



## *Engineering Department*

**DATE:** September 15, 2020

**FROM:** Gabe Schell, City Engineer

**ITEM:** NDDOT CPM agreement for Bismarck Expressway Bridge Rehabilitation Project

### **REQUEST**

Consider approval of North Dakota Department of Transportation Cost Participation and Maintenance Agreement for Bismarck Expressway Bridge Project NHU-1-810(028, City Project HC-137

Please place this item on the 9/22/2020 City Commission meeting agenda.

### **BACKGROUND INFORMATION**

The NDDOT is proposing a maintenance project consisting of painting, joint repark, deck grinding and crack sealing on the Bismarck Expressway Bridge over the Missouri River in 2021.

The NDDOT is requesting the City of Bismarck enter into a Cost Participation and Maintenance (CPM) agreement for the project. This agreement assigns the respective responsibilities of the NDDOT and the City of Bismarck including the financial responsibility for each party.

The City will be required to pay for 5% of the total cost of all items on the project and which are determined eligible for funding participation. The total cost will include the actual construction cost plus 10 percent for the preliminary and construction engineering. The City would be 100% responsible for any extra items as well as 10% for construction engineering for any items requested by the City. It is not anticipated that any extra items will be requested.

The agreement indicates an estimated City cost share of \$71,211 for the \$1,424,220 project. The City funding source of sales tax was identified in the 2021 CIP.

**RECOMMENDED CITY COMMISSION ACTION**

Approve the NDDOT Cost Participation and Maintenance Agreement.

**STAFF CONTACT INFORMATION**

Gabe Schell, PE | City Engineer, 355-1505 or [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**North Dakota Department of Transportation  
COST PARTICIPATION AND MAINTENANCE AGREEMENT**

**Federal Award Information – to be provided by NDDOT**

CFDA No: 20.205

CFDA Title: Highway Planning &amp; Construction

Award Name: Federal Aid Highway Program

Awarding Fed. Agency: Federal Highway Admin

NDDOT Program Mgr: Striefel, Ardin L.

Telephone: 328-2559

**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.NHU-1-810(028)000**

**Location: 1 Mile West of Washington St (Bismarck Expressway Bridge)**

**Type of Improvement:** Structural Steel Painting, Rust Repair, Joint Repair, Deck Grinding, & Crack Sealing

**Point of Beginning:** West Side of Expressway Bridge

**Point of Ending:** East Side of Expressway Bridge

In consideration of the mutual benefits to be derived therefrom, it is agreed 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 Bismarck, North Dakota, hereinafter referred to as the LPA, the project will be constructed in accordance with the current edition of NDDOT's *Standard Specifications for Road and Bridge Construction* and with the plans incorporated into this agreement by reference.

The LPA

- a. Will pay 5 percent of the total actual cost of right of way acquired for the project which are determined eligible for funding participation; and
- b. Will pay 5 percent of the total actual cost of utility relocations required for the project which are determined eligible for funding participation; and
- c. Will pay 5 percent of the total actual construction cost of all items which are determined eligible for funding participation; and
- d. Will pay 5 percent of the total actual preliminary engineering cost of all items which are determined eligible for funding participation; and
- e. Will pay 5 percent of the total actual construction engineering cost of all items which are determined eligible for funding participation; and
- f. Will pay 100 percent of the actual construction, preliminary engineering, construction engineering, utility relocation, right of way, and any other costs incurred of all items as requested by the LPA and determined to be non-participating or ineligible for federal aid.



## PART I

### LPA Obligation:

1. The LPA will pay to NDDOT as the work progresses or when completed its share of the total cost of the project as defined above.
2. It is specifically agreed that if at any time the LPA fails to pay the amount billed to NDDOT within 60 days after billings, this document shall constitute an assignment of funds derived from the State Highway Tax Distribution Fund now or hereafter coming into the hands of the State Treasurer to the credit of the LPA, and the State Treasurer is hereby directed to deliver and pay over to NDDOT all funds credited to the LPA until the total thereof equals the sum billed pursuant to this agreement. The preliminary cost estimate of the project is \$1,424,220, with the LPA's estimated share being \$71,211.
3. All existing LPA right of way within the project limits will be provided by the LPA with clear title and available for use in the project.

## PART II

### Post Construction

After the project is completed the LPA agrees to:

1. The LPA will control the length and location of curb openings for future entrances and will not permit the length of curb openings for entrances to exceed the length shown on the plans or as shown on a sketch of typical entrances for similar entrances; and will prohibit the construction or use of any entrances along the project within the LPA other than those shown on the plans, without prior approval of NDDOT.
2. The LPA will not change any speed limit signs as shown on the plans without prior approval of NDDOT.
3. The LPA will prohibit double and diagonal parking and will control all parallel parking where allowed within the limits of the project in a manner satisfactory to NDDOT and to the Federal Highway Administration (FHWA), or both.
4. All signs, signals, markings, and other protective structures erected on or in connection with the project, including those installed at the sole cost and expense of the LPA or by others, shall be approved by NDDOT. All traffic control devices will be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.
5. All right of way for the project will be maintained free of all encroachments except utilities and others in accordance with the current edition of NDDOT's "A Policy for Accommodation of Utilities on State Highway Right-of-Way". All obstructions to, interference with, or hazards to traffic flow will be removed by the LPA at the request of NDDOT. 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 the streets, inconveniences to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance.



### **PART III**

#### Maintenance

NDDOT is responsible for all maintenance activities except those identified as LPA responsibilities. The LPA is responsible for restoring to original conditions any cuts in surface initiated by the LPA for utilities, etc. Exact limits of the project are shown on the attached map.

### **PART IV**

#### General:

1. Appendices A and E of the Title VI Assurances, attached, are hereby incorporated into and made a part of this agreement.
2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. 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.
4. 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 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.
5. NDDOT is not responsible for any Property Taxes or Special Assessments on property which has been acquired as part of the roadway reconstruction project. The LPA is responsible to make arrangements for deferral or payment of such Taxes and/or Special Assessments.



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

APPROVED:

LPA of Bismarck

\_\_\_\_\_  
LPA ATTORNEY (TYPE OR PRINT)

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\*  
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

ATTEST:

Please attach Certificate of Insurance

\_\_\_\_\_  
AUDITOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Executed for the North Dakota Department of Transportation by the Director at Bismarck, North Dakota,  
the last date below signed.

APPROVED as to substance by:

NORTH DAKOTA DEPARTMENT OF  
TRANSPORTATION

\_\_\_\_\_  
DIVISION DIRECTOR(TYPE OR PRINT)

\_\_\_\_\_  
DIRECTOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

\*Mayor or President of Commission

CLA 17058 (Div. 38)  
L.D. Approved 10-17, Rev. 06-20; C.M. 08/20/2020



### CERTIFICATION OF LOCAL MATCH

It is hereby certified that the LPA of Bismarck 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:**

Sales Tax

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

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
AUDITOR (TYPE OR PRINT)

LPA of Bismarck

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\*

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\*Mayor or President of Commission

CLA 17058 (Div. 38)  
L.D. Approved 02-18; Rev. 08-18; C.M. 08/20/2020



**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).



Appendix A**NHU-1-810(028)000 - Cost Estimate and Funding Breakdown - Bismarck 810**

Cost Estimate:	Total	Federal	State	City 5%
Bridge Work Estimated Cost =	\$1,294,745 =	\$1,047,837	\$117,433	\$64,737
Construction Engineering =	\$129,475 =	\$104,784	\$11,743	\$6,474
<b>Total Cost Estimate =</b>	<b>\$1,424,220 =</b>	<b>\$1,152,621</b>	<b>\$129,177</b>	<b>\$71,211 *</b>

**NHU-1-810(028)000 - Cost Estimate and Funding Breakdown - Mandan 810**

Cost Estimate:	Total	Federal	State	City 5%
Bridge Work Estimated Cost =	\$1,294,745 =	\$1,047,837	\$117,433	\$64,737
Construction Engineering =	\$129,475 =	\$104,784	\$11,743	\$6,474
<b>Total Cost Estimate =</b>	<b>\$1,424,220 =</b>	<b>\$1,152,621</b>	<b>\$129,177</b>	<b>\$71,211 *</b>

\*Note: The costs above are estimated.

9/3/2020

# JOB #22 NORTH DAKOTA

## DEPARTMENT OF TRANSPORTATION

NHU-1-810(028)000

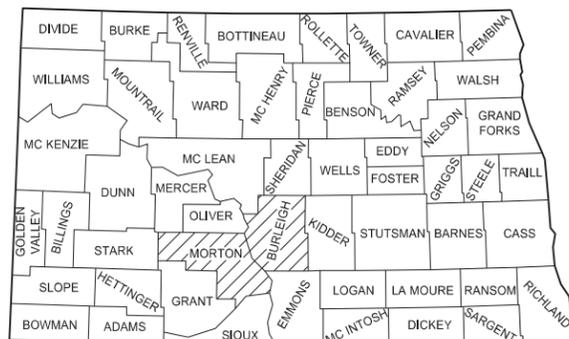
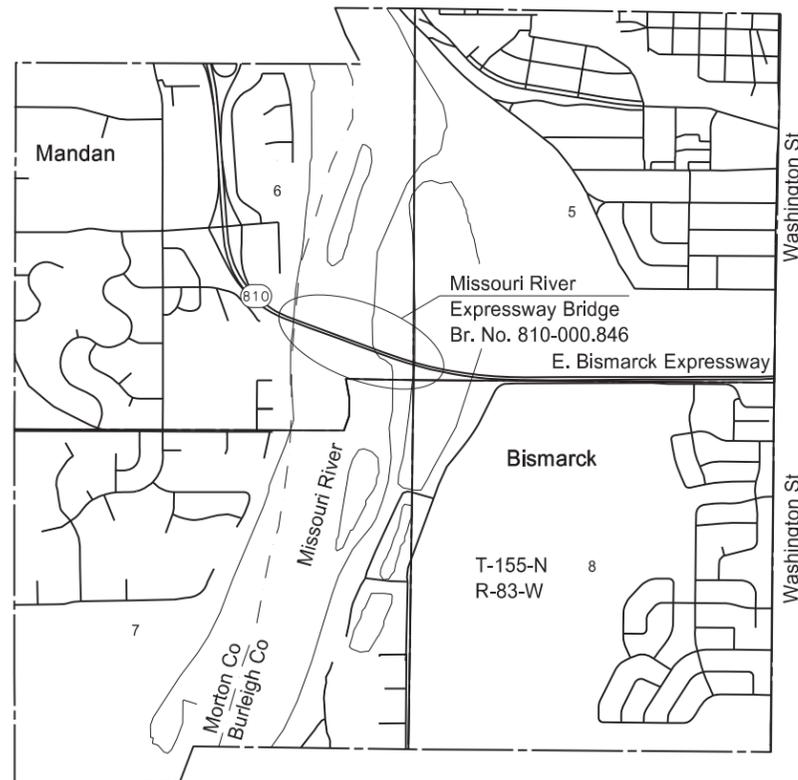
Morton & Burleigh Counties  
 Missouri River ~ Expressway Bridge  
 1 Mile West of Washington Street  
 Structural Steel Painting, Pack Rust Repair, Expansion Joint Repair,  
 Deck/Approach Surface Grinding, Concrete Spall Repair & Concrete Crack Sealing

STATE	PROJECT NO.	PCN	SECTION NO.	SHEET NO.
ND	NHU-1-810(028)000	22863	1	1

23 U.S.C. 409  
 NDDOT Reserves All Objections

GOVERNING SPECIFICATIONS:  
 2020 Standard Specifications adopted by the North Dakota  
 Department of Transportation and the Supplemental Specifications  
 effective on the date the project is advertised.

PROJECT NUMBER \ DESCRIPTION	NET MILES	GROSS MILES
NHU-1-810(028)000	N/A	N/A



STATE COUNTY MAP

ND DEPARTMENT OF TRANSPORTATION  
 BRIDGE DIVISION

*Nathan D Ketterling*

09/02/20

BRIDGE ENGINEER



DocuSign

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