



## Engineering Department

**DATE:** July 21, 2022  
**FROM:** Gabe Schell, City Engineer  
**ITEM:** Grant Marsh Bridge Mural Agreement

**REQUEST:**

Consider approval of North Dakota Department of Transportation (NDDOT) Agreement  
Consider approval of companion agreement with Northern Plains Heritage Foundation

Please place this item on the July 26, 2022, City Commission meeting agenda.

**BACKGROUND INFORMATION:**

The Northern Plains Heritage Foundation, a 501c3 non-profit, approached the NDDOT seeking approval to paint and maintain a mural on the pier of the I-94 Grant Marsh Bridge. NDDOT agrees in concept to the request but would only enter into an agreement with the City of Bismarck. The City of Bismarck would agree to the terms and conditions of the NDDOT agreement and subsequently enter into an agreement with Northern Plains Heritage Foundation assigning the terms and conditions of the NDDOT agreement to the Foundation.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve North Dakota Department of Transportation (NDDOT) Agreement  
Approve companion agreement with Northern Plains Heritage Foundation

**STAFF CONTACT INFORMATION:**

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

**North Dakota Department of Transportation**  
**AGREEMENT TO ENTER AND DO WORK ON HIGHWAY RIGHT-OF-WAY**

This agreement is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Bismarck, hereafter referred to as the Permittee, whose address is 221 N. 5<sup>th</sup> St. Bismarck ND 58506.

Permission is hereby given to enter and do work on highway right-of-way, under the following conditions:

1. The location of the proposed work is the east side of east pier that is located on the west end of the parking lot under the I-94 Grant Marsh Bridge.
2. The work to be performed is to paint and maintain a mural painted on the pier of the I-94 Grant Marsh Bridge Pier.

No advertising or written message are allowed on the mural. Advertising includes the names, abbreviations, logos, phone numbers, websites, etc. of individuals, businesses, organizations, sponsors, and/or the promotion of goods or services.

The Permittee must obtain all necessary permits, licenses, and approvals. The Permittee must comply with all federal, state, and local laws and ordinances. The Permittee is responsible for paying all charges, fees, and taxes.

Prior to work taking place, an artist's rendering of the mural must be submitted and approved in writing by the NDDOT.

The Permittee must provide appropriate traffic control according to the current edition of the Manual of Uniform Traffic Control Devices for Streets and Highways, as supplemented and amended. There will be no impacts to I-94 traffic of any kind.

Any changes to the approved artist's rendering (either during initial painting or throughout the life of this agreement) must be requested in writing by the Permittee and approved in writing by the NDDOT.

The Permittee will promptly remove or repair all offensive graffiti or vandalism within 72 hours.

The Permittee must maintain the mural near original condition. Maintenance requested in writing by the NDDOT must occur within 60 days of notification. Damage or removal of the mural may occur as a result of rehabilitation that may be necessary to the existing pier. The Permittee bears full responsibility to replace or repair the mural after the rehabilitation project is complete. At the time of a bridge reconstruction, this agreement will be considered null & void. Permittee agrees to remove or paint over the mural if it is not maintained to the satisfaction of the NDDOT, or any other reason, within 60 days of written notification by the NDDOT. Permittee agrees to remove or cover the mural (at no expense to the NDDOT) if the NDDOT determines that it is a distraction to drivers.

3. All work done on highway right-of-way must conform to the reasonable requirements of NDDOT's district engineer, whether communicated before or after the work is conducted.



4. Effective November 24, 2008, the Permittee shall be required to wear an ANSI/ISEA 107-2004 Class II high visibility garment while within the highway right-of-way as per the requirements of 23 CFR 634.
5. Permittee must, as soon as possible, return all disturbed areas to their original condition and reseed all disturbed areas with seed mixture approved by NDDOT.
6. All work done will be at no cost to NDDOT.
7. All work will be completed by November 1<sup>st</sup> 2022.
8. The Permittee, for him or herself, his or her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Permittee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities set forth in this Assurance.

That in the event of breach of any of the above Non discrimination covenants, NDDOT will have the right to terminate this Permit and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Permit had never been made or issued.

9. The Risk Management Appendix, attached, is hereby incorporated into and made a part of this agreement.

Executed the last date below signed.

PERMITTEE:

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

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

\_\_\_\_\_  
DISTRICT ENGINEER (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

To be signed by **Owner; Partner; Corp. Pres., Vice Pres., or other authorized Corp. Officer.** (If signed by other authorized Corp. Officer, please attach copy of Power of Attorney or other documentation showing authority to sign.)

CLA 17088 (Div. 70)  
L.D. Approved 7-17-89; 8-18



## 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 **\$375,000 per person** and **\$1,000,000 per occurrence**. The minimum limits of liability required of the State are **\$375,000 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 \$375,000 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 07-22



## Risk Management Appendix

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- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

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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 \$375,000 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.

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RM Consulted 2007  
Revised 07-22



## A G R E E M E N T

The City of Bismarck, P.O. Box 5503, Bismarck, North Dakota 58506-5503, hereinafter "**City**," and the Northern Plains Heritage Foundation, 1700 River Road, Bismarck, ND 58501, hereinafter "**Permittee**," agree as follows:

WHEREAS, **City** has contracted with the North Dakota Department of Transportation (NDDOT) to paint and maintain a mural painted on the pier of the I-94 Grant Marsh Bridge; and

WHEREAS, **Permittee** will contract at its own expense for the installation and maintenance of the mural;

The **City** and **Permittee** agree that **Permittee** shall be subject to the following terms and conditions:

1. The location of the proposed work is the east side of east pier that is located on the west end of the parking lot under the I-94 Grant Marsh Bridge.
2. The work to be performed is to paint and maintain a mural painted on the pier of the I-94 Grant Marsh Bridge Pier.

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3. All work done on highway right-of-way must conform to the reasonable requirements of NDDOT's district engineer, whether communicated before or after the work is conducted.
4. Effective November 24, 2008, the Permittee shall be required to wear an ANSI/ISEA 107-2004 Class II high visibility garment while within the highway right of-way as per the requirements of 23 CFR 634.
5. Permittee must, as soon as possible, return all disturbed areas to their original condition and reseed all disturbed areas with seed mixture approved by NDDOT.
6. All work done will be at no cost to NDDOT.
7. All work will be completed by November 1st, 2022.
8. The Permittee, for him or herself, his or her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national

origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Permittee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities set forth in this Assurance.

That in the event of breach of any of the above Non-discrimination covenants, City will have the right to terminate this Permit and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Permit had never been made or issued.

9. The Risk Management Appendix, attached, is hereby incorporated into and made a part of this agreement.

10. This Agreement becomes effective immediately on signature indicated by the following execution of the parties.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Northern Plains Heritage Foundation

By \_\_\_\_\_  
Aaron Barth  
Executive Director

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Attest:

CITY OF BISMARCK

By \_\_\_\_\_  
Keith J. Hunke  
City Administrator

By \_\_\_\_\_  
Michael T Schmitz, President  
Board of City Commissioners