

**Agreement Between the Federal Highway Administration
and Minnesota Department of Transportation
DOT # 2019-0058**

I. Purpose

The Federal Highway Administration (FHWA) and the Minnesota Department of Transportation (MnDOT) hereby enter into this Voluntary Resolution Agreement (Agreement) to resolve a complaint of discrimination filed with FHWA against MnDOT.

II. Background

- a. Title VI of the Civil Rights Act of 1964, along with the U.S. Department of Transportation (DOT) Title VI regulations at 49 C.F.R. Part 21, and FHWA’s Title VI regulations at 23 C.F.R. Part 200 (hereinafter Title VI), prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives federal financial assistance. 49 CFR 21.5(a). This includes retaliation by a recipient against any person who engages in protected activities such as filing a Title VI complaint. 49 C.F.R. 21.11(e).
- b. MnDOT is a Recipient of continuing Federal financial assistance from FHWA per 49 C.F.R. 21.23(f). In Federal Fiscal Year (FFY) 2018, MnDOT’s annual initial Fixing America’s Surface Transportation (FAST) Act apportionment from FHWA was \$689,749,576. In FFY 2020, MnDOT was apportioned \$722,206,857.
- c. On November 11, 2018, FHWA received a discrimination complaint (Complaint) filed against MnDOT alleging that MnDOT discriminated against a contractor and its Native American employees on the Mission Creek Bridge Burial Recovery Project (Project). Specifically, the complaint alleged that MnDOT intentionally discriminated against the contractor on the basis of race, national origin, and/or sex in its policies, procedures, or actions regarding human health, safety, and security.
- d. FHWA determined that it had jurisdiction over the matters in the Complaint because MnDOT is a recipient of federal financial assistance from FHWA, MnDOT’s activities on the Project were covered programs and activities under Title VI, and the allegations concerned race, color, and/or national origin—bases covered by Title VI.
- e. In July 2022, MnDOT engaged in an informal resolution process with FHWA to voluntarily resolve all of the allegations in the Complaint, pursuant to 49 C.F.R. 21.11(d)(1).

III. General Terms

- a. This Agreement, and all provisions herein, are between MnDOT and FHWA as the sole parties to the Agreement. This Agreement will be applicable to, and binding upon, the parties to this Agreement, their officers, agents, employees, assigns, and successors in office.

- b. The provisions herein constitute the entire Agreement.
- c. If any part of the Agreement is deemed invalid, all other provisions remain valid.
- d. The signatories represent that they are authorized to bind MnDOT and FHWA.
- e. This Agreement is not an admission of Title VI liability by MnDOT regarding the Complainant’s allegations, nor of any facts alleged by the Complainant.
- f. This Agreement resolves this Title VI investigation and is limited to the facts and issues presented in the complaints identified during this investigation. This Agreement does not affect MnDOT’s continuing obligation to comply with Title VI, and all other federal laws and applicable regulations, or preclude FHWA from taking appropriate action to evaluate MnDOT’s compliance with any laws enforced by FHWA.
- g. MnDOT—or any entity or business party to an agreement to carry out the actions herein—will not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 601 of Title VI or 49 C.F.R. Part 21, or because such individual has made a complaint, testified, assisted, or participated in any manner in this Title VI investigation.
- h. The term of this Agreement (Term) shall commence on the date that both parties sign this Agreement (Effective Date) and shall terminate after the date that all terms in Articles V through VII have been completed.
- i. If MnDOT is unable to comply with the initial timelines in this Agreement, then MnDOT may send FHWA a written extension request detailing the reasons for the request and the new dates requested. The new dates will become effective only if FHWA responds in writing to MnDOT accepting the requested terms.

IV. Definitions

For the purposes of this Agreement, the terms listed below shall have the following meanings:

“Compliance” means the condition that exists when a recipient of Federal financial assistance has fully implemented all Title VI requirements and there is no evidence of discrimination.

“Days” means calendar days.

“Noncompliance” means a failure to meet the requirements of Title VI and the regulations and compliance requests (such as enforcement orders) of the Department issued thereunder.

“Title VI program” or **“Title VI”** means the system of requirements, procedures, guidance, actions, and sanctions through which FHWA affirmatively enforces Title VI of the Civil Rights Act of 1964 and the regulations effectuating it and ensures that

discrimination does not occur in connection with programs or activities that receive Federal financial assistance from FHWA.

V. MnDOT Actions

a. Relief for Complainant and Employees

i. Complainant

1. MnDOT shall pay Complainant:

a. Within 60 days of the Effective Date of this Agreement, MnDOT shall pay the Complainant a lump sum of \$90,000. Within 3 days of making the payments, MnDOT shall confirm the disbursement of funds via email to the FHWA Minnesota Division Office.

2. MnDOT shall, to resolve the Title VI Complaint:

a. To the extent that MnDOT maintains current or creates new records that describe the discrimination complaints associated with the Mission Creek Burial Recovery Project, they will be kept separate from other records used to evaluate performance or record complaints.

b. MnDOT shall consider the Complainant, and any entities affiliated with the Complainant, equivalent to any other individual or entity permitted to submit proposals and provide contracted goods or services to MnDOT, except as required to comply with this Agreement or applicable local, state, or Federal law.

ii. Persons employed by [REDACTED] between March 23, 2018 – April 13, 2018.

1. MnDOT shall pay the Complainant's former employees:

a. Within 60 days of the Effective Date of this Agreement, MnDOT shall pay a lump sum of \$4,500 to each of the 12 persons identified by MnDOT as having been employed by [REDACTED] as field technicians during the period of March 23, 2018, through April 13, 2018.

b. Persons eligible for payment made through this provision must be verified through documentation to have been actively working on the Mission Creek Bridge Project for 20 days prior to April 14, 2018, through [REDACTED].

c. Within 3 days of making the payments, MnDOT shall confirm the disbursement of funds via email to the FHWA Minnesota Division Office.

- b. **FHWA Compliance Review** – MnDOT will fully cooperate with FHWA’s compliance review as detailed in Article VI of this Agreement and in compliance with 49 C.F.R. 21.9(c)—*Access to sources of information*.

VI. FHWA Actions

- a. FHWA will conduct a compliance review of MnDOT’s Title VI program (Review), using Title VI requirements and standards established by 49 C.F.R. Part 21, 23 C.F.R. Part 200, DOT Order 1000.12C, and FHWA guidance. The Review will begin within 60 days from the Effective Date of this Agreement. When complete, FHWA will produce a written compliance review report (Review Report) to share with MnDOT. If deficiencies are found, then within 90 days of receipt of the Review Report, MnDOT will create a corrective action plan (CAP) to address the deficiencies. Upon FHWA’s approval of MnDOT’s CAP, then MnDOT will perform the actions therein to FHWA’s satisfaction.
- b. FHWA will continue to provide MnDOT with technical assistance and training to implement all aspects of this Agreement.
- c. FHWA will continue its Title VI stewardship and oversight activities as required by 23 C.F.R. Part 200.

VII. Monitoring and Reporting

- a. MnDOT will provide FHWA with quarterly monitoring and status reports that address each item in Article V.a. until such items are completed.
- b. MnDOT and FHWA will agree on the report format within **60 days** of the effective date of this Agreement.
- c. FHWA will review each quarterly monitoring and status report and will provide timely feedback.

VIII. Enforcement

FHWA will hold in abeyance the Letter of Finding (LOF) for this complaint until all commitments under this Agreement are complete. Provided that MnDOT performs all of its obligations under this Agreement in the time frame required by this Agreement, absent any extensions granted under III.i., FHWA will issue a closure letter. Failure of MnDOT to satisfy any term of this Agreement may result in further enforcement actions, including issuance of a Letter of Finding, regarding the complaint filed in the matter.

If at any time FHWA believes that MnDOT has failed to comply in a timely manner with any obligation under Title VI or this Agreement, FHWA may issue MnDOT a notice of alleged noncompliance and will provide a reasonable opportunity of at least 45 days for MnDOT to respond. The parties will attempt to resolve any issue in good faith. Should the parties not be able to resolve any issue, FHWA may pursue any action allowed by law.

IX. Signatures

FEDERAL HIGHWAY ADMINISTRATION

Peggie N McWhorter

FHWA Representative

Dated: 9/14/2023

MINNESOTA DEPARTMENT OF TRANSPORTATION

Nancy Daubenburger

MnDOT Representative

Dated: 9/14/2023