying the requirements of the current edition of the DBE special provision, and 49 CFR Part 26. NDDOT shall have exclusive authority in evaluating the adequacy of DBE participation.
 - c. Tabulate the bids and send to the County for its determination of the lowest responsible bidder and the execution of the contract.
 - d. Concur in the award of the contract for the sole purpose of enabling the County to procure federal aid for the construction of the project.
 - e. Distribute copies of the executed contract, plans, and contract documents to the parties.
2. During the construction of the project, the County will:
 - a. Provide engineering services, material testing, inspection of the work, and administer the construction contract as required by the contract documents and the current edition of NDDOT's *Standard Specifications for Road and Bridge Construction, Sampling and Testing Manual, and Construction Manual*.
 - b. Keep all project records and documentation as required in NDDOT's current edition of the *Construction Records Manual* and the *Construction Automated Record System*.
 - c. Make all records available to NDDOT and FHWA for inspection upon request. Submit all documents and records to NDDOT for review before final payment is made. NDDOT will maintain the project records for three years from the final voucher date of FHWA and then return them to the County.
 - d. Be responsible for any changes in plan, character of work, quantities, site conditions, or any claim for extra compensation. NDDOT will review all contract adjustments to determine if the adjustments are eligible for federal aid. Federal aid shall be limited to the amount stated on page one of this agreement.

PART III

Post Construction:

After the project is completed the County agrees to:

1. Maintain the signing and marking of the project according to the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways*, as supplemented and amended.
2. Provide maintenance to the completed project, at its own cost and expense.



3. Prohibit encroachments upon the right of way pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

PART IV

General:

1. NDDOT will make all contract payments, on behalf of the County. Payment will be made upon receipt of the engineer's estimate. The County will reimburse NDDOT for all payments made under this contract less the amount paid by FHWA. No costs will be incurred by NDDOT for the construction and maintenance of this project.

If the County fails to reimburse NDDOT within 60 days after billing for funds advanced on behalf of the County, 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 County 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.

2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. No official, employee or other person performing services for the County who is authorized to negotiate or approve any contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract. No officer or employee of such person retained by the County shall have any financial or other personal interest in any real property acquired for the project unless such interest is openly disclosed upon public records of NDDOT and of the County, and such officer, employee, or person has not participated in such acquisition for and in behalf of the County.
4. 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.
5. NDDOT requires contracts executed with counties, cities, other state agencies, Indian tribes, colleges, hospitals, and nonprofit businesses to comply with OMB Cir. A-133.
6. 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.

Local Government Engineer
ND Department of Transportation
608 East Boulevard Avenue
Bismarck ND 58505-0700

Cass County Chairperson
Board of County Commissioners
C/O County Auditor
PO Box 2806
Fargo, ND 58108

7. The County is advised that its signature on this contract or agreement, certifies that the County 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.



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

Executed by Cass County, North Dakota, the date last below signed.

APPROVAL:

County of Cass

STATES ATTORNEY (TYPE OR PRINT)

SIGNATURE

DATE

ATTEST:

COUNTY AUDITOR (TYPE OR PRINT)

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

DATE

Executed by the North Dakota Department of Transportation the date last below signed.

APPROVAL:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

DIRECTOR (TYPE OR PRINT)

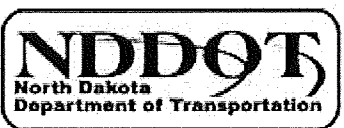
SIGNATURE

SIGNATURE

DATE

DATE

CLA 19257 (Div. 38)
L.D. Approved 4-12-93; 04-11



**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 shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
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 shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status.**
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the North Dakota Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the North Dakota Department of Transportation, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the North Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as the North Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the North Dakota Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.



Risk Management Appendix

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

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

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

Governments – State and Government Entity, as defined above

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

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

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

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

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

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

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

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

RM Consulted 2007
Revised 5-09





North Dakota Department of Transportation

Grant Levi, P.E.
Interim Director

Jack Dalrymple
Governor

September 18, 2013

RECEIVED

SEP 20 2013

VERN BENNETT, CHAIRPERSON
BOARD OF COUNTY COMMISSIONERS
C/O CASS COUNTY AUDITOR
PO BOX 2806
FARGO, ND 58108

CASS COUNTY COMMISSION

SC-0957(061) - CASS COUNTY
CMC 0957 - 2.6 MI SOUTH OF FARGO, NORTH
BITUMINOUS OVERLAY - 2.598 MI

Attached is a Construction and Maintenance Agreement for this project.

Please sign the document, date it, and return it to our office. **We need the Construction and Maintenance Agreement returned no later than October 18, 2013,** to be able to program the project for federal funds from Federal Highway Administration. You may fax a copy of the agreement to us at 701-328-0310, attention Sara, and mail the original. After the bid opening, a signed copy of the agreement will be returned to you for your records.

This project is scheduled for the November 15, 2013, bid opening.

Please return this promptly after your next meeting so that we may proceed with the bid opening process.

PAUL M. BENNING, P.E., LOCAL GOVERNMENT ENGINEER

blf/sp
Enclosure
c: Cass County Engineer

**North Dakota Department of Transportation
CONSTRUCTION AND MAINTENANCE AGREEMENT
COUNTY FEDERAL AID PROJECT**

Federal Award Information – to be provided by NDDOT

CFDA No.: 20.205	CFDA Title: Highway Planning and Construction
Award Name: Federal Aid Highway Program	Awarding Fed. Agency: Federal Highway Admin.
NDDOT Program Mgr.: Bryon Fuchs	Telephone: (701) 328-2516

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.

For NDDOT use only.

FHWA Authorization date:

**Project No. SC-0957(061)
Location: FARGO CITY LIMITS, SOUTH
Type of Improvement: HBP OVERLAY
Length: 2.598 MI**

CASS County

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and Cass County, North Dakota, hereinafter referred to as the County, who hereby agree that:

It is in the best interest of both parties to have the County construct and maintain this project according to the terms and conditions set forth in this agreement. NDDOT will assist the County with the preparation and distribution of the bid documents and include the project in a scheduled bid opening.

The County agrees to the terms and conditions required for the project by the Federal Highway Administration (FHWA).

NDDOT will procure federal funds for the construction of the project, pursuant to Title 23 of the United States Code. Federal funds will be provided under item B:

- a. Federal funds obligated for this project shall not exceed NA percent of the total eligible project cost up to a maximum of \$NA.
- b. Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project cost. The total estimated project cost is \$838,391, with the County's estimated share being \$159,881.

The balance of the project cost is the obligation of the County. The total eligible project costs include the cost of those items shown in the engineer's detailed estimate as approved for federal funds and any project changes approved by NDDOT for the use of federal funds.



Federal funds may not be obligated by the County, prior to Federal Highway Administration approval of the program documents for the project.

PART I

County Obligation:

1. To comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The County 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 County 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 County of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. seq.).

Include the following paragraph verbatim in any subcontracts they sign relative to this project:

- a. The contractor 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 USDOT-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 NDDOT deems appropriate.
2. To comply with requirements of 23 CFR Part 633, Required Contract Provisions, and 23 CFR Part 635, Construction and Maintenance.
 3. To construct the project in conformity with the construction contract. Changes to the plans shall meet the requirements of the current edition of NDDOT's *Local Government Manual* and 23 CFR Part 625, Design Standards for Highways.
 4. To construct the project in conformity with the approved environmental documents, and implement any measures mitigating the environmental impact of the project.
 5. To comply with the procedures outlined in the current edition of NDDOT's *Local Government Manual*.
 6. To comply with the current edition of NDDOT's *Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects*.
 7. The County will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this project, such as changes in the grades of streets, inconvenience to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance.
 8. To comply with the requirements of Appendix A of the Title VI Assurances, attached and incorporated by reference herein.



PART II

Contracting and Construction:

1. On behalf of the County, NDDOT will:
 - a. Prepare the bid proposals, print and distribute the proposals and plans, solicit proposals and include the project in a scheduled bid opening, as provided in NDCC Chapter 24-02.
 - b. Evaluate the bids as to the sufficiency of Disadvantaged Business Enterprise (DBE) participation and the bidders good faith efforts in satisfying the requirements of the current edition of the DBE special provision, and 49 CFR Part 26. NDDOT shall have exclusive authority in evaluating the adequacy of DBE participation.
 - c. Tabulate the bids and send to the County for its determination of the lowest responsible bidder and the execution of the contract.
 - d. Concur in the award of the contract for the sole purpose of enabling the County to procure federal aid for the construction of the project.
 - e. Distribute copies of the executed contract, plans, and contract documents to the parties.
2. During the construction of the project, the County will:
 - a. Provide engineering services, material testing, inspection of the work, and administer the construction contract as required by the contract documents and the current edition of NDDOT's *Standard Specifications for Road and Bridge Construction, Sampling and Testing Manual, and Construction Manual*.
 - b. Keep all project records and documentation as required in NDDOT's current edition of the *Construction Records Manual* and the *Construction Automated Record System*.
 - c. Make all records available to NDDOT and FHWA for inspection upon request. Submit all documents and records to NDDOT for review before final payment is made. NDDOT will maintain the project records for three years from the final voucher date of FHWA and then return them to the County.
 - d. Be responsible for any changes in plan, character of work, quantities, site conditions, or any claim for extra compensation. NDDOT will review all contract adjustments to determine if the adjustments are eligible for federal aid. Federal aid shall be limited to the amount stated on page one of this agreement.

PART III

Post Construction:

After the project is completed the County agrees to:

1. Maintain the signing and marking of the project according to the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways*, as supplemented and amended.
2. Provide maintenance to the completed project, at its own cost and expense.



3. Prohibit encroachments upon the right of way pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

PART IV

General:

1. NDDOT will make all contract payments, on behalf of the County. Payment will be made upon receipt of the engineer's estimate. The County will reimburse NDDOT for all payments made under this contract less the amount paid by FHWA. No costs will be incurred by NDDOT for the construction and maintenance of this project.

If the County fails to reimburse NDDOT within 60 days after billing for funds advanced on behalf of the County, 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 County 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.

2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. No official, employee or other person performing services for the County who is authorized to negotiate or approve any contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract. No officer or employee of such person retained by the County shall have any financial or other personal interest in any real property acquired for the project unless such interest is openly disclosed upon public records of NDDOT and of the County, and such officer, employee, or person has not participated in such acquisition for and in behalf of the County.
4. 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.
5. NDDOT requires contracts executed with counties, cities, other state agencies, Indian tribes, colleges, hospitals, and nonprofit businesses to comply with OMB Cir. A-133.
6. 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.

Local Government Engineer
ND Department of Transportation
608 East Boulevard Avenue
Bismarck ND 58505-0700

Cass County Chairperson
Board of County Commissioners
C/O County Auditor
PO Box 2806
Fargo, ND 58108

7. The County is advised that its signature on this contract or agreement, certifies that the County 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.



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

Executed by Cass County, North Dakota, the date last below signed.

APPROVAL:

County of Cass

STATES ATTORNEY (TYPE OR PRINT)

SIGNATURE

DATE

ATTEST:

COUNTY AUDITOR (TYPE OR PRINT)

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

DATE

Executed by the North Dakota Department of Transportation the date last below signed.

APPROVAL:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

DIRECTOR (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

DATE

CLA 19257 (Div. 38)
L.D. Approved 4-12-93; 04-11



**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 shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
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 shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status.**
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the North Dakota Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the North Dakota Department of Transportation, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the North Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as the North Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the North Dakota Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.



Risk Management Appendix

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

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

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

Governments – State and Government Entity, as defined above

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

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

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

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

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

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

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

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

RM Consulted 2007
Revised 5-09





North Dakota Department of Transportation

Grant Levi, P.E.
Interim Director

Jack Dalrymple
Governor

September 18, 2013

RECEIVED

SEP 20 2013

VERN BENNETT, CHAIRPERSON
BOARD OF COUNTY COMMISSIONERS
C/O CASS COUNTY AUDITOR
PO BOX 2806
FARGO, ND 58108

CASS COUNTY COMMISSION

SU-8-984(149)152 - CASS COUNTY
FARGO - COSSETTE DRIVE TO 76TH
BITUMINOUS OVERLAY - 1.425 MI

Attached is the Construction and Maintenance Agreement for this project.

Please sign the document, date it, and return it to our office. **We need the Construction and Maintenance Agreement returned no later than October 18, 2013,** to be able to program the project for federal funds from Federal Highway Administration. You may fax a copy of the agreement to us at 701-328-0310, attention Sara, and mail the original. After the bid opening, a signed copy of the agreement will be returned to you for your records.

This project is scheduled for the November 15, 2013, bid opening.

Please return this promptly after your next meeting so that we may proceed with the bid opening process.

PAUL M. BENNING, P.E., LOCAL GOVERNMENT ENGINEER

blf/sp

Enclosure

c: Cass County Engineer

**North Dakota Department of Transportation
CONSTRUCTION AND MAINTENANCE AGREEMENT
COUNTY FEDERAL AID PROJECT**

Federal Award Information – to be provided by NDDOT

CFDA No.: 20.205	CFDA Title: Highway Planning and Construction
Award Name: Federal Aid Highway Program	Awarding Fed. Agency: Federal Highway Admin.
NDDOT Program Mgr.: Bryon Fuchs	Telephone: (701) 328-2516

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.

For NDDOT use only.

FHWA Authorization date:

Project No. SU-8-984(149)152

CASS County

Location: CASS CO - 76TH AV S TO COSSETE DR S

Type of Improvement: HBP OVERLAY

Length: 1.425 MI

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and Cass County, North Dakota, hereinafter referred to as the County, who hereby agree that:

It is in the best interest of both parties to have the County construct and maintain this project according to the terms and conditions set forth in this agreement. NDDOT will assist the County with the preparation and distribution of the bid documents and include the project in a scheduled bid opening.

The County agrees to the terms and conditions required for the project by the Federal Highway Administration (FHWA).

NDDOT will procure federal funds for the construction of the project, pursuant to Title 23 of the United States Code. Federal funds will be provided under item b:

- a. Federal funds obligated for this project shall not exceed NA percent of the total eligible project cost up to a maximum of \$NA.
- b. Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project cost. The total estimated project cost is \$627,426, with the County's estimated share being \$119,650.

The balance of the project cost is the obligation of the County. The total eligible project costs include the cost of those items shown in the engineer's detailed estimate as approved for federal funds and any project changes approved by NDDOT for the use of federal funds.



Federal funds may not be obligated by the County, prior to Federal Highway Administration approval of the program documents for the project.

PART I

County Obligation:

1. To comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The County 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 County 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 County of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. seq.).

Include the following paragraph verbatim in any subcontracts they sign relative to this project:

- a. The contractor 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 USDOT-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 NDDOT deems appropriate.
2. To comply with requirements of 23 CFR Part 633, Required Contract Provisions, and 23 CFR Part 635, Construction and Maintenance.
 3. To construct the project in conformity with the construction contract. Changes to the plans shall meet the requirements of the current edition of NDDOT's *Local Government Manual* and 23 CFR Part 625, Design Standards for Highways.
 4. To construct the project in conformity with the approved environmental documents, and implement any measures mitigating the environmental impact of the project.
 5. To comply with the procedures outlined in the current edition of NDDOT's *Local Government Manual*.
 6. To comply with the current edition of NDDOT's *Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects*.
 7. The County will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this project, such as changes in the grades of streets, inconvenience to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance.
 8. To comply with the requirements of Appendix A of the Title VI Assurances, attached and incorporated by reference herein.



PART II

Contracting and Construction:

1. On behalf of the County, NDDOT will:
 - a. Prepare the bid proposals, print and distribute the proposals and plans, solicit proposals and include the project in a scheduled bid opening, as provided in NDCC Chapter 24-02.
 - b. Evaluate the bids as to the sufficiency of Disadvantaged Business Enterprise (DBE) participation and the bidders good faith efforts in satisfying the requirements of the current edition of the DBE special provision, and 49 CFR Part 26. NDDOT shall have exclusive authority in evaluating the adequacy of DBE participation.
 - c. Tabulate the bids and send to the County for its determination of the lowest responsible bidder and the execution of the contract.
 - d. Concur in the award of the contract for the sole purpose of enabling the County to procure federal aid for the construction of the project.
 - e. Distribute copies of the executed contract, plans, and contract documents to the parties.
2. During the construction of the project, the County will:
 - a. Provide engineering services, material testing, inspection of the work, and administer the construction contract as required by the contract documents and the current edition of NDDOT's *Standard Specifications for Road and Bridge Construction, Sampling and Testing Manual, and Construction Manual*.
 - b. Keep all project records and documentation as required in NDDOT's current edition of the *Construction Records Manual* and the *Construction Automated Record System*.
 - c. Make all records available to NDDOT and FHWA for inspection upon request. Submit all documents and records to NDDOT for review before final payment is made. NDDOT will maintain the project records for three years from the final voucher date of FHWA and then return them to the County.
 - d. Be responsible for any changes in plan, character of work, quantities, site conditions, or any claim for extra compensation. NDDOT will review all contract adjustments to determine if the adjustments are eligible for federal aid. Federal aid shall be limited to the amount stated on page one of this agreement.

PART III

Post Construction:

After the project is completed the County agrees to:

1. Maintain the signing and marking of the project according to the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways*, as supplemented and amended.
2. Provide maintenance to the completed project, at its own cost and expense.



3. Prohibit encroachments upon the right of way pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

PART IV

General:

1. NDDOT will make all contract payments, on behalf of the County. Payment will be made upon receipt of the engineer's estimate. The County will reimburse NDDOT for all payments made under this contract less the amount paid by FHWA. No costs will be incurred by NDDOT for the construction and maintenance of this project.

If the County fails to reimburse NDDOT within 60 days after billing for funds advanced on behalf of the County, 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 County 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.

2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. No official, employee or other person performing services for the County who is authorized to negotiate or approve any contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract. No officer or employee of such person retained by the County shall have any financial or other personal interest in any real property acquired for the project unless such interest is openly disclosed upon public records of NDDOT and of the County, and such officer, employee, or person has not participated in such acquisition for and in behalf of the County.
4. 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.
5. NDDOT requires contracts executed with counties, cities, other state agencies, Indian tribes, colleges, hospitals, and nonprofit businesses to comply with OMB Cir. A-133.
6. 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.

Local Government Engineer
ND Department of Transportation
608 East Boulevard Avenue
Bismarck ND 58505-0700

Cass County Chairperson
Board of County Commissioners
C/O County Auditor
PO Box 2806
Fargo, ND 58108

7. The County is advised that its signature on this contract or agreement, certifies that the County 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.



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

Executed by Cass County, North Dakota, the date last below signed.

APPROVAL:

County of Cass

STATES ATTORNEY (TYPE OR PRINT)

SIGNATURE

DATE

ATTEST:

COUNTY AUDITOR (TYPE OR PRINT)

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

DATE

Executed by the North Dakota Department of Transportation the date last below signed.

APPROVAL:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

DIRECTOR (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

DATE

CLA 19257 (Div. 38)
L.D. Approved 4-12-93; 04-11



**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 shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
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 shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status.**
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the North Dakota Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the North Dakota Department of Transportation, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the North Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as the North Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the North Dakota Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.



Risk Management Appendix

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

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

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

Governments – State and Government Entity, as defined above

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

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

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

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

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

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

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

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

RM Consulted 2007
Revised 5-09



Worden, Heather

From: Benson, Jason
Sent: Thursday, October 03, 2013 4:36 PM
To: Worden, Heather
Subject: FW: Agreement
Attachments: Maintenance and Non-encroachment Agreement for City of Fargo.pdf

Heather,

This is a standard NDDOT form for Federal Projects. It is for the Cass Hwy 81 paving project for the section inside of the MetroCOG urban area (76th Ave-Cossette Drive). This is the same agreement we sign for all of our Federal Highway funded projects and certifies that we will maintain the highway and ROW to standard. Please have Commissioner Bennett sign this.

If you're wondering, I already discussed the issue of the form stating "City" and "Mayor". They stated that the form is fine as it is written and we can line through those and place "County" and "Commission Chair" in its place.

Thanks,

Jason Benson, P.E.
Cass County Engineer
Work: 701-298-2372
Cell: 701-799-7384
bensonj@casscountynd.gov

From: Pister, Sara B. [<mailto:spister@nd.gov>]
Sent: Tuesday, September 24, 2013 10:29 AM
To: Benson, Jason
Subject: Agreement

Jason –

Here is the agreement that Paul Benning asked I send you. Please let me know if you need anything else.

Thank you ☺

Sara Pister
Administrative Assistant / NDDOT Local Government
spister@nd.gov
(701) 328-2540

**North Dakota Department of Transportation
MAINTENANCE AND NONENCROACHMENT AGREEMENT**

Federal Award Information – to be provided by NDDOT

CFDA No: 20.205

CFDA Title: Highway Planning & Construction

Award Name: Federal Aid Highway Program

Awarding Fed. Agency: Federal Highway Admin.

NDDOT Program Mgr: Bryon Fuchs

Telephone: (701) 328-2516

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

Project No.SU-8-984(149)152

County CASS

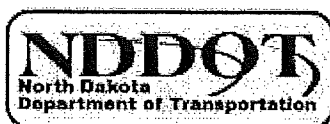
Location: CASS CO - 76TH AV S TO COSSETE DR S

The state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, on behalf of Cass County, North Dakota, has requested federal aid participation in the improvement on a street and County Federal Aid Secondary Project passing through the city of Fargo, hereinafter referred to as the City. A portion of the project described as follows is located within the corporate limits of the City.

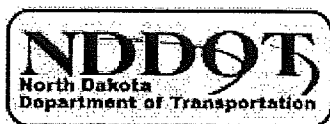
On CMC Route 0957, from Sta. 545+75, a point on the NE corner of Sec. 13, Twp. 138 N., Rge. 49 W., south on a line for a distance of 7875 ft. to Sta. 467+00, a point 2486 ft. south and 47 ft. east of the NE corner of Sec. 24, Twp. 138 N., Rge. 49 W.

NDDOT and the City hereby agree that:

1. NDDOT will take all steps necessary toward securing the cooperation of the United States government through the Federal Highway Administration (FHWA) in order to obtain federal funds for the project construction to the extent provided in Title 23 in the United States Code as amended and supplemented.
2. All signs and traffic control devices and other protective structures erected on or in connection with the project, including those that are installed at the sole cost of the City, will be installed in conformity with the *Manual on Uniform Traffic Control Devices for Streets and Highways* with its subsequent supplements or revisions.
3. The City hereby approves the section, grade, alignment, and other construction details as shown on the project plans.
4. The City will not designate a speed limit of less than 25 mph within the project, unless approved by NDDOT.
5. The City will maintain the right of way inviolate for public highway purposes and will maintain the right of way free of any public or private installations, facilities, or encroachments, except those approved by law. Such installations, facilities, or encroachments shall be removed by the city when requested by NDDOT or FHWA.



6. The City will prohibit double and diagonal parking and it will control parallel parking where allowed within the limits of the project in a manner satisfactory to NDDOT or FHWA, or their authorized representatives.
7. The City will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this project, such as changes in the grades of streets, inconvenience to property or business, and any loss of light, air, view, access, egress, drainage, support or nuisance.
8. The Risk Management Appendix, attached, is hereby incorporated into and made a part of this agreement.
9. The City will enact such ordinances as are necessary to properly enforce any of the above provisions. Any future changes in this agreement or control measures require prior approval of NDDOT and/or FHWA.
10. Audits must be in accordance with the most current version of OMB Cir. A-133. The contractor shall submit copies of audits covering the term of this agreement to NDDOT. This requirement is applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.
11. Appendix A of the Title VI Assurances, attached, is hereby incorporated into and made a part of this agreement.



12. The City is advised that its signature on this contract or agreement, certifies that the City 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.

EXECUTED the date last below signed.

ATTEST:

Country _____
OFFY-AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

Country City of Cass _____

MAYOR (TYPE OR PRINT) Chair, Cass County Commission

SIGNATURE

DATE

APPROVED as to substance by:

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

DIRECTOR (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

DATE

CLA 17048 (Div. 38)
L.D. Approved 7-17-89, 4-11



**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 shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
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 shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status.**
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the North Dakota Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the North Dakota Department of Transportation, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the North Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as the North Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the North Dakota Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.



Risk Management Appendix

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

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

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

Governments – State and Government Entity, as defined above

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

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

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

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

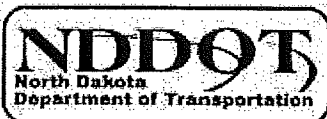
Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

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

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

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

RM Consulted 2007
Revised 5-09





October 2, 2013

Sheriff Paul D. Laney
Cass County Sheriff's Department
P.O. Box 488
Fargo, ND 58107

RECEIVED

OCT 14 2013

CASS COUNTY COMMISSION

Dear Sheriff Laney:

At CBM Managed Services, we highly value our partnership with you. We are looking forward to continuing a mutually beneficial business relationship. Please know that we will continue to work hard to meet your expectations.

At this time, we are enclosing the 2014 pricing structure for the contract year which begins March 1, 2014. These prices were calculated based on a 2.5% agreed upon price increase. The new prices will take place on March 1, 2014. Please sign and initial both copies of the enclosed Amendment to the Food Service Contract and return one copy to us in the enclosed postage-paid envelope.

Your continued satisfaction is important to us. Again, we do appreciate your business. We hope you will let us know if there is any way we can serve you better.

Sincerely,

A handwritten signature in blue ink that reads 'Shane Sejnoha'.

Shane V. Sejnoha
Vice President of Operations

Enclosure: Amendment to the Contract
Return Envelope

**Amendment No. 7
To Food Service Contract
Between Cass County and CBM Managed Services**

This Amendment No. 7 (the "Amendment"), is entered into this ____ day of _____, 2013 by and between Cass County ("County") located at 450 34th Street, South, Fargo, North Dakota and Catering By Marlin's, Inc. d/b/a CBM Managed Services ("CBM") located at 500 East 52nd Street, N., Sioux Falls, South Dakota.

WITNESSETH:

WHEREAS, County and CBM entered into a Food Service Contract (the "Agreement") dated, February 20, 2007 for the management of the food service operation at Cass County Jail and the Cass County Juvenile Detention Center;

WHEREAS, County and CBM amended the Agreement previously via an amendment dated March 1, 2009, via an amendment dated March 1, 2010, via an amendment dated March 1, 2011, via an amendment dated March 1, 2012, via a letter dated July 2, 2012, and via an amendment dated March 1, 2013;

WHEREAS, Article 2.4 "Adjustments to the Contract" of the Agreement provides, "After the initial two year contract, each following year(s) price per meal increases will be based on the Consumer Price Index (CPI-U) Midwest Region All Items for the previous year. ";

WHEREAS, an amendment dated March 1, 2010 provides that "Price adjustments in future years will be no more or no less than 2.5%";

NOW THEREFORE, the County and CBM hereby agree to amend the Agreement as follows:

The Foregoing recitals are deemed substantive and are incorporated herein as if fully set forth.

1. Cost per Meal: County and CBM agree to the following cost per meal structure to be effective from March 1, 2014 through February 28, 2015:

Inmate Population	160 - 169	170 - 179	180 - 189	190 - 199	200 - 209	210 - 219	220 - 229	230 - 239
Current Price	\$1.350	\$1.311	\$1.277	\$1.256	\$1.142	\$1.130	\$1.105	\$1.090
Inmate Population	160 - 169	170 - 179	180 - 189	190 - 199	200 - 209	210 - 219	220 - 229	230 - 239
CPI Adjustment 2.5%	\$1.384	\$1.344	\$1.309	\$1.287	\$1.171	\$1.158	\$1.133	\$1.117

Inmate Population	240 - 249	250 - 259	260 - 269	270 - 279	280 - 289	290 - 299	300 - 309	310 +
Current Price	\$1.075	\$1.061	\$1.049	\$1.038	\$1.026	\$1.016	\$1.006	\$0.997
Inmate Population	240 - 249	250 - 259	260 - 269	270 - 279	280 - 289	290 - 299	300 - 309	310 +
CPI Adjustment 2.5%	\$1.102	\$1.088	\$1.075	\$1.064	\$1.052	\$1.041	\$1.031	\$1.022

Current JDC price: Inmate meal plus 0.175 cents per meal
 CPI Adjustment: $0.175 \times 2.5\% = 0.18$ added to each juvenile meal served.

These prices were calculated based on a 2.5% agreed upon price increase.

2. Effect of Amendment: Amendment No. 7 along with all previous Amendment shall be attached to the original Agreement and all terms, conditions and provisions of the original Agreement and all subsequent Amendment shall remain in full force and effect unless otherwise modified by this Amendment.

IN WITNESS WHEREOF, County and CBM have executed this Amendment No. 7 as of the day and year written below.

Dated this ____ day of _____, 2013

Dated this 2nd day of October 2013

CASS COUNTY

CBM Managed Services

 By: Cass County Commissioner

Shane Sejnoha
 By: Shane Sejnoha
 Vice-President of Operations

 Witness

Salonna Mak
 Witness