

**REQUEST FOR PROPOSALS
FOR
ENGINEERING TRANSPORTATION PLANNING SERVICES**

The Bismarck-Mandan Metropolitan Planning Organization (MPO) and Bis-Man Transit request proposals from qualified consultants for the following project:

RE-ISSUED - 2022 Transit Development Plan

Qualifications based selection criteria will be used to analyze technical proposals and interviews from responding consultants. The MPO reserves the right to reject any or all proposals. **This project has a not to exceed budget of \$175,000.**

Interested firms should contact, Rachel Drewlow, Executive Director, at the Bismarck-Mandan MPO, 221 N 5th Street P.O. Box 5503, Bismarck ND 58506. Contact can also be made via phone 701.355.1852 or by email: rdrewlow@bismarcknd.gov

All proposals received by 4:00 PM (CST) on June 17, 2022 will be given consideration for an interview. The Bismarck-Mandan MPO reserves the right to limit the interviews to a maximum of five (5) firms whose proposals most clearly meet the RFP requirements. Firms will be notified in writing or by phone of shortlist results. Successful candidates will receive date, time and location information for the interviews. Consultant may provide a video conference platform for team members participating remotely.

It is the responsibility of the consultant to ensure all required elements of the proposal are submitted. Proposals missing required elements will be rejected and consultants will be denied interviews.

Minority, women-owned, and disadvantaged business enterprises are encouraged to participate. Respondents must submit six (6) copies of the written proposal and one (1) electronic copy. The full length of the proposal shall be no more than eight (8) pages, and preferably printed as double sided. Stapling is preferred over spiral binding. Appendix material is not counted toward the eight (8) page limit. Submittals must be received no later than 4:00 PM (CST) June 17, 2022 and may be shipped or hand delivered to:

Bismarck-Mandan MPO
221 N 5th Street
P.O. Box 5503
Bismarck, ND 58506-5503

Once submitted, the proposals become the property of the MPO. Proprietary information must be clearly noted in the proposal, or it will be subject to open records laws.

To request accommodations for disabilities and/or language assistance, contact Title VI/ADA Coordinator at (701) 355-1332, or email mpo@bismarcknd.gov, TTY users may access Relay North Dakota at 711 or 1-800-366-6888.

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I. PURPOSE OF THE REQUEST

The purpose of this Request for Proposals (RFP) is to provide interested consulting firms with enough information about the professional services desired by the Bismarck-Mandan Metropolitan Planning Organization (MPO) for the following project:

2022 Transit Development Plan

The MPO is requesting services to complete an evaluation and operational analysis of the transit system managed by Bis-Man Transit, which serves Bismarck and Mandan, ND. This study will be in cooperation with the cities of Bismarck and Mandan; the Bis-Man Transit Board, the North Dakota Department of Transportation (NDDOT), the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA).

II. GENERAL INSTRUCTIONS

A. Any questions or comments regarding this proposal should be submitted to:

Bismarck-Mandan MPO
221 N 5th Street
P.O. Box 5503
Bismarck, ND 58506-5503

Phone: 701.401.6996
E-Mail: dhughes@bismantransit.com
(cc: rdrewlow@bismarcknd.gov and kriepl@bismarcknd.gov)
(Please submit all questions in writing no later than June 15, 2022,)

B. Proposals shall be submitted to:

Bismarck-Mandan MPO
City/County Building
221 N 5th Street
P.O. Box 5503
Bismarck, ND 58506-5503

C. All Proposals must be clearly identified and marked as follows:

Proposal for:
2022 Transit Development Plan
Firm's Name
Bismarck-Mandan MPO

- D.** The MPO will only consider proposals received prior to 4:00 PM Central Time on Friday, June 17, 2022. Six (6) copies of the written proposal and one (1) electronic copy must be received by the deadline. Electronic copies may be sent via a flash drive or emailed to rdrewlow@bismarcknd.gov. Proposals received after the 4:00 PM deadline will be considered unresponsive and will not be considered for an interview. The MPO reserves the right to reject any or all proposals.

E. Proposal Cut Down:

The Selection Committee intends to interview between three (3) and five (5) consultants, depending on the number and quality of proposals received. Strength of the written proposals will be the basis for awarding an interview. Consultants who are awarded an interview will be notified by phone. Consultants not selected for an interview will be notified in writing.

<p>F. Selection Committee: The Selection Committee will consist of a six (6) person panel; five (5) voters and one (1) moderator. Committee members represent the following entities: City of Lincoln, City of Bismarck, City of Mandan, Bismarck Transit, and a member of the community at large/business community. The MPO Project Manager will moderate the interviews and provide a tie breaking vote if neither Consultant employs a ND-Certified DBE.</p>
<p>G. Interviews: Consultants will be evaluated on both the written proposal and in-person interviews. Ranking is based on the criteria listed in Section V: Evaluation Criteria and Process. Interviews are planned to be held July 13, 2022. Consultants will be given forty-five (45) minutes for their interview and Q&A. Consultants manage their own time and are encouraged to leave space at the conclusion of their presentation for questions and answers. There will be fifteen (15) minute breaks between interviews for set up and tear down. Consultant may provide a video conference platform for team members participating remotely.</p>
<p>H. Disadvantaged Business Enterprise: In the event that multiple consultants are equally ranked as the top consultant, additional positive consideration will be given to proposals which employ a Disadvantaged Business Enterprise (DBE) company. The DBE company must be certified with the North Dakota Department of Transportation (NDDOT). This applies equally to the prime or sub-consulting company, and any such company should be identified in the proposal.</p>
<p>I. Selection and Approvals: Selection will be based on the interview committee's recommendation. All interviewees will be notified of the selection results by phone and formal letter. Approval of the top ranked consultant will be requested of the MPO's TAC and Policy Board.</p>
<p>J. Contract Negotiations: Contract development will begin immediately after Policy Board approval of the top-ranked consultant. The MPO has a template contract which will be use for the study. Consultant will be required to prepare a scope of work and final fee schedule, which will be included in the contract. The draft contract is reviewed by MPO Staff, local and federal partners, and legal counsel(s). After negotiations, the MPO intends to execute the contract upon staff authority.</p> <p>Final negotiations will include submission of:</p> <ol style="list-style-type: none"> 1) Prime Consultant scope of work and final fee schedule not exceeding \$175,000 2) Scope of work and fee schedule for <u>ALL</u> Subconsultants 3) Prime Consultant Certificate of Liability Insurance 4) Prime Consultant Indirect Cost Form (blank form will be provided by MPO) 5) SFN 60233: Prime Consultant Request to Sublet Form (blank form will be provided by MPO) 6) Up-to-date SF330 Form for NDDOT (See Section III: Content of Proposals).

III. CONTENT OF PROPOSALS

Length of Proposals:

The length of the main body of the proposal shall be limited to eight (8) pages and these pages shall be numbered. If the main body is printed double-sided, the reverse of the first page should be numbered 'page 2', and the main body would cover four physical pages front-and-back. The cover page, the table of contents, and the appendix material are not counted in the (8) page limit. These may be numbered distinct from the main body or not numbered all, and consultants may use as many pages as needed for these elements. Stapling is preferred over spiral binding.

Required Elements for Proposal:

The consultants are requested to be as brief and concise as possible. The main body of the proposal shall address the following major sections:

1. Description of firm
2. Organizational chart showing project team and general activities
3. Table of key individuals' time-available for project/study
4. Understanding of project and proposed work approach
5. Brief examples of past, pertinent work projects

Required Elements for Appendix:

The consultant's appendix must include the following items unless noted as 'optional'. The following items will not count toward the eight (8) page limit and may take as many pages as needed.

- **Proposed Project Schedule:** Proposed schedules may begin as soon as July 19, 2022, and should detail all activities necessary to complete the study. Activities may include but are not limited to:
 - Contract Negotiations
 - Monthly Updates (via telephone or in person) to MPO TAC and Policy Boards
 - Updates (as needed) to the Bis-Man Transit Board.
 - Data Acquisition (provided, as available, by MPO, NDDOT, City of Bismarck, City of Mandan, and Bis-Man Transit)
 - Stakeholder Interviews/ Bis-Man Transit Board
 - Steering Committee Meetings/ Activities
 - Public Outreach Activities (webpage, meetings, social media, news releases, etc.)
 - Public Input Meetings
 - Documents/Tech Memos for Study Milestones
 - Draft Report Development
 - Draft Report Review by Steering Committee, MPO, NDDOT, FHWA, and FTA (required before presentation to the Bis-Man Transit Board, City Commissions, and MPO Boards)
 - Final Presentations to the Bis-Man Transit Board, Bismarck City Commission, Mandan City Commission, MPO TAC and Policy Board.
- **Quality Control/Quality Assurance (QC/QA) program:** Detail the program that will be used on the project. This (QC/QA) program must identify the team members, their responsibilities, and stages of development at which each is to be responsible.
- **Required Qualification Based Selection (QBS) Documents:**
 - Signed Proposed Sub-Consultant Request Form (Appendix A)
 - Signed Consultant Self Certification of Government-Wide Debarment and Suspension (Nonprocurement) Form (Appendix B)
 - Signed and Notarized Certification and Restriction on Lobbying Form (Appendix C)
- **Resumes or list of Personnel:** Detail who will be assigned to work on the project (including titles, education, and/or work experience).
- **Optional:** Consultants are encouraged to update or complete a Federal Standard Form 330 (Architect-Engineer Qualifications). The SF 330 is an NDDOT requirement, and proves the consultant is pre-qualified to provide architectural, engineering and/or planning services for NDDOT. Consultants will not be penalized if the SF 330 is omitted in their proposal, but **the consultant selected for contract negotiations must provide an active SF-330 before the contract can be signed.**

See http://www.dot.nd.gov/divisions/environmental/docs/consultnt_prequal_requirements.pdf for link to the SF 330. All SF 330 forms will be kept on file by the MPO and forwarded to NDDOT.

Disclosure of Proposal Ownership:

At the conclusion of the selection process, the contents of all proposals will be subject to the City of Bismarck's Open Records Law and may be open to inspection by interested parties. Any information included in the proposal that the proposing party believes to be a trade secret or proprietary information must be clearly identified in the proposal. Any identified information documented as such and protected by law may be exempt from disclosure.

IV: ADDITIONAL REQUIRMENTS AND MISCELLANEOUS INFORMATION

State, Federal and Local Contract Requirements:

The City of Bismarck as the MPO's Host Agency, the NDDOT, and FHWA require that specific clauses accompany federally funded projects executed by the MPO. Consultants should be prepared to abide by the necessary clauses which are included verbatim and unaltered in all potential MPO contracts. *The clauses can be reviewed in Appendix D: State, Federal and Local Clauses.*

One additional clause not included in Appendix D, but required due to the use of Federal Funds, is the ‘Ownership of Work Product Clause’. Consultants and subconsultants should be prepared to abide by the following:

Ownership of Work Product: All work products and copyrights of the contract, which result from the contract, are the exclusive property of BMMPO and NDDOT, with an unlimited license for use by the federal government and its assignees without charge.

General Information:

Bismarck-Mandan MPO reserves the right to enter into a supplementary agreement to have the selected firm perform any additional work not currently assigned.

If the contract is terminated prior to completion of the final report, all work completed, which has been compensated for, shall become the property of the NDDOT, as per the ‘Ownership of Work Product’ Clause. The final report will be submitted using the following formats and standards, if applicable:

- GIS Shapefiles
- MS Word/ MS Excel
- Adobe Acrobat (Standard or Compatible)
- NDDOT Data Collection Codes and Procedures
- NDDOT and/or City, as applicable, Drafting Standards
- NDDOT Design Manual
- Chapter 19 NDDOT Survey and Photogrammetry Manual

V. EVALUATION CRITERIA AND PROCESS

The selection process will be completed in accordance with Bismarck-Mandan MPO policies. Written proposals shall address the firm’s ability to perform the necessary services in the allotted time with qualified personnel. Selection will be based on an array of measures chosen from the following criteria:

1. Recent, current, and projected workloads
2. Ability of professional personnel (staff experience and technical capabilities)
3. Related experience on similar projects
4. Location
5. Project understanding, issues and approach
6. Past Performance
7. Willingness to meet time and budget
8. Recent and current work for the agency
9. Project Schedule

The final selection will be based on written proposals along with in-person interviews (with the capability for a consultant-provided online platform). All firms not selected will be notified in writing.

In the event of equally ranked consultants, additional positive consideration will be given to proposals which employ a Disadvantaged Business Enterprise (DBE) company. If no DBE is employed, the moderator’s rankings will provide the tie-breaking score. See Section II: General Instructions for more information.

A final scope of work will be developed and price will be negotiated with the successful firm. An agreement will be executed with a single firm. If unable to arrive at a mutual agreement with the top ranked firm, the MPO retains the right to move on to negotiations with the second (then third, etc.) ranked firm. Approved sub-agreements for minor portions of the work will be permitted.

VI. REGIONAL CONTEXT AND EXISTING CONDITIONS

Bismarck-Mandan MPO Region:

The Bismarck-Mandan MPO consists of the cities of Mandan, Bismarck, and Lincoln, and the metropolitan portions of Burleigh and Morton County. The MPO has a performance-based planning process that supports metropolitan community development and federal, state and local transportation goals. These plans and programs are intended to lead to the development of an integrated, multi-modal metropolitan transportation system that facilitates the safe, efficient and economic movement of people and goods.

The MPO planning area is roughly 394 square miles with an estimated population of approximately 115,000 and 50,000 households (Source: 2013-2017 5-year American Community Survey). The MPO area is bisected from north to south by the Missouri River and is generally comprised of rolling topography throughout. One of the more noteworthy challenges facing the MPO planning area is the heightened level of growth, experienced largely due to energy development in western North Dakota. Historic growth trends in the MPO area have traditionally hovered within a 1% to 1.5% annual rate of population growth. The currently adopted growth projection is a “Continuation of Past Trends”, or a 1.2% annual growth rate for the period between 2015 and 2045.

While the population growth is generally perceived as positive, there are some noteworthy concerns, specifically: the impact of recent growth on public service costs, the continued ability of the MPO region to grow in an efficient manner, and the ability to maintain the high quality of life enjoyed by residents of the communities. The heightened rates of growth strain many aspects of the region’s transportation infrastructure and create increased demands on area municipal services, schools, and transportation. Also, topography, man-made barriers, and historical development patterns have contributed to challenges regarding roadway connectivity. The MPO’s local jurisdictions have worked diligently to meet these needs, and now must develop a balance to accommodate the expanding systems but also maintain current, aging infrastructure.

The MPO has a planning process that supports metropolitan community development and social goals. These plans and programs are intended to lead to the development of an integrated, multi-modal metropolitan transportation system that facilitates the safe, efficient and economic movement of people and goods.

Bis-Man Transit:

The Bis-Man Transit system was originally developed in 1989-1990. It was designed as a coordinated transportation system to replace several smaller individual programs.

Transit services are run out of the Bis-Man Transit offices, located at 3750 East Rosser Avenue. This location also serves as the regular stop and depot for the Jefferson Lines inter-state bus service.

The City of Bismarck is designated as the grantee for Federal Transit funds and owns the building, vehicles and equipment of the Bis-Man Transit service. The City passes federal funds to the Bis-Man Transit Board, who is the broker for public transportation in the community. Numerous City departments, as well as the MPO, provide monitoring and oversight of Bis-Man Transit’s administrative processes to ensure federal requirement are met and maintained.

The Bis-Man Transit Board is comprised of nine members. Board members serve voluntarily and have three-year terms. Placement onto the board is achieved thru individual application followed by popular vote of the current board’s contingency. The Board provides members to an Executive Committee, a Finance Committee, and an Administrative Committee which confer on committee-specific items. The Board also considers recommendations provided thru a Citizen-led advisory committee known as CTIC (Community Transportation Input Committee). The Bis-Man Transit Board employs three staff persons to manage the administrative duties of the Transit offices: a Transit Executive Director, a Marketing and Mobility Specialist, and a Transit Accountant.

The Bis-Man Transit Board contracts with National Express to operate the area’s public transportation service. National Express provides all drivers, dispatchers, and maintenance personnel, as well as the management to employ these persons. National Express also staffs the Jefferson Lines bus depot.

Bis-Man Transit, as a public transportation service, has two operational components. The paratransit service, which was the community’s original service, is called Bis-Man Transit. The fixed-route service, which began in 2003, is known as Capital Area Transit (CAT). Weekly paratransit services run 18.5 hours on Monday thru Saturday (5:30am -12am) and seven hours on Sunday (7:30am - 2:30pm). Weekly CAT service runs 12 hours on Monday thru Friday (7:00am – 7pm), six hours on Saturday (8:00am – 7:00pm), and zero hours on Sunday.

The Bis-Man Transit Board, their staff, and National Express have looked into alternative modes of public transportation. This includes a premium demand-response option which can be made available to the entire community (and not only paratransit eligible individuals) or other micro-transit opportunities. They would like to continue this investigation in the current study.

The paratransit service logged approximately 392,998 miles within the Bismarck-Mandan service area and the City of Lincoln in 2021. The CAT fixed-route service logged 351,049 miles in the same period, but does not extend to Lincoln. Paratransit mileage is approximately 25% decreased compared to pre-pandemic levels. However, the fixed-route has returned – relatively speaking – to its pre-pandemic level of service.

The paratransit service made 86,203 trips in 2021, and the CAT fixed-route service made 56,744 trips in the same period. These numbers represent a 20-30% decrease in paratransit trips and a 45-48% decrease in fixed-route trips compared to pre-pandemic levels.

In 2017, the Bis-Man Transit Board, with approval from the Bismarck City Commission, implemented service changes that reduced the hours of service and eligibility for paratransit ridership. These changes were an attempt to ‘right-size’ the operations and become more financially sustainable. These changes did decrease paratransit ridership somewhat, and produced a very small shift to fixed-route ridership. Further, the fixed-routes were recently updated using a citizen-centered approach. The Bis-Man Transit Board and staff are relatively pleased with these service changes.

Monthly paratransit and CAT ridership has been listed in the tables below:

CAT Bus	2018	2019	2020	2021	2022	Paratransit	2018	2019	2020	2021	2022
January	8,165	7,483	7,946	3,878	5,131	January	10,989	8,884	9,025	6,066	7,439
February	8,020	7,568	7,810	4,065		February	10,000	8,951	8,535	6,194	
March	9,187	9,313	5,173	4,488		March	10,311	9,663	6,108	7,495	
April	9,116	10,173	-	4,087		April	11,034	9,648	2,673	6,825	
May	9,783	9,765	2,159	4,559		May	10,670	9,638	3,733	6,834	
June	10,381	8,427	5,025	4,694		June	9,756	8,532	5,999	7,437	
July	9,341	8,351	4,343	4,096		July	9,718	9,153	6,102	7,324	
August	9,583	8,304	4,685	4,770		August	10,516	9,153	6,195	7,903	
September	8,527	8,598	4,885	5,298		September	9,062	8,562	5,836	7,526	
October	9,438	8,612	5,225	6,147		October	10,809	9,334	6,229	7,825	
November	8,309	7,936	4,016	5,604		November	9,891	8,329	4,957	7,372	
December	7,313	8,008	4,178	5,058		December	9,332	8,762	6,243	7,402	
	107,163	102,538	55,445	56,744	5,131		122,088	108,609	71,635	86,203	7,439

VII. OBJECTIVE

The purpose of this study is to provide the Bismarck-Mandan MPO and Bis-Man Transit with a quality and usable guide to improve operations in a financially constrained manner. The study should evaluate and build upon the current TDP but provide additional guidance where improvement is needed.

The primary effort of this study will be to evaluate the organizational structure and financial sustainability of the public transportation service. Consultants shall develop a compelling case for necessary service changes and embark on an exploration of alternative organizational structure. The system has operated under the ‘grantee-broker-operator’ system since its inception. There is a desire to evaluate if this remains the best, most optimal arrangement. No recommendation—operational or organizational—shall be considered the ‘best’ or ‘first’ option. Rather a variety of alternatives shall be invested and weighted based a holistic array of factors: ability to meet public needs, ability to become fiscally sustainable, ability to create workflow efficiencies for City, MPO and Transit Staff, etc.

The study should be comprehensive in its discussion of recommendations and potential outcomes. Recommendations should be achievable in a strategic manner and backed by a clear, logical rationale that is useful for decision-makers, staff, and community members. Exceedingly clear and thorough communication is required for this study.

VIII: STUDY AREA

The study area encompasses transits current service area, which includes the corporate limits of Bismarck and Mandan AND $\frac{3}{4}$ of a mile from an existing route. Routes may be viewed on the Bis-Man Transit website: www.bismantransit.com/

IX. SCOPE OF WORK

Project Management:

This task involves activities required to manage the project including staff, equipment, and documentation. It also includes the preparation of progress reports, documenting travel and expense receipts, and preparing and submitting invoices in a timely manner. This task includes monthly progress reports to the MPO, Bis-Man Transit Board and Transit Staff, the Technical Advisory Committee, and to the Policy Board.

Steering Committee:

The MPO project manager will assist the consultant in developing a Steering Committee(s) for the study. The Committee(s) may contain but are not limited to the following members:

- City Engineers/ City Traffic Engineers
- City Planners
- Staff of Bis-Man Transit
- Staff member(s) of the MPO
- Members of the Community
- Members of the CTIC
- City Officials or representative staff for the interests of Bismarck, Mandan and/or Lincoln.
- Transit Board Members (preferably not to exceed a quorum)
- NDDOT Local Government Division
- FHWA
- FTA

The consultant shall meet with the Steering Committee periodically, and as necessary, during the study process to review data and recommendations.

The consultant shall provide progress/technical memorandums at key points throughout the study process. Sufficient copies shall be provided for the distribution to the Steering Committee.

Involvement with the Transit Board:

Consultant is expected to regularly meet with the Transit Board and consider their input in identifying the future vision for Transit and recommendations for the Transit Development Plan. Study updates should be given to the Transit Board every 2-4 months, or as needed. These presentations are intended as general updates, not opportunities to steer the study. MPO staff feels it would be more beneficial for the Transit Board to designate members to sit on the steering committee and/or participate in Full-Board design charrettes to provide guiding input.

Review of Previous Plan:

Consultant will review the previous Transit Development Plan (2017 Transit Development Plan) and evaluate its recommendations. Consultant should assess whether a previous recommendation had been implemented and if it had been implemented to completion. Areas that have not been achieved should be evaluated for their continued value and usefulness to the future of the transit agency.

Special Requests by Bis-Man Transit:

1. Special Focus Areas
 - a. Identify the long-term vision for transit in our community. Consider the needs and wishes of Users, Citizens, Commissions, and Transit Board and Transit Staff.

- b. Involve the public in further discussion on funding challenges for Transit. How can transit involve the community so they better understand the ‘why’ behind service changes so that Transit’s reputation remains favorable in the communities.
- 2. Organizational Analysis and Peer Comparisons
 - a. Compare the Organizational Structure of Transit to that of other Transit agencies in the state and comparable cities.
 - b. **Create infographic/chart** to share with City Commission and the taxpayers.
- 3. Organizational Recommendations
 - a. Describe feasible alternatives for the overall organizational structure.
 - b. Outline the costs, advantages, and challenges of all feasible alternatives. Ensure all feasible options are permissible under state and federal law.
 - c. Alternatives may include, but are not limited to:
 - i. Grantee administers the system internally and contracts operations.
 - ii. Grantee administers and operates the system internally.
 - iii. Grantee contracts with a single service provider to administer and operate the system.
 - iv. Grantee changes to another entity (ie. Transit Authority) for administration and operations.
 - v. Administration and Operation of the service is privatized.
 - d. **Create infographic/chart** to share with City Commission and the taxpayers
- 4. Analysis of Current Cost of System
 - a. Develop a detailed outline of the costs to managing, operate, and monitoring the Transit system.
 - b. Cost could include:
 - i. Operations and Maintenance Costs
 - 1. Costs of Fixed-Route Service
 - 2. Costs of Paratransit Service
 - ii. Capital Costs
 - iii. Administrative Costs
 - iv. Monitoring and Oversight Costs
 - c. **Create infographic/chart** to share with City Commission and the taxpayers
- 5. Funding Comparisons and 5- to 10-Year Financial Forecast
 - a. Outline Transit’s funding sources and annual allocations (Local, State or Federal Funds).
 - b. Describe funding shortfalls and Transit’s 5-10 year financial forecast.
 - c. Compare the funding structure to peer agencies/ communities.
 - d. Outline additional fund-raising opportunities. These could include, but are not limited to:
 - i. Use taxpayer approved mills. If so, how many mills?
 - ii. Use local jurisdictions’ general fund money?
 - iii. Use sales tax or another funding alternative?
 - iv. Identify additional organizations and specify opportunity/ requests for their matching funds.
 - v. Identify additional grants for transit funding.
 - vi. Identify additional revenue streams for Transit (i.e. Demand Response service, Micro-Transit, Match from Local Partners).
 - vii. Identify possibility for additional funding requests through the Cities (Bismarck, Mandan, Lincoln).
 - e. **Create infographic/chart** to share with City Commission and the taxpayers
- 6. Facility/Service Analysis and Peer Comparisons
 - a. Evaluate the effectiveness of recently changed fixed-routes
 - b. Evaluate the effects of past service changes (reduction in service area, reduction in paratransit eligibility criteria)
 - c. Evaluate shelter placement
 - d. Comparison of the facility/services versus peer communities
 - e. Compare cost of services to peer communities
 - f. Identify communities whose cost of service (per trip) equals that of Bis-Man Transit

g. **Create infographic/chart** to share with City Commission and the taxpayers

7. Facility/ Service Recommendations

- a. Review current fixed route system. Identify potential changes/ additions to fixed routes.
- b. Recommend alternative types of Transit services
 - i. Offering service at a premium rate (outside ADA required hours and holidays)
 - ii. Demand Response service
 - iii. Micro-Transit
- c. Develop location for fixed bus stops and outline entities/avenues for funding new stops.
- d. Evaluate if a new, central Transit Hub is still a need for the system
- e. Tie services recommendations back to public comments and financial forecast

Update Federal Requirements:

Consultant should note the following federal elements which will need mention or adoption into the Transit Development Plan.

1. Incorporate adopted Safety and Security Performance Measures/Targets
2. Incorporate current and newly adopted Transit Performance Measure
3. Incorporate the updated Transit Asset Management (TAM) Plan (to be finalized October 2022)
4. Update the lay-out of the TAM Report, if needed (Found in Bis-Man MPO 2022-2025 TIP)

Monthly TAC and Policy Board Meetings:

The consultant will provide monthly updates (i.e. progress reports) to the MPO TAC and Policy Boards. Updates will be conducted verbally and with written memorandums, briefly updating board members on the status of the project. A minimum of one (1) personal appearances is also required before the TAC and Policy Board during the development or completion of the study.

Public Involvement:

See Section XI: Public Involvement Plan for detailed information.

X. REVIEW AND COMPLETION PROCESS

A. Draft Development and Review:

A draft report shall be produced after all recommendations have been developed and approved by the Steering Committee(s). Electronic and/ or paper copies of the draft report shall be provided for the Steering Committee(s), the MPO project manager, the Bis-Man Staff, Bis-Man Transit Board or designees, NDDOT, FHWA and FTA for their review and comment. All comments from the MPO, NDDOT, FHWA, and FTA shall be addressed to the respective entity's satisfaction prior to development of the final draft and final presentations.

B. Final Presentations/ Completion:

The draft report shall be advertised and made available to the public for a minimum of fifteen (15) days before the final presentations.

The consultant will be requested to make a presentation to the Bis-Man Transit Board, the Bismarck Board of City Commissioners, the Mandan Board of City Commissioners, the MPO Technical Advisory Committee and the MPO Policy Board for review and acceptance/approval of the final draft report. Approval of the final draft report by the MPO Policy Board, and subsequent distribution of study deliverables, will mark the completion of the study.

C. Deliverables:

The final study report shall be produced after all comments on the draft report are addressed, final presentations are complete, and the report has been approved by the MPO TAC and Policy Board. A minimum of twelve (12) paper copies shall be provided. A minimum of one (1) pdf-based electronic copy shall also be provided. All products are to be delivered to the MPO project manager for dissemination to the

appropriate City, Transit or MPO staff, Transit Board Member, TAC or Policy Board Members, and oversight entity.

Schedule for Contract Development and Final Study Deadline:

RFP Submittal Deadline	June 17, 2022
Notification for Interviews	June 29-30, 2022
Interviews and Notification of Ranking	July 13, 2022
Consultant Approval(s)	July 19, 2022
Formal Notification of Firms	July 20-23, 2022
Negotiation of Work Fee and Scope of Work	July-Aug 2022
Notice to Proceed	August 2022 (Approx.)
Final Project Report & Presentations	June-August 2023 (Approx.)

XI. PUBLIC INVOLVEMENT PLAN

Special Note: Consultants should expect a high degree to public engagement and public opinion from this study, particularly regarding any proposal to adjust paratransit services. The MPO and Bis-Man Transit recommend assigning staff who are well-versed in successful public engagement and mediation. This will help ensure all members of the public are respectfully heard and engaged throughout the study process.

In order to achieve the proposed vision for the Transit System, it is imperative that residents, businesses, human service providers, and stakeholders be involved in the development of the study. Direct effort should be made to obtain broad-based support from the community. Consultants shall prepare a Public Involvement Plan that is consistent with the MPO Public Participation Plan and complies with Title VI of the Civil Rights Act of 1964 and the Executive Order on Environmental Justice of 1994. The following are the minimum public involvement activities the consultant should include:

- 1) The study will have two (2) public involvement opportunities for the general public. Each public involvement opportunity will consist of two (2) meetings, one in Bismarck and one in Mandan. The general public should include residents, businesses, and community stakeholders. Public involvement opportunities may be in-person, online, or hybrid. All input and attendance from the public input opportunities shall be recorded and all concerns and suggestions will be included and addressed in the study document.
- 2) A web-site for the study that will be interesting, provide up-to-date information, and be easy to use by the public;
- 3) Five (5) final presentation meetings, with potential for each to be a public meeting. One meeting with each of the following entities: Bis-Man Transit Board, Bismarck Board of City Commissioners, Mandan Board of City Commissioners, and MPO TAC and Policy Board.

Community Engagement:

Consultants are encouraged to reach out to the community at large and interested or affected community members. Consultants are encouraged to use novel means to inform the public and gather their opinions. Suggested ideas could include but are not limited to: flyers; updates in city bulletins, radio or television PSAs; coordination with local public or commercial media outlets; presentation to community/ business groups, and public meetings.

Online Engagement:

The consultant shall create a website to keep the public informed and engaged regarding the study. The website should include regular updates, including pertinent study documentations, maps, online surveys, public involvement opportunities, and the drafts and final reports. The website should also track hits/visits to the site.

Consultants are required to dedicate one or more staff to the development and maintenance of social media posts or other online engagement tools to enhance the public involvement process and encourage the public's participation.

The MPO hosts a Facebook page which is intended to be a clearing house for all MPO related social media outreach. The MPO will not allow consultants to create additional Facebook pages for MPO studies, but the MPO can allow

administrative privileges to designated consultant staff during active phases of the study. This arrangement allows consultants (or their designated staff) to provide study updates and public outreach via Facebook, while also allowing the MPO project manager and the City of Bismarck's Public Information Officer convenient access to monitor public responses.

Newspaper Engagement:

Public meetings and final presentations will be advertised in the local newspaper(s). Consultants are responsible for preparing newspaper advertisements for public meetings and final presentations. The MPO reviews the ads, provides necessary modifications to language and formatting, and coordinates and pays for printing with the local newspaper(s).

XII: INFORMATION AVAILABLE TO THE CONSULTANT

The following resources/data/information is available for the project from the Bismarck-Mandan MPO and its partners:

Past Transit Plans:

1. [2017 Transit Development Plan](#) – 2019
2. [2011 Transit Development Plan](#) (Mobility 2017) – 2012
3. [2006 Transit Development Plan](#)
4. [Bis-Man Transit Management Alternatives Study](#) – (2011)

Major MPO Documents:

5. [MPO 2022-2025 Transportation Improvement Plan](#)
6. [Arrive 2045 \(2020-2045 MTP\)](#) – 2020
7. [TDMSE for 2020 Base Year Model](#) – 2018

Pertinent MPO Transportation Studies and Data:

8. [ITS Architecture Update](#) – 2021
9. [Bismarck-Mandan Intersection Analysis Study](#) – 2020
10. [US 83 Alternative Study](#) – 2019
11. [Downtown Mandan Subarea Study](#) – 2018
12. [2018 Freight Plan](#) – 2018
13. [Bismarck-Mandan Bicycle and Pedestrian Plan](#) – 2017
14. Bismarck-Mandan School Safety Crossing Study – 2017
 - a. [Bismarck Public Schools Final Report](#)
 - b. [Mandan Public Schools Final Report](#)
15. [Mandan and Bismarck Corridors Improvement Study](#) – 2016
16. [Northeast Bismarck Subarea Study](#) – 2015
17. [Downtown Bismarck Subarea Study](#) – 2014
18. 2014 Fringe Area Master Plan – 2014
 - c. [Burleigh-Bismarck-Lincoln](#)
 - d. [Mandan/Morton](#)
19. [North Mandan Subarea Study](#) – 2013
20. [43rd Avenue Corridor Study](#) – 2013
21. [North Mandan Subarea Study](#) – 2013
22. [NW Bismarck Subarea Study](#) – 2011
23. [Lincoln and Bismarck Connection Study](#) – 2008
24. Land base/Infrastructure data from member jurisdictions
25. Colored Digital Orthophotography – 3-inch resolution – 2020
26. Digital Elevation Data – 1-foot contours – 2020

MPO General Documents

27. [Bismarck-Mandan MPO Monitoring Report](#) – 2016/2019
28. [MPO Public Participation Plan](#) – 2021
29. [MPO Title VI/Non-Discrimination Plan](#) – 2017

Partner/Jurisdictional Plans and Information:

30. 2018-2021 Bis-Man Transit Ridership Statistics (revenue hours, miles, ridership, and on time performance)
31. [Together 2045: Bismarck Comprehensive Plan Update](#) (Ongoing)
32. [ND State Freight and Rail Plan](#) (Ongoing)
33. [Bis-Man Transit Coordinated Public Transit-Human Services Plan](#) – 2022
34. [ND Moves Plan \(Statewide Active and Public Transportation Plan\)](#) – 2019
35. [2017 Bismarck Livability Survey Documents](#) – 2017
36. [Mandan Land Use and Transportation Plan](#) – 2015
37. [City of Bismarck Growth Management Plan](#) – 2013

Appendix A: Proposed Subconsultant Request Form

**Appendix B: Consultant Self Certification of Government-Wide Debarment and Suspension (Nonprocurement)
Form**

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

1. It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,
2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
 - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
 1. Debarred
 2. Suspended
 3. Proposed for debarment
 4. Declared ineligible
 5. Voluntarily excluded
 6. Disqualified
 - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
 2. Violation of any Federal or State antitrust statute, or
 3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property
 - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
 - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
 - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
 - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
 1. Equals or exceeds \$25,000,
 2. Is for audit services, or
 3. Requires the consent of a Federal official, and
 - g. It will require that each covered lower tier contractor and subcontractor:
 1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
 2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and
3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor _____
Signature of Authorized Official _____ Date ____/____/_____
Name and Title of Contractor's Authorized Official _____

Appendix C: Certification and Restriction on Lobbying Form

Federal Certifications

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, _____, hereby certify (Name and title of official)

On behalf of _____ that: (Name of Bidder/Company Name)

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name _____

Type or print name _____

Signature of Authorized representative _____ Date ____/____/____

Signature of notary and SEAL _____

Appendix D: State, Federal, and Local Clauses

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



**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.F.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.*).



Federal Clauses

Equal Employment Opportunity Clause – 41 CFR 60-1.4(a) and 2 CFR Part 200 Appendix II (C)

41 CFR 60-1.4(a)

- (a) *Government contracts.* Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract): during the performance of this contract, the contractor agrees as follows:
- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
 - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the secretary of labor.
 - (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the secretary of labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the secretary of labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - (6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the secretary of labor, or as otherwise provided by law.

- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the secretary of labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the secretary of labor as a means of enforcing such provisions including sanctions for noncompliance: *provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the united states to enter into such litigation to protect the interests of the United States.

2 CFR Part 200 Appendix II (C)

- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Sanctions and Penalties for Breach of Contract – 2 CFR Part 200 Appendix II (A)

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Termination for Cause and Convenience – 2 CFR Part 200 Appendix II (B)

- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Rights to Inventions Made Under a Contract or Agreement – 2 CFR Part 200 Appendix II (F)

- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and

Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Debarment and Suspension - 2 CFR Part 200 Appendix II (I)

- (I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Byrd Anti-Lobbying Amendment - 2 CFR Part 200 Appendix II (J)

- (J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Local Clauses

Providing Goods and Services to the City When City is Buying with Federal Funds

Contract Provisions

The following is a list of contract or award provisions a vendor or contractor must sign based on the contract amount.

- If contract is > \$250,000, it must contain legal remedies for breach of contract
- If contract is > \$10,000, it must contain termination for cause and convenience
- If construction contract, it must contain Equal Employment Opportunity
- If construction contract and > \$2,000, it must include Davis-Bacon Act
- If contract is > \$100,000 and includes mechanics or laborers, it must include Contract Work Hours and Safety Standards Act
- If contract is a funding agreement for experimental, developmental, or research, it must include Rights to Inventions Made
- If contract is > \$150,000, it must contain the Clean Air Act and Federal Water Pollution Control Act
- If contract is > \$25,000, it must contain Suspension and Debarment
- If contract is > \$100,000, it must contain Byrd Anti-Lobbying
- If State or political subdivision of State and contract is > \$10,000, it must contain recovered materials in provision
- All Subawards must include provision of Prohibition of Certain telecommunication and video surveillance services or equipment
- All contracts, subawards and purchase orders must include of indicating domestic preferences for procurements.
- If Contract is \$25,000 and over, it must include provision of Waste Fraud and Abuse notification to Federal government 2 C.F.R. §§180.220 and 31 U.S.C. § 3729
- If contract and award is over \$50,000, it must include provision of Never contract with the enemy 2 CFR Part 183

An example of contract language for each provision is listed below.

VIOLATION AND BREACH OF CONTRACT

Rights and Remedies of the Grantor

The Grantor shall have the following rights in the event that the Grantor deems the Subrecipient guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as Grantor for and at the expense of the Subrecipient, either directly or through other Subrecipients;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include.

Providing Goods and Services to the City When City is Buying with Federal Funds

Rights and Remedies of Subrecipient

Inasmuch as the Subrecipient can be adequately compensated by money damages for any breach

of this Contract, which may be committed by the Grantor, the Subrecipient expressly agrees that no default, act or omission of the Grantor shall constitute a material breach of this Contract, entitling Subrecipient to cancel or rescind the Contract (unless the Grantor directs Subrecipient to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Subrecipient to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the Grantor will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Subrecipient recognizes that in the event of a breach of this Contract by the Subrecipient before the Grantor takes the action contemplated herein, the Grantor will provide the Subrecipient with sixty (60) days written notice that the Grantor considers that such a breach has occurred and will provide the Subrecipient a reasonable period of time to respond and to take necessary corrective action.

Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by an authorized representative of Grantor. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Subrecipient mails or otherwise furnishes a written appeal to the Grantor's authorized representative. In connection with any such appeal, the Subrecipient shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Grantor's authorized representative shall be binding upon the Subrecipient and the Subrecipient shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Grantor's direction or decisions made thereof.

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Performance during Dispute

Unless otherwise directed by Grantor, Subrecipient shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Grantor and the Subrecipient arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Grantor is located.

Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Grantor or Subrecipient shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

TERMINATION

a. Termination by Mutual Agreement

This Grant may be terminated by mutual consent of both parties executed in writing.

b. Termination for Lack of Funding or Authority

GRANTOR by written notice to Subrecipient may terminate the whole or any part of this Agreement under any of the following conditions:

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- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Agreement under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

c. Termination for Cause

GRANTOR may terminate this Agreement effective upon delivery of written notice to Subrecipient, or any later date stated in the notice:

- 1) If Subrecipient fails to provide services required by this Agreement within the time specified or any extension agreed to by GRANTOR: or
- 2) If Subrecipient fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

The rights and remedies of GRANTOR provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The Subrecipient agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to Federal awarding agency and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

- i. The Subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

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- ii. The Subrecipient agrees to report each violation to the Grantor and understands and agrees that the Grantor will, in turn, report each violation as required to assure notification to the Grantor, Federal Emergency Management Grantor, and the appropriate Environmental Protection Grantor Regional Office. (3) The Subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by Federal awarding agency.

Federal Water Pollution Control Act

- i. The Subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii. The Subrecipient agrees to report each violation to the Grantor and understands and agrees that the Grantor will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The Subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by Federal awarding agency.”

DEBARMENT/SUSPENSION

Either language can be added to the agreement or the entity can sign a certification.

Language added to agreement:

By signing this grant, Subrecipient certifies that neither Subrecipient, Subcontractor, nor their principals, are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with State or Federal Government by and Department or Grantor of the State or Federal Government.

Or certification to be signed:

**Certification Regarding
Debarment, Suspension, Ineligibility**

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and Voluntary Exclusion

Subrecipient Covered Transactions:

1. The prospective subrecipient of the Grantee certifies, by submission of this document, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

2. Where the Grantee's subrecipient is unable to certify to the above statement, the prospective subrecipient shall attach an explanation to this form.

SUBRECIPIENT:

Name of Company

Street Address

City, State, Zip

Federal Employer Identification Number (FEIN)

Data Universal Number System (DUNS) or Unique Entity Identifier (UEI)

By:

Signature

Date

Subrecipient Name

Grantee Agreement Number

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RESTRICTIONS FOR LOBBYING

Either language can be added to the agreement or the entity can sign a certification.

Language added to agreement:

Subrecipient assures that:

- No federal funds from this agreement will be paid by for on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any Grantor, a Member of Congress in connection with the awarding of any federal contract; the making of any federal grant, the making of any federal loan, the entering of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any grant funds other than federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Grantor, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, Subrecipient agrees to complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- Subrecipient shall require that the language of the Subrecipient Assurances in this Attachment be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall comply with these Subrecipient Assurances.
- Public Law No.104-208, Section 503 expressly prohibits the use of appropriated funds for indirect or "grassroots" lobbying efforts that are designed to support or defeat legislation pending before state legislatures. No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress or any state legislative body itself.

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Governmental entities are prohibited by law from lobbying. Activities designed to influence action in regard to a particular piece of pending state or federal legislation are considered lobbying. That includes lobbying for or against pending legislation, as well as indirect or "grass roots" lobbying efforts that are directed at inducing the public to contact their elected representatives to urge support of, or opposition to, pending legislation.

The North Dakota attorney general has determined that governmental entities may provide the public with neutral factual information but may not, without express legislative authority, expend public funds for the purpose of influencing the result of an election issue, including initiated measures.

No part of any funding may be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence election issues or pending legislation.

Or certification to be signed:

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, _____, hereby certify (Name and title of official) On behalf of _____ that: (Name of Company Name)

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

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This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name _____

Type or print name _____

Signature of Authorized representative _____ Date
____/____/____

Signature of notary and SEAL _____

PROCUREMENT OF RECOVERED MATERIALS

In the performance of this contract, the Subrecipient shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site,
<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The Subrecipient agrees to comply with 2 CDR 200.216 and is prohibited to obligate or spend grant funds (to include direct and indirect expenditures as well as cost share and program) to:

1. Procure or obtain.
2. Extend or renew a contract to procure or obtain; or
3. Enter into contract (or extend or renew contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Pub. L. 115-232, section 889, covered telecommunications

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equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
- iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise, connected to the government of a covered foreign country.

BUY AMERICA REQUIREMENTS AND DOMESTIC PREFERENCES FOR PROCUREMENT

The Subrecipient agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in Federal awarding agency funded projects are produced in the United States, unless a waiver has been granted by Federal awarding agency or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. §5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements: The bidder or offeror must submit to the Grantor the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

WASTE, FRAUD, OR ABUSE - NOTIFICATION TO FEDERAL AWARDING AGENCY

If a current or prospective legal matter that may affect the Federal Government emerges, the Subrecipient must promptly notify the Federal awarding agency in which the Subrecipient is located. The Subrecipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. (3) The Recipient must promptly notify the U.S. DOT

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Inspector General in addition to the Federal awarding agency, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from the Federal awarding agency. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this 18 Agreement or another agreement between the Subrecipient and Federal awarding agency, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Subrecipient.

NEVER CONTRACT WITH THE ENEMY

The Subrecipient must adhere to 2 CFR Part 183 and must

- (1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR 180.300 prior to issuing a subaward or contract and;
- (2) Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.

The Subrecipient may include the substance of this clause, including paragraph (a) of this clause, in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the Subrecipient failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.