



## Highway Department

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### MEMORANDUM

TO: Cass County Commission

FROM: Jason Benson, County Engineer *JB*

DATE: September 6, 2023

SUBJECT: Agenda Item for September 18th, 2023 Cass County Commission. Memorandum of Understanding with the Upper Great Plains Transportation Institute Regarding U.S. Department of Transportation Strengthening Mobility and Revolutionizing Transportation (SMART) Grant.

The Upper Great Plains Transportation Institute (UGPTI) at NDSU has asked Cass County to serve as the applicant for the U.S. Department of Transportation Strengthening Mobility and Revolutionizing Transportation (SMART) Planning Grant. UGPTI will be submitting a SMART planning grant application for an independent traffic operations center (TOC).

A regional TOC serves as a focal point for coordinating and supporting transportation system operations; it brings together various jurisdictions and agencies to focus on the common goal of optimizing the system's performance and maximizing its safety and service to the traveling public. A TOC provides the infrastructure, mechanism, and agreements for sharing and directing information related to traffic control, traffic management, traveler information, and traffic incident/emergency management.

The 2022 SMART planning grant application for the same project was not selected by the USDOT. One of the comments regarding the application was that it wasn't submitted by a sponsor that could construct the project in the future since UGPTI has no authority or ability to build and operate at TOC. Because of this, UGPTI is requesting that Cass County be the applicant. However, by Cass County agreeing to be the applicant for this grant, if the grant is approved, UGPTI will handle the administrative responsibilities of this grant, the planning study, all at no financial impact to Cass County. This grant would further develop the project so that it could be submitted for a future SMART construction grant which would fund the construction of the TOC. By approving this MOU, Cass County is not agreeing to be the applicant for any future construction grant application or funding a future TOC construction project.

#### **SUGGESTED MOTION:**

Move to approve the Memorandum of Understanding with the Upper Great Plains Transportation Institute Regarding U.S. Department of Transportation Strengthening Mobility and Revolutionizing Transportation (SMART) Planning Grant.



**CONTRACT APPROVAL**

**REQUIRED BY DEPARTMENT:**

DEPARTMENT: Highway Department DATE OF REQUEST: September 15, 2023

COMPANY REQUESTING CONTRACT: Upper Great Plains Transportation Institute

BRIEF PROJECT DESCRIPTION: SMART Grant

  <sup>x</sup> NEW CONTRACT OR    CONTRACT RENEWAL

**REQUIRED BY STATE'S ATTORNEY OFFICE:**

STATE'S ATTORNEY SIGNATURE: \_\_\_\_\_ DATE \_\_\_\_\_

STATE'S ATTORNEY COMMENTS:

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**MEMORANDUM OF UNDERSTANDING REGARDING U.S. DEPARTMENT OF  
TRANSPORTATION STRENGTHENING MOBILITY AND REVOLUTIONIZING  
TRANSPORTATION (SMART) GRANT**

This Memorandum of Understanding (“MOU”) is entered into between Upper Great Plains Transportation Institute, a North Dakota Research and Education Center at North Dakota State University whose address is: NDSU Dept 2880, P.O. Box 6050, Fargo, ND 58108-6050 (“UGPTI”), and Cass County, North Dakota, a North Dakota political subdivision, whose address is 211 9th Street South, Fargo, North Dakota 58103 (“Cass County”).

**WHEREAS**, North Dakota Century Code § 11-09.1-05 and Article 2 of Cass County’s Home Rule Charter authorizes the Cass County to enter into contracts; and

**WHEREAS**, Cass County will be submitting a SMART grant application for an independent traffic operations centers (TOC). A regional TOC serves as a focal point for coordinating and supporting transportation system operations; it brings together various jurisdictions and agencies to focus on the common goal of optimizing the system’s performance and maximizing its safety and service to the traveling public. A TOC provides the infrastructure, mechanism, and agreements for sharing and directing information related to traffic control, traffic management, traveler information, and traffic incident/emergency management; and

**WHEREAS**, the SMART Grant provides an opportunity to advance these high-benefit but uncommon solutions. This level of technology planning and collaboration has the potential to yield transformative benefits for the communities of Fargo-West Fargo and Cass County; and

**WHEREAS**, if awarded, the SMART Grant will fund and study a scope of work includes, but is not limited to, five phases across an 18-month completion timeframe:

- Business Plan - The purpose of the business plan is to develop an understanding of existing needs, document previous work, conduct alternatives analysis, modeling and simulation efforts, and formulate a phasing and funding plan.
- Operations Plan - The purpose of the operations plan is to lay out the vision for the Traffic Operations Center (TOC) and any field devices that will accompany the center. This effort will include the concept of operations, requirements, implementation and agency agreements, operations and maintenance, and roles and responsibilities.
- Environmental Document -The purpose of this phase is to advance the operations plan vision through the NDDOT environmental process. This will include a systems engineering management plan, preliminary design, and a decision document.
- Facility Plan - The purpose of the facility plan is to evaluate the location, integration, and architecture types for the TOC. This plan will include conceptual designs and data management best practices.
- Stakeholder Engagement - The purpose of the stakeholder engagement phase, which will occur throughout the entire duration of the project, is to identify, evaluate, and vet strategies and

visions. Engagement will occur with owners, operators, and users of the various systems as well as policy makers.

**NOW THEREFORE**, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, it is hereby agreed by and between the parties as follows: Cass County will serve as the Applicant for the SMART Grant application; and

1. Administrative. The Parties agree that the Upper Great Transportation Institute of North Dakota State will serve as the primary sub recipient to the grant and will perform the tasks described in the proposal and scope of work. The Upper Great Transportation Institute will provide Cass County with the information needed for grant management and reporting, including the progress reports and materials required by the U.S. Department of Transportation. The Upper Great Transportation Institute will coordinate the activities of all parties involved and manage the work of other parties that serve as subcontractors to UGPTI.
2. Costs. The time and costs of preparing the grant application will be borne by the Upper Great Plains Transportation Institute, expect that any subcontractors to UGPTI will be responsible for their time in preparing the proposal. Cass County will be responsible from contributing staff time as needed to help prepare and submit the grant. To the extent possible, the Upper Great Plains Transportation Institute will seek to minimize the time requirements of Cass County staff in preparing the proposal.
3. Grant Approval. The Parties agree that if the grant is approved, the Upper Great Transportation Institute will serve as the prime subrecipient and undertake the activities escribed in the scope of work.
4. Reapplication of Grant is not Approved. The Parties agree that a reapplication of this grant is not approved.
5. Term. This Agreement will terminate upon the grant not being awarded to Cass County.
6. Release and Waiver. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this MOU and each party releases the other party, its officers, employees, agents or designees relating to or arising out of that parties', agents, employees or designees work pursuant to this MOU, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, asserted or unasserted, direct or indirect, at law or in equity, from the beginning of time, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this MOU.

7. Notice. Any notice or election required or permitted to be given or served by any party to this MOU upon any other will be deemed given or served in accordance with the provisions of this MOU if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Upper Great Plains Transportation Institute:  
ATTN: Dr. Denver Tolliver  
Upper Great Plains Transportation Institute  
NDSU Dept 2880  
P.O. Box 6050  
Fargo, ND 58108-6050  
Harmony Township

If to Cass County:  
ATTN: County Administrator  
211 9th Street South  
Fargo, ND 58103

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this MOU.

8. Time is of the Essence. Time is of the essence of each provision of this entire MOU and of all the conditions thereof.

9. Entire Agreement. This MOU constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this MOU and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

10. Amendments. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

11. No Forbearance. The failure or delay of any party to insist on the performance of any of the terms of this MOU, or the waiver of any breach of any of the terms of this MOU, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this MOU, or the right to enforce each and every term of this MOU.

12. Remedies. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this MOU.
13. Binding Effect. All covenants, agreements, warranties and provisions of this MOU will be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns.
14. Governing Law. This MOU has been made and entered into under the laws of the State of North Dakota and said laws will control its interpretation. Any litigation arising out of this MOU will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.
15. Rules of Construction. The parties acknowledge that they have had the opportunity to review this MOU, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this MOU.
16. Representation. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this MOU, and agree they have not been influenced by any representations or statements made by any other parties.
17. Headings. Headings in this MOU are for convenience only and will not be used to interpret or construe its provisions.

Dated this 13th day of September, 2023.

North Dakota State University

Upper Great Plains Transportation Institute

By: Denver Tolliver

Denver Tolliver, Director

North Dakota State University

Sponsored Programs

By: \_\_\_\_\_

Amy Scott, Assistant Director

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CASS COUNTY, NORTH DAKOTA

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Chad Peterson, Board Chairman

ATTEST:

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Brandy Madrigga, Finance Director