NO. 12

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSAL

STATE AID PROJECT NO. SOIB-7-804(040)286 (PCN-18835)

0.230 Miles

STRUCTURAL, SURFACING, & INCIDENTALS

ND 1804, 31 MILES EAST OF WILLISTON ON BEAVER CREEK

WILLIAMS COUNTY

BID OPENING: The bidder's proposal will be accepted via the Bid Express on-line bidding exchange at www.bidx.com until **09:30AM Central Time on March 24, 2015.**

Prior to submitting a Proposal, the Bidder shall complete all applicable sections and properly execute the Proposal Form in accordance with the specifications.

Proposal Form of:

_____
(Firm Name)

_____
(Address, City, State, Zipcode)

(For official use only)

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Project: SOIB-7-804(040)286 (PCN-18835)

The company, firm, corporation, or individual hereby acknowledges that it has designated a responsible person or persons as having the authority to obligate the company, firm, or individual, through electronic or paper submittal, to the terms and conditions described herein and in the contract documents. The designated responsible person submitting this proposal shall be hereafter known as the bidder. By submitting this proposal, the bidder fully accepts and agrees to all the provisions of the proposal. The bidder also certifies that the information given in this proposal is true and the certifications made in this proposal are correct.

The bidder acknowledges that they have thoroughly examined the plans, proposal form, specifications, supplemental specifications, special provisions and agrees that they constitute essential parts of this proposal.

The bidder acknowledges that all line items which contain a quantity shall have a unit price bid. Any line item which is bid lump sum shall contain a lump sum bid price.

The bidder acknowledges that they understand that the quantities of work required by the plans and specifications are approximate only and are subject to increases and decreases; the bidder understands that all quantities of work actually required must be performed and that payment therefore shall be at the prices stipulated herein; that the bidder proposes to timely furnish the specified materials in the quantities required and to furnish the machinery, equipment, labor and expertise necessary to competently complete the proposed work in the time specified.

NON-COLLUSION AND DEBARMENT CERTIFICATION

The bidder certifies that neither he/she, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with this bid.

By submitting this proposal, the bidder certifies to the best of his/her knowledge and belief that he/she and his/her principles:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or perform a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property

Project: SOIB-7-804(040)286 (PCN-18835)

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph b. of the certification; and
d. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or Local) terminated for cause or default

Where the prospective bidder is unable to certify to any of the statements in this certification, the bidder shall submit an explanation in the blanks provided herein. The explanation will not necessarily result in denial of participation in a contract:

Explanation:_____
_____
_____
_____

If the prequalified bidder's status changes, he/she shall immediately submit a new fully executed non-collusion affidavit and debarment certification with an explanation of the change to the Contract Office prior to submitting the bid.

Failure to furnish a certification or an explanation will be grounds for rejection of a bid.

BID LIMITATION (Optional)

The bidder who desires to bid on more than one project on which bids are to be opened on the same date, and who also desires to avoid receiving an award of more projects than the bidder is equipped to handle, may bid on multiple projects and limit the total amount of work awarded to the bidder on selected projects by completing the "Bid Limitation".

The Bid Limitation must be filled in on each proposal form for which the Bidder desires protection. Each such proposal must be covered by a proposal guaranty.

The bid limitation can be made by declaring the total dollar value of work OR total number of projects a bidder is willing to perform.

The Bidder desires to disqualify all of his/her bids on this bid opening that exceed a total dollar value of

$_____

OR

that exceed a total number of _____ projects.

The Bidder hereby authorizes the Department to determine which bids shall be disqualified.

Project: SOIB-7-804(040)286 (PCN-18835)

PERMISSIBLE DISCOUNT (optional)

Only when invited to do so in the Request for Proposal by Special Provision, Bidders are permitted to offer a discount on a specific project (discount project) if they are awarded the contract on one or more additional projects bid at the same bid opening time and date. The bidder must present the proposal so that it can be considered with or without the discount. The bid or discount offered on the "discount project" will not affect the determination of the low bid of any other project.

When discounts are offered, they must be presented as a reduction in the unit price for one or more items of work in the specified proposal (discount project).

Space for Offering Discounts:
_____
_____
_____

Item No:_____

Description:_____

Unit:_____

Proposal Quantity:_____ Unit Price Reduction: $_____ Discount: $_____

Item No:_____

Description:_____

Unit:_____

Proposal Quantity:_____ Unit Price Reduction: $_____ Discount: $_____

Item No:_____

Description:_____

Unit:_____

Proposal Quantity:_____ Unit Price Reduction: $_____ Discount: $_____

TOTAL DISCOUNT_____

It is understood that the discount will only apply if awarded under the conditions as listed above and signed by the bidder.

Project: SOIB-7-804(040)286 (PCN-18835)

RECEIPT OF ADDENDA ACKNOWLEDGEMENT

We hereby acknowledge receipt of the following addenda:

Addendum #_____ Dated_____

Addendum #_____ Dated_____

Addendum #_____ Dated_____

Addendum #_____ Dated_____

Addendum #_____ Dated_____

Addendum #_____ Dated_____

PROPOSAL GUARANTY

A proposal guaranty is required. The proposal guaranty must comply with Section 102.09, "Proposal Guarantee" of the Standard Specifications.

TYPE OF PROPOSAL GUARANTY APPLIED TO THIS PROJECT (Check one):

_____ Annual Bid Bond*

_____ Single Project Bid Bond

_____ Certified or Cashier's Check

*Annual Bid Bond is required when submitting proposals electronically

BID ITEMS

Project: SOIB-7-804(040)286 (PCN-18835)

Bidder must type or neatly print unit prices in numerals, make extensions for each item, and total. Do not carry unit prices further than three (3) decimal places.

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
001	103	0100	CONTRACT BOND	L SUM	1.				
002	202	0105	REMOVAL OF STRUCTURE	L SUM	1.				
003	202	0132	REMOVAL OF BITUMINOUS SURFACING	SY	1,465.				
004	202	0312	REMOVE EXISTING FENCE	LF	770.				
005	202	0350	REMOVAL OF TEMPORARY BYPASS	EA	1.				
006	203	0109	TOPSOIL	CY	2,050.				
007	203	0121	TOPSOIL-WETLAND	CY	225.				
008	203	0140	BORROW-EXCAVATION	CY	10,250.				
009	210	0050	BOX CULVERT EXCAVATION	EA	1.				
010	210	0210	FOUNDATION FILL	CY	1,165.				
011	210	0405	FOUNDATION PREPARATION-BOX CULVERT	EA	1.				
012	216	0100	WATER	M GAL	230.				
013	230	0111	FORESLOPE RESHAPING	STA	16.600				
014	251	0200	SEEDING CLASS II	ACRE	2.537				
015	251	1000	WETLAND SEED	ACRE	.274				
016	251	2000	TEMPORARY COVER CROP	ACRE	1.435				

BID ITEMS

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Bidder must type or neatly print unit prices in numerals, make extensions for each item, and total. Do not carry unit prices further than three (3) decimal places.

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
017	253	0101	STRAW MULCH	ACRE	3.972				
018	256	0200	RIPRAP GRADE II	CY	540.				
019	260	0200	SILT FENCE SUPPORTED	LF	1,715.				
020	260	0201	REMOVE SILT FENCE SUPPORTED	LF	1,715.				
021	261	0112	FIBER ROLLS 12IN	LF	2,425.				
022	262	0100	FLOTATION SILT CURTAIN	LF	370.				
023	262	0101	REMOVE FLOTATION SILT CURTAIN	LF	370.				
024	302	0120	AGGREGATE BASE COURSE CL 5	TON	4,025.				
025	401	0060	PRIME COAT	GAL	1,750.				
026	411	0105	MILLING PAVEMENT SURFACE	SY	324.				
027	430	0500	COMMERCIAL GRADE HOT MIX ASPHALT	TON	816.				
028	702	0100	MOBILIZATION	L SUM	1.				
029	704	0100	FLAGGING	MHR	600.				
030	704	1000	TRAFFIC CONTROL SIGNS	UNIT	1,234.				
031	704	1052	TYPE III BARRICADE	EA	6.				
032	704	1060	DELINEATOR DRUMS	EA	22.				

BID ITEMS

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Bidder must type or neatly print unit prices in numerals, make extensions for each item, and total. Do not carry unit prices further than three (3) decimal places.

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
033	704	1081	VERTICAL PANELS-BACK TO BACK	EA	50.				
034	704	1500	OBLITERATION OF PAVEMENT MARKING	SF	80.				
035	709	0151	GEOSYNTHETIC MATERIAL TYPE R1	SY	1,140.				
036	709	0155	GEOSYNTHETIC MATERIAL TYPE RR	SY	875.				
037	714	4128	PIPE CONDUIT 48IN-APPROACH	LF	40.				
038	714	7030	PIPE PVC 12IN	LF	80.				
039	752	0110	FENCE BARBED WIRE 3 STRAND-STEEL POST	LF	740.				
040	752	0900	FENCE TEMPORARY INSTALL & REMOVE	LF	700.				
041	760	0005	RUMBLE STRIPS - ASPHALT SHOULDER	MILE	.218				
042	760	0007	RUMBLE STRIPS - ASPHALT CENTERLINE	MILE	.109				
043	762	0420	SHORT TERM 4IN LINE-TYPE R	LF	650.				
044	762	0430	SHORT TERM 4IN LINE-TYPE NR	LF	825.				
045	762	1104	PVMT MK PAINTED 4IN LINE	LF	3,713.				
046	764	0151	REMOVE W-BEAM GUARDRAIL & POSTS	LF	500.				
047	764	2081	REMOVE END TREATMENT & TRANSITION	EA	4.				
048	900	1000	TEMPORARY STREAM DIVERSION	EA	1.				

BID ITEMS

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Bidder must type or neatly print unit prices in numerals, make extensions for each item, and total. Do not carry unit prices further than three (3) decimal places.

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
			SUBTOTAL						
			ALTERNATE A						
049	**602**	**1131**	**CLASS AE-3 CONCRETE-BOX CULVERT**	**CY**	**509.800**				
050	**612**	**0114**	**REINFORCING STEEL-GRADE 60-BOX CULVERT**	**LBS**	**95,005.**				
			SUBTOTAL ALTERNATE A						
			ALTERNATE B						
051	**606**	**3409**	**DBL 14FT X 9FT PRECAST RCB CULVERT**	**LF**	**176.**				
052	**606**	**7409**	**DBL 14FT X 9FT PRECAST RCB END SECTION**	**EA**	**2.**				
			SUBTOTAL ALTERNATE B						
			SUBTOTAL + SUBTOTAL ALTERNATE A						
			SUBTOTAL + SUBTOTAL ALTERNATE B						

Project: SOIB-7-804(040)286 (PCN-18835)

Type of Work: STRUCTURAL, SURFACING, & INCIDENTALS

County: WILLIAMS

Length: 0.2300 Miles

TIME FOR COMPLETION:

The undersigned Bidder agrees, if awarded the contract, to prosecute the work with sufficient forces and equipment to complete the contract work within the allowable time specified as follows:

WORKING DAY CONTRACT: **NA** working days are provided. The Department will begin charging working days beginning **NA** or the date work begins on the project site, whichever is earlier.

CALENDAR DAY CONTRACT: **NA** calendar days are provided. The completion date will be determined by adding **NA** calendar days to **NA** or the date work begins on the project site, whichever is earlier.

COMPLETION DATE CONTRACT The project completion date is **10/10/2015**. The Department provides a minimum of **NA** working days. The Department will begin charging working days beginning **NA** or the date work begins on the project site, whichever is earlier.

Project: SOIB-7-804(040)286 (PCN-18835)

Type of Work: STRUCTURAL, SURFACING, & INCIDENTALS

County: WILLIAMS

Length: 0.2300 Miles

CONTRACT EXECUTION:

The undersigned Bidder agrees, if awarded the contract, to execute the contract form and furnish a contract bond within fifteen calendar days, as determined by NDCC Section 1-02-15, after date of notice of award, in accordance with the provisions of Sections 103.05 and 103.06 of the Standard Specifications.

AFFIDAVIT:

STATE OF _____)
) ss.
COUNTY OF _____)

The undersigned bidder, being duly sworn, does depose and say that they are an authorized representative of _____
CONTRACTOR NAME

of _____ , a
MAILING ADDRESS

☐ Individual ☐ Partnership ☐ Joint Venture ☐ Corporation

and that they have read, understand, acknowledge, and accept the entire proposal form; and that all statements made by said bidder are true and correct.

_____ , TITLE _____
BIDDER MUST SIGN ON THIS LINE

_____
TYPE OR PRINT SIGNATURE ON THIS LINE

Subscribed and sworn to before me this day.

_____
COUNTY

(Seal)

_____ _____
STATE DATE

_____
NOTARY PUBLIC

My commission expires _____

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Job #12, Project No. SOIB-7-804(040)286

Structural, Surfacing, & Incidentals

INDEX OF PROVISIONS

Road Restriction Permits

Price Schedule for Miscellaneous Items dated October 1, 2014 (PS-1)

On-The-Job Training Program dated November 1, 2013

Appendix A of the Title IV Assurances dated October 1, 2014

Appendix E of the Title IV Assurances dated October 1, 2014

On-The-Job Training Program dated November 1, 2013

SP 4(14) Federal Migratory Bird Treaty Act

SP 89(14) Temporary Stream Diversions

SP 5035(14) Permits and Environmental Considerations

SP Fuel Cost Adjustment Clause dated September 8, 2006

NOTICE

TO: All prospective bidders on all North Dakota Department of Transportation Highway Construction Projects.

Contractors moving construction equipment to NDDOT highway construction projects are subject to the Road Restriction Policy with the following modifications:

A. The contractor may purchase up to 10 single trip permits for each NDDOT highway construction project at a cost ranging from $20 to $70 each. These permits must be purchased from the Motor Carrier Division of the Highway Patrol at the central office of the NDDOT in Bismarck, North Dakota.

B. The $1 per mile fee will not be charged for Gross Vehicle Weights (GVW) exceeding 105,500 pounds, 105,500 pounds, and 105,000 pounds for highways Restricted by Legal Weights, 8 Ton, and 7 Ton highways respectively.

C. The $5 per ton per mile fee will be charged only for loads exceeding a GVW of 130,000 pounds, 120,000 pounds, 110,000 pounds and 80,000 pounds for highways Restricted by Legal Weights, 8 Ton, 7 Ton, and 6 Ton highways respectively.

D. The maximum weights per axle for each of the class restrictions still apply. If it is shown that more axles cannot be added, movement may be authorized; however, a $1 per ton per mile fee will be charged for all weight in excess of the restricted axle limits.

E. These construction equipment single trip permits apply to State and US Highways only.

F. The District Engineers and Highway Patrol will select the route of travel.

G. Contractors moving equipment to other than NDDOT highway construction projects are subject to all fees as shown in the Road Restriction Permit Policy.

H. Contractors must call the Highway Patrol prior to movement of all overweight loads on all State and US Highways.

NDDOT ROAD AND VEHICLE RESTRICTIONS Date Revised 05-22-10

ROAD RESTRICTION PERMITS

Permits shall be issued for the movement of non-divisible vehicles and loads on state highways which exceed the weight limits during spring road restrictions. The issuance of permits may be stopped or posted weights changed at any time based on the varying conditions of the roadways. Permits can be obtained from the Highway Patrol.

RESTRUCTION CLASSIFICATIONS WITH ALLOWABLE AXLE WEIGHTS AND GROSS VEHICLE WEIGHTS	PERMIT AND TON/MILE FEES
Highways Restricted by Legal Weight Single Axle -- 20,000 lbs. Tandem Axle -- 34,000 lbs. Triple Axle -- 48,000 lbs. 4 Axles or more -- 15,000 lbs. per axle Gross Vehicle Weight -- 105,500 lbs. Note: The above weights apply to state highways restricted by legal weights, other than interstate highways, in areas where road restrictions are in force. When the gross weight of an axle grouping exceeds 48,000 pounds, the $1 per ton per mile shall apply to all weight in excess of 15,000 pounds per axle.	Permit Fee: $20-$70 per trip Ton Mile Fee: 105,501 lbs. to 130,000 lbs. GVW -- $1 per mile Over 130,000 lbs. GVW – $1 per mile **plus** $5 per ton per mile for that weight exceeding 130,000 lbs. GVW Exceeding axle limits -- $1 per ton per mile
8-Ton: Single Axle -- 16,000 lbs. Tandem Axle -- 32,000 lbs. 3 Axles or more -- 14,000 lbs. per axle Gross Vehicle Weight -- 105,500 lbs.	Permit Fee: $20-$70 per trip Ton Mile Fee: 105,501 lbs. to 120,000 lbs. GVW -- $1 per mile Over 120,000 lbs. GVW – $1 per mile **plus** $5 per ton per mile for that weight exceeding 120,000 lbs. GVW Exceeding restricted axle limits -- $1 per ton per mile
7-Ton: Single Axle -- 14,000 lbs. Tandem Axle -- 28,000 lbs. 3 Axles or more -- 12,000 lbs. per axle Gross Vehicle Weight -- 105,500 lbs.	Permit Fee: $20-$70 per trip Ton Mile Fee: 105,500 lbs. to 110,000 lbs. GVW -- $1 per mile Over 110,000 lbs. GVW – $1 per mile **plus** $5 per ton per mile for that weight exceedi ng 110,000 lbs. GVW Exceeding restricted axle limits -- $1 per ton per mile
6-Ton: Single Axle -- 12,000 lbs. Tandem Axle -- 24,000 lbs. 3 Axles or more -- 10,000 lbs. per axle Gross Vehicle Weight -- 80,000 lbs.	Permit Fee: $20-$70 per trip Ton Mile Fee: $5 per ton per mile for all weight exceeding 80,000 lbs. GVW Exceeding restricted axle limits -- $1 per ton per mile
5-Ton: Single Axle -- 10,000 lbs. Tandem Axle -- 20,000 lbs. 3 Axles or more -- 10,000 lbs. per axle Gross Vehicle Weight -- 80,000 lbs.	No overweight movement allowed

SINGLE UNIT FIXED LOAD VEHICLES SUCH AS TRUCK CRANES AND WORKOVER RIGS

A. Permit Fee and Ton Mile Fee for Self-Propelled Fixed Load Vehicles.

1. Permit Fee: $25 per trip

2. $1 per ton per mile for all weight in excess of restricted axle limits or in excess of legal limits on state highways in areas where road restrictions are in force. When the gross weight of an axle grouping exceeds 48,000 pounds, the $1 per ton per mile shall apply to all weight in excess of 15,000 pounds per axle (see weight classification chart in section C.)

3. $5 **per ton per mile** for all movements exceeding the following gross vehicle weight limits:

   a. 105,500 lbs. GVW on unrestricted state highways, other than interstate highways, in areas where road restrictions are in force.
   b. 105,500 lbs. GVW on 8-ton highways.
   c. 105,500 lbs. GVW on 7-ton highways.
   d. 80,000 lbs. GVW on 6-ton highways.
   e. No overweight movement allowed on 5-ton highways

B. Permit Fees for Work-Over Rigs and Special Mobile Equipment Exceeding 650 but not 670 Pounds Per Inch Width of Tire.

1. Permit Fee:
   a. $50 per trip on work-over rigs up to 650 pounds per inch width.
   b. $75 per trip on work-over rigs that exceed 650 but not 670 pounds per inch width of tire.
2. The work-over rig shall be stripped to the most minimum weights.
3. A minimal number of state highway miles shall be used.
4. District engineer approval shall be obtained prior to movement when vehicle exceeds restricted axle weights by more than 5,000 pounds.
5. A validation number ending in TM must be obtained from the Highway Patrol prior to using a self-issue single trip movement approval form.
6. The ton mile shall be waived.

10/1/2014

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
PRICE SCHEDULE FOR MISCELLANEOUS ITEMS (PS-1)

The Contractor agrees to accept the following unit prices for each listed item of work and or material when no project contract unit price exists for that item. Each price listed will be full compensation for the cost of labor, material and equipment necessary to provide the item of work and/or material, complete in place, including (but not limited to) royalty, disposal of unsuitable material, equipment rental, sales tax, use tax, overhead, profit, and incidentals.

Each listed item is referenced to the Standard Specifications by Section number and Section name.

SECTION NO.	SECTION NAME	ITEM NAME	PRICE PER ITEM
107.08	Haul Roads	Water	$27 per M Gal
107.08	Haul Roads	Bitumen for Mix	Invoice Price [1] + 10%
107.08	Haul Roads	Bituminous Mix	$42 per Ton [2]
107.08	Haul Roads	Aggregate Base	$17 per Ton [2]
203.01 B	Rock Excavation	Rock Excavation	$11 per CY
203.01 C	Shale Excavation	Shale Excavation	Common Excavation Price + $1.00 per CY
203.01 D	Muck Excavation	Muck Excavation	$9 per CY
203.05 H.3	Embankment	Overhaul	$1.40 per CY - Mile
260	Silt Fence	Mucking Silt Fence	$3.90 per LF
260	Silt Fence	Removal of Silt Fence [3]	$4.25 per LF
261	Fiber Rolls	Mucking of Fiber Rolls	$3.90 per LF
261	Fiber Rolls	Removal of Fiber Rolls [3]	$4.25 per LF
420.04 E	Bituminous Seal Coat	Blotter Sand	$27 per Ton [2]
430.04 G	Hot Mix Asphalt (Exc. Material Hauled to Disposal Area)	Bituminous Mixture	Machine Placed: Bid or Invoice Price + $31 per ton Hand Placed: Bid or Invoice Price + $48 per Ton
704	Temporary Traffic Control	Flagging	$32 per MHR

[1] Price paid for bituminous material will be invoice price plus freight costs.

[2] Price Includes haul up to 10 miles. Payment for haul exceeding 10 miles will be according to Section 109.03 E, “Force Account.” The haul distance for aggregate base and bituminous mix will be based on the average haul. The haul distance for blotter sand will be from the point where the haul begins to the point where it enters the project.

[3] This is only for pre-existing items that were not installed under the Contract.

Effective October 1, 2014

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX A OF THE TITLE VI ASSURANCES

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

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, 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 Acts and the Regulations, 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 Acts and the Regulations relative to Non-discrimination 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 Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, 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 Recipient or the Federal Highway 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 Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway 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, 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 Recipient or the Federal Highway 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 Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Effective October 1, 2014

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX E OF THE TITLE VI ASSURANCES

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.),* (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.),* (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures 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).

2014 NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

ON-THE-JOB TRAINING SPECIAL PROVISION

I. PURPOSE

The purpose of the On-the-Job Training (OJT) Program is to provide training **in the highway construction industry** for minority, female, and economically disadvantaged individuals, hereafter known as the targeted group. **Pursuant to 23 Code of Federal Regulations Part 230, Subpart A, Appendix B - Training Special Provisions, this program provides for on-the-job training aimed at developing full** journeyworkers **in the type of trade or job** classification **involved.**

II. INTRODUCTION

A. The OJT Program **was originally** prepared through the cooperative efforts of the Associated General Contractors of North Dakota (AGC); the Federal Highway Administration (FHWA); and the North Dakota Department of Transportation (Department).

B. Successful operation of the OJT Program requires that contractors follow uniform and basic procedures in training, keeping records of trainee progress toward journeyworker status, and reporting each trainee's successful completion or termination from the OJT Program.

C. The bidder's signature on the proposal sheet indicates the bidder agrees to take part in the OJT Program and to **follow** this On-the-Job Training (OJT) Program Special Provision. **Contractors that do not follow this special provision will be subject to sanctions up to and including revocation of bidding privileges.**

D. Projects funded solely with county funds and emergency relief projects that are not included **in the Department's bid openings will not contain this OJT Program Special Provision (i.e., no training program hours will count toward completion of an approved training program or be eligible for reimbursement).**

III. DEFINITIONS

Carryover Position: Unfulfilled trainee position carried forward from a prior program year.

Carryover Trainee: Trainee scheduled to continue required training hours under an approved training program from a prior program year.

Journeyworker: A worker employed in a trade or craft who has attained a level of skill, abilities, and competencies recognized within the industry.

OJT Supportive Services (OJTSS) Consultant: A consultant under contract with the Department to provide in-person oversight, support, and guidance to contractors and trainees in an effort to increase the effectiveness of approved training programs.

Targeted Group: Individuals eligible to receive training under the OJT Program. For trainee

positions assigned by the Department, trainees must be minority, female, or economically disadvantaged as defined by Job Service North Dakota (JSND).

Trainee: A person who receives on-the-job training, whether through an apprenticeship program or other program approved or accepted by FHWA.

Trainer/Supervisor: Prime contractor employee assigned to mentor, train, supervise, and support an assigned OJT Program trainee.

IV. FUNDING

The Department will establish an OJT fund annually from which contractors may bill the Department directly for eligible trainee hours. **The funds for payment of trainee hours on federal-aid projects will be made available based on 23 USC 504(e)** to a maximum of $100,000. The funds for payment of trainee hours on state-aided projects will be allocated to a maximum of $10,000.

V. ASSIGNED TRAINEE POSITIONS

A. Trainee positions will be assigned to contractors and will not be project specific. The number of trainee positions assigned will be determined by applying a formula based on calculations involving specific project specification numbers on applicable projects funded with federal highway dollars awarded by the Department to a contractor from October 1 to September 30.

B. The dollar value of projects subject to Tribal Employment Rights Ordinances (TERO), concrete pavement repair (CPR) projects, electrical projects, rest area projects, signing projects, striping projects, and state-aid highway projects will be excluded when determining the number of trainee positions assigned.

C. In early March, a summary of the trainee positions required and links to the OJT Program package will be sent to prime contractors with assigned positions. The links to the OJT Program package are also provided to prime contractors and subcontractors upon request. In addition, the summary and links are sent to prime contractors as they become eligible for trainee positions throughout the remainder of the year.

The number of trainee positions assigned to each contractor will increase proportionately, as shown in the following table, for any applicable federally funded projects awarded to them. Projects awarded after September 30 will be included in the following year's OJT Program.

D. The number of trainee **positions** will be assigned and will increase as follows:

For all federal highway dollars awarded from October 1 to September 30,

$ 4,500,000	- 8,000,000	=	1 trainee
$ 8,000,001	- 15,000,000	=	2 trainees
$15,000,001	- 23,000,000	=	3 trainees
$23,000,001	- and above	=	4 trainees

A maximum of four (4) trainee positions in a federal fiscal year will be assigned to any prime contractor regardless of dollar amount. Carryover positions from a prior

program year are not included in the four trainee maximum, e.g., a contractor with one carryover and four assigned positions will have a total five trainees.

E. Contractors not qualifying for the OJT Program, or contractors desiring to train more than the allotted number of trainees, may apply to the Department for additional trainee positions. Approval of additional positions will be at the sole discretion of the Department. The Department will take into consideration whether there is enough work for the trainee to successfully complete the curriculum and whether the contractor will be exceeding the allowable ratio of trainees to journeyworkers (generally considered to be one trainee or apprentice to every three to five journeyworkers).

F. The additional positions may be filled by individuals outside of the targeted groups. The contractor may pay the reduced training rates to additional trainees outside of the targeted groups and receive hourly reimbursement for those individuals.

VI. APPROVALS REQUIRED

A. Training Programs: Contractors must have training programs approved by the Civil Rights Division in order to pay the trainees less than the appropriate Davis-Bacon wage established for the job classification concerned and to be eligible for reimbursement under the OJT Program. No training program hours will count toward the fulfillment of an assigned trainee position or be eligible for reimbursement without prior approval. **No retroactive approval will be granted.**

1. The contractor will notify the Civil Rights Division using the *Request for On-the-Job Training Program Approval SFN 9762.* This form is available on the Department's website at:

   http://www.dot.nd.gov/forms/sfn09762.pdf

2. A completed request form and the training curriculum must be submitted for each trainee in the OJT Program. Requests must be submitted by April 1 or within fifteen (15) calendar days of notification of additional trainee assignments.

B. Trainees: Contractors must have trainees approved by the Civil Rights Division in order to pay the trainees less than the appropriate Davis-Bacon wage established for the job classification concerned and to be eligible for reimbursement under the OJT Program. No training program hours will count toward completion of an approved training program or be eligible for reimbursement without prior trainee approval. **No retroactive approval will be granted.**

1. The contractor will notify the Civil Rights Division using the *Request for On-the-Job Trainee Approval SFN 60226*. This form is available on the Department's website at:

   http://www.dot.nd.gov/forms/sfn60226.pdf

2. A completed request form and the trainee's employment application must be submitted for each trainee employed under the OJT Program.

3. Written JSND certification of an individual as economically disadvantaged

must also be provided to the Civil Rights Division as part of the approval process for trainees.

C. The contractor may request to train an individual in a classification not included in this OJT Program package. The request must be submitted, in its entirety, for approval by the Department and FHWA before the trainee begins work under the OJT Program. **No retroactive approval will be granted.**

Training programs for classifications not covered by the Davis-Bacon and Related Acts (DBRA) will be considered on a limited basis. **Customized training curricula will not necessarily be added to the OJT Program; however, previously approved programs are available to contractors upon request; for example, in 2013 the Department approved programs for GPS Survey Technician and Project Management.**

If approved, each new classification must comply with the provisions specified in this OJT Program package. The request must include:

1. A training curriculum, including the classification requested, minimum number of hours required, and type of training the individual will receive to achieve journeyworker status.

2. A minimum wage scale.

D. Union apprenticeship and on-the-job training programs registered with the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, are recognized by the Department. These programs may be used for trainee positions assigned under the OJT Program, provided the trainees or apprentices are minority, female, or economically disadvantaged. Nonminority males not certified as economically disadvantaged may be used when the contractor has requested and received approval, from the Department, for additional trainee positions. However, contractors must produce indenture papers to be eligible for reimbursement, to pay the trainees or apprentices less than the appropriate Davis-Bacon wage established for the job classification concerned, and to receive credit for fulfilling assigned trainee positions.

E. The contractor may train an individual on a combination of equipment if each piece of equipment falls within the same groups of power equipment operators identified in the training curricula (groups 1-3 and groups 4-6). These power equipment operator groups are referenced to the federal Davis-Bacon wage rates contained in the contract proposal. As an example, a "utility operator" may receive training on a broom, a front-end loader less than 1½ cubic yards, or other piece of equipment that is used around a paver if each piece falls within either groups 1-3 or groups 4-6. When multiple wage rates apply, the trainee's wage will be based on the equipment being operated at the time or on the highest of the applicable wage rates.

F. Use of the classification "pickup machine operator (asphalt dump-person)" as a group 4 power equipment operator is considered standard industry practice. The classification is defined as: "Operates the controls on the pickup machine that runs in front of the paver, trips the levers on the dump trucks, and balances the loads for the paver. The pickup machine operates on similar principles as a shouldering machine."

VII. DEPARTMENT'S RESPONSIBILITIES

A. Once the trainees have been approved, the Department's OJT supportive services (OJTSS) consultant will monitor the excerpts from the weekly certified payrolls submitted with the monthly vouchers for reimbursement. This includes weekly payrolls from contractors working on state funded only projects. The OJTSS consultant will assure that when the trainees have completed the specified number of hours, their wages are increased accordingly. The OJTSS consultant will also assure that applicable fringe benefits are paid either directly to the trainees or into approved plans, funds, or programs on their behalf.

B. **The OJTSS consultant will also be visiting the** targeted group trainees **and monitoring their progress under the OJT Program. To facilitate the on-site visits, the OJTSS consultant will contact contractors** for the location of the trainees.

VIII. CONTRACTOR'S RESPONSIBILITIES

The contractor:

A. Will appoint an individual within their company who will be available to respond to weekly contacts by the OJTSS consultant in order to monitor the status of assigned trainee positions (e.g., program and trainee approvals, trainees' progress, etc.). Upon assignment of a trainee position, the OJTSS consultant will immediately send a Request for On-the-Job Trainee Approval (SFN 60226) to the contractor to obtain the name, direct phone number, and email address of the individual. The individual must reply to communications from the Department and the OJTSS consultant in a timely manner.

B. **Will ensure trainees are aware they are in a training program and what that means to the contractor and the trainee.**

C. **Will make trainees available to the OJTSS consultant for on-site visits at least twice each construction season.**

D. Will identify all approved trainees on the payrolls, for example: "grp. 4 roller operator trainee." This includes trainees in job classifications not covered by DBRA.

E. Will assign each trainee to a particular person–either a supervisor or an employee proficient in the skill–who shall see that timely, instructional experience is received by the trainee. This person will **be familiar with the OJT Program,** ensure proper records are kept, and **ensure** the required training hours are completed **in** accord**ance with** the training curriculum.

F. **Will make the trainer and project superintendent available to the OJTSS consultant for on-site visits at least twice each construction season.**

G. May terminate the training period of a trainee who has completed 90% or more of their hours and advance the trainee to journeyworker status after providing notice to the Department.

H. Will notify the Department when a trainee completes the OJT Program. The Department will issue a certificate of completion to the trainee.

I. May upgrade trainees from one power equipment operator group or truck driver group to another, with the approval of the Civil Rights Division. Trainees upgraded will not be required to complete the entire number of hours assigned to the new training curriculum. The minimum number of hours required will be:

Power Equipment Operator Groups 4-6 to Groups 1-3 = 400 hrs.
Class C Truck Driver to Class B = 200 hrs.
Class B Truck Driver to Class A = 200 hrs.

Depending on the variety of experience the trainee has gained under the previous curriculum, the difference in the hours may be deducted from the actual operation of the piece of equipment or truck. The contractor will need to review the trainee's past performance in order to make this determination.

J. Commercial driver's license (CDL) holders having over-the-road driving experience, with little or no highway construction experience, may be considered to have completed the Class C truck driver training curriculum and, therefore, are eligible to be upgraded to a Class B truck driver trainee, with the approval the Civil Rights Division.

K. May transfer trainees from one project to another in order to complete the OJT Program. If transfers are made, the Civil Rights Division must be notified and provided with the name of the trainer. The training hours will count toward overall OJT Program completion.

L. May use trainees on municipal, private, or other non-highway work and work performed out of state. The training hours will count toward overall OJT Program completion; however, no program reimbursement will be made for those hours. In addition, the hours will be limited to no more than 25% of the total hours required under the training curriculum.

M. Contractors may delegate or reassign trainee positions to subcontractors, with the acceptance of the subcontractors and the approval of the Civil Rights Division. The prime contractor must verify that the trainee will be able to accumulate enough hours to complete his or her training program. If approved, the subcontractor must obtain training program and trainee approval from the Civil Rights Division before the trainee begins work under the OJT program. Program reimbursement will be made directly to the prime contractor. The trainee position will remain the responsibility of the prime contractor.

N. May use trainees on projects subject to TERO requirements as part of the core crew or as part of the skilled labor supplied by the contractor.

O. Contractors may not use one trainee to fill multiple trainee positions. For instance, a subcontractor may not use the same trainee in the same training program to simultaneously fill two or more trainee positions reassigned to them by prime contractors.

P. May use a trainee on a piece of equipment in groups 1-3 or groups 4-6 for one assigned trainee position, then once that trainee has completed the program, the trainee may be trained on a different piece of equipment in groups 1-3 or groups 4-6 to fulfill a second assigned trainee position. When a trainee is used for a second time within a group, the contractor must pay that trainee at the higher wage rate as described in paragraph B under Wage Rates (page 8).

IX. CLASSROOM TRAINING

A. Classroom training may be used to train employees. The contractor will submit a proposed classroom training curriculum to the Civil Rights Division for approval. The classroom training curriculum must define the type of training the individual will receive and the minimum number of hours required. The Department will determine the number of hours of credit each trainee will receive toward their training. Each classroom training curriculum must be pre-approved by the Civil Rights Division if the contractor wishes to count the classroom hours as training hours. **No retroactive approval will be granted.**

B. Contractors will be reimbursed for classroom training hours after the trainee has completed 80 hours of work on highway construction projects.

C. Reimbursement for classroom training will be limited to 60 hours per trainee per construction season. **Qualified testing technicians and concrete testing technicians/inspectors will not be included in the 60-hour limit.** Reimbursement for classroom training required under the Department's Transportation Technician Qualification Program will be at the Department's discretion.

D. The minimum wage scale to be used for classroom training will be that of the first federal-aid highway construction project on which the trainee will be employed. If the trainee is already employed on a federal-aid highway construction project, the trainee will be paid in accordance with the minimum wage scale applicable to that project. However, if the first project on which the trainee will be employed is a state funded only contract, the minimum wage scale to be used for the classroom training will be that of the appropriate Davis-Bacon wage in effect at the time of award of the state funded contract.

X. WAGE RATES

A. The minimum wage rates shall not be less than 80% of the journeyworker rate for the first two quarters of training, 85% of the journeyworker rate for the third quarter, and 90% of the journeyworker rate for the fourth quarter. In no case shall the minimum wage be less than that of the group 1 laborer classification in the federal Davis-Bacon wage rates contained in the contract proposal. Trainees shall be paid full fringe benefit amounts, where applicable. The contractor has the option of paying the fringe benefits into approved plans, funds, or programs or directly to their employees. A trainee working on a state funded only project, must be paid the Davis-Bacon wage rate in effect at the time of award of the state funded project for the type of work the trainee is performing.

B. Under the power equipment operator training curricula only, once a trainee has completed a training curriculum in either groups 1-3 or groups 4-6, the contractor may enroll the trainee in another training curriculum on a different piece of equipment in either groups 1-3 or groups 4-6. The minimum wage rate under the second program shall not be less than 85% of the journeyworker rate for the first two quarters of training, 90% of the journeyworker rate for the third quarter, and 95% of the journeyworker rate for the fourth quarter.

C. At the completion of the OJT Program, the trainee shall receive the wages of a skilled journeyworker.

D. For the purpose of the OJT Program, a quarter is 25% of the hours worked by each trainee and does not represent three months of the year. The first two quarters of a 550-hour training curriculum would end after 275 hours, the third quarter after 138 hours, and the fourth after 137 hours.

XI. RECRUITMENT AND SELECTION PROCEDURES

A. Prerequisite for Trainees:

To be qualified for enrollment in the OJT Program, trainees must possess basic physical fitness for the work to be performed, dependability, willingness to learn, ability to follow instructions, and an aptitude to maintain a safe work environment.

B. Licenses:

Truck driver trainees must possess appropriate driver permits or licenses for the operation of Class A, B, and C trucks. When an instructional permit is used in lieu of a license, the trainee must be accompanied by an operator who:

1. Holds a license corresponding to the vehicle being operated;

2. Has had at least one year of driving experience; and

3. Is occupying the seat next to the driver.

C. Recruitment:

1. Notices and posters setting forth the contractor's Equal Employment Opportunity Policy and the availability of the OJT Program will be placed in areas readily accessible to employees, applicants for employment, and potential employees.

2. The contractor must employ **members of the targeted group (minority, female, or economically disadvantaged individuals)** for all trainee positions assigned **in** accord**ance with** the OJT Program. Additional positions requested by the contractor may be filled by individuals outside of the targeted groups.

3. The contractor will conduct systematic and direct recruitment through public and private employee referral sources.

4. Present employees will be screened for upgrading. A present employee may qualify as a trainee; however, no work hours will be reimbursed or counted toward program completion prior to training program and trainee approval by the Civil Rights Division.

D. Selection:

1. The selection and employment of a person, meeting the aforementioned criteria, by a participating contractor shall qualify the person for the OJT Program.

2. Employment of trainees will be in accordance with the workforce requirements of the contractor. Each contractor will hire and train the trainees for use in their own organization.

3. A contractor may not employ an individual as a trainee in a job classification in which that individual has successfully completed a training course leading to journeyworker status or in which the individual has been previously employed as a journeyworker.

4. Contractors must submit the *Request for On-the-Job Trainee Approval (SFN 60226)* and the trainee's employment application to the Civil Rights Division for review and approval. Approval must be obtained before the trainee may begin work under the OJT Program. **No retroactive approval will be granted.**

5. The economically disadvantaged certification can only be obtained from **JSND**. Written certification of individuals under this category can be provided to the contractor at the time of the interview if the applicant is referred by **JSND**. Any person wishing to obtain this certification must apply to **JSND** and complete the Application for Eligibility (SFN 7857). This certification must be provided to the Civil Rights Division with the other required information as part of the approval process for trainees. A contractor that has an individual who may qualify must contact the Workforce Investment Act Program Manager at **JSND. JSND** contacts **are also** available on the Department's website at:

   http://www.dot.nd.gov/divisions/civilrights/docs/jobservice-workforce-invest-contacts.pdf

6. Nonminority males used to fill additional trainee positions approved by the Department do not have to be certified as economically disadvantaged.

XII. BASIS OF PAYMENT

A. Contractors will be paid $4.00 for each hour of training provided in accordance with the OJT Program.

B. Program reimbursement will be made directly to the prime contractor. To request reimbursement, prime contractors must complete the *Voucher for On-the-Job Training Program Hourly Reimbursement (SFN 51023)* for each trainee employed under the OJT Program. Attached to each voucher must be excerpts from the weekly certified payrolls showing the trainee's hours, rate of pay, and how applicable fringe benefits are paid. This includes excerpts from weekly payrolls for state funded only projects. Vouchers without excerpts from payrolls will not be paid until the excerpts are provided. If the excerpts from the payrolls are not provided within one week, the voucher will not be approved. The voucher is available on the Department's website at:

   http://www.dot.nd.gov/forms/sfn51023.pdf

C. The completed vouchers must be submitted to the Civil Rights Division for approval and processing by the fifteenth (15th) calendar day of every following month the trainee is employed under the OJT Program.

Regardless, all vouchers for trainee hours worked on state funded only projects from July 1 to June 30 must be received by the Civil Rights Division no later than July 15 in order to be reimbursed. All vouchers for trainee hours worked on federally funded projects from October 1 to September 30 must be received by the Civil Rights Division no later than October 15 in order to be reimbursed. This is due to state and federal end-of-the-year budget fiduciary requirements.

XIII. FAILURE TO PROVIDE THE REQUIRED TRAINING OR HIRE THE TRAINEE AS A JOURNEYWORKER

A. No payment shall be made to a contractor for failure to provide the required training or failure to hire the trainee as a journeyworker when such failure is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this OJT Program Special Provision.

B. If payments have been made, the Department will withhold the amount paid from the contractor's progress payment.

C. It is normally expected that a trainee will begin his or her training as soon as feasible after start of work utilizing the skill involved and remain employed as long as training opportunities exist in his or her work classification or until he or she has completed his or her training program.

D. It is not required that all trainees be employed for the entire length of the construction season. A contractor will have fulfilled its responsibilities under this OJT Program Special Provision if it has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled for a significant period.

XIV. UNFULFILLED TRAINEE POSITIONS

A. For a variety of reasons, a contractor may be unable to fulfill the assigned number of trainee positions during a construction season. Any contractor that has not completed the assigned number of trainee positions must contact the Civil Rights Division by October 1 of the current construction season and provide documentation as to why the assigned trainee positions were not fulfilled. The Civil Rights Division will decide, on a case-by-case basis, whether to carry the trainee positions over to the next construction season.

B. Carryover trainee positions should be among the first positions filled at season startup. Contractors must notify the Department of the trainee's rehiring and submit *Request for On-the-Job Trainee Approval (SFN 60226)*, marking 'Check if Carryover Trainee' in the Approved Training Program section of the form, See Attachment 2.

C. Sanctions, up to and including revocation of bidding privileges, may be imposed by the Department for failure on the part of the contractor to provide sufficient documentation as to why assigned trainee positions were not fulfilled.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

FEDERAL MIGRATORY BIRD TREATY ACT

GENERAL

Work may impact migratory birds or active migratory bird nests. A nest is considered active when it contains eggs or chicks.

Nests are active primarily during the primary breeding season for migratory birds in North Dakota from February 1 to July 15.

All reasonable, prudent, and effective measures should be identified and implemented to avoid take. The definition of take in 50 CFR 10.12 is: to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.

PREVENTATIVE MEASURES

General

If no active nests are present at bridges, reinforced concrete box culverts, or structural plate pipes; prevent migratory birds from building new nests and from using nests built in previous years.

Preventative measures include securing tarps, fabric, netting, or wire mesh to the structure to prevent and discourage nesting. Additional measures may include hosing or knocking down any inactive nests or unfinished nests while avoiding take.

Preventative measures may be utilized before, during, and after breeding season.

Collect nests and nest debris and treat as agriculture waste. Disposal can occur by hauling waste to a permitted landfill or on-site when mixed with topsoil uniformly at the rate of 2 tons per acre away from water bodies and runoff.

If a nest where birds are present is found; the Contractor shall have a qualified biologist conduct a bird/nest survey no more than 5 working days prior to starting work at the structure site. A biologist is considered qualified if they have obtained a 4 year degree from an accredited university in a natural sciences field and is employed as an environmental professional.

If active nests are identified, cease construction or demolition and maintain a minimum buffer of 25 feet around active nests to avoid take. The qualified biologist may adjust the buffered distance in coordination with the USFWS. Maintain the buffer as construction resumes until the nests are no longer active.

SURVEY REQUIREMENTS

The USFWS requires that field surveys conducted for nesting birds with the intent of avoiding take include documentation of the presence of migratory birds, eggs, inactive and active nests, along with information regarding the qualifications of the biologists performing the survey, and any avoidance measures implemented at the project site.

If the survey or other available information indicates a potential for take of migratory birds, their eggs, or active nests, contact the USFWS for further coordination on the extent of the impact and the long-term implications of the intended use of the project on migratory bird populations.

Ecological Services
U.S. Fish & Wildlife Service
3425 Miriam Avenue
Bismarck, ND 58501
701-250-4481

BASIS OF PAYMENT
Include the costs for the removal and disposal of nests, the prevention of nesting, and bird/nest surveys in the price bid for the work at the structure site.

Such payment is full compensation for furnishing all materials, equipment, labor, and incidentals to complete the work as specified.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION (SP)

Temporary Stream Diversions

7-804(040)286 – PCN 18835

DESCRIPTION

This work consists of constructing and maintaining a temporary stream diversion for constructing box culverts. This SP work is in conjunction with the requirements of SP 03(14) "Temporary Erosion and Sediment Best Management Practices," and the Construction General Permits.

MATERIALS

Item	Section
Geosynthetic Type R1	858

Where R1 material is specified, alternative materials may be used if the alternative material has a lower permittivity and higher strength than Geosynthetic Type R1.

CONSTRUCTION REQUIREMENTS

A. General.

Construct temporary stream diversions using a dike and a combination of the items listed below, or methods approved by the Engineer.

Place stockpiles and excavated material a minimum of 200 feet from diversions and waters of the state.

Install diversion measures before starting work on the structure.

Isolate work area even when no water is present.

Strip and stockpile topsoil from areas above the waterline where devices and diversions will be constructed and installed.

1. Plan.

When submitting the Storm Water Pollution Prevention Plan (SWPPP), submit a Temporary Stream Diversion Plan.

Include provisions that will prevent the accumulation of sediment and will protect the stream from concrete washout material and other construction debris.

2. Design.

Design the temporary stream diversion to maintain normal flow and downstream water quality equal to the upstream water quality.

3. Dike.

Construct dikes to divert the stream and isolate the work area. Prevent soil/water interaction with the dike using one or more of the following methods:

- Sandbags;
- Sheet piles;
- Acceptable rock size wrapped with Geosynthetic Type R1;
- Portable concrete barrier wrapped with Geosynthetic Type R1 or other;
- Impermeable containers; or
- Prefabricated dams.

Isolate the work area by installing upstream and downstream dikes.

4. Work Area Dewatering.

Operate and maintain the dewatering system to prevent any change in water quality. Before beginning dewatering, provide an inlet control system that limits sediment from entering the system and a stabilized discharge from the dewatering system.

Inlet control systems may include:

- Surface skimmers;
- Aggregate filled perforated containers; or
- Inlet sock.

Stabilized discharges may include:

- Dewatering basin;
- Sediment bag; or
- Filtering thru vegetation.

Design and operate the discharge so that no visible sediment plume is present and so the discharge causes no additional erosion.

Do not discharge water directly to the stream or the diversion.

B. Pipe Installation.

Provide energy dissipation measures for pipe outlets.

Size pipes to at minimum match the pipe sizes of the Temporary Traffic Bypass.

Install a temporary pipe crossing under the roadway near the existing culvert. Provide positive drainage from the upstream to downstream ends of the temporary pipe crossing.

Compact the backfill and embankment around the temporary pipe as specified in Section 203.04 E.3, “Compaction Control, Type B”.

C. Channels.

Construct channels with side slopes that are 3:1 or flatter. Construct the channel bottom and side slopes of a sufficient width to maintain flows. Cover disturbed slopes and channel bottom with Geosynthetic Type R1.

Place geosynthetic with the longest dimension parallel to the direction of water flow. Place overlaps so the upstream strip overlaps the downstream strip. Overlap splices and joints at

least 18 inches. Overlap splices and joints placed underwater at least 36 inches. Pin or staple all overlaps at a maximum 3 foot interval.

Patch damaged areas by overlapping the tear a minimum of 36 inches with geosynthetic and secure the perimeter of the patch area with pins or staples.

Install fiber rolls or silt fence along the top of the channel to prevent any sediment or debris entering the channel.

Connect the downstream end of the channel before connecting the upstream end of the channel to the existing stream. Secure the Geosynthetic liner at the connection ends by:

- Staples;
- Sandbags; or
- Rip rap.

D. Diversion Pumping.

Pumping is limited to 21 calendar days and must maintain low flow at all times. All work associated with the culvert must be completed within 21 calendar days.

Failure to complete the work within the 21 calendar days will require the restoration of the flow and all work relating to the construction at the location to cease until another type of diversion has been constructed.

Size pumps to maintain the flows. Provide backup pumps in working condition on site or at a location approved by the Engineer.

Place an inlet control system in a manner that allows water to free flow into the inlet and prevents aquatic species and limits sediment from entering the inlet. An inlet control systems may include:

- Surface skimmers;
- Aggregate filled perforated containers; or
- Inlet sock.

Stabilize the discharge so that it will not affect water quality. Stabilized discharges may include:

- Dewatering basin;
- Sediment bag; or
- Filtering thru vegetation.

Design and operate the discharge so that no visible sediment plume is present and so the discharge causes no additional erosion.

E. Removal.

Before opening the culvert to flow, place permanent erosion and sediment control devices and flow dissipation devices around the ends of the culvert or culverts. Flow dissipation devices include:

- Rip rap;
- Cable tie concrete; or
- Concrete jacks.

Do not begin removal of the temporary stream diversion until the construction activities in the stream and relating to the culvert are complete.

Remove all materials used to construct the diversion.

After all work within the channel is complete, remove the temporary stream diversion. Work within the channel includes the placement of riprap and permanent erosion and sediment control devices.

Restore the area affected by the temporary stream diversion to the same condition that existed before construction.

1. **Downstream Dike.**
   Remove downstream dike first. Stabilize the areas above the waterline where the downstream dike was located.

2. **Upstream Dike.**
   Remove the upstream dike to restore the stream back to normal flow through the box culvert before removal of any other devices.

   Stabilize the areas above the waterline where the upstream dike was located.

   Remove the upstream dike and construct a dike to prevent water from entering the channel or pipe diversion.

3. **Pipe.**
   Remove pipe after the stream has been restored to normal flow.

   Backfill pipe removal from under the roadway as specified in Section 203.04 E.2, “Compaction Control, Type A”.

   Place a minimum of 12 inches of Salvage Base Course or Class 5 Aggregate Base as specified in Section 302, “Aggregate Base and Surface Course” as a surface aggregate.

   Pave final surface with mainline paving operation.

4. **Channel.**
   Backfill channels outside of the roadway embankment according to Section 203.04 E.3, “Compaction Control, Type B”. Backfill channel inside the roadway embankment according to the plans.

BASIS OF PAYMENT

Pay Item	Pay Unit
Temporary Stream Diversion	Each

The Engineer will pay for the stream diversion according to the Table 1.

Table 1	
Work Completed	**Percent of Payment**
Stream Diversion Installed	75
Restoration of the Diversion	100

Include the cost of installation, maintenance, and removal of traffic control devices used in conjunction with the stream diversion in the contract unit price for “Temporary Stream Diversion”.

Include the cost for installation, maintenance, and removal of erosion control devices used in conjunction with the stream diversion in the contract unit price for “Temporary Stream Diversion”. Section 4, “Basis of Payment” in SP 03(14) does not apply to erosion control devices used in conjunction with stream diversions.

Such payment is full compensation for furnishing all equipment, material, labor, and other incidentals to complete the work as specified.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

PERMITS AND ENVIRONMENTAL CONSIDERATIONS

PROJECT NUMBER: SS-7-804(040)286 – PCN 18835

This Special Provision incorporates the US Army Corps of Engineers (USACE) Section 404 Permit obtained by the North Dakota Department of Transportation (NDDOT). The project as proposed includes replacing the existing single span 50' long x 30' wide bridge with a quad 9'x14'x88' box culvert, placing riprap upstream and downstream at the new box culvert invert, installing a temporary bypass including temporary riprap and (1) temporary 48" culvert set at an elevation for high flows, and utilizing the exiting levee and culvert system to dewater the work area.

The Contractor shall be responsible for complying with all the terms and conditions as contained in the permit(s) attached hereto. Bidders shall become familiar with all standard conditions and special conditions of the permit(s) and submit their bid for the construction of this project based on the following:

- **Section 404 Permit**
  The USACE Section 404 Permit number NWO-2010-2812-BIS authorizes impacts associated with replacing the existing single span 50' long x 30' wide bridge with a quad 9'x14'x88' box culvert, placing riprap upstream and downstream at the new box culvert invert, installing a temporary bypass including temporary riprap and (1) temporary 48" culvert set at an elevation for high flows, and utilizing the exiting levee and culvert system to dewater the work area. The Section 404 Permit authorizes a total of 0.14 acres of permanent jurisdictional wetland impacts, 0.53 acres of temporary jurisdictional wetland impacts, 98 linear feet of permanent other water impacts and 111 linear feet of temporary other water impacts. The temporary impacts were assumed by the designer to account for construction activities.

  See the Section 6 Environmental Commitments Sheets and Section 75 sheets of the design plans for the authorized impact footprint areas. The Section 404 Permit is attached.

The contractor shall be responsible for obtaining permits for impacts not authorized by the attached Permit obtained by the NDDOT.

Corps of Engineers Nationwide Permit (NWP) Verification

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION (ND DOT) PROJECTS
REQUEST FOR NWP DETERMINATION(S)

IMPACTED WATER RESOURCE NUMBER	PCN (DOT generated) HWY/Road Number	TYPE AND DIMENSIONS OF EXISTING STRUCTURE	ACTIVITY	STREAM IMPACTS BELOW OHWM (linear feet)			WETLAND IMPACTS (acres)		LOCATION LAT/LONG (NAD 83)		SEC-TWP-RGE, COUNTY	COE ID NUMBER (to be filled by COE)	NWP #
				TEMP (LF)	PERM (LF)	PERM (acre)	TEMP (acre)	PERM (acre)	LAT (Decimal Degrees)	LONG (Decimal Degrees)			
1c	18835 Hwy 1804	Single Span Bridge 50' long and 30' wide	Widening, Replacing existing bridge with a quad 9'x14'x88' box culvert with 10 linear feet of riprap upstream and 20 linear feet of riprap downstream, install temporary bypass using perched 48 in culvert to maintain high flow and dewatering the entire areas downstream utilizing the existing levees and culverts.				0.25	0.04	48.197225	-103.025426	4-154-96 Williams County	NWO-2010-2812-BIS	23
1d	18835 Hwy 1804	Single Span Bridge 50' long and 30' wide	Same as 1c				0.06	0.05	48.197691	-103.024622	33-155-96 Williams County	NWO-2010-2812-BIS	23
OW1a	18835 Hwy 1804	Single Span Bridge 50' long and 30' wide	Same as 1c	5	52				48.197225	-103.025426	4-154-96 Williams County	NWO-2010-2812-BIS	23
OW1b	18835 Hwy 1804	Single Span Bridge 50' long and 30'	Same as 1c	106	46				48.197691	-103.024622	33-155-96 Williams County	NWO-2010-2812-BIS	23

		wide											
2	18835 Hwy 1804	na	Widening				0.03	0.01	48.197245	-103.023086	4-154-96 Williams County	NWO-2010-2812-BIS	23
3	18835 Hwy 1804	na	Widening				0.19	0.04	48.197615	-103.023758	33-155-96 Williams County	NWO-2010-2812-BIS	23

The U.S. Army Corps of Engineers verifies that the requested activity(s) meet the criteria of the listed NWPs.

Signed: _____ North Dakota Regulatory Office

Verification Date: 3 February 2015 Expiration Date: 18 March 2017

***This NWP verification is subject to the activity meeting all General and Regional Conditions applicable to the 2012 NWPs reissuance. For this authorization to remain valid, you must meet all Regional and General Conditions and Section 401 Water Quality Certification Requirements, identified in the applicable Nationwide Permit Fact Sheet. All Fact Sheets and Section 401 Water Quality Certification Requirements are provided on the North Dakota Regulatory Office's website at https://www.nwo.usace.army.mil/html/od-rnd/factsheet.htm.**

****Project Compliance Certification.** In compliance with General Condition 26, you are required to submit the following project compliance certification within thirty (30) days of project completion. [**Please check all applicable statements**]

[ ] I certify that I have completed the project as permitted.
[ ] I certify that I have completed a modified version of the project.
[ ] I certify that I have completed all required mitigation.

Permittee's Signature:_____ **Date:**_____

***** Special Conditions.**

NONE

FACT SHEET
NATIONWIDE PERMIT 23
(2012)

APPROVED CATEGORICAL EXCLUSIONS.

Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP. (Sections 10 and 404)

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters.

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those

species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed

activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer

shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. <u>Discovery of Previously Unknown Remains and Artifacts</u>. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. <u>Designated Critical Resource Waters</u>. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the

designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of

the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____

(Transferee)

_____

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification—(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the

PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either: (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition
20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information: (1) Name, address and telephone numbers of the prospective permittee; (2) Location of the proposed project; (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans); (4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the

delineation has been submitted to or completed by the Corps, as appropriate; (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act. (c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used. (d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. (2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. (3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section

305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction notifications to expedite agency coordination.

Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

2012 Nationwide Permits
Regional Conditions
Omaha District
State of North Dakota

The following Nationwide Permit regional conditions will be used in the State of North Dakota. Regional conditions are placed on Nationwide Permits to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns.

Wetlands Classified as Peatlands – Revoked for Use

All Nationwide Permits, with the exception of 3, 5, 20, 32, 38 and 45, are revoked for use in peatlands in North Dakota.

Peatlands are saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Peatlands can be primarily classified into ombrotrophic bogs and minerotrophic fens; the latter subdivided into poor, moderate-rich, and extreme-rich fens, each with distinctive indicator species, community physiognomy, acidity, alkalinity, and base cation content.

Wetlands Classified as Peatlands – Pre-construction Notification Requirement

For Nationwide Permits 3, 5, 20, 32, 38, and 45 permittees must notify the Corps in accordance with General Condition 31 (Notification) prior to initiating any regulated activity impacting peatlands in North Dakota.

Waters Adjacent to Natural Springs – Pre-construction Notification Requirement

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in North Dakota. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

Missouri River, including Lake Sakakawea and Lake Oahe within the State of North Dakota – Pre-construction Notification Requirement

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity in the Missouri River, including Lake Sakakawea and Lake Oahe, within the State of North Dakota.

Borrow Site Identification – All Nationwide Permits

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

Counter-sinking Culverts and Associated Riprap – All Nationwide Permits

That culverts and riprap proposed to be installed within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota shall be installed one foot below the natural streambed. The 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm.

REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS

Nationwide Permit 7 – Outfall Structures and Associated Intake Structures and Nationwide Permit 12 – Utility Line Activities

Intake Structures - Intake screens with a maximum mesh opening of 1/4-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed ½-foot per second.

Pumping plant sound levels will not exceed 75 dB at 50 feet.

Intakes located in Lake Sakakawea, above river mile 1519, are subject to the following conditions:

- The intakes shall be floating.
- At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
- If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.
- If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to ¼ foot per second.

Intakes located in Lake Sakakawea, below river mile 1519, and in the Missouri River below Garrison Dam are subject to the following conditions:

- The intakes shall be submerged.
- At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
- The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
- If the 20-foot depth is not attainable, then the intake velocity shall be limited to ¼-foot per second with the intake placed at the maximum practicable attainable depth.

Nationwide Permit 11 – Temporary Recreational Structures - Boat Docks

a. If future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

b. No boat dock shall be located on a sandbar or barren sand feature located in or along the banks of the Missouri River.

c. The farthest point riverward on the dock located on the Missouri River proper shall not exceed a total length of 30 feet from the ordinary high water line found along the high bank out into the River. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.

d. Any boat dock located on the Missouri River shall be anchored to the top of the high bank.

e. Any boat dock located within an excavated bay or marina off the main river channel may be anchored to the bay or marina bottom with spuds.

Nationwide Permit 13 - Bank Stabilization

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota.

Nationwide Permit 23 - Approved Categorical Exclusions

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota. In addition to information required by General Condition 31, permittees must identify the approved categorical exclusion that applies and provide documentation that the project fits the categorical exclusion.

Nationwide Permit 27 - Aquatic Habitat Restoration, Establishment and Enhancement Activities

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota.

GENERAL CONDITIONS (REGIONAL ADDITIONS)

General Condition 3- Spawning Areas

No regulated activity within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota or on the North Dakota Game and Fish Department's website as a North Dakota Public Fishing Water shall occur between 15 April and 1 June. No regulated activity within the Red River of the North shall occur between 15 April and 1 July. North Dakota Public Fishing Waters can be accessed at: http://gf.nd.gov/fishing/nd-fish-wat.html. The 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm.

General Condition 6 – Suitable Material

Permittees are reminded that General Condition No. 6 prohibits the use of unsuitable material. In addition, organic debris, some building waste, and materials excessive in fines are not suitable material. Specific verbiage on prohibited materials can be accessed on the North Dakota Regulatory Office's website at: http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm.

General Condition 9 - Management of Water Flows

Permittees are reminded that water flow management addressed in General Condition 9 is applicable to all aspects of a permitted project, including temporary features.

General Condition 31 – Pre-construction Notification

Prospective permittees should be aware that a **field delineation** may be required for applications where notification is required in accordance with General Condition 31 and/or mitigation may be required. The Corps 1987 Wetland Delineation Manual and applicable Regional Supplements to the Manual can be accessed on the North Dakota Regulatory Office's website at: http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm.

NORTH DAKOTA
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION
Gold Seal Center, 918 E. Divide Ave.
Bismarck, ND 58501-1947
701.328.5200 (fax)
www.ndhealth.gov

Construction and Environmental Disturbance Requirements

These represent the minimum requirements of the North Dakota Department of Health. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect the waters of the State of North Dakota. All projects will be designed and implemented to restrict the losses or disturbances of soil, vegetative cover, and pollutants (chemical or biological) from a site.

Soils

Prevent the erosion of exposed soil surfaces and trapping sediments being transported. Examples include, but are not restricted to, sediment dams or berms, diversion dikes, hay bales as erosion checks, riprap, mesh or burlap blankets to hold soil during construction, and immediately establishing vegetative cover on disturbed areas after construction is completed. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, or land resources will be protected against compaction, vegetation loss, and unnecessary damage.

Surface Waters

All construction which directly or indirectly impacts aquatic systems will be managed to minimize impacts. All attempts will be made to prevent the contamination of water at construction sites from fuel spillage, lubricants, and chemicals, by following safe storage and handling procedures. Stream bank and stream bed disturbances will be controlled to minimize and/or prevent silt movement, nutrient upsurges, plant dislocation, and any physical, chemical, or biological disruption. The use of pesticides or herbicides in or near these systems is forbidden without approval from this Department.

Fill Material

Any fill material placed below the high water mark must be free of top soils, decomposable materials, and persistent synthetic organic compounds (in toxic concentrations). This includes, but is not limited to, asphalt, tires, treated lumber, and construction debris. The Department may require testing of fill materials. All temporary fills must be removed. Debris and solid wastes will be removed from the site and the impacted areas restored as nearly as possible to the original condition.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION

FUEL COST ADJUSTMENT CLAUSE

Revision Date: 9/8/2006

Introduction

This Special Provision provides for price adjustments to the Contract when significant changes in the cost of motor fuels and burner fuels occur while completing the Contract work. Participation in fuel cost adjustment program is not mandatory. A Contractor is not required to notify the Department at the time of submitting bids whether the Contractor will or will not participate in the fuel cost adjustment provision.

The North Dakota Department of Transportation (NDDOT) will send the low responsible bidder a "Fuel Cost Adjustment Affidavit" (SFN 58393) with the proposed Contract. The Contractor shall return a completed Fuel Adjustment Affidavit with the signed Contract as specified in Standard Specification Section 103.06, Execution and Approval of the Contract. The affidavit shall be returned on all Contracts with this provision even if the Contractor elects not to participate in the provision.

Compensation adjustments for motor fuels and burner fuels consumed in prosecuting the Contract shall be determined by the Engineer in accordance with the provisions set forth herein. Compensation adjustments will be assessed monthly for the cost of the motor fuels and burner fuels whenever the Current Fuel Index (CFI) is outside the given threshold of the Base Fuel Index (BFI) for the Contract.

If the Contractor has a fixed price for fuel for motor or burner fuels to complete the work, no fuel cost adjustments will be made for that fuel type. If there is no fixed fuel price for motor or burner fuels, participation in the Fuel Adjustment provision is the decision of the prime Contractor.

If the prime Contractor decides not to participate, no fuel cost adjustments will be made to the Contract for the Contractor or any subcontractors. If the prime Contractor elects to participate in the fuel cost adjustment provision, the prime Contractor shall include the anticipated fuel cost of subcontractors who wish to participate. If fuel cost adjustments are made to the Contract, the prime Contractor shall ensure that participating subcontractors including second and lower tier, are included in the adjustments in proportion to the percentage of work and anticipated fuel cost by that subcontractor.

Fuel Indexes

Each month, NDDOT will record the average wholesale price for No. 2 diesel fuel and the average wholesale price for unleaded gasoline (87 octane). The monthly average will be the average of the daily rack prices for the month as reported by DTN Energy for Fargo ND.

The burner fuel index will be the No. 2 diesel fuel index regardless of the type of burner fuel actually used.

The Base Fuel Index (BFI) price for motor fuels and burner fuel to be used in the Contract will be the average wholesale price for the month prior to the bid opening.

The Current Fuel Index (CFI) price for motor fuels and burner fuel to be used for each monthly adjustment will be the average wholesale price for the month prior to the adjustment month.

Fuel Ratio

For motor fuels diesel and unleaded gas, the fuel ratio of the Contract will be determined by dividing the Contractor's affidavit costs for each motor fuel by the original Contract amount.

For burner fuels, the fuel ratio of the contract will be determined by dividing the Contractor's affidavit cost for burner fuels by the original Contract amount of plant-mixed hot bituminous pavement paid by the ton. Asphalt cement, binders and other miscellaneous bituminous items shall not be included.

The fuel ratio of the contract for motor and burner fuels will remain the same throughout the length of the contract. The sum of the affidavit fuel costs shall not exceed 15% of the original Contract amount.

The fuel ratio for the three fuel types will be determined by the following equation:

$$\textbf{Fuel Ratio}_{(x, y, z)} = \textbf{Affidavit Cost}_{(x, y, z)} / \textbf{Original Contract Amount}_{(x, y, z)}$$

(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel
Fuel Ratio$_{(x, y, z)}$	=	Fuel ratio of the contract for each respective fuel type
Affidavit Cost$_{(x, y, z)}$	=	Fuel costs from Fuel Adjustment Affidavit (SFN 58393)
Original Contract Amount$_{(x, y)}$	=	Total of the original contract amount excluding lane rental, and Part B of the bid (when A+B bidding is used), if applicable.
Original Contract Amount$_{(z)}$	=	Total original contract amount for all hot bituminous pavement bid items combined, excluding bid items for asphalt cement, sawing and sealing joints, coring, etc. Only hot bituminous pavement bid items measured by the Ton will be included in the calculation.

Cost Change

The monthly change in fuel costs will be determined by the following equation:

$$\textbf{Cost Change}_{(x, y, z)} = (\textbf{CFI}_{(x, y, z)} - \textbf{BFI}_{(x, y, z)}) / \textbf{BFI}_{(x, y, z)}$$

(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel (use diesel prices)
Cost Change$_{(x, y, z)}$	=	The relative change in the current CFI and the BFI for each fuel type
CFI$_{(x, y, z)}$	=	Current Fuel Index for each fuel type
BFI$_{(x, y, z)}$	=	Base Fuel Index for each fuel type

Contract Adjustments

Contract adjustments will be made for the cost of motor and burner fuels whenever the cost change exceeds a ±0.10 threshold. No fuel cost adjustment will be made for work done under liquidated damages. Adjustments will be determined for Motor Fuel (diesel), Motor Fuel (unleaded), and Burner Fuel (burner) separately and shall be computed on a monthly basis.

When the cost change is greater than 0.10, the rebate to the Contractor for each fuel type shall be computed according to the following formulas:

$$\mathbf{FCA_{(x,\,y,\,z)} = Fuel\ Ratio_{(x,\,y,\,z)} \times Estimate_{(x,\,y,\,z)} \times (\ Cost\ Change_{(x,\,y,\,z)} - 0.10\ )}$$

(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel
$FCA_{(x,\,y,\,z)}$	=	Fuel Cost Adjustment for each of the fuel types
$Fuel\ Ratio_{(x,\,y,\,z)}$	=	Fuel Ratio for each of the fuel types
$Estimate_{(x,\,y)}$	=	The monthly total of work done on estimates issued in the current month excluding incentive or disincentive payments, pay factor adjustments and any work completed under liquidated damages.
$Estimate_{(z)}$	=	The monthly total of hot bituminous pavement work done on estimates issued in the current month, excluding bid items for asphalt cement, sawing and sealing joints, coring, etc. Only hot bituminous pavement bid items measured by the Ton will be included in the calculation. Hot bituminous pavement work completed under liquidated damages will not be included.
$Cost\ Change_{(x,\,y,\,z)}$	=	The monthly change in fuel costs for each of the fuel types

When the cost change is less than -0.10, the credit to the Department for each fuel type shall be computed according to the following formulas:

$$\mathbf{FCA_{(x,\,y,\,z)} = Fuel\ Ratio_{(x,\,y,\,z)} \times Estimate_{(x,\,y,\,z)} \times (\ Cost\ Change_{(x,\,y,\,z)} + 0.10\ )}$$

(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel
$FCA_{(x,\,y,\,z)}$	=	Fuel Cost Adjustment for each of the fuel types
$Fuel\ Ratio_{(x,\,y,\,z)}$	=	Fuel Ratio for each of the fuel types
$Estimate_{(x,\,y)}$	=	The monthly total of work done on estimates issued in the current month excluding any incentive or disincentive payments, pay factor adjustments and any work completed under liquidated damages.
$Estimate_{(z)}$	=	The monthly total of hot bituminous pavement work done on estimates issued in the current month, excluding bid items for asphalt cement, sawing and sealing joints, coring, etc. Only hot bituminous pavement bid items measured by the Ton will be included in the calculation. Hot bituminous pavement work completed under liquidated damages will not be included.
$Cost\ Change_{(x,\,y,\,z)}$	=	The monthly change in fuel costs for each of the fuel types

Payments

Adjustments will be determined by the Engineer monthly. Adjustments will be made under the following spec and code for each fuel type:

109 0100	Motor Fuels (Diesel)
109 0200	Motor Fuels (Unleaded)
109 0300	Burner Fuel

When significant payment adjustments are made on final estimates to account for final in-place measured quantities, the Engineer may prorate the adjustments back to the months when the work was done.

Attachments

For informational purposes, a ‘Fuel Cost Adjustment Affidavit’ (SFN 58393) is included as Attachment A.

FUEL COST ADJUSTMENT AFFIDAVIT

North Dakota Department of Transportation, Construction Services
SFN 58393 (08-2006)

Attachment A

Project Number

The Contractor is not required to notify the Department at the time of submitting bids whether he will or will not participate in the fuel cost adjustment program. The Contractor shall return the affidavit on all Contracts with this Provision even if the Contractor elects not to participate.

Check the box for each fuel type that has a fixed price.
No adjustments in fuel price will be made for the boxes that are checked.

☐ Diesel ☐ Unleaded ☐ Burner Fuel

Does your company elect to participate in a fuel adjustment for this contract for the fuels that do not have a fixed price?
No adjustments in fuel prices will be made if **No** is checked.

☐ Yes ☐ No

If yes, provide the total dollars for each of the applicable fuels.

Diesel (x)	$		
Unleaded (y)	$		
Burner Fuel (z)	$		
Sum (x+y+z)	$	% of Original Contract Amount	%*

*The sum of the x, y, and z may not exceed 15% of the original contract amount.

Under the penalty of law for perjury of falsification, the undersigned,

_____, _____
Name Title

of _____, here by certifies that the documentation is submitted in good
Contractor

faith, that the information provided is accurate and complete to the best of their knowledge and belief, and that the monetary amount identified accurately reflects the cost for fuel, and that they are duly authorized to certify the above documentation on behalf of the company.

I hereby agree that the Department or its authorized representative shall have the right to examine and copy all Contractor records, documents, work sheets, bid sheets and other data pertinent to the justification of the fuel costs shown above.

_____ **X** _____
Date Signed

State of _____

County of _____

Subscribed and sworn to before me this _____ day of _____, _____.

(Seal) **X** _____
Signature of Notary Public

My Commission Expires _____