

REQUEST FOR QUALIFICATIONS

**Tribal Coordination Services
for the
XWA Williston Basin International Airport**



**Qualifications Submissions Due: March 16, 2017
10:00AM Central Daylight Time**

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ANTICIPATED SOLICITATION TIMELINE	
<u>Target Date</u>	<u>Event</u>
March 6, 2017	Solicitation posted on City of Williston website
March 10, 2017	Questions Due by 5:00PM CDT
March 14, 2017	City of Williston Response to Questions
March 16, 2017	Qualifications Submission Deadline at 10:00AM CDT
March 16-17, 2017	Evaluation Period
March 17, 2017	Award of Contract
March 17-20, 2017	Fee Negotiation
March 21, 2017	Tribal Coordination Meeting; selected vendor to participate.

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1.0 INVITATION TO SUBMIT QUALIFICATIONS

The City of Williston is soliciting qualifications for qualified Respondents to enter into an agreement to provide Tribal Coordination Services for the XWA Williston Basin International Airport.

Sealed qualifications submissions are to be submitted to:

David Tuan
City Administrator
PO Box 1306
Williston ND 58802
701-713-3800
davidt@ci.williston.nd.us

1.1 - Qualifications Submission Deadline

Qualifications submissions will be accepted until 10:00AM March 16, 2017.

1.2 - Questions Regarding Request for Qualifications

Questions and requests for additional information may be directed to:

David Tuan
701-713-3800
davidt@ci.williston.nd.us

Questions must be received by **5:00PM CDT on Friday, March 10**. Responses to submitted questions shall be posted on the City's website by 5:00PM on Tuesday, March 14 as an addendum to this Request for Qualifications.

1.3 - Certification of Regarding Debarment

By submitting a bid/proposal under this solicitation, Respondent certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

1.4 - Time Is of the Essence

The City wishes to secure the services described herein as quickly as reasonably possible in order to maximize the upcoming construction season. Further, the selected vendor is required to participate in a scheduled Tribal Coordination Meeting on Tuesday, March 21st. The timeline for submission and evaluation of qualifications is reflective of these factors, and as such, potential respondents should infer neither bias nor lack of rigor in this procurement process.

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2.0 MANDATORY RESPONDENT CRITERIA

Respondents must meet the following mandatory requirements to be considered for an award of contract. Respondents will address each mandatory requirement specifically in their qualifications submission by submitting written evidence to support and affirm Mandatory Respondent Criteria.

1. Respondent shall have provided National Historical Preservation Act (NHPA) compliance services for at least one client.
2. Respondent shall be able to provide a North Dakota-permitted professional archaeologist in the role of Archaeologist Field Director.
3. Respondent shall accept all contract provisions as described within Section 6.0, Required Contract Provisions.

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3.0 SCOPE OF SERVICES

3.1 – Overview of Requested Services

In conjunction with the City's replacement airport project and associated development efforts, the City wishes to procure professional services to provide Tribal Coordination services in compliance with the National Historic Preservation Act 16 U.S.C. 470.

The successful Respondent will be contracted to provide the following services:

- Provide technical expertise to the Airport Sponsor;
- Act as the Tribal Relations Manager, and
 - Coordinate with the contractor(s) to determine number of crews needed.
 - Coordinate with the THPO office(s) to arrange TCS(s) for monitoring.
 - Develop agreements/paperwork contracting TCS(s) for monitoring.
 - Once agreements/paperwork have been approved at THPO office and returned to City or agent, project start dates and location will be provided to THPO office(s).
 - Coordinate the compensation, lodging, travel fee and mileage compensation and appropriate equipment provided by the City.
 - Serve as the primary point of contact for contract employees from the THPO office(s).
 - Provide an Archaeological Field Director and/or Archaeological Field Director for the monitoring project.
- Act as Archaeologist Field Director, and
 - Conduct construction monitoring.
 - Coordinate day to day activities/schedules of monitoring crews.
 - Provide transportation on job site for TCS(s).
 - Assist the monitoring crews in the unanticipated discovery of human remains and other discoveries.
 - Coordinate the completion of daily and weekly logs.
 - Coordinate with the Archaeological Principal Investigator to ensure completion of the final report on the results of monitoring.

3.2 – Detailed Scope of Services

The following documents, included herein, provide details pertaining to the requested services:

Appendix A: Detailed Scope of Services for Tribal Coordination

Appendix B: FAA Special Provision, Tribal Coordination & Procedures during Construction

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4.0 QUALIFICATIONS SUBMISSION PREPARATION

4.1 – Detailed Submittal Requirements

In order to facilitate the analysis of responses to this RFQ, Respondents are required to prepare their qualifications submissions in accordance with the instructions outlined below. Qualifications submissions should be prepared as simply as possible and provide a straightforward, concise description of the Respondent’s capabilities to satisfy the requirements of the RFQ. Emphasis should be placed upon accuracy, completeness, and clarity of content. All parts, pages, figures, and tables should be numbered and clearly labeled.

Respondents shall submit qualifications in the following format and with tabs numbered as shown below:

TAB	ITEM	INSTRUCTIONS
1	Mandatory Respondent Criteria	<p>Respondent shall provide written evidence that it meets the following mandatory criteria:</p> <ol style="list-style-type: none"> 1. Respondent shall have provided National Historical Preservation Act (NHPA) compliance services for at least one client. 2. Respondent shall be able to provide a North Dakota-permitted professional archaeologist in the role of Archaeologist Field Director. 3. Respondent shall accept all contract provisions as described within Section 6.0, Required Contract Provisions.
2	Company Profile	<p>Respondent should provide a general overview of the company, including brief company history, amount of time in business, company size and organizational structure, service lines and locations.</p>
3	Experience with Similar Efforts	<p>Respondent should address experience of Respondent with clients of similar size and complexity to the City of Williston.</p>
4	References	<p>Respondent shall provide three (3) references of current or previous clients. Each reference must contain:</p> <ol style="list-style-type: none"> a) Reference contact information, including name, title, organization, phone number, and email address; and b) A brief description of the services provided to the reference organization by Respondent. <p>Respondent is encouraged to notify selected references that the City may be contacting them. The City reserves the right to disqualify references that are unresponsive or unreachable.</p>

TAB	ITEM	INSTRUCTIONS
5	Project Approach	Respondent shall demonstrate understanding of the scope and complexity of this effort for the City, and shall provide a narrative of Respondent's proposed approach to accomplishing the Scope of Services. Approach shall include anticipated staffing and utilization over the life of the project.
6	Project Team Composition and Résumés	Respondent should provide résumés of proposed project team to support the services outlined in this RFQ.

4.2 - Delivery of Qualifications Submissions

One (1) original copy (clearly marked "ORIGINAL"), three (3) copies (each clearly marked "COPY") and one (1) USB containing a copy of the complete original response in Adobe PDF format must be submitted in a sealed package and delivered to:

David Tuan
City Administrator
PO Box 1306
Williston ND 58802
701-713-3800
davidt@ci.williston.nd.us

The City's office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m., CDT, excluding major holidays.

Facsimile or e-mail submissions will not be accepted. Subject to the City's discretion to waive minor irregularities that will not result in an unfair economic or competitive advantage or disadvantage to any Respondent, a late submission, as determined by the City's official bid clock, will not be considered and may be returned to the Respondent as non-responsive. Each Respondent is fully responsible for ensuring submission is timely received, and shall assume the risk of non-delivery or untimely delivery caused by its chosen delivery method, whether by US mail, public carrier or otherwise. This RFQ does not commit the City to paying costs or expenses of any kind incurred by the various Respondents during preparation, submittal or presentation, if any.

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5.0 QUALIFICATIONS EVALUATION

5.1 - Qualifications Evaluation Criteria

The City will examine the factors listed below and will assign the defined point value on a scaled basis. The City reserves the right to reject any and all submissions, in whole or in part, and to waive any minor irregularities that will not result in an unfair economic or competitive advantage or disadvantage to any Respondent.

This solicitation will be evaluated using the following factors and corresponding maximum available points:

- 1) **Mandatory Respondent Criteria (Pass/Fail)** – See Section 2.0, Mandatory Respondent Criteria.
- 2) **Approach to Project (Maximum 25 Points)** – Respondents shall be evaluated on the basis of their demonstrated understanding of, and approach to, this effort for the City.
- 3) **Past Performance (Maximum 25 Points)** – Respondents shall be evaluated on the basis of stated outcomes and references for past efforts.
- 4) **Experience with Similar Efforts (Maximum 25 Points)** – Respondents shall be evaluated on the basis of the degree to which proposed firms and/or team members have successfully completed efforts of similar scope and complexity to this one for the City.
- 5) **Project Team Composition and Experience (Maximum 25 Points)** – Proposed project team members shall be evaluated on their technical expertise as demonstrated by submitted résumés.

5.2 – Selection Process

Consultant shall be selected on the basis of qualifications and experience, with fees determined through negotiations following selection. The City shall evaluate the qualifications of each respondent using the above weighted criteria, and the best qualified consultant shall be selected. Subject to a mutual understanding of the scope of services and negotiation of a fair and reasonable fee, a contract shall be awarded.

5.3 - Disadvantaged Business Enterprise

The requirements of 49 CFR part 26 apply to this contract. It is the policy of The City to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The City encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

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6.0 REQUIRED CONTRACT PROVISIONS

6.1 – Overview of Required Contract Provisions

The Williston Basin International Airport is enabled by Airport Improvement Program funding through the Federal Aviation Administration. As such, any contract resulting from this Request for Qualifications will be subject to the contract provisions described herein. Respondent must state affirmatively its agreement with the below contract provisions.

6.2 – Access to Records and Reports

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

6.3 – General Civil Rights Provisions

The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

6.3.1 Title VI Solicitation Notice

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair 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.

6.3.2 Compliance with Nondiscrimination Requirements

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

1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or

supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to: a. Withholding payments to the contractor under the contract until the contractor complies; and/or b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, Required Contract Provisions Issued on January 29, 2016 Page 19 AIP Grants and Obligated Sponsors Airports (ARP) unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

6.3.3 Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients

and contractors, whether such programs or activities are Federally funded or not); • Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38; • The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

6.4 - Disadvantaged Business Enterprise

The requirements of 49 CFR part 26 apply to this contract. It is the policy of The City to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The City encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

6.5 – Energy Conservation Requirements

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201et seq).

6.6 – Equal Opportunity

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and

shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency 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 vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

6.7 - Federal Fair Labor Standards Act

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

6.8 - Occupational Safety and Health Act

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

6.9 – Trade Restriction Certification

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror - a. is not owned or controlled by one or more citizens of a foreign country included

in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.); b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.; and c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

6.10 – Veteran’s Preference

In the employment of labor (excluding executive, administrative, and supervisory positions), the contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by

15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

6.11 – Texting when Driving

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

6.12 – Contract Termination

6.12.1 Termination for Convenience

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete. Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services. Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

6.12.2 Termination for Default

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:

1. Perform the services within the time specified in this contract or by Owner approved extension;
2. Make adequate progress so as to endanger satisfactory performance of the Project;

3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

b) Termination by Consultant: The Consultant may terminate this Agreement in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Consultant is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

6.13 – Certification of Offerer/Bidder Regarding Debarment

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

6.14 – Certification Regarding Lobbying

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an

agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

6.15 – Breach of Contract Terms

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Consultant written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Consultant must correct the breach. Owner may proceed with termination of the contract if the Consultant fails to correct the breach by deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

6.16 – Clean Air and Water Pollution Control

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

APPENDIX A: DETAILED SCOPE OF SERVICES FOR TRIBAL COORDINATION

Project Description

General

The work is to occur at Williston Basin International Airport in Williston, North Dakota. The goal of this document is to quantify the level of effort anticipated for Tribal Coordination throughout the 2016 & 2017 construction seasons. Project sketches that are covered by this Detailed Scope of Services shall be added to the final agreement. For purposes of this effort, it is anticipated that this will be completed over a duration of 42 weeks. Anticipated construction activities for this time frame consist of the following projects:

1. Site Grading
2. Soil Borings
3. 59th Street Re-Route
4. Terminal Phase 1 Surcharge
5. Utility Relocations
6. Access road maintenance

Monitoring crews will be provided during any ground disturbances on the proposed new airport location, access roads, and the existing airport location in areas identified as culturally sensitive. Services by the Consultant beyond December 31, 2017 will be continued, at the discretion of the Owner, under a new scope of work. The Owner is responsible to provide Tribal coordination until the new airport is constructed, in accordance with the FAA's Special Provision.

It is the intention of the FAA, the ND Aeronautics Commission and City of Williston (Owner) to continue to work with the Tribes to find appropriate ways to avoid effecting important cultural resources that may be discovered during construction. Avoidance will always be the first option studied. When a resource cannot be avoided, every attempt will be made to minimize the impacts and to mitigate the loss of information and value identified by all parties. Once the top 12 inches including the topsoil and Holocene deposits have been disturbed, further monitoring is not anticipated except on a case-by-case basis.

Known environmentally sensitive areas as identified on the Airport Layout Plan shall not be disturbed by construction and shall be fenced to protect them from construction activities. This fencing is contained within specific construction project plans. Minor construction elements are likely to occur prior to fencing such as setting up staging areas and/or utility work. In these cases, sensitive areas will also be protected by construction safety fence that can be installed prior to the main construction project fencing task.

Completion Time

The Consultant shall complete the total contract within 360 days after final construction acceptance. Schedule and fee is based on FAA funding for the project being approved for construction in 2016. If funding does not become available for 2016 construction, timelines may be revised accordingly.

TCS Employment

The TCS are not employees of the Consultant or Owner. The Tribes will provide TCS's during construction to monitor for and determine if other cultural resources may be impacted. The TCS will work as an independent contractor together with archaeologists to assist in cultural resource identification and

perform site monitoring in areas where Tribes have expressed interest in being present during construction.

Construction Coordination

For the purpose of the proposed replacement airport project and associated development, monitoring crews are representative of an Archaeologist and TCS. These crews are and will be present during all ground disturbances within the top 12 inches including the topsoil and Holocene deposits on the proposed new airport location (Site #5), access roads, and the existing airport location in areas identified as culturally sensitive.

Coordinate with Monitoring Crews

The Consultant shall coordinate with the contractor on a routine basis for the number of anticipated monitoring crews that are actually needed based on anticipated construction activities. At this time, it is anticipated that 7 monitoring crews will be needed on-site for 25 weeks and 3 monitoring crews will be needed on-site for the remaining 17 weeks. Construction activities are anticipated to take place 6 days per week.

- i. The Owner or Consultant's Tribal Relations Manager will send agreements and necessary paperwork to the appropriate TCS and THPO/Cultural Preservation offices for their approval and signature. The paperwork will then be sent back to the Owner or Consultant. Copies of all forms will be provided to the THPO /Cultural Preservation office.
- ii. Consultant's Tribal Relations Manager will be the primary point of contact.

In accordance with the project Discovery Plan contained in the FAA Tribal Coordination Special Provisions, if a cultural/tribal feature is found during monitoring, the Consultant's Field Director will notify the FAA. The FAA will notify the Tribes (and as needed the North Dakota SHPO) of the discovery. The area will be buffered and avoided by construction activities until a course of action is determined. If an isolated non-feature find is found on-site, the Archaeological Field Director and the Tribal Lead TCS will contact the FAA as deemed necessary. This project will follow the terms of the North Dakota State Burial Law (North Dakota Century Code 23-06-27) if there is a discovery situation. In the event of an inadvertent discovery, the procedures in Special Provisions-Appendix C – Discovery Plan must be followed. Appendix C – Discover Plan is contained within the FAA Tribal Coordination Special Provision.

Obtain & Process Payment Information with TCS

The Consultant shall obtain payment information and process instructions for each TCS as they begin work on the airport program.

Coordinate Lodging for TCS – Weekly

The Consultant shall coordinate lodging for each TCS on a weekly basis.

Provide Transportation for TCS

Consultant shall provide transportation on the job site for TCS(s).

Process Payment/Reimbursement to TCS - Weekly

The Consultant shall coordinate payment & reimbursement processing for each TCS on a weekly basis.

Archaeological Field Director – On-Site

The Consultant shall have an archaeological field director on-site at all times when a monitoring crew is present. The archaeological field director shall provide communication and coordination services between the contractor and the Tribal Lead TCS.

A North Dakota permitted archaeologist will serve as the Archaeologist Field Director (Field Director) and will be present during all monitoring activities to assist and advise the monitoring crews. Depending upon the work plan of the Contractor(s) to complete construction of the project, fewer or more monitoring crews may be needed at the discretion of the Owner, Contractor, and the Archaeological Field Director in coordination with the Tribe(s).

Such coordination time/efforts are anticipated for scheduling, answering project questions, relaying information about the on-going construction activities and current/forecast needs for construction monitoring efforts. The tasks included in this Scope of Services are based on past experience with similar sized projects in the region and manhours identified in the manhour estimate.

At the beginning of each rotation (bi-weekly) or at the discretion of the Tribes, the TCS(s) and Archaeologist Field Director(s) will meet to nominate the Tribal Lead TCS. That individual will serve as the single point of contact for all of the TCS(s) in the field and coordinate the daily/weekly reports. These reports will be provided weekly to the Field Director who will then combine with the Archaeologist report to distribute weekly to the Environmental Protection Specialist at the FAA Airports District Office in Bismarck, ND. These reports, including any drawings or sensitive information, are considered to be confidential and not to be reproduced or distributed to anyone other than the FAA's Environmental Protection Specialist. The Archaeological Field Director (Archaeologist II) shall coordinate the work items as described above.

Archaeological Field Director will provide transportation for TCS(s) on job site.

Safety Training for TCS

The Consultant shall provide general safety training for the TCS staff. This is in addition to whatever safety training that may be required by the general site contractor.

The Consultant anticipates that the Safety Representative III shall develop the training sessions.

The safety training is anticipated to take place at the construction site of Williston Basin International Airport. These training costs are included within this Detailed Scope of Services.

Committee Meetings

The Project Team Consultation Committee will be made up of individuals designated from each Tribe; generally, this is the Tribal Historic Preservation Officer (THPO), and at least one individual from the FAA and City of Williston (Owner). NDAC personnel will have a standing invitation to each meeting and can participate as a full Committee member. State Historic Preservation Office (SHPO) personnel can be invited to attend the meetings at the discretion of the Committee, but will not serve as official members.

The Consultant shall coordinate up to three (3) committee meetings to review the findings and progress of the monitoring crews. These meetings are anticipated to take place in Williston, ND. As directed by the FAA, the Consultant's design and planning staff will not be present at these meetings. Only the Archaeological Field Director (Archaeologist II) would attend to provide background information regarding archaeological features that are known or may be discovered during construction. However, some design and planning staff is included to assist with logistics and information gathering. Additionally, time for debrief with the City and FAA has been included.

Tribal Preconstruction Meeting

The Consultant shall coordinate one tribal preconstruction meeting to review the known finding and anticipated construction monitoring process and procedures. The Consultant will assist with the preparation of meeting materials, coordinate logistics, and prepare a record of the meeting. Please note this meeting has already take place in Williston.

Staff attending included:

- Program Manager (Engineer V)
- Senior Planner (Planner IV)
- Planner (Planner III)
- Environmental Planner (Environmental Planner III)
- Archaeologist (Archaeologist II)

Documentation

The Archaeological Field Director(s) and Tribal TCS Lead will ensure that documentation of tribally sensitive and legally required documentation of monitoring activities, discoveries and results are produced. This documentation will include dates, participants, decisions, and results. It will also be the responsibility of the Archaeological Field Director(s) and Tribal TCS Lead to produce weekly reports to the Owner and the FAA. At the completion of the monitoring effort and the processing of any recovered feature fill, cultural materials, or specialized samples, a professional quality report will be produced. If discoveries include culturally sensitive information (including burial goods or human remains) it should be kept separate from the primary reports. The primary report(s) will meet or exceed the SHPO Guidelines. Copies of the primary report(s) will also be provided to the Owner, the FAA and the Project Team Consultation Committee. The Owner and the FAA will distribute primary report(s) to the SHPO and Project Consultation Committee members for review and concurrence. The final report(s) should not contain culturally sensitive information that is widely distributed. This information is considered confidential and property of the tribes.

**APPENDIX B: FAA SPECIAL PROVISION, TRIBAL COORDINATION &
PROCEDURES DURING CONSTRUCTION**



FAA
Office of Airports
Dakota-Minnesota Airports District Office

**Special
Provision**

TRIBAL COORDINATION & PROCEDURES DURING CONSTRUCTION

Williston Basin International Airport (XWA) located in Williston, North Dakota

1. PURPOSE.

Establish uniform procedures for the Federal Aviation Administration (FAA) Office of Airports, Dakota-Minnesota Airports District Office (ADO) that define the consultation process, project implementation including the tribal monitoring compensation plan and inadvertent discovery plan, for compliance with the National Historic Preservation Act (NHPA) 16 U.S.C. 470 during construction and implementation of a new commercial service airport - Williston Basin International Airport (XWA) located in Williston, North Dakota.

This document sets forth the process and protocol by which FAA will meet its responsibilities with regard to consultation with Native American Tribal communities with interest in the project area under Section 106 of the NHPA for the replacement airport and associated development in Williston, North Dakota.

Consultation can be generalized as a process of learning through education and interaction. In this case it is a process whereby federal, state and local agencies and the tribal communities work together to take into consideration the effects those undertakings will have on cultural resources important to the Tribes. Working with the Project Team Consultation Committee will allow a clearer understanding of relevant issues and concerns which will result in more effective cultural resource management, and streamline the process.

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2. WILLISTON REPLACEMENT AIRPORT PROJECT.

2.1. Background.

The City of Williston completed a planning study in July 2014. Alternatives included the redesign and reconstruction of the existing airport or a new, relocated airport. They completed a site selection study and found two feasible sites for the proposed new airport location. On September 22, 2015, FAA approved a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for the proposed new airport location in Williston, ND. The site selected for the new airport is Alternative E, Site 5.

The purpose of the proposed action is to develop aviation facilities that meet FAA airport design standards and accommodate current and projected aviation activity for the Williston, ND area. The need for the proposed action is to provide aviation facilities that meet FAA airport design standards for Airport Reference Code (ARC) D-III aircraft at Alternative E, Site #5. Further information regarding the proposed project is available in the Environmental Assessment (EA) and the Airport's Master plan.

This project will require the acquisition of approximately 1,565 acres of land for airport use and 24.6 acres for road right-of-way, for a total of 1,589.6 acres.

Multiple site visits since 2012 have produced technical and culturally-sensitive reports, drawings and maps outlining the potential resources identified on Site #5. The general identification of the environmentally sensitive resources including wetlands and tribal resources are outlined in the EA. The specific locations and culturally-sensitive materials are kept confidential and are not subject to release.

The replacement airport and associated development project is considered to be a Federal Undertaking subject to Section 106 as described in 36 CFR Part 800.3(a)(I) and Part 800.16(y) and all other applicable federal, state and local laws.

Williston is committed to the design and construction of a replacement airport project and associated development in Williston, North Dakota that: 1) safely moves people and goods; 2) avoids, minimizes and/or mitigates adverse effects on cultural resources; 3) recognizes that consideration of tribal interest in preservation of significant cultural resources is important to tribal well-being, growth and prosperity; and 4) responds to the needs of North Dakota communities and the Tribes.

2.2. Mission Statement and Goals.

Avoidance of effect to significant cultural resources is important to the FAA, the North Dakota Aeronautics Commission (NDAC), City of Williston, and the Tribes. However, avoidance is not always preservation. If practical and possible, the FAA, the NDAC, and Williston will assist the Tribes in their further goal of preservation of resources of value to them. Avoidance will always be the first option studied. When a resource cannot be

avoided, every attempt will be made to minimize the impacts and to mitigate the loss of information and value identified by all parties.

2.3. Intent.

The FAA, NDAC, and Williston understand the Tribes have concerns regarding cultural resources, preservation of sacred places, continuing destruction of places and things of cultural value, and the effects of this destruction on their cultural identity. Cultural resources are revered by the Tribes. These cultural resources are a connection to their past and important to their cultural identity, sense of self, and future well-being. Cultural resources are tied to people's ancestors, some are related to important religious activities, and all have ongoing spiritual connections. The FAA, the NDAC and Williston recognize the importance of these remnants from the past to indigenous people living today.

Modern development, including transportation construction, has destroyed valuable cultural resources and adversely impacted others. This document is intended to ensure all parties understand all cultural resources are important to the Tribes and work together to protect and preserve them. The FAA, the NDAC and Williston are committed to providing a replacement airport and associated development that will benefit all aviation users. The FAA, the NDAC and Williston are also committed to learning tribal perspectives about cultural resources important to the Tribes and accommodating tribal sensitivities into the aviation project. The Tribes are committed to understanding transportation issues and the perspectives of the FAA, the NDAC, and Williston. The tribes shall provide tribal monitoring for the project. Jointly we are committed to establishing a relationship of mutual trust and respect.

The FAA, the NDAC, and Williston recognize that transportation projects have the potential to adversely affect cultural resources: sacred sites, archaeological sites, traditional natural resources, and traditional landscapes of value to the Tribes. The FAA, the NDAC, and Williston do not wish further destruction of these important places and recognize the inherent rights of the Tribes to retain and preserve these places of value.

It is the intention of the FAA, the NDAC, and Williston to continue to work with the Tribes to find appropriate ways to avoid effecting important cultural resources that may be discovered during construction. Williston pledges to always identify ways of avoiding these resources as the first option. When avoidance of effect is impossible or impractical given other concerns of equal importance, Williston will work with the Tribes for appropriate and respectful resolution of any unavoidable effects.

3. PROJECT TEAM CONSULTATION COMMITTEE.

The Project Team Consultation Committee will be made up of individuals designated from each Tribe; generally this is the Tribal Historic Preservation Officer (THPO), and at least one individual from the FAA and Williston. NDAC personnel will have a standing

invitation to each meeting and can participate as a full Committee member. State Historic Preservation Office (SHPO) personnel can be invited to attend the meetings at the discretion of the Committee, but will not serve as official members.

The Committee will meet annually (prior to the beginning of each construction season) with the potential for specific additional ad-hoc meetings to discuss the replacement airport project and associated development with regard to National Historic Preservation Act (NHPA) compliance.

Project specific issues may require the Committee members to participate in an on-site consultation. These on-site visits may be done by the whole Committee, or interested members, or those appointed by the Committee for the specific task. This on-site consultation can be used to help identify possible impacts or to obtain first-hand knowledge of issues relating to cultural concerns. Tribal elders, THPOs, or other individuals identified by the Committee, who have specific knowledge of the area, project, or resource will be welcome to attend ad hoc Committee onsite meetings.

4. PRESERVATION PLAN.

The proposed new airport site contains known cultural resources. Williston has developed a new airport layout that avoids these known cultural resources. These known cultural resource areas are identified on the Airport Layout Plan for future protection. These sites will be fenced or otherwise protected during construction. The Tribes will provide TCS during construction to monitor for and determine if other cultural resources may be impacted.

Williston will also protect the cultural resources on the existing Williston Airport. Covenants or other protections will be placed on cultural resources within the existing airport property and avoidance measures, such as fencing, would be incorporated to ensure cultural resources within the access road right-of-way are avoided.

5. CONSTRUCTION MONITORING.

For the purpose of the proposed replacement airport project and associated development, monitoring crews are representative of an Archaeologist and TCS. These crews are and will be present during all ground disturbances on the proposed new airport location (Site #5), access roads, and the existing airport location in areas identified as culturally sensitive. These areas on the existing airport will remain protected in perpetuity after the land is released. The TCS(s) are chosen at the discretion of the Tribe(s).

A North Dakota permitted archaeologist will serve as the Archaeologist Field Director (Field Director) and will be present during all monitoring activities to assist and advise the crews. Depending upon the work plan of the Contractor(s) to complete construction of the project, fewer or more monitoring crews may be needed at the discretion of the

City of Williston, Contractor, and the Archaeological Field Director in coordination with the TCS(s).

Ground disturbing activities is focused on the disturbance and/or removal of the top 12 inches including the topsoil and Holocene deposits. Material sources (borrow, aggregate, and/or rip-rap) will be from an approved ND Department of Transportation source(s) or a culturally-cleared material source site specific to the Project and therefore does not require monitoring. This would also include stockpile sites, staging areas, plant sites, and waste sites located off the Project site.¹ Once the top 12 inches including the topsoil and Holocene deposits have been disturbed, further monitoring is not anticipated except on a case-by-case basis.

When the TCS(s) arrive at the project, they will receive a contact list that includes names, title, office and cell phone numbers for the consultants engineering staff, the City of Williston, and the FAA staff responsible for this project. A safety plan will be provided. The TCS(s) will also receive a map of the project and area around the project showing the previously discovered cultural sites. The TCS(s) are not employees of the City of Williston or employees of the City's agents/consultants, but will be compensated by the City per the terms defined in Appendix B – Logistics Plan for Construction Monitoring.

At the beginning of each rotation (bi-weekly) or at the discretion of the Tribes, the TCS(s) and Archaeologist Field Director(s) will meet to nominate the Tribal Lead TCS. That individual will serve as the single point of contact for all of the TCS(s) in the field and coordinate the daily/weekly reports. These reports will be provided weekly to the Field Director who will then combine with the Archaeologist report to distribute weekly to the Project Team Consultation Committee. These reports, including any drawings or sensitive information, are considered to be confidential and not to be reproduced or distributed outside the Committee.

The Field Director will coordinate with the FAA, NDAC, the City of Williston, and the Project Team Consultation Committee to provide updates and project information progress. The Tribal Lead TCS serves as the single point of contact for Tribes on the

¹ Before disturbing an area outside the project limits, the Contractor must provide the Engineer with a Certificate of Approval for material source locations. A complete list of previously approved sites and downloadable COAs is available on the NDDOT website at www.dot.nd.gov/divisions/environmental/materialsource.htm.

If the list does not include a location, the Contractor must provide a Class III Survey to the Engineer for use by the FAA to consult with the NDSHPO before use of the source on the project. Please provide at least 30 days for the consultation process to occur.

notification of issues, questions, or problems that need to be addressed during construction and will coordinate with the Field Director.

The construction crew work schedules will include a daily/weekly meeting to discuss results and devise appropriate responses to issues, including communication between crews, specific discoveries, and monitoring issues. This should be scheduled in conjunction with the weekly planning, safety, and reporting meeting. The TCS(s) will use these meetings to notify the crew of any special days and observed holidays.

Prior to any construction activity, the staked construction area will be inspected by the TCS(s) and archaeologist(s) to ensure any known cultural resources are being properly identified, delineated and avoided.

The TCS (s) and archaeologist(s) will closely observe the removal process and inspect each cut to ensure that subsurface or surface features are identified. If cultural features are encountered during monitoring activities, the location will be marked and construction will skip the area of the feature and work will continue in such a manner so as not to impede project progress in other areas and in a way that will not disturb the feature or associated artifacts prior to excavation and monitoring. If subsurface or surface features are encountered, the Inadvertent Discovery Plan will be initiated.

The Archaeological Field Director(s) and Tribal TCS Lead will ensure that documentation of tribally sensitive and legally required documentation of monitoring activities, discoveries and results are produced. This documentation will include dates, participants, decisions, and results. It will also be the responsibility of the Archaeological Field Director(s) and Tribal TCS Lead to produce weekly reports to the City of Williston and the FAA. At the completion of the monitoring effort and the processing of any recovered feature fill, cultural materials, or specialized samples, a professional quality report will be produced. If discoveries include culturally sensitive information (including burial goods or human remains) it should be kept separate from the primary reports. The primary report(s) will meet or exceed the SHPO Guidelines. Copies of the primary report(s) will also be provided to the City of Williston, the FAA and the Project Team Consultation Committee. The City of Williston and the FAA will distribute primary report(s) to the SHPO and Project Consultation Committee members for review and concurrence. The final report(s) should not contain culturally sensitive information that is widely distributed. This information is considered confidential and property of the tribes.

6. OTHER POINTS OF MUTUAL AGREEMENT.

6.1. Execution and Implementation.

The implementation of this process shall constitute formal consultation between the FAA, the NDAC, Williston and the Tribes to meet tribal consultation requirements of Section 106 of the NHPA.

6.2. Confidentiality.

The FAA, the NDAC, and Williston acknowledge the need for confidentiality of certain tribal spiritual and cultural information that may be provided to the FAA by the Tribes during the course of Committee meetings and other aspects of tribal consultation conducted on cultural resource issues. Information provided by consulted tribal members identified as sensitive, and requested to remain confidential, will remain confidential to the extent permitted by State and Federal law. The mechanism used for confidentiality may change through time or with circumstance, but the result will be the same. All confidential materials will be temporarily housed at the Dakota-Minnesota Airports District Office (Bismarck Office) of the FAA after project/issue completion. These materials can be distributed to the appropriate Tribe or Tribes as decided by the Project Team Consultation Committee. At the completion of the project, these materials will be returned to the Tribes.

6.3. Tribal Consultation & Monitoring Reimbursements.

The City of Williston will host project specific related meetings and will reimburse the travel, per diem and mileage expenses at Federal rates for up to two representatives from each participating Tribe attending. See [Appendix B](#) for details of reimbursement.

6.4. Termination Date.

This document is effective through the completion of the replacement airport project and associated development at which time it will expire unless specifically extended.

7. APPLICABLE REGULATIONS AND POLICY.

Requirements identified within this document originate in various FAA directives including Orders, regulations and statutes. In the event a listed directive is revised subsequent to the date of this document, the user of this document shall refer to the current version of the policy directive to establish applicable requirements.

- a. Title 49 United States Code (U.S.C.) § 44718, Structures Interfering with Air Commerce.
- b. FAA Order 5100.38 - Airport Improvement Program Handbook.
- c. National Environmental Policy Act of 1969 (NEPA), as amended (42 United States Code § 4321-4347). See the U.S. Code.
- d. Council on Environmental Quality (CEQ), Title 40, Code of Federal Regulations (CFR), parts 1500-1508, Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ Regulations).
- e. FAA Order 1050.1F, Environmental Impacts, Policies and Procedures, U.S. Department of Transportation, Federal Aviation Administration, July 16, 2015.

- f. FAA Order 5050.4B, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions, U.S. Department of Transportation, Federal Aviation Administration, April 28, 2006.
- g. Environmental Desk Reference for Airport Actions, FAA Office of Airports, October 2007.
- h. National Historic Preservation Act of 1966 (NHPA), as amended, including Executive Order 11593, Protection and Enhancement of the Cultural Environment (36 FR 8921, May 13, 1971) [16 U.S.C. 470, 470 note] [PL 102–575 (1992)].
- i. Antiquities Act of 1906 [16 U.S.C. 431, 432, 433] [PL 59–209 (1906)].
- j. Archaeological and Historic Preservation Act of 1974 (AHPA), as amended [16 U.S.C. 469–469c] [PL 89–665].
- k. Archaeological Resources Protection Act of 1979 (ARPA), as amended [16 U.S.C. 470aa–470mm] [PL 96–95 (1979)].
- l. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) [25 U.S.C. 3001] [PL 101–601 (1990)].
- m. American Indian Religious Freedom Act of 1978 [42 U.S.C. 1996, 1996 note] [PL 95–341 (1978)].
- n. Executive Order 13007, Indian Sacred Sites (61 FR 26771, May 29, 1996).
- o. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), and the Presidential Memorandum of April 29, 1994, Government-to-government Relations with Native American Tribal Governments.
- p. Executive Order 11593, Protection and Enhancement of the Cultural Environment (36CFR 8921, May 13, 1971) (16 U.S.C. 470 note).

APPENDIX A - GLOSSARY

Airport District Office (ADO): For the purpose of this document, ADO refers to the office within the FAA Region that administers projects under the AIP and PFC programs. For Regions that do not formally have an ADO office, it refers to the section of the Regional office that administers projects under the AIP and PFC programs.

Airport Consultant: An Airport Consultant is a private or public company that provides technical expertise to the Airport Sponsor. The Airport Sponsor often hires the Airport Consultant to prepare, revise, and submit environmental documentation to the FAA in compliance with NEPA and other special purpose laws.

Airport Sponsor: The entity that is legally responsible for the management and operation of an airport, including the fulfillment of Federal program obligations and the requirements of applicable laws and regulations.

Airport Operations Area (AOA): Any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operations area includes such paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runways, taxiways, or aprons. (AC 150/5370-2)

Archaeological Field Director: is an archaeologist permitted by the NDSHS to conducted archaeological investigations and monitoring projects in ND. This individual will identify, as necessary, when construction has proceeded beyond Holocene deposits, and to assist the monitoring crews in the identification of human remains. The Archaeological Field Director will ensure appropriate documentation of discoveries, with consideration to Tribal sensitivity and legal requirements. The Archaeological Field director and/or Archaeological Principal Investigator will ensure completion of a report on the results of monitoring for the SHPO and Committee members.

Construction Monitoring: Construction monitoring will be completed by individual crews walking areas of recently disturbed ground during the process of removal of topsoil material with construction machinery. Construction monitoring requires that fresh passes of material removal are inspected. Safe and effective monitoring requires good understanding of construction and monitoring activities by individual's involved and effective means of communication between construction and monitoring crews. Construction implementation plans should consider how best to approach the project with construction monitoring crews, including monitor safety and project construction needs. Coordination with monitoring crews and setting a process for education of all project crews to each other's duties will be the responsibility of the Contractor. If construction activity involving ground disturbance is taking place in multiple areas of the project at the same time, multiple monitoring crews will be needed. Training, coordination, and pairing of monitoring and construction activities will take place in a

manner to allow for effective and safe monitoring for discovery of human remains and archaeological features and completion of project construction needs and is the responsibility of the Contractor.

Cultural Resources: Prehistoric and historic districts, sites, buildings, structures, or objects that may or may not be eligible for the National Register of Historic Places. The term includes resources of traditional religious and cultural importance to an Indian Tribe.

Effect: Alteration of the characteristics of a cultural resource that qualifies it for inclusion in or eligibility for the National Register of Historic Places [36 CFR 800.16(i)].

Environmental Protection Specialist (EPS): The FAA ARP employee that is currently assigned responsibilities for administering the National Environmental Policy Act and other associated environmental actions for a specific airport.

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the National Register criteria [36 CFR 800.16(1)(1)].

Line of Business (LOB): As used in this document, LOB represents service units of other FAA organizational offices (e.g. Flight Procedures).

National Historic Preservation Act (NHPA): An act to establish a Program for the Preservation of Additional Historic Properties throughout the Nation and for Other Purposes. The Congress finds and declares that 1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage; 2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people; 3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency; 4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans; 5) in the face of ever-increasing extensions of urban centers, highways, residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation; 6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal

and federally assisted projects and will assist economic growth and development; and 7) although the major burdens of historic preservation have been borne and major effects initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities [16 U.S.C. 470(b)].

National Register Criteria: The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location design, setting, materials, workmanship, feeling, and association, and: a) that are associated with events that have made a significant contribution to the broad patterns of our history; orb) that are associated with the lives of significant persons in our past; or c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or d) that have yielded or may be likely to yield information important in history or prehistory.

National Environmental Policy Act (NEPA): is an act to establish a national policy for the environment. The purposes of the act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality [42 U.S.C. 4321].

Planner: The FAA ARP employee that is currently assigned responsibilities for administering airport planning actions for a specific airport.

Project Manager/Program Manager/Engineer (PM): For the purpose of this document, the titles "Project Manager", "Program Manager" and Engineer shall be considered synonymous. All references to PM shall mean the FAA ARP employee currently assigned responsibilities for overseeing and administering AIP and PFC funded construction projects at the subject airport.

State Historic Preservation Officer (SHPO): The official appointed or designated pursuant to section 101 (b) (1) of the National Historic Preservation Act to administer the State historic preservation program [36 CFR 800.16(v)].

Subject Matter Expert (SME): An individual who possesses technical knowledge, skills and abilities that qualifies them as a competent authority for a specific area of expertise.

Tribal Historic Preservation Officer (THPO): means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

Traditional Cultural Specialist (TCS): The work of the Traditional Cultural Specialist will be to monitor for cultural resources during construction of the Williston Replacement Airport project. The TCS will work as an independent contractor together with archaeologists to assist in cultural resource identification and perform site monitoring in areas where Tribes have expressed interest in being present during construction.

Requesting and obtaining a TCS involves several steps. In order to make this process as easy and efficient as possible, the following steps must be taken.

(i) FAA Tribal Liaison will contact the tribes THPO or Cultural Preservation Office representatives to identify how many and which TCS(s) will be involved. This information will be relayed to the City or their agent's Tribal Relations Manager.

(ii) The City or their agent's Tribal Relations Manager will send agreements and necessary paperwork to the appropriate TCS and THPO/Cultural Preservation offices for their approval and signature. The paperwork will then be sent back to the City or its agent. Copies of all forms will be provided to the THPO /Cultural Preservation office.

(iii) When the necessary paperwork has been completed, project start dates and location will be provided to the TCS. Compensation, lodging, travel fee and mileage compensation and appropriate equipment will be provided by the City (see Appendix B). If questions or concerns arise regarding any of the above information, the City's Tribal Relations Manager will be the primary point of contact.

Undertaking: A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval; and that is a type of activity that has potential to cause effects to an historic property 36 CFR 800.3(a) and 800.16(y).

APPENDIX B – LOGISTICS PLAN FOR CONSTRUCTION MONITORING**B.1. TRADITIONAL CULTURAL SPECIALIST (TCS).****B.1.1. Monitoring Crews.**

Monitoring crews will be made up of an archaeologist and TCS(s) (number to be determined by the Archaeological Field Director in coordination with the TCS(s) on each crew. A Field Director level Archaeologist or higher (Field Director) will be present during all monitoring activities to assist and advise the crews. Depending upon the work plan of the Contractor(s) to complete construction of the project, fewer or more monitoring crews may be needed at the discretion of the City of Williston, Contractor, and the Tribes. Notifications of monitoring needs and TCS requests will occur no less than 48-hours (or two business days) for assignment to report to the construction site.

The TCS(s) and Archeologist Field Director(s) will provide construction monitoring during ground disturbing activities in consultation with the City of Williston and the Contractor(s). Ground disturbing activities include the scraping, grading, trenching, and excavation of earthen materials at the new airport location. Once the top 12 inches including the topsoil and Holocene deposits have been disturbed, further monitoring is not anticipated except on a case-by-case basis.

B.1.2. Tribal TCS Lead.

When the TCS(s) arrive at the project, they will receive a contact list that includes names, title, office and cell phone numbers for the consultants engineering staff, the City of Williston, and the FAA staff responsible for this project. A safety plan will be provided. The TCS(s) will also receive a map of the project and area around the project showing the previously discovered cultural sites. The TCS(s) are not employees of the City of Williston or employees of the City's agents/consultants, but will be compensated by the City per the terms defined in this Appendix.

At the beginning of each rotation (bi-weekly) or at the discretion of the Tribes, the TCS(s) and Archaeologist Field Director(s) will meet to nominate the Tribal Lead TCS. That individual will serve as the single point of contact for all of the TCS(s) in the field and coordinate the daily/weekly reports. These reports will be provided weekly to the Field Director who will then combine with the Archaeologist report to distribute weekly to the Project Team Consultation Committee. These reports, including any drawings or sensitive information, are considered to be confidential and not to be reproduced or distributed outside the Committee.

The Field Director will coordinate with the FAA, NDAC, the City of Williston, and the Project Team Consultation Committee to provide updates and project information progress. The Tribal Lead TCS serves as the single point of contact for Tribes on the notification of issues, questions, or problems that need to be addressed during construction and will coordinate with the Field Director.

The Archaeological Field Director will coordinate with the FAA, NDAC, the City of Williston, and the Project Team Consultation Committee to provide updates and project information progress. The Tribal Lead TCS serves as the single point of contact for notification of issues, questions, or problems that need to be addressed during construction.

B.1.3. Terms of Engagement.

Terms and conditions have been developed in a manner consistent with all local, state and federal laws governing the protection and identification of archaeological and cultural resources. TCS(s) should become familiar with the project and with the following terms of engagement as well as any project specific conditions prior to beginning their monitoring session.

- All TCSs designated by the Tribe for the Project are not considered employees of City of Williston or employees of the City's agents, but will be compensated as defined below. All monitors are responsible for applicable taxes, insurances, and/or any other benefits required by law.
- At the start of each work day, TCS(s) shall report to the Archaeological Field Director to whom they are assigned in order to receive any and all necessary safety and job coordination information.
- All TCS(s) must successfully complete the requisite safety and environmental training. Safety training is anticipated to occur weekly.
- Should a TCS(s) find a cultural resource(s), they shall safely notify construction personnel, mark the location for temporary avoidance and immediately report the finding to their assigned Archaeologist or Tribal Lead TCS. Sensitive resources might be of significance to additional tribes and there shall be an opportunity for other tribal monitors to review the discovery.
- TCS(s) will not have the authority to direct construction personnel or equipment. In the event that a surface or subsurface feature is encountered within the project area during any ground-disturbing activities, the Tribal Lead TCS(s) and Archaeologist Field Director(s) will request a temporary work stop in the area of discovery. The City of Williston shall protect the area until cultural resource concerns have been appropriately addressed, and the contractor shall take all actions to protect the area until further notice.

B.1.4. Compensation.

TCS(s) will be compensated for their work during the project as follows:

Prior to the first day of monitoring, each TCS(s) will be provided with compensation for their travel fee and one day's monitoring fee, meals (per diem) and estimated mileage for the first week of their monitoring session. Following this initial payment, per diem, mileage and the monitoring fee will be paid out on a weekly basis at the end of the following week.

Amounts paid will be as follows:

- Monitoring Travel Fee \$200/day/TCS
- Monitoring Fee* \$50/hr**/TCS
\$65/hr**/Tribal TCS Lead
**Monitoring Fee will be paid straight time for overtime*
***\$200/day/TCS minimum*
- Meals Applicable per diem rate
- Automobile Mileage Applicable IRS mileage rate
- Lodging Reasonable hotel lodging accommodations will be provided for each TCS (one adult), if desired.
- ✓ Expense and/or travel cost for spouses, other family members, and friends are not allowed.
- ✓ Anticipated construction will occur 6 days a week from dawn until dusk. Daily minimums will not be paid on days when the contractor is not working; such as holidays and/or weekends.
- ✓ Daily minimums will be paid on days that the contractor had anticipated working but was unable to because of conditions beyond their control; such as weather.
- ✓ Personal Protective Equipment (PPE) will be provided to Tribal Monitors as required by the project.
- ✓ A monitoring fee as described above will be paid to each TCS on a weekly basis. Hours and/or days of monitoring shall be reported to the Archaeological Field Director by Wednesday 10:00 am of each week.

B.1.5. Cash Card Reimbursements.

Reimbursements will be paid via a cash card. Each card will be issued to the list of the monitors provided by each specific THPO or designated employee. These cards will be loaded with reimbursable amounts on a weekly basis. It is the responsibility of the TCS to manage and keep their card (and pin number) safe and private. If their card is

damaged, lost or stolen, the tribal monitor must notify the card company. A new card will be issued and loaded.

B.1.6. Direct Billing.

Some of the tribes have TCSs that are employees of that specific tribe. Others do not have that capacity and therefore tribal monitors will be reimbursed for salary and expenses directly. Tribes that utilize direct billing will invoice in order to compensate the monitors with payment as a reimbursed amount including per diem and mileage.

B.1.7. Violations.

Any violations of hotel policies regarding the number of occupants in a room, damage to the hotel, etc. could result in removal of those persons or people from the hotel. If a monitor is removed from their project-provided hotel lodging accommodations, new accommodations will not be arranged. Instead, in those cases, lodging reimbursement will be limited to the U.S. Government GSA lodging rate for the city of Williston, ND as listed in the most recent OAG Official Traveler – Travel Guide. Weekly expenses for lodging, in the form of a detailed receipt, must be provided, failure to report any and all expenses as scheduled will result in a delay in payment. Any hotel expenses considered excessive or unreasonable will be deducted from future tribal monitoring fees.

B.2. TRANSPORTATION.

The Tribe or TCS(s) are responsible to provide transportation from the Tribal Monitors home address to the project location. Mileage reimbursement will be determined by use of online mapping program, such as Google Maps at the above mileage rate. Absences from the project and return trips home should be coordinated with an onsite Archaeological Field Director to limit unnecessary lodging and/or travel expenses. Travelers failing to do so may not be reimbursed.

TCS(s) are responsible for travel to and from the work site. They will be compensated for 30 miles per days worked at the aforementioned mileage rate. Transportation will be provided on the jobsite.

The Tribe or TCS(s) shall use sound business judgment in determining the need for travel. The following guidelines are provided to assist the monitor in their compliance with the requirements to limit expense reimbursement to those costs that are necessary. Travelers will not be reimbursed for excess costs caused by:

- An indirect route as a matter of personal preference
- Excessive travel to and from the work site for personal reasons

B.3. TRIBAL PROJECT TEAM CONSULTATION COMMITTEE MEMBERS.

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APPENDIX C - DISCOVERY PLAN

C.1. SECTION 106 LEGAL REQUIREMENTS.

National Historic Preservation Act regulations (36 CFR Part 800.13) define requirements for post-review discoveries. An agency can develop a programmatic agreement [800.13(a)(1)] or include a process to resolve any adverse effects to discoveries in any finding of no adverse effect or memorandum of agreement [800.13(a)(2)]. The finding of effect for this project is No Adverse Effect as outlined in the Final EA and FONSI/ROD dated September 22, 2015. This Discovery Plan is intended to serve the function defined in 800.13(a)(2).

C.2. BURIAL DISCOVERY.

Intentional, unauthorized disturbance of a human burial site under North Dakota State law is a Class C felony.

"Any person who knows or has reasonable grounds to believe that a human burial site, human remains, or burial goods, found in or on any land, shall refrain from any activity which might disturb or immediately cease any continued activity which might cause further disturbance of such burial, remains, or goods and shall, as soon as practicable, report the presence or discovery of the burial, remains, or goods, to the local law enforcement agency with jurisdiction in the area in which the burial, remains, or goods are located. A person is guilty of a class B misdemeanor who is required to make such report and willfully, as defined in section 12.1-02-02, fails to make the same. The requirements imposed in this subsection do not apply to any person engaged in the salvaging excavation or other disinterment of a human burial under authority of law." (23-06-27.5).

If human remains or burial goods are discovered either through monitoring activities or through exposure and identification by the Contractor, the reporting and disposition will take place in accordance with NAGPRA and procedures defined in North Dakota Administrative Code (NDAC) 40-02-03 (Protection of Prehistoric and Historic Human Burial Sites, Human Remains, and Burial Goods) and in accordance with North Dakota Century Code (NDCC) 23-06-27 (Protection of Human Burial Sites, Human Remains, and Burial Goods- Unlawful acts-Penalties-Exceptions):

- Work will immediately cease in the vicinity of the burial site and the Archaeological Field Director or the person identifying the discovery (if it takes place outside the formal monitoring process) will contact the Archaeological Field Director. The Archaeological Field Director is responsible for contacting

immediately the County Sheriff, Intertribal Reinterment Committee (IRC) member(s), Project Team Consultation Committee, and the SHSND.

- All appropriate respect will be shown for any burial (human remains or burial goods) discovered on the project, including efforts to ensure that the burial is protected from on-lookers and potential looting.
- The burial site will be protected by careful placement of tarps or back fill as needed. The burial site should be taken to mean an entire isolated landform (i.e. hilltop, knoll), or 300-foot radius around the discovery when an isolated landform is not present.
- The burial site will be protected from further disturbance until the above listed parties are notified, they consult on the project, and they devise a scope of work under which the project may proceed.
- When Williams County Sheriff's Office completes the investigation and clears the area, the Intertribal Reinterment Committee can continue with the needs of the burial as defined in this document and agreed upon between the Archaeological Field Director, IRC representative(s), Project Team Consultation Committee and the SHSND.
- The SHSND shall inform the North Dakota State Health Department (NDDOH) of the burial discovery. SHSND and NDDOH will determine, as possible, whether the remains are Native American or not. If the remains are determined or presumed to be related to Native Americans then the IRC will become actively involved. IRC involvement will take place within 24 hours of the discovery or as soon as practicable after that time.
- The human remains and burial goods will be studied within the scope allowed through the Administrative Rules (40-02-03-01).
 - If the human remains or burial goods can be restored, visual observation of the remains and burial goods will be completed by the Archaeological Field Director, Tribal Lead TCS, and IRC.
 - If the human remains or burial goods must be disinterred, study may take place at the burial site and will include visual observation, written description, and documentation of the remains and goods including limited photography agreed to by the Archaeological Field Director, Tribal Lead TCS, and IRC. Written documentation of the burial will be filed with the THPO(s) and documentation acceptable to the IRC will be forwarded to the SHSND. Results will be reported to the Project Team Consultation

Committee. Study will be completed by the Archaeological Field Director, SHSND representative, and/or anthropologist.

- If it is possible to leave the human remains or burial goods in-place without further disturbance and is not in conflict with the project construction needs, the area will be backfilled, stabilized, and protected.
- If disinterment is the only feasible option, the IRC shall, as soon as possible after study is completed, re-inter the disinterred human remains and all burial goods as by the IRC with notification to the Project Team Consultation Committee, which may include either at a nearby location (with the consent of the landowner), or on Indian lands within the boundaries of the appropriate reservation.
- Disinterment will take place under the supervision of the Archaeological Field Director, Tribal Lead TCS, and FAA Tribal Liaison using standard archaeological procedures and contextual analysis.

The City of Williston will facilitate payment for the cost of reburial at the rate of up to \$2,000/burial discovery. Payment will be directed to an individual or Tribe identified by the IRC.

C.3. OTHER CULTURAL FEATURES DISCOVERY.

This Discovery Plan will apply to any and all surface and subsurface cultural features discovered during the course of construction monitoring. This Discovery Plan will be used in conjunction with monitoring effort described in this document to ensure that any surface and subsurface features are identified and data recovered from them before they are preserved or destroyed by construction activities.

At the discretion of the Archaeological Field Director and Tribal Lead TCS(s), the discovery of sparse or moderate concentrations of cultural material (involved) would not activate the terms of the Discovery Plan. The Discovery Plan is focused on the recovery of information from prehistoric and historic features, which include any surface or subsurface features including but not limited to the following: cache pits, fire-hearths, cairns, stone circles, post-molds, house floors, discrete prehistoric artifact concentrations, foundations, cellars, vaults, window wells, privy pits, or other definable remnants of historic structures.

In the event that a surface or subsurface feature is encountered within the project area during any ground-disturbing activities, all work in the discovery area shall cease until the Archaeological Field Director and Tribal Lead TCS have documented and evaluated the site for eligibility for the National Register of Historic Places. The City of Williston shall protect the area until cultural resource concerns have been appropriately

addressed, and the contractor shall take all actions to protect the area until further notice. The significance of the discovery will dictate the level of coordination and documentation needed. The City of Williston will notify the FAA, the North Dakota SHPO, and the Tribes of discoveries found on-site that the Archaeological Field Director and the Tribal Lead TCS deem necessary. Under typical non-burial circumstances, certain features encountered will be plotted on a map of the area (site map) and a USGS 7.5' quadrangle map. Certain features will be fully recorded and excavated in compliance with State Historical Society of North Dakota (SHSND) Guidelines and Excavation Standards. The features will be exposed in plain view, photographed, and mapped, then one-half of the feature will be expediently excavated (and bagged for water screening) to expose the profile. The second half of the feature will be excavated after a profile has been photographed and illustrated.

No artifacts besides those recovered from excavation will be collected during the monitoring process unless deemed burial goods by the Tribal Lead TCS. Collected artifacts not deemed burial goods (a protected class of artifacts noted in NDAC 40-02-03-03) will be collected from excavations, and material will be deposited in the collections of the SHSND following state law (NDCC 55-03-02). This will be the responsibility of the involved archaeologists.