

North Dakota Parks and Recreation Department



Recreational Trails Program Program Manual

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Recreational Trails Program Program Manual

Introduction

The North Dakota Parks and Recreation Department (NDPRD) in cooperation with the North Dakota Division Office of the Federal Highway Administration (FHWA) has prepared this manual to answer questions relating to project application and management. The FHWA has a webpage that outlines the program requirements.

https://www.fhwa.dot.gov/environment/recreational_trails/

Recreational Trails Program Overview

The Recreational Trails Program (RTP) is a federal-aid assistance program (CFDA: 20.219) to help states provide and maintain recreational trails for both motorized and non-motorized trail use. The program provides funds for all kinds of recreational trail uses, such as pedestrian uses (hiking and running), bicycling, in-line skating, equestrian, cross-country skiing, snowmobiling, canoe/kayak trails, off-road motorcycling, all-terrain vehicle riding, four-wheel driving, or using other off-road motorized vehicles.

The RTP funds come from the Federal Highway Trust Fund and represent a portion of the motor fuel excise tax collected from non-highway recreational fuel use: fuel used for off-highway recreation by snowmobiles, all-terrain vehicles, off-highway motorcycles, and off-highway light trucks.

The U.S. Department of Transportation, Federal Highway Administration (USDOT/FHWA) administers the RTP program. The Governor of the state of North Dakota has designated the North Dakota Parks and Recreation Department (NDPRD) as the agency responsible for administering apportionments made to the state. RTP funds represent a portion of the federal gasoline tax attributed to recreation on non-gasoline tax supported roads. The federal government prescribes many of the regulations governing this program.

NDPRD, along with the Recreational Trail Program Advisory Committee (RTPAC), intends that RTP grant funding be used to enhance trail opportunities by achieving results that would not otherwise be possible. RTP grants are for projects that are primarily recreational in nature, rather than serving a more utilitarian transportation function. The following is a list of eligible projects:

- Maintenance and restoration of existing recreational trails.
- Development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails.
- Purchase and lease of recreational trail construction and maintenance equipment.

- Construction of new recreational trails (with restrictions for new trails on Federal lands).
- Acquisition of easements and property for recreational trails or recreational trail corridors.
- Assessment of trail conditions for accessibility and maintenance.
- Development and dissemination of publications and operation of educational programs to promote safety and environmental protection related to the use of recreational trails, including supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training (limited to 5 percent of a State's apportionment).
- State costs incurred in administering the program (limited to 7 percent of a State's apportionment)

Title VI of the Civil Rights Act

Title VI of the Civil Rights Act of 1964 ensures that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination, including sex, age, disability, low-income, or LEP discrimination, under any program or activity for which the Recipient receives Federal financial assistance. The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973) by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally-assisted.

Sponsors **who are** Title VI compliant may coordinate bidding and procurement on their own. Sponsors must follow the original procurement process for reimbursement. All bidding, procurement and construction must adhere to Title VI requirements. Additional information on the Title VI Program is available on the North Dakota Parks and Recreation Department website at: <https://www.parkrec.nd.gov/business/grants/recreation-trails-program>.

Sponsors **who are not** Title VI compliant will work with the NDPRD during the bidding and procurement process. Project reimbursement in this manner will require project reimbursement (20%) from sponsor to NDPRD.

Program Funding Limits

The Recreational Trails Program funds up to 80% of eligible costs for trail projects. At the time of application, the project sponsor must have at least 20% of the total project cost available. The local share may include tax sources (appropriations), bond issues or force account contributions. The donated value of land, cash, labor, equipment and materials may also be used.

Individual grant awards are limited to a **minimum of \$10,000 and a maximum of \$200,000**. NDPRD and the RTPAC reserve the right to change the minimum/maximum dollar amounts in order to ensure the complete expenditure of RTP funds.

Eligible Grant Sponsors

Grants may be awarded to any of the following:

- Non-profit organizations - A qualified non-profit organization is one that meets the following criteria:
 - Registered with the State of North Dakota as a non-profit for a minimum of 5 years.
 - Will name a successor at the time of any change in organizational status (for example, dissolution). A qualified successor is any party that meets the eligibility criteria to apply for RTP funds and is capable of complying with all RTP responsibilities. NDPRD recommends, whenever possible, a government agency be sought as a successor. A successor organization must agree, in writing, to complete all RTP project responsibilities should the original organization's status change.
- Municipal agencies (cities, towns, counties, school districts, etc.)
- State agencies (North Dakota Parks and Recreation Department, North Dakota Forest Service, North Dakota Game and Fish).
- Federal government agencies (Bureau of Land Management, U.S. Forest Service, National Park Service, etc.)
- Other government entities (regional governments, etc.)

Potential project sponsors with active or previously awarded grants through NDPRD must be in full compliance with federal and state programs to be eligible for funding.

"40-30-30" Requirement

RTP Legislation (23 U.S.C. 206) requires that States use:

- 40 percent shall be used for recreational trail or related projects that facilitate diverse recreational trail use within a recreational trail corridor, trailside, or trailhead, regardless of whether the project is for diverse motorized use, for diverse nonmotorized use, or to accommodate both motorized and nonmotorized recreational trail use;
- 30 percent for motorized recreation; and
- 30 percent for non- motorized recreation.

The diverse, motorized, and non-motorized percentages are minimum requirements that must be met. A project for diverse motorized use (such as snowmobile and off-road motorcycle use) may satisfy the 40 percent diverse use requirement and the 30 percent motorized use requirement simultaneously. A project for diverse non-motorized use (such as pedestrian and bicycle use) may satisfy the 40 percent diverse use requirement and the 30 percent non-motorized use requirement simultaneously.

To provide more flexibility in RTP project selection, FHWA established five categories to account for the 40-30-30 requirements:

- 1) Non-motorized project for a single use: A project primarily intended to benefit only one mode of nonmotorized recreational trail use, such as pedestrian only, or equestrian only. Projects serving various pedestrian uses (such as walking, hiking, wheelchair use, running, bird-watching, nature interpretation, backpacking, etc.) constitute a single use for the purposes of this category. *Note: wheelchair use by mobility-impaired people, whether operated manually or powered, constitutes pedestrian use, not motorized trail use.* Projects serving various nonmotorized human-powered snow uses (such as skiing, snowshoeing, etc.) constitute a single use for this category.
- 2) Non-motorized diverse use project: A project primarily intended to benefit more than one mode of non-motorized recreational use such as: walking, bicycling, and skating; both pedestrian and equestrian use; and pedestrian use in summer and cross-country ski use in winter.
- 3) Diverse use project including both motorized and non-motorized uses: A project intended to benefit both nonmotorized recreational trail use and motorized recreational trail use. This category includes projects where motorized use is permitted but is not the predominant beneficiary. This category includes projects where motorized and nonmotorized uses are separated by season, such as equestrian use in summer and snowmobile use in winter. Other examples: a common trailhead project serving separate ATV and bicycle trails; purchasing a machine to groom both snowmobile and cross-country ski trails.
- 4) Motorized single use project: A project primarily intended to benefit only one mode of motorized recreational use, such as snowmobile trail grooming. A project may be classified in this category if the project also benefits some nonmotorized uses (it is not necessary to exclude nonmotorized uses), but the primary intent must be for the benefit of motorized use.
- 5) Motorized diverse use project: A project primarily intended to benefit more than one mode of motorized recreational use, such as: motorcycle and ATV use; or ATV use in summer and snowmobile use in winter. A project may be classified in this category if the project also benefits some nonmotorized uses (it is not necessary to exclude nonmotorized uses), but the primary intent must be for the benefit of motorized use.

Projects in categories 1 and 2 apply towards the 30 percent non-motorized use requirement. Projects in categories 2, 3, and 5 apply towards the 40 percent diverse trail use requirement. Projects in categories 4 and 5 apply towards the 30 percent motorized use requirement.

Project Timeline

When applying for project funding, the project sponsor must be ready to begin construction upon grant approval. This requirement includes having all local match available and all project planning complete. Once the project sponsors are notified of their project approval and funding level, they have 18 months to complete the project.

Eligible Projects/Expenses

Projects will be ranked based on the categories below.

1. Maintenance and restoration of existing trails: Restoration may be interpreted broadly to include any kind of non-deferred trail maintenance, restoration, rehabilitation, or relocation. This category may include maintenance and restoration of trail bridges or providing appropriate signage along a trail.
2. Development and rehabilitation of trailside and trailhead facilities and trail linkages: This may be interpreted broadly to include development or rehabilitation of any trailside and trailhead facility. The definition of “rehabilitation” means extensive trail repair needed to bring a facility up to standards suitable for public use due to natural disasters or acts of nature (not routine maintenance). Trailside and trailhead facilities must have a **direct relationship** with a recreational trail.
3. Purchase and lease of recreational trail construction and maintenance equipment: Purchase and lease of any trail construction and maintenance equipment, including lawn mowers and trail grooming machines, provided **the equipment is used primarily to construct and maintain recreational trails**. For example, a lawn mower purchased under this program must be used primarily for trail and trailside maintenance, not to maintain open lawn areas or sport fields. *(Please note equipment projects, only federal, state and municipal agencies qualify for equipment funding; a use agreement will need to be signed by the project sponsor).*
4. Construction of new recreation trails: Construction of new recreational trails is self-explanatory for projects not located on Federal land. For projects on Federal land, the most important requirement is that the federal agency land manager must approve of the project in accordance with other applicable federal laws and regulations. This category may include construction of new trail bridges or providing appropriate signage along a trail.
5. Acquisition of easements and fee simple title to property: See the Land Acquisitions and Easements section below; please note, RTP legislation prohibits condemnation of any kind of interest in property. Therefore, acquisition of any kind of interest in property must be from a willing landowner or seller.
6. Trail accessibility assessment: assessment of trail conditions for accessibility and maintenance.

Ineligible Projects/Expenses

- Condemned Land as Matching Value: RTP legislation prohibits using RTP funds for condemnation of any kind of interest in property. An RTP project may be located on land condemned with funds from other sources. However, it is not permissible to use the value of condemned land toward the match requirement for an RTP project.
- Feasibility Studies: Trail feasibility studies are not a use permitted in the RTP legislation. The permissible uses relate to actual on-the-ground trail projects.
- Environmental Evaluation and Documentation: Projects intended solely for the purpose of covering environmental evaluation and documentation expenses are not permissible.
 - Reasonable environmental evaluation and documentation expenses, including

costs associated with environmental permits and approvals, may be included as part of an approved project's engineering costs. Expenses incurred developing the environmental evaluation, necessary permits, as well as engineering costs, may not exceed 20% of the total funded grant amount.

- Project expenses, in which a project sponsor will seek reimbursement via the grant, may not occur prior to the project start date. The project start date will be provided once the FHWA approves the project. The project start date will be provided to the project sponsor by the NDPRD.
- **Law Enforcement:** Routine law enforcement is not a use permitted in the RTP legislation.
- **Planning:** Trail planning is not a permissible use of RTP funds.
- **Sidewalks:** RTP funds will not normally be used to provide paths or sidewalks along or adjacent to public roads or streets, unless the path or sidewalk is needed to complete a missing link between other recreational trails.
- **Roads:** RTP funds may not be used to improve roads for general passenger vehicle use.
- **Overhead:** The regular operating expenses such as rent, building upkeep, utilities and all fixed costs associated with a business, agency or group.
- **Indirect Costs:** Only direct costs that can be identified specifically with a particular final cost objective directly related to the trail project are eligible.

Land Acquisitions and Easements

- **Acquisition Costs:** The following land acquisition costs are allowable and eligible for reimbursement under the Recreational Trails Program:
 - The appraised fair market value of fee simple title or an easement for the use of real property acquired by negotiated purchase.
 - The purchase price for an easement or fee title to real property acquired below appraised value.
 - The donated land value (the difference between the purchase price and appraised value) may be used as a match for federal funds to purchase that parcel of land, purchase other pieces of property, or develop facilities.
 - Similarly, lands for which 100% of the value is donated may only be used as the organization's share of a project to purchase other land or build facilities.
 - Appraisal fees.
 - Boundary surveys, title search, legal filling fees.
- **Ineligible Costs:** Costs ineligible for reimbursement in an acquisition project include:
 - The purchase of real property to which the project sponsor became committed prior to federal approval.
 - Legal fees other than for filling and fines and penalties paid by the project sponsor.
 - Incidental costs relating to real property acquisition and interests in real property unless allowable under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.
 - Taxes for which the local sponsor would not have been liable to pay.

- Damage judgments arising out of acquisition whether determined by judicial decision, arbitration or otherwise.
- **Easements:** In some instances, the applicant will not be able to purchase the property but can acquire an easement. An easement must be for a period of at least 25 years. During the time period, the easement cannot be revoked at will by the landowner unless the applicant or state is guilty of an infraction of the easement. The land must still be retained in public trail use for the duration of the easement period even though the easement has been revoked. Provisions stated in the easement cannot be detrimental to the proposed recreational development.

A draft copy of the easement must accompany the application for acquisition and development projects. If an easement has been or is to be executed prior to the submission of a development project application, a draft copy of the easement should be sent to the NDPRD for review. Advance approval of such agreements may help ensure the eligibility of the site for funding. Negotiations for easements must follow general negotiated land purchase regulations including the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

Control and Tenure of Lands

Adequate control must be established by an applicant over any land (public or private) to be improved/developed with RTP grant funds, including documentation of the fee title, lease, easement, or use agreement. Lease, easement and use agreement terms must be for a term no less than 25 years.

The application must identify all outstanding rights or interests held by others on land upon which the project is proposed. A signed letter explaining control and tenure must be submitted for all projects not located on Federal Lands. The applicant will be required to submit a signed approval from the official responsible for management of the project property.

Application Process and Review

The following information outlines the review process for each submitted application.

Metropolitan Planning Organizations (MPOs)

Project sponsors that fall into one of the Metropolitan Planning Organizations' jurisdictions must have and provide approval that their project is following the MPO's Long Range Transportation Plan. These areas include Bismarck-Mandan, Grand Forks, and Fargo.

Technical Review

Once a sponsor submits an application, NDPRD staff will review the application for completeness, eligibility, the sponsor's current grant status, match, property ownership, local/regional/federal approval, etc. Staff will forward eligible applications to the Recreational Trails Program Advisory Committee (RTPAC) for further consideration.

Recreational Trail Program Advisory Committee (RTPAC)

RTPAC membership represents a broad range of motorized and non-motorized trail users and associations. A total of nine committee members are appointed by the Director of the North Dakota Parks and Recreation Department and must be recreational trail users and represent trail interests (hiking, biking, horseback riding, paddling, OHV and snowmobile).

In North Dakota, the committee serves as the evaluation committee that reviews and prioritizes grant applications and recommends projects for funding. The project evaluation allows committee members to bring their knowledge of statewide and local recreation patterns, resources, and needs into consideration. Reviewers may rank a project based upon their evaluation of site suitability, fiscal consideration, commitment to long-term operation and maintenance, superior design, superior leverage of funding and partnership, ADA compliance, and project presentation, heritage and legacy context, and regional issues.

Committee members are appointed to 3-year terms. Upon completion of a 3-year term, NDPRD will advertise for replacement of the committee member. If no replacement is found, the existing committee member will be given the option to renew their term.

Pair-Based Scoring Process and Example

Pair-based scoring is a ranking methodology in which each project is individually ranked against each other project, one project at a time.

In the example below, 7 applications were received and ranked. The numbers 1-7 correspond with the assigned application numbers. Projects are then compared starting with project number 1 vs. project number 2. The better of the two projects is then marked on the score sheet. Then project 1 is compared to project 3 and again the better project is marked on the score sheet. This process is repeated until project 1 has been compared to all other applications.

Project 2 is then compared against all other projects excluding project 1, then project 3 against all others excluding 1 and 2, etc., until each has been compared to all other projects and project preference has been established. Points are assigned based on the number of times a project is chosen.

Project #	Total Times Chosen	Pair Ranking
1	4	<u>1</u> vs. 2, <u>1</u> vs.3, 1 vs. <u>4</u> , 1 vs. <u>5</u> , <u>1</u> vs. 6, <u>1</u> vs. 7
2	2	<u>2</u> vs. 3, 2 vs. <u>4</u> , 2 vs. <u>5</u> , 2 vs. <u>6</u> , <u>2</u> vs. 7
3	0	3 vs. <u>4</u> , 3 vs. <u>5</u> , 3 vs. <u>6</u> , 3 vs. <u>7</u>
4	6	<u>4</u> vs. 5, <u>4</u> vs. 6, <u>4</u> vs. 7
5	5	<u>5</u> vs. 6, <u>5</u> vs. 7
6	3	<u>6</u> vs. 7
7	1	

21 Total Points - The sum of all points should be 21.

In this example project number 4 was selected the most times and is ranked #1, followed by project 5 and so on. Once the projects have been ranked by all committee members, the scores will be averaged and the highest-ranking projects will be submitted for environmental and historical review and clearance.

Environmental and Historical Reviews

Documentation of compliance with the National Environmental Policy Act (NEPA) and other Federal environmental laws, regulations, and Executive Orders must be provided as part of an authorized project under the RTP. FHWA procedures in 23 CFR 771 apply to the RTP. Each project must be evaluated to determine the environmental impacts; however, most RTP projects will qualify as Categorical Exclusions (CE) under NEPA (23 CFR 771.117) if they meet the following requirements:

- Does not have significant impacts to planned growth or land use for the area;
- Does not require the relocation of a significant number of people;
- Do not have a significant impact on any natural, cultural, recreational, historic or other resource;
- Does not involve significant air, noise, or water quality impacts;
- Does not have significant impacts on travel patterns;
- Does not otherwise have any significant environmental impacts.

The following project types are CE by definition and do not require further review:

- Rehabilitation contained within the footprints of existing trails and trailhead facilities;
- Re-grading within the footprints of existing trails or trail parking areas;
- Striping and/or re-striping of existing facilities;
- Replacement, renovation, or rehabilitation of existing signs, kiosks, or markers;
- Alterations to existing facilities in order to make them accessible to the elderly and handicapped persons;
- Repair or replacement of existing fencing, guardrails, retaining walls, or berms within existing facilities, including areas needed for construction and staging.

After the Recreational Trails Program Advisory Committee (RTPAC) reviews and ranks the applications, the selected projects will be sent to the following agencies to meet the environmental review requirements:

- North Dakota Department of Health
- North Dakota Department of Transportation
- North Dakota Game and Fish

- North Dakota Parks and Recreation Department
- North Dakota State Historical Society
- North Dakota Water Commission
- US Department of Agriculture
- US Fish and Wildlife Service

All comments and concerns identified by the agencies must be addressed before funding can be awarded.

State Historic Preservation Office (SHPO) Requirements

The SHPO will be contacted to assure that the project proposal complies with State laws regarding archaeology on lands or historic properties.

- Any project element calling for alteration, rehabilitation, renovation, or demolition of a building or structure 45 years or older needs to be reviewed by the SHPO on a case-by-case basis.
- Photographs of properties that would be affected 45 years of age or older need to be submitted along with a narrative describing the project, including plans and specifications, as appropriate. Any available historical information on the property should also be submitted.
- It is illegal to disturb an archaeological site or to remove artifacts from an archaeological site or to remove an archaeological object on public or private lands, unless that activity is authorized under a permit and requisite permissions have been obtained.
- If human remains are found during an excavation on private or state lands, the local law enforcement office must be contacted pursuant to N.D.C.C. §23-06-27 to determine if they are Native American or are evidence of a crime scene.

If other archaeological materials are found during a ground disturbing activity, contact the SHPO at 701-328-2682. The SHPO can check to see if your project area has been surveyed and can give you a current list of archaeological consultants. Only professional archaeologists or persons working for recognized scientific organizations may apply for an archaeological permit.

Other Environmental Considerations

- Wetlands: Impacts to wetlands must be considered and may result in trail route or structure changes. All applications will be reviewed by NDPRD Grant staff for wetland impacts using the U.S. Fish and Wildlife's Wetland Mapper available at <https://www.fws.gov/wetlands/Data/Mapper.html>
- Threatened and Endangered Species: The occurrence of a protected species could be an important issue to consider during the development of an RTP project. Projects will be reviewed by the U.S. Fish and Wildlife Service and the North Dakota National Heritage Inventory Program.
- Hazardous Wastes and Contaminated Properties: Contaminated sites may be encountered during the development of RTP projects. Abandoned railroad lines being converted into trails are of particular concern. Site assessments and appropriate steps for remediation may be necessary.

- Noxious Weeds: Project sponsors are responsible for the spread of noxious weeds in conjunction with the trail project.
- Conservation Measures: Careful planning and the use of best management practices should be implemented during the construction phase and after the trail is built to help decrease impact and reduce cumulative effects to plant and wildlife communities. Avoiding habitat fragmentation should be considered and implemented when possible.

The following conservation measures are suggested:

- Start and finish the project outside the migratory bird nesting periods of February 1 through July 15.
- Design the trail alignment to avoid sensitive areas such as wetlands or other habitat that are rare in the area.
- Reduce the invasion of invasive species by controlling weeds prior to construction and include a weed management plan for after construction.
- Maintain clean trail building equipment to limit the spread of noxious weeds and invasive species.
- Avoid practices that cause erosion.
- Identify any off trail use immediately and have a plan to eliminate the problem.
- ND Parks and Recreation Department recommends using the Best Management Practices when implementing this project.
- Removal of existing trees should be completed when all other options are exhausted.
- Tree mitigation should be completed on a 2:1 basis and completed in the area of disturbance.

Tips for Project Sponsors

Develop your proposal sufficiently so that the project may move quickly into implementation after project approval. In order to do so, consider the following:

- Prepare a project development plan. What aspects need to be addressed? Identify issues and steps which are critical to the project development process.
- Develop a workable project. What are the trail needs? What can be done realistically?
- Get public support for the project. How does the project benefit the community? Are there other potential project sponsors?
- Find other funding sources. The normal Federal share is limited to 80 percent. Some state or local governments may provide some matching funds, but usually the project sponsor has to provide most or all of the match.
- Consider donations of materials and services, including volunteer labor. Obtain estimates of cost on materials.
- Develop a good project design.
- Consider the natural environment in which the project is located.
- Consider community benefits.
- Consider user needs, including use by people with disabilities.

- Consider potential problems:
 - Environmental impacts: these must be minimized and mitigated, and may require some documentation.
 - Permits: various permits may be needed prior to submitting the project proposal.
 - Possible opposition: some people may oppose a project for various reasons, including concerns about property rights, liability, safety, historic or archaeological impacts or environmental impacts. Identify these potential issues early and maintain a constant dialog of communication.
- Complete the project application.
- Work with NDPRD to answer any questions about the application. Do not begin work until you receive official authorization to proceed. Work performed prior to Federal project approval cannot be reimbursed.
- After the project receives Federal approval, initiate the project as soon as possible. NDPRD may withdraw project approval if a sponsor does not show evidence of project progress within a reasonable time frame.

Project Expenditure and Reimbursement Process

To be eligible for reimbursement funds, project costs must be incurred after the federal project approval start date. Donations of equipment, labor, and materials must be contributed after the federal project approval start date as well. Cash contributions may be received at any time.

The bidding and procurement process must also begin after the federal project approval start date; this date will be indicated on your project agreement from NDPRD. Please note a pre-approval award letter will be sent out to all projects that are ranked high enough to be funded; final approval will be contingent upon Solicitation of View (SOV) letters and responses. Upon successful completion of reviews, a project agreement, to include the project start/completion date, will be provided to the sponsor.

Local Share

Local match may include donated/volunteer labor, donated equipment and materials, and force account.

- Donated Labor: The time of a person donating services will be valued at a rate paid as a general laborer (per North Dakota Job Service's General Laborer Rate for the project area location, documented and provided by sponsor to NDPRD) unless the person is professionally skilled in the work being performed on the project (i.e. mason doing work on a retaining wall). When this is the case, the wage rate this individual is normally paid for performing this service may be charged to the project. The rates for labor should **not** include payroll additives or overhead costs. Evidence of the skilled labor rates must accompany the reimbursement request. Volunteer labor may be used as match only and is never a reimbursable item.
- Donated Equipment and Materials: Donated equipment and materials may be used as match only and are never reimbursable items. The value of the donated materials and equipment rental rates must be documented through an invoice or official letter from the

donor/vendor.

- **Force Account:** Force account is different than volunteer labor or donated equipment and supplies. Force account refers to the use of a project sponsor's staff, equipment, and/or materials. All or part of the project sponsor's share may be provided through force account. Documentation must be verifiable from the project sponsor's records and must be reasonable and necessary for efficient completion of the project.

Federal Matching Share

The federal share through the RTP for projects is limited to 80 percent except under the following circumstances:

- A Federal agency project sponsor may provide its own funds toward RTP projects as additional Federal share up to 95 percent of the project cost. The limitation is intended to ensure commitment to the project from State, local, or private co-sponsors. Under this provision, a Federal agency project sponsor may provide any amount of funds, provided the total Federal share does not exceed 95 percent.
- Funds from Federal Programs: RTP funds may be matched with funds available under other Federal funding programs, if the project also is eligible for funding under the other Federal program. Federal funds received by any project sponsor from another Federal program may be credited as if they were the non-Federal share, and may be used to match RTP project funds up to 100 percent of the project cost.

Procurement

Please note *this section is only applicable to project sponsors that are Title VI compliant*. If the sponsor is not Title VI compliant, the NDPRD will be coordinating the bidding and procurement process.

Grant recipients are required to follow the State of North Dakota's procurement guidelines when purchasing goods or services needed to complete a project. Please refer to N.D.C.C. §54-44.4-14 and N.D.A.C. Chapter 4-12-08.

- **Purchases \$10,00.00 and below:** Use adequate procedures to ensure commodities and services are obtained at a fair and reasonable price, which may include the soliciting only one informal bid or proposal. Rotate vendors solicited on an equitable basis "Fair and reasonable" price can be based on previous purchases, market research, a published price list, or by simply soliciting more than one vendor. Remember, "When in doubt, bid it out." Use the state purchasing card whenever possible.
- **Purchases \$10,000.01 to \$50,000.00:** Solicit no fewer than three vendors, insofar as practical, to submit oral or written informal bids or proposals. If you do not receive three bids or proposals, provide a written justification (e.g., "only two known vendors" or "contacted three vendors, only two responded").
- **Purchases over \$50,000.01 to \$100,000.00:** Solicit formal sealed bids or proposals with notice to approved bidders on the State Bidders List and post on the [State](#)

[Procurement Online](#) website.

- Purchases over \$100,000.01 and over: Must be purchased using formal sealed bids or Request for Proposal (RFP). Solicitations must be posted using SPO Online with appropriate state bidders list. May send to additional bidders.
- Limited Competitive and Noncompetitive Procurements: Occasionally, circumstances arise under which a fully competitive procurement process may be difficult or impossible. Procurement is noncompetitive when there is no bidding process. Limited competition occurs when competition is possible, but the requirements of the solicitation restrict competition to particular bidders. Project sponsors must use the State's [Alternate Procurement Request form](#), SFN 51403 to document this process and submit to NDPRD prior to entering into a contract or incurring an expense which is classified as a limited competitive or noncompetitive purchase. In accordance with federal regulations, NDPRD will then forward to FHWA for approval. NDPRD will notify the project sponsor of FHWA's decision within 10 business days of the forms submittal along with a reason, if denied.
- Documentation Requirements: Each procurement transaction must be adequately documented for audit and public record purposes. If the purchase is over \$2,500.01, the procurement file must have evidence that three vendors were solicited or document the reason three bids were not obtained using the guidelines and forms listed above. Include any required approvals, solicitation documents used, list of bidders solicited, and responses received. In addition, a bid tab or summary must be included which includes the name, address and phone number of the all bidders along with evaluation worksheets, reasons for rejecting a particular bid, and method of award (e.g. purchasing card or purchase order).
- Exemptions by Statute: Please note, certain commodities and services are not subject to state procurement laws. The following commodities and services are exempted from state procurement practices, as follows:
 - Land, building, space, or the rental thereof, however before making a commitment to obtain land for a RTP project, an appraisal must be submitted to the Parks and Recreation Department for approval. The land is required to be appraised by a certified general appraiser with federal experience according to the Uniform Appraisal Standards for Federal Land Acquisitions. <https://www.justice.gov/file/408306/download>
 - No more than the appraised value can be paid.
 - Specific commodities and services as determined by written directive by the Director of OMB in N.D.A.C § 4-12-01-04 such as: A. contracts for public buildings and public improvement contract bids, pursuant to N.D.C.C. Title 48. B. Contracts for architect, engineer, and land surveying services pursuant to N.D.C.C. Chapter 54-44.7.

Public Improvement Projects

Public improvement means any improvement undertaken by a governing body for the good of

the public and which is paid for with any public funds, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building or any other public infrastructure or facility if the result of the improvement will be operated and maintained by the governing body. The term does not include a county road construction and maintenance, state highway, or public service commission project governed by Title 11, 24, or 38.

The threshold for bidding construction of a public improvement is one hundred fifty thousand dollars (\$150,000). The threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement is one hundred fifty thousand dollars (\$150,000).

If the estimated cost for the construction of a public improvement is in excess of the threshold, the governing body shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least twenty-one days before the date of the opening of bids. <https://www.legis.nd.gov/cencode/t48c01-2.pdf>

Each governing body shall require a statement from any person preparing the plans and specifications for a public building or facility that, in the professional judgment of that person, the plans and specifications are in conformance with the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36], subject to the exception stated in section 54-21.3-04.1.

- **Required Contract Language:** Attached to this manual is FHWA Form 1273 and Title VI nondiscrimination assurances, which are required to be included in its entirety in every RTP contract between a project sponsor and any organization, group, agency or individual they do business with (see attachments B and C). Failure to include this form will result in forfeiture of RTP funds for the project portion covered by of the contract in question. While including this form is a federal requirement, only certain portions may apply depending on the contracted dollar amount or the location of the project (federal road right of way). Please direct any questions relating to this form to NDPRD grant staff.
- **Disadvantaged Business Enterprise Program:** Project sponsors are encouraged to work with disadvantaged businesses, including those owned by minorities, women, and socially and economically disadvantaged individuals, when practical and applicable to the State's procurement guidelines. For more information on the ND Department of Transportation's Disadvantaged Business Enterprise Program, please visit <http://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>.

Reimbursement

The project sponsor will not receive upfront funding at the time of project approval. Instead, the sponsor must pay the bills and be reimbursed for a maximum of 80% of the expenses incurred for the project. **To avoid the risk of losing funding, reimbursement requests must be submitted approximately every 6 months during the project period.** Land donations will be credited

towards the match of the sponsor's share of the project.

As in any program where a reimbursement is requested for a portion of the project costs, adequate documentation and records are essential. There must be definite supporting documentation (i.e. invoices and canceled checks-**front and back**) for each item of cost claimed- estimates are not sufficient. NDPRD may request additional support documentation in order to process a billing.

- Reimbursement Requests: The following is a list of documentation NDPRD will need to process reimbursement requests:
 - Grant Program Reimbursement Request Form.
 - Affidavit of publication, supplied by the newspaper when you advertise for bids.
 - For purchases over \$2,500.01, include any required approvals, solicitation documents used, list of bidders solicited and responses received. In addition, a bid tab or summary must be included which includes the name, address and phone number of the all bidders along with evaluation worksheets, reasons for rejecting a particular bid, and method of award (e.g. purchasing card or purchase order). Forms should be dated and signed by responsible official.
 - Contractor invoices (or final payment, if countersigned by contractor acknowledging payment of all prior charges, and if the cost of each major work item is shown) and cancelled checks to contractor (**front and back**).
 - All other cancelled checks (**front and back**).
 - Copies of invoices. Not monthly statements.
 - Individual earnings records for the calendar year or payroll journals. Should show gross wages, withholdings and net pay for each pay period – See Force Account Form.
 - Equipment rental time records.
 - Detailed schedule showing how you computed owned-equipment rental rates. For donated equipment time, you must use hourly rates via a quote from a local rent all or a published equipment billing chart for a municipality.

- Partial Billing: A partial billing along with supporting documentation may be submitted to NDPRD after portions of the work have been completed. Submit the completed "Reimbursement Request Form." The state will retain 5% of the grant amount until the project is complete and a final inspection completed. Supporting documentation needed includes the following:
 - Expenditure Records indicated above
 - Volunteer Logs

- Final Billing: For a project to be considered completed and ready for final billing, it should be submitted within thirty days of the completion of the project or grant expiration date, whichever comes first. Final project billings must be submitted to NDPRD utilizing the process outlined above. Final project billing and grant closeout will not be completed until

NDPRD has conducted the final inspection and certified the project is indeed complete, meeting the project description outlined in the grant application and/or project amendment.

- Reimbursement Request Form: A separate file should be established and maintained for each RTP project. The project sponsor is responsible to track costs according to the categories on the Grant Programs Reimbursement Request Form and must maintain an auditable record for a period of not less than 3 years from the date of the final reimbursement. A grant reimbursement form must be submitted for all payment requests and reimbursements. Only the form provided by NDPRD will be accepted.

Projects that have not shown progress for six months, risk potential termination of RTP funding. If no reimbursement requests are received, NDPRD will assume no progress has been made.

Amendments

During the project period, various situations may result in changes or deviations from the Project description. An amendment is necessary to add to or alter the approved project. Changes that may necessitate an amendment are increases or decreases in the grant amount, project scope changes, or an extension of the project period.

- Changes in Project Scope: Only those items approved for the project are eligible for federal assistance. Similarly, facilities must be constructed in the same location as designated on the plans submitted with the application. Due to unforeseen changes in project costs or revisions in the plans for the facility, certain items may have to be added or deleted from the project after it is approved. These changes may require submission to the Federal Government for approval. In the case of adding an item to the project, construction on that item cannot begin until the amendment is approved.

The amount of federal assistance specified on the award letter is the maximum amount reserved for that particular project. Costs over this amount have to be paid by the applicant. All changes in project scope should be in accordance with the intent of the original application and must be justifiable. The need for the change must be documented by a letter to the NDPRD, accompanied by revised cost estimates, construction plans and maps.

- Project Period Extensions: All acquisition and development must take place within the project period, which is identified in the award letter. The award letter is sent to the project sponsor after the project has received Federal approval. The target date for project completion will be based on an 18-month project period. The project sponsor is encouraged to complete the project as soon as possible as inflation can add a 5% cost increase each year.

If the project cannot be completed during the period identified on the project agreement,

contact NDPRD.

- Submission of an Amendment Request: The sponsoring agency initiates the amendment by submitting a request for the changes to NDPRD. This request should include all project revisions desired, including cost estimates, maps or design plans, and justification of the need for the changes. It is recommended the NDPRD be contacted prior to the submission of the amendment request. Department staff will be able to provide advice on the feasibility of an amendment approval. An amendment for a change in project scope can be requested any time prior to the construction of the added item or acquisition of the added tract. An amendment for an extension of time should be submitted forty-five days before the project is scheduled to expire.

It is essential that amendment requests be kept to a minimum. Amendments are used to cover items that could not be anticipated in the original project. Major deviations from the original project will not be accepted. It is the responsibility of the project sponsor to thoroughly determine the type of project prior to submission and, upon approval, carry through with that project.

Project Termination

A project sponsor may request withdrawal of the project at any time prior to the first payment or expenditure of grant funds. After the initial payment, the project may be rescinded, modified or amended only by written mutual agreement between the project sponsor and NDPRD.

NDPRD may terminate the project in whole or in part, at any time before the date of completion, if it is determined the project sponsor has failed to comply with the terms of the project proposal or the intent of the program. Failure by the project sponsor to comply with the terms of the grant may cause suspension of all obligations by and a return of any monies received. If a project is terminated the project sponsor will be notified in writing of the determination and the reasons for the termination, together with the effective date. Payments made to the project sponsor or recovery of funds by the NDPRD under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.

NDPRD may terminate the grants in whole, or in part at any time before the date of completion, when all parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The project sponsor shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. Termination either for cause or for convenience requires the project in question be brought to a state of recreational usefulness agreed upon by the project sponsor and NDPRD or all funds must be returned.

Project Site Retention & Future Responsibilities

At the time of project approval, the project sponsor through the acceptance of funds, commits that the facilities developed with federal assistance must remain open for general public use and will be operated and maintained. If RTP monies are used for land acquisition the land must remain in public trail use for perpetuity. If RTP monies are used for development, the site and facility must remain in public trail use until the facilities become obsolete or are at the end of their useable life.

Design, Construction, Maintenance and Signage Criteria

Recreational trails should generally follow design criteria recommended for the types of uses. FHWA has a list of design guideline resources.

https://www.fhwa.dot.gov/environment/recreational_trails/guidance/rtp9908_pt2.cfm#page53

Project sponsors should review the design criteria and identify which level of design will apply to their project. NDPRD can assist with project design criteria.

Signs which function as traffic control devices must conform with the [Manual on Uniform Traffic Control Devices](#) (MUTCD). Part IX of the MUTCD, [Traffic Controls for Bicycle Facilities](#), covers the bicycle related signs, pavement markings, and signals which may be used on highways or bikeways. Part 9 is for bicycle facilities and is suitable for shared use paths (nonmotorized multiple-use trails which may provide a transportation purpose).

The publication [Standard Highway Signs](#) has the detailed drawings for the highway signs prescribed in the MUTCD. These documents are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402 or at <https://mutcd.fhwa.dot.gov/>. Signs which do not function as traffic control devices are not subject to the MUTCD. However, informational signs and kiosks must take into consideration the needs of various users, such as:

- People who are blind or who have low vision.
- People who use wheelchairs.
- Children.

The International Association of Snowmobile Administrators (IASA) has developed its own standards for snowmobile trails based on research from the US Forest Service. The primary difference from the MUTCD is an allowance for smaller sized signs.

Americans with Disabilities Act

The Americans with Disabilities Act of 1990 is civil rights legislation which prohibits discrimination against people on the basis of disability. While specific technical standards have not yet been finalized for recreation facilities (including recreational trails), State and local government trail developers and operators nevertheless have statutory responsibilities to

provide opportunities for the participation of people with disabilities in recreational trails funded under the RTP.

Federal laws that affect the design, construction, alteration, and operation of trail facilities include the Architectural Barriers Act of 1968 (ABA), the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990 (ADA). Current regulations implementing these statutes contain requirements that apply to existing trail construction and program operations and adopt technical standards to guide new trail construction and alterations of existing networks:

- Buildings and facilities newly-constructed or altered with Federal funds are subject to the accessibility requirements contained in the [Uniform Federal Accessibility Standards](#) (UFAS), the standard currently referenced in the ABA.
- Accessibility in Federally-assisted programs is governed by the requirements of the USDOT regulations ([49 CFR part 27](#)) implementing Section 504 of the Rehabilitation Act (29 U.S.C. 794).
- The Americans with Disabilities Act of 1990 (ADA) is the legislation intended to improve access for people with disabilities. The U.S. Department of Justice's (DOJ) title II implementing regulations (28 CFR part 35) describe the obligations of State and local governments for existing facilities and program operations, and require title II entities (public entities) to comply with either [UFAS](#) or the [Americans with Disabilities Act Accessibility Guidelines](#) (ADAAG) developed by the U.S. Architectural and Transportation Barriers Compliance Board (the Access Board) when newly constructing or altering facilities. Private sector entities, including lessees, concessionaires, and contractors to State and local governments, are governed by the DOJ title III implementing regulations, which adopt ADAAG as the standard for accessible design.

A Regulatory Negotiation Committee reported to the Access Board on September 15, 1999. These guidelines will provide technical criteria more specific to the design of new recreational trails and the alterations of existing systems. Until then, however, trail designers should follow the advice contained in the DOJ preamble to their title III regulation: To the extent that a particular type or element of a facility is not specifically addressed by the standards, the language of this section (that new and altered facilities should be "readily accessible to and usable by individuals with disabilities" is the safest guide.

The concept of program accessibility, established in regulations implementing the Rehabilitation Act and extended to State and local governments (irrespective of Federal funding) under title II of the ADA, should guide the operation of existing trails programs and facilities.

RTP projects are primarily recreational in nature, rather than serving a more utilitarian transportation function. Consider the potential uses of each trail project, consider what is

reasonable and feasible, and provide for users in an appropriate manner. It is not necessary to construct every recreational trail according to the ADA guidelines, but trail project sponsors must not install barriers or other features that would make it more difficult for people with disabilities to use the trail. States should make sure they maintain program accessibility. Failure to provide some kind of program of accessible recreational opportunities for people with disabilities may constitute discrimination.

Trail designers should seek opportunities to incorporate accessible features and elements, and to include trail routings that meet accessibility criteria to ensure that there are recreation opportunities for a variety of users within an overall recreational trails program. Where trail-related facilities, such as parking, shelters, toilets, drinking fountains, and other features are provided on or along an accessible trail site, they should provide the required level of accessibility and be served by an accessible route. Trail designers should account for people with disabilities that may arrive at trail facilities by horse, ATV, snowmobile, with assistance, or by other means.

Other facilities, including transportation facilities, also must be constructed, altered, and operated to be accessible to people with disabilities. Transportation and pedestrian linkages serving or intersecting accessible recreational trails should contain accessible elements, including curb ramps, sidewalks, and similar improvements.

FHWA Form 1273

The provisions of form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (which includes RTP) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

An overview of the program is here: <https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>

The PDF version of the form that must be included in all contracts can be found here: <https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>

Federal Register: Requirements for Federal Funding Accountability and Transparency Act Implementation

The rules and regulations regarding OMB guidance to agencies to establish requirements for Federal financial assistance applicants, recipients and subrecipients that are necessary for the implementation of the Federal Funding and Accountability and Transparency Act of 2006. The PDF version of these rules and regulations that apply can be found here:

https://www.doi.gov/sites/doi.gov/files/migrated/pam/programs/financial_assistance/upload/Federal_Register_FFATA_Implementation.pdf

Standard U.S. DOT Title VI Assurances

The (Title of Recipient) (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, SubTitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation, including the (*Name of Appropriate Administration*), and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations, a copy of which is attached.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its (*Name of Appropriate Program*):

1. That the Recipient agrees that each "program" and each "facility as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all (*Name of Appropriate Program*) and, in adapted form in all proposals for negotiated agreements:

The (Recipient), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, SubTitle A, Office the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidden that it will affirmatively insure that in any contact entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
4. That the Recipient shall insert the clauses of Appendix B of this assurance, 'as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under (*Name of Appropriate Program*); and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under (*Name of Appropriate Program*).
8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient Department of Transportation under the (*Name of Appropriate Program*) and is binding on it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest and other participants in the (*Name of Appropriate Program*). The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient

Dated. _____

(Recipient)

by _____
(Signature of Authorized Official)

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *(Recipient)* or the *(Name of Appropriate Administration)* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *(Recipient)*, or the *(Name of Appropriate Administration)* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the *(Recipient)* shall impose such contract sanctions as it or the *(Name of Appropriate Administration)* may determine to be appropriate, including, but not limited to:
 - (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as the *(Recipient)* or the *(Name of Appropriate Administration)* may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the *(Recipient)* to enter into such litigation to protect the interests of the *(Recipient)*, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B

A. The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the *(Name of Recipient)* will accept Title to the lands and maintain the project constructed thereon, in accordance with *(Name of Appropriate Legislative Authority)*, the Regulations for the Administration of *(Name of Appropriate Program)* and the policies and procedures prescribed by *(Name of Appropriate Administration)* of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, SubTitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the *(Name of Recipient)* all the right, Title and interest of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto *(Name of Recipient)* and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the *(Name of Recipient)*, its successors and assigns.

The *(Name of Recipient)*, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on over or under such lands hereby conveyed [,I[and]' (2) that the *(Name of Recipient)* shall use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, SubTitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended LI and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to reenter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.*

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- Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964,

APPENDIX C

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the *(Name of Recipient)* pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, SubTitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)'

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in deed.]'

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to reenter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of *(Name of Recipient)* and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by *(Name of Recipient)* pursuant to the provisions of Assurance 6(b).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or he 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 shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations. Department of Transportation, SubTitle A, Office of the Secretary. Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964), and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]"

Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to terminate the [license, lease, permit, etc.] and to reenter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds]*

That in the event of breach of any of the above nondiscrimination covenants, (*Name of Recipient*) shall have the right to reenter said land and facilities there-on, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of (*Name of Recipient*) and its assigns.

Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.