



MEMORANDUM

**Highway
Department**

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

TO: Cass County Commission

FROM: Jason Benson, Cass County Engineer *FOR: Tom Soucy*

DATE: May 10, 2022

SUBJECT: Consent Agenda Item for May 16, 2022 Commission Meeting: TAC-0009(054) Job 22943 Shared Use Path

Attached are the shared use project bid documents for Northern Improvement and the city of Horace. The city of Horace is under 5,000 population; therefore, federal aid projects must go through the Cass County Commission for funding and project concurrence.

SUGGESTED MOTION: THE CASS COUNTY COMMISSION HEREBY APPROVES THIS PROJECT AND AUTHORIZES THE COUNTY ENGINEER OR HIS REPRESENTATIVE TO SEND AN EMAIL TO THE NDDOT FOR FUNDING AND PROJECT CONCURRENCE.

1201 Main Avenue West
West Fargo, North Dakota
58078-1301

701-298-2370
Fax: 701-298-2395

J:\Admin-Eng\Commission Corrsp\2022 Commission Correspondence\Consent Agenda Memo Horace SUP Job 22943 Project TAC 00090564.docx



May 9, 2022

Tom Soucy, PE, Deputy County Engineer
Cass County Highway Department
1201 Main Ave W
West Fargo, ND 58078
Via email:

RE: TAC-0009(054) Job 22943
County Road 17 Shared Use Path – phase II
Horace, ND
W21-00-062

Dear Tom:

The Horace City Council reviewed bids for the above referenced project at their April 18, 2022, meeting.

The City Council voted to award the project – option 2 concrete to Northern Improvement Co. of Fargo.

Please see attached memo to the Horace City Council with bid summary.

If you have any questions, please let me know.

Yours very truly,
INTERSTATE ENGINEERING, INC.

A handwritten signature in blue ink that reads 'James A. Dahlman'.

James A. Dahlman, PE

JD:jad

C: Brenton Holper, City of Horace (via email: bholper@cityofhorace.com)





MEMO

To: Horace City Council (via email: bholper@cityofhorace.com)

From: James Dahlman, PE *Jad*

Date: April 15, 2022

Re: Award and Cost Share Estimate
County Road 17 Shared Use Path – Phase II
TA-0009(054) PCN 22943
Horace, North Dakota
W21-00-042

The bid opening for the above referenced project occurred on April 8th, 2022. The North Dakota Department of Transportation, on behalf of the City and Cass Co. sponsorship, received bids from three Contractors: Norther Improvement, Co., Central Specialties, Inc., and Opp Construction, LLC.

The project was bid with two options. Option 1 is for asphalt shared use path. Option 2 is for a concrete shared use path.

The bid tabulation is attached for your reference.

The apparent low bidder was Northern Improvement, Co. of Fargo, ND with a bid of \$220,300.10 for option 1 and \$326,913.10 for Option 2 (+\$106,613.00).

Summary of the low bids:

	<u>Northern Improvement, Co.</u>
Option 1 (Asphalt):	\$220,300.10
Option 2 (Concrete):	\$326,913.10

Northern Improvement, Co. has completed projects in the City of Horace and performed well.

- It is our recommendation that the City recommend to Cass Co. (project sponsor) to award to Northern Improvement, Co. in the amount of \$326,913.10 for Option 2 - Concrete.

This project is funded by the NDDOT's Transportation Alternatives Program and would be granted 80.93% cost share of total eligible project costs up to a maximum of \$186,260.00. It is estimated that the City's cost share for eligible items would be (\$42,011.23) plus 100% of the difference in price of the two options (\$106,613.00) for a Total Responsibility of **\$148,624.23**.

Attached is a letter from the NDDOT that includes a breakdown of project cost share.

If you have any further questions, please feel free to contact me at any time.

Professionals you need, people you trust

NORTH
Dakota | Transportation
Be Legendary.™

April 13, 2022

Brandy Madrigga
Cass County Auditor
211 9th Street S
Fargo, ND 58103

PROJECT: TAC-0009(054), PCN 22943 – CASS CO; CMC 0949, JCT 81ST AVE S N TO JCT
CMC 0944 (HORACE)

Bids for the construction on the above noted project were taken at our bid opening on April 8, 2022.
Copies of the Contract Detail Estimate and abstract of bids are enclosed.

The low bid for SHARED USE PATH, ADA RAMPS, CURB & GUTTER, CULVERT
EXTENSION, GRADING & INCIDENTALS was submitted by Northern Improvement Company
of Fargo, ND in the amount of \$220,300.10(with Option 1). According to the agreement with
Cass County, the County's share of the project is estimated to be \$42,011.23. Federal Funds
obligated for this project shall not exceed 80.93 percent of the total eligible project cost up to a
maximum of \$186,260.00. The balance of the project cost is the obligation of the County.
Please see contract detail estimate for funding limits and breakdowns.

If the County chooses to use the higher bid with Option 2 (\$326,913.10), the County will be
responsible for 100% of the difference in the price of the two options, which is \$106,613.00.
See attached bid sheet.

The Department will review the low bidder's proposal to assure that the Disadvantaged
Business Enterprise Program requirements have been met. Upon review of the contractor's
Disadvantaged Business Enterprise Program, the Department will advise you via email
whether this project may be awarded. The County must award the contract before the
Department will concur in the award, therefore, the County must notify the Department in
writing as soon as possible after the award is made. Contracts cannot be executed prior to the
date of the Department's concurrence.

Questions should be addressed to the Construction Services Division at 701-328-2566.



PHILLIP MURDOFF, P.E. - CONSTRUCTION SERVICES ENGINEER

80/pm/jt
Enclosure
Via e-mail only

North Dakota **FEDERAL AID**

Bid Opening Date: **4/8/2022**

Project Number: **TAC-0009(054)**

PCN: **22943**

Job Number: **22943**

English/Metric: **ENGLISH**

Contract with **NORTHERN IMPROVEMENT COMPANY FARGO, ND**

Signed Date:

County(s): **CASS**

Location: **CMC 0949, JCT 81ST AVE S N TO JCT CMC 0944 (HORACE)**

North Dakota **FEDERAL AID**

Bid Opening Date: **4/8/2022**

Project Number: **TAC-0009(054)**

PCN: **22943**

Job Number: **22943**

English/Metric: **ENGLISH**

Roadway: **RURAL**

CMC 0949, LRS_ID L1878_017M FR MEAS 9.650 TO MEAS 10.015

Type: **SHARED USE PATH, ADA RAMPS, CURB & GUTTER, CULVERT EXTENSION, GRADING & INCIDENTALS**

Participating: **Y**

Spec Code	Item Description	Quantity	Unit	Unit Price	Amount
103 0100	CONTRACT BOND	1.000	L SUM	\$650.00	\$650.00
201 0330	CLEARING & GRUBBING	1.000	L SUM	\$5,000.00	\$5,000.00
202 0132	REMOVAL OF BITUMINOUS SURFACING	107.000	SY	\$20.00	\$2,140.00
203 0103	COMMON EXCAVATION-TYPE C	250.000	CY	\$38.00	\$9,500.00
203 0125	REMOVE & SALVAGE TOPSOIL	636.000	CY	\$26.00	\$16,536.00
230 0300	SUBGRADE PREPARATION-TYPE A	17.600	STA	\$300.00	\$5,280.00
251 0300	SEEDING CLASS III	0.600	ACRE	\$5,500.00	\$3,300.00
253 0201	HYDRAULIC MULCH	0.600	ACRE	\$2,750.00	\$1,650.00
255 0102	ECB TYPE 2	24.000	SY	\$8.50	\$204.00
261 0112	FIBER ROLLS 12IN	1,466.000	LF	\$2.20	\$3,225.20
261 0113	REMOVE FIBER ROLLS 12IN	768.000	LF	\$0.65	\$499.20
302 0121	AGGREGATE BASE COURSE CL 5	366.000	CY	\$121.00	\$44,286.00
401 0050	TACK COAT	3.000	GAL	\$2.70	\$8.10
430 0043	SUPERPAVE FAA 43	17.000	TON	\$300.00	\$5,100.00
430 5803	PG 58S-28 ASPHALT CEMENT	1.100	TON	\$510.00	\$561.00
702 0100	MOBILIZATION	1.000	L SUM	\$21,500.00	\$21,500.00
704 0100	FLAGGING	40.000	MHR	\$47.00	\$1,880.00
704 1000	TRAFFIC CONTROL SIGNS	1,072.000	UNIT	\$1.65	\$1,768.80
704 1052	TYPE III BARRICADE	2.000	EA	\$99.00	\$198.00
704 1054	SIDEWALK BARRICADE	2.000	EA	\$77.00	\$154.00
704 1060	DELINEATOR DRUMS	84.000	EA	\$14.30	\$1,201.20
704 1067	TUBULAR MARKERS	100.000	EA	\$3.30	\$330.00
714 5120	PIPE CORR STEEL .064IN ARCH 28IN X 20IN	46.000	LF	\$140.00	\$6,440.00
714 5870	END SECT CORR STEEL .064IN ARCH 28IN X 20IN	1.000	EA	\$375.00	\$375.00
748 0140	CURB & GUTTER-TYPE I	37.000	LF	\$100.00	\$3,700.00
750 0107	SIDEWALK - DECORATIVE	8.000	SY	\$350.00	\$2,800.00
750 0120	SIDEWALK CONCRETE 5IN REINF	30.000	SY	\$265.00	\$7,950.00
750 2115	DETECTABLE WARNING PANELS	60.000	SF	\$50.00	\$3,000.00
754 0110	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	17.700	SF	\$28.00	\$495.60
754 0206	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	89.000	LF	\$16.50	\$1,468.50
754 0592	RESET SIGN PANEL	1.000	EA	\$55.00	\$55.00
Subtotal					\$151,255.60

Type: **OPTION 1** Include in Preliminary Estimate: **YES**

ASPHALT

Spec Code	Item Description	Quantity	Unit	Unit Price	Amount
401 0050	TACK COAT	95.000	GAL	\$2.70	\$256.50
430 0043	SUPERPAVE FAA 43	424.000	TON	\$130.00	\$55,120.00
430 5803	PG 58S-28 ASPHALT CEMENT	26.800	TON	\$510.00	\$13,668.00
Subtotal Option 1					\$69,044.50

North Dakota **FEDERAL AID**

Bid Opening Date: **4/8/2022**

Project Number: **TAC-0009(054)**

PCN: **22943**

Job Number: **22943**

English/Metric: **ENGLISH**

Subtotal	\$220,300.10
Eng and Contg	\$0.00
Total	\$220,300.10

Length **0.3380 Miles**

Estimated Cost		<u>Construction</u>
		\$220,300.10
TAC FEDERAL FUNDS	80.93%	\$178,288.87
TAC CASS CO FUNDS	19.07%	\$42,011.23

Summary for Project

Length **0.3380 Miles** **CASS** **0.3380 Miles**

Estimated Total Construction Cost:	\$220,300.10
Estimated Total Eng and Contg:	\$0.00

	<u>Construction</u>	<u>Total</u>
Estimated Cost	\$220,300.10	\$220,300.10
TAC FEDERAL FUNDS	\$178,288.87	\$178,288.87
TAC CASS CO FUNDS	\$42,011.23	\$42,011.23

**DOT TO MAKE CONTRACTOR PAYMENTS
TA FEDERAL FUNDS ARE NOT LIMITED
NO CONSTRUCTION ENGINEERING REQUESTED**

ND DEPARTMENT OF TRANSPORTATION

SHEET NO 1 OF 2

ABSTRACT OF BIDS RECEIVED

PROJECT NO. TAC-0009(054)	NO. 22943	BIDDER ENGINEERS ESTIMATE	BIDDER NORTHERN IMPROVEMENT COMPANY	BIDDER CENTRAL SPECIALTIES INC
COUNTY & DATE CASS (017) APR 08, 2022 09:30AM			FARGO, ND	ALEXANDRIA, MN
LENGTH & TYPE 0.338 HORACE-CR 17- 81ST TO 76TH ROUNDABOUT		c.c. CHECK RANK 00	c.c. BOND RANK 01	c.c. BOND RANK 02
COMPLETION TIME 08/13/22 SHARED USE PATH, CURB & GUT				

SPEC. NO.	ITEM DESCRIPTION	UNIT	QUANTITY	BID PRICE	AMOUNT	BID PRICE	AMOUNT	BID PRICE	AMOUNT
103	CONTRACT BOND	L SUM	1000	2000000	2000000	650000	650000	500000	500000
201	CLEARING & GRUBBING	L SUM	1000	7500000	7500000	5000000	5000000	250000	250000
202	REMOVAL OF BITUMINOUS SURFACING	SY	107000	30000	3210000	20000	2140000	20000	2140000
203	COMMON EXCAVATION-TYPE C	CY	250000	7000	1750000	38000	9500000	75000	18750000
203	REMOVE & SALVAGE TOPSOIL	CY	636000	20000	12720000	26000	16536000	35000	22260000
230	SUBGRADE PREPARATION-TYPE A	STA	17600	500000	8800000	300000	5280000	500000	8800000
251	SEEDING CLASS III	ACRE	1600	2000000	1200000	5500000	3300000	5000000	3000000
253	HYDRAULIC MULCH	ACRE	1600	4000000	2400000	2750000	1650000	2500000	1500000
255	ECB TYPE 2	SY	24000	4000	96000	8500	204000	8000	192000
261	FIBER ROLLS 12IN	LF	1466000	2500	3665000	2200	3225200	2000	2932000
261	REMOVE FIBER ROLLS 12IN	LF	768000	750	576000	650	499200	1000	768000
302	AGGREGATE BASE COURSE CL 5	CY	366000	50000	18300000	121000	44286000	100000	36600000
401	TACK COAT	GAL	3000	1000	3000	2700	8100	5000	15000
430	SUPERPAVE FAA 43	TON	17000	75000	1275000	300000	5100000	250000	4250000
430	PG 58S-28 ASPHALT CEMENT	TON	1100	750000	825000	510000	561000	750000	825000
702	MOBILIZATION	L SUM	1000	2500000	2500000	2150000	2150000	6300000	6300000
704	FLAGGING	MHR	40000	40000	1600000	47000	1880000	75000	3000000
704	TRAFFIC CONTROL SIGNS	UNIT	1072000	2500	2680000	1650	1768800	1500	1608000
704	TYPE III BARRICADE	EA	2000	150000	300000	99000	198000	90000	180000
704	SIDEWALK BARRICADE	EA	2000	100000	200000	77000	154000	70000	140000
704	DELINEATOR DRUMS	EA	84000	25000	2100000	14300	1201200	13000	1092000
704	TUBULAR MARKERS	EA	100000	10000	1000000	3300	330000	3000	300000
714	PIPE CORR STEEL .064IN ARCH 28IN X 20IN	LF	46000	150000	6900000	140000	6440000	200000	9200000
714	END SECT CORR STEEL .064IN ARCH 28IN X 20IN	EA	1000	400000	400000	375000	375000	500000	500000
748	CURB & GUTTER-TYPE I	LF	37000	35000	1295000	100000	3700000	75000	2775000
750	SIDEWALK - DECORATIVE	SY	8000	160000	1280000	350000	2800000	435000	3480000
750	SIDEWALK CONCRETE 5IN REINF	SY	30000	50000	1500000	265000	795000	135000	405000
750	DETECTABLE WARNING PANELS	SF	60000	50000	3000000	50000	3000000	50000	3000000
754	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	17700	25000	442500	28000	495600	24000	424800
754	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	89000	15000	1335000	16500	1468500	15000	1335000
754	RESET SIGN PANEL	EA	1000	100000	100000	55000	55000	50000	50000
	SUBTOTAL				11345250		15125560		19691680
	OPTION 1								
401	TACK COAT	GAL	95000	1000	95000	2700	256500	5000	475000
430	SUPERPAVE FAA 43	TON	424000	75000	31800000	130000	55120000	175000	74200000
430	PG 58S-28 ASPHALT CEMENT	TON	26800	750000	20100000	510000	13668000	750000	20100000
	SUBTOTAL				5199500		6904450		9477500
	TOTAL				26039750		22030010		29169180
						OPT 1		OPT 1	

ACTION TAKEN BY DEPARTMENT OF TRANSPORTATION
Deputy Director For Engineering:

AWARD TO: NORTHERN IMPROVEMENT COMPANY

WHEN PRELIMINARY ARRANGEMENTS ARE COMPLETED.

ND DEPARTMENT OF TRANSPORTATION

SHEET NO 2 OF 2

ABSTRACT OF BIDS RECEIVED

PROJECT NO. TAC-0009(054)	NO. 22943	BIDDER OPP CONSTRUCTION LLC	BIDDER	BIDDER
COUNTY & DATE CASS (017) APR 08, 2022 09:30AM		GRAND FORKS, ND		
LENGTH & TYPE 0.338 HORACE-CR 17- 81ST TO 76TH ROUNDABOUT		c.c. BOND RANK 03	C.C.	C.C.
COMPLETION TIME 08/13/22 SHARED USE PATH, ADA RAMPS, CURB & GUT				

SPEC. NO.	ITEM DESCRIPTION	UNIT	QUANTITY	BID PRICE	AMOUNT	BID PRICE	AMOUNT	BID PRICE	AMOUNT
103	CONTRACT BOND	L SUM	1000	4600000	4600000				
201	CLEARING & GRUBBING	L SUM	1000	2500000	2500000				
202	REMOVAL OF BITUMINOUS SURFACING	SY	107000	22000	235400				
203	COMMON EXCAVATION-TYPE C	CY	250000	18000	450000				
203	REMOVE & SALVAGE TOPSOIL	CY	636000	30000	1908000				
230	SUBGRADE PREPARATION-TYPE A	STA	17600	2500000	4400000				
251	SEEDING CLASS III	ACRE	600	8700000	5220000				
253	HYDRAULIC MULCH	ACRE	600	5800000	3480000				
255	ECB TYPE 2	SY	24000	8000	192000				
261	FIBER ROLLS 12IN	LF	1466000	2250	3298500				
261	REMOVE FIBER ROLLS 12IN	LF	768000	1500	1152000				
302	AGGREGATE BASE COURSE CL 5	CY	366000	110000	4026000				
401	TACK COAT	GAL	3000	1200	36000				
430	SUPERPAVE FAA 43	TON	17000	220000	3740000				
430	PG 58S-28 ASPHALT CEMENT	TON	1100	800000	880000				
702	MOBILIZATION	L SUM	1000	9600000	9600000				
704	FLAGGING	MHR	40000	80000	3200000				
704	TRAFFIC CONTROL SIGNS	UNIT	1072000	2000	2144000				
704	TYPE III BARRICADE	EA	2000	100000	200000				
704	SIDEWALK BARRICADE	EA	2000	125000	250000				
704	DELINEATOR DRUMS	EA	84000	16000	1344000				
704	TUBULAR MARKERS	EA	100000	5000	500000				
714	PIPE CORR STEEL .064IN ARCH 28IN X 20IN	LF	46000	130000	5980000				
714	END SECT CORR STEEL .064IN ARCH 28IN X 20IN	EA	1000	2350000	2350000				
748	CURB & GUTTER-TYPE I	LF	37000	75000	2775000				
750	SIDEWALK - DECORATIVE	SY	8000	385000	3080000				
750	SIDEWALK CONCRETE 5IN REINF	SY	30000	135000	4050000				
750	DETECTABLE WARNING PANELS	SF	60000	50000	3000000				
754	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	17700	26400	4672800				
754	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	89000	16500	1468500				
754	RESET SIGN PANEL	EA	1000	55000	550000				
	SUBTOTAL				28462388				
	OPTION 1								
401	TACK COAT	GAL	95000	2000	190000				
430	SUPERPAVE FAA 43	TON	424000	265000	11236000				
430	PG 58S-28 ASPHALT CEMENT	TON	26800	1000000	26800000				
	SUBTOTAL				13935000				
	TOTAL				42397388				
				OPT 1					

ACTION TAKEN BY DEPARTMENT OF TRANSPORTATION
Deputy Director For Engineering:

AWARD TO: NORTHERN IMPROVEMENT COMPANY

WHEN PRELIMINARY ARRANGEMENTS ARE COMPLETED.

24

DATE OF AWARD

DEPARTMENT OF TRANSPORTATION Deputy Director For Engineering

NDDOT Contract No. 38200855

**North Dakota Department of Transportation
COST PARTICIPATION, CONSTRUCTION, AND MAINTENANCE AGREEMENT
LPA FEDERAL AID PROJECT**

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: Wenger, Pamela J.	Telephone: 701-328-4787

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. TAC-0009(054)	LPA: CASS COUNTY
Location: HORACE CR 17 SHARED USE PATH PHASE 2	
Type of Improvement: SHARED USE PATH	Length: APPROXIMATELY 2,000 FEET

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

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

The LPA agrees to the terms and conditions required for this 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 obligated for this project shall not exceed 80.93 percent of the total eligible project cost up to a maximum of \$186,260. The balance of the project is the obligation of the LPA.

Additional Funding Clause
N/A

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 LPA, prior to FHWA approval of the program documents for the project.

PART I

LPA Obligation:

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

The LPA 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 LPA 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 LPA 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:

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 solicitation, 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 23 CFR Part 625, Design Standards for Highways and the current edition of the NDDOT's *Local Government Manual*.
4. To construct the project in conformity with the approved environmental documents and provide for the implementation of 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 LPA 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 Appendices A and E of the Title VI Assurances, attached and incorporated by reference herein.



PART II

Contracting and Construction:

1. On behalf of the LPA, NDDOT will:

- a. Prepare the bid package, solicit proposals, and include the project in a scheduled bid opening as provided in the North Dakota Century Code, Chapter 24-02.
- b. Evaluate the bids as to the sufficiency of Disadvantaged Business Enterprise (DBE) participation and the bidder's 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 LPA.
- d. Concur in the award of the contract, after the LPA has executed the contract, for the sole purpose of enabling the LPA to procure federal aid for the construction of the project.

2. The LPA will:

- a. Review bids to determine the lowest responsible bidder.
- b. Execute the contract.
- c. Distribute copies of the executed contract and contract bond to NDDOT.

3. During the construction of the project, the LPA will:

- a. Provide engineering services, material testing, and inspection of the work as required by the contract documents and the current editions of NDDOT's *Sampling and Testing Manual* and the *Standard Specifications for Road and Bridge Construction*.
- b. Keep all project records and documentation as required in NDDOT's current editions of the *Construction Records Manual* and the *Construction Automated Records System*.
- c. Make all records available to NDDOT and FHWA for inspection upon request. The LPA will 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 LPA.
- 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 LPA agrees to:

1. If the traffic corridor intersects a state highway, the LPA must justify to NDDOT that any new access allowed will have minimal impact to the state highway. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.



2. Prohibit the installation of traffic signals and pedestrian beacons on or in connection with the project, including those installed at the sole cost and expense of the LPA or by others, without NDDOT approval.
3. Maintain all traffic control devices on the project according to the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways*, as supplemented and amended.
4. Restrict the speed limit on the project at or below the maximum design speed. Any changes to the speed limit will be pursuant to North Dakota Century Code, Chapter 39-09.
5. Provide maintenance to the completed project at its own cost and expense.
6. Prohibit access and 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 LPA. Payment will be made upon receipt of the engineer's estimate. The LPA will reimburse NDDOT for payments made less the amount paid by FHWA. No costs will be incurred by NDDOT for the construction and maintenance of this project.

If the LPA fails to reimburse NDDOT within 60 days after billing for funds advanced on behalf of the LPA, 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 LPA 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 LPA 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 LPA 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 LPA, and such officer, employee, or person has not participated in such acquisition for and in behalf of the LPA.
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. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.
6. All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at the 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

7. The LPA is advised that its signature on this contract or agreement certifies that 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 LPA, by the signature below of its authorized representative, hereby acknowledges that the LPA has read this agreement, understands it, and agrees to be bound by its terms and conditions.



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

APPROVED:

Birch Burdick
CITY/STATE/ATTORNEY (TYPE OR PRINT)
B. Burdick
SIGNATURE
11/17/20
DATE

LPA of Cass County
*
Chad Peterson
NAME (TYPE OR PRINT)
[Signature]
SIGNATURE
*Chair, Cass County Commission
TITLE
11-16-2020
DATE

ATTEST:

Michael Montplaisir
AUDITOR (TYPE OR PRINT)
Michael Montplaisir
SIGNATURE
11-16-2020
DATE

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

APPROVED as to substance:

Paul Benning
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)
DocuSigned by:
[Signature]
SIGNATURE
A411F817506247A...
12/10/2020
DATE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION
Ronald Henke
DIRECTOR (TYPE OR PRINT)
For the
DocuSigned by:
[Signature]
SIGNATURE
2A3326B55C844FD...
12/15/2020
DATE

DS
SS
DS
SS

*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)
L.D. Approved 4-12-93; 9-19

ATTORNEY GENERAL
APPROVED as to Execution

DocuSigned by:
Clint Morgenstern
SIGNATURE
12/14/2020

Special Asst Attorney General



CERTIFICATION OF LOCAL MATCH

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

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

Source: 211-2001-431-45.75

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

ATTEST:

Michael Montplaisir
AUDITOR (TYPE OR PRINT)
Michael Montplaisir
SIGNATURE
11-16-2020
DATE

APPROVED:

LPA of Cass County
Chad Peterson
NAME (TYPE OR PRINT)
[Signature]
SIGNATURE
*Chair, Cass County Commission
TITLE
11-16-2020
DATE

*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)
L.D. Approved 4-12-93; 9-19



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX A OF THE TITLE VI ASSURANCES**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX E OF THE TITLE VI ASSURANCES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



Risk Management Appendix

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

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

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

Governments – State and Government Entity, as defined above

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

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

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

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

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

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

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

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

RM Consulted 2007
Revised 11-19



MEMO TO: Ron Henke
Deputy Director for Engineering

FROM: Pam Wenger
Local Government Division

DATE: 12/10/2020

SUBJECT: Cost Participation, Construction, and Maintenance Agreement for Project No. TAC-0009(054) PCN 22943 – Horace CR 17 Shared Use Path - Cass County.

The purpose of this contract is construction of shared use path in Cass County.

Contract #38200855

Contract Total Maximum Cost is \$186,260

Contract authorized amount \$186,260 - 80.93% Federal Funds

38/sbh

Contract routing:

Pam Wenger - Contract Owner

Paul Benning

Steve Salwei

Shannon Sauer

Clint Morgenstern

Ronald Henke

Certificate Of Completion

Envelope Id: 7C463B00454A496E84E0163D9D68AEDB	Status: Completed
Subject: Contract #: 38200855 Please DocuSign: Cost Participation, Construction & Maintenance Agreement	
Contract Number: 38200855	
PCN: 22943	
Source Envelope:	
Document Pages: 11	Signatures: 3
Certificate Pages: 3	Initials: 3
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Pam Wenger
Time Zone: (UTC-06:00) Central Time (US & Canada)	608 E Boulevard Ave
	Bismarck, ND 58505
	pwenger@nd.gov
	IP Address: 165.234.252.245

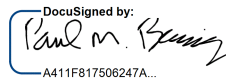
Record Tracking

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Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD	Location: DocuSign

Signer Events

Paul Benning
pbenning@nd.gov
Security Level: Email, Account Authentication (None), Authentication

Signature

DocuSigned by:

A411F817506247A...

Signature Adoption: Pre-selected Style
Using IP Address: 165.234.252.245

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Signed: 12/10/2020 10:58:02 AM

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Type: SMSAuth
Performed: 12/10/2020 10:57:25 AM
Phone: +1 701-214-2502

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Steve Salwei
ssalwei@nd.gov
Security Level: Email, Account Authentication (None), Authentication

DS


Signature Adoption: Pre-selected Style
Using IP Address: 165.234.252.245

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Vendor ID: TeleSign
Type: SMSAuth
Performed: 12/10/2020 12:36:10 PM
Phone: +1 701-527-8980

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Signer Events

Shannon Sauer
ssauer@nd.gov
Security Level: Email, Account Authentication
(None), Authentication

Signature

A blue square icon with a white border containing the letters 'SS' in a stylized font, with a small 'DS' above it.

Signature Adoption: Pre-selected Style
Using IP Address: 216.71.24.86

Timestamp

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Vendor ID: TeleSign
Type: SMSAuth
Performed: 12/14/2020 3:34:40 PM
Phone: +1 701-426-9825

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sara Helm
shelm@nd.gov
Carahsoft OBO North Dakota Department of
Transportation CLOUD
Security Level: Email, Account Authentication
(None), Authentication

A blue square icon with a white border containing the letters 'SH' in a stylized font, with a small 'DS' above it.

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Vendor ID: TeleSign
Type: SMSAuth
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Phone: +1 701-202-6473

Electronic Record and Signature Disclosure:
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Clint Morgenstern
cdmorgenstern@nd.gov
Security Level: Email, Account Authentication
(None), Authentication

DocuSigned by:

74C101681DFD4D8...

Signature Adoption: Pre-selected Style
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Phone: +1 701-213-0588

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Ronald Henke
rhenke@nd.gov
ND Department of Transportation
Security Level: Email, Account Authentication
(None), Authentication

DocuSigned by:

2A3326B55C844FD...

Signature Adoption: Uploaded Signature Image
Using IP Address: 165.234.252.245

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Authentication Details

Signer Events	Signature	Timestamp
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 Phone: +1 701-400-8185

Electronic Record and Signature Disclosure:
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Editor Delivery Events	Status	Timestamp
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Pam Wenger
 pwenger@nd.gov

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Carahsoft OBO North Dakota Department of
 Transportation CLOUD
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Using IP Address: 165.234.252.245

Electronic Record and Signature Disclosure:
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Legal Admin
 dotlegaladmin@nd.gov

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Electronic Record and Signature Disclosure:
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Legal Admin
 dotlegaladmin@nd.gov

COPIED

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Notary Events	Signature	Timestamp
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