



ENGINEERING DEPARTMENT

DATE: January 22, 2020
FROM: Gabe Schell, PE | City Engineer
ITEM: NDDOT - Safety Inspections of Bridges and Concrete Box Culverts

REQUEST

Consider approval of North Dakota Department of Transportation (NDDOT) Bridge Inspection and Load Rating services agreement.

Please place this item on the January 28, 2020 City Commission meeting agenda.

BACKGROUND INFORMATION

The NDDOT currently inspects all structures (bridges and box culverts with a span greater than 20') for the City of Bismarck. This agreement would allow the NDDOT, if necessary, to hire a consultant to inspect the nine (9) bridges/culverts within the City on a cyclical basis. The City's responsibility for these inspections would be a 20% local match of all applicable costs whether performed by the NDDOT or a consultant. Local costs to the City have historically been less than \$500 every other year.

RECOMMENDED CITY COMMISSION ACTION

Recommend approval NDDOT Bridge Inspection and Load Rating Agreement.

STAFF CONTACT INFORMATION

Gabe Schell, PE, City Engineer, 355-1505, gschell@bismarcknd.gov

**North Dakota Department of Transportation
LPA BRIDGE INSPECTION AND LOAD RATING AGREEMENT**

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 city of Bismarck, North Dakota, hereinafter referred to as the LPA, whose address is 221 N 5th St., Bismarck, ND 58506, who agree that:

It is in the best interest of both parties to have the NDDOT provide bridge inspection and/or load rating Services on LPA owned bridges that are greater than 20.0' in span length in accordance with the National Bridge Inspection Standards (NBIS), 23 CFR 650. NDDOT will provide this service either with internal staff and/or acting through a qualified Engineering Consulting Firm hired by NDDOT.

PART I

LPA Obligation:

1. The LPA will reimburse NDDOT for all costs associated with performing this service less the amount paid by Federal Highway Administration (FHWA). The federal funds will come from the LPA's allocation of federal funds.

If the LPA fails to reimburse NDDOT within 60 days after billing, 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 LPA will provide or perform the following task(s) to assist NDDOT in meeting the requirements list in the NBIS (to include but not limited to):
 - a. Allow NDDOT or consultant access to the bridge to perform the inspection(s) as deemed necessary.
 - b. Notify NDDOT if a bridge has been repaired, rehabilitated, replaced, a new bridge constructed, or damaged in order to perform the required inspection and/or load rating as necessary.
 - c. Post bridge load ratings within the required timeframe when notified by NDDOT.
 - d. Return Alert code 3 notifications and scour and channel profiles when due.
 - e. Close bridges when recommended by NDDOT so the traveling public cannot remove or go around the bridge closure.
 - f. And comply with any other requirements as federal regulations are revised.
3. Provide any bridge plans, shop drawings, etc. if available when requested.



PART II

NDDOT obligation:

1. NDDOT or consultant will perform the necessary bridge inspection(s) and/or load rating on said LPA bridge(s) in accordance with NBIS, 23 CFR 650.
2. NDDOT will secure the federal funds to perform the bridge inspection(s) and load rating on all LPA owned bridges that are required to be inspected in accordance with NBIS, 23 CFR 650.
3. NDDOT will submit the following information to the LPA for their use or action as required, but is not limited to the following:
 - a. Completed inspection report for each bridge.
 - b. Updated Structural Inventory and Appraisal (SI&A) sheet(s) for each bridge.
 - c. Bridge Load postings as required.
 - d. Bridge Alert Code 3's as required.
 - e. Bridge scour and channel profiles that need to be completed.
 - f. Bridge Critical Findings as required.
 - g. And any other requirements as federal regulations are revised.

PART III

1. This agreement will remain in place for all current and future inspections and/or load rating of LPA owned bridges unless the agreement is terminated in writing. This agreement can be terminated at any time by either party. If either party terminates this agreement, sufficient time will be provided so the other party can make the necessary arrangements to provide the necessary bridge inspection(s) and/or load ratings in accordance with NBIS, 23 CFR 650. Any costs incurred prior to and up to the termination date will be reimbursed by the applicable party.
2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. If any part of this agreement is determined to be invalid, illegal, or unenforceable, the determination does not affect the validity, legality, or enforceability of any other part of this agreement, and the remaining parts of this agreement shall be carried out by each party.



Executed by the LPA of city of Bismarck, North Dakota, the date last below signed.

APPROVED:

Janelle Combs

CITY/STATES ATTORNEY (TYPE OR PRINT)

SIGNATURE
1/28/2020

DATE

LPA of city of Bismarck
*
Steve Bakken

NAME (TYPE OR PRINT)

SIGNATURE
* President, Board of City Commissioners

TITLE
1/28/2020

DATE

ATTEST:

Keith Hunke

AUDITOR (TYPE OR PRINT)

SIGNATURE
1/28/2020

DATE

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

APPROVED as to substance:

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

*Mayor, President or Chairperson of Commission

CLA 1097 (Div. 38)
L.D. Approved 1-6-20



**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

