NO. 25

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSAL

URBAN FEDERAL AID PROJECT NO. SU-8-992(036)037 (PCN-20057)

2.559 Miles

GRADING, SALVAGED BASE, PCC PAVEMENT, CURB & GUTTER, SIDEWALK, STORM SEWER, SANITARY SEWER, WATERMAIN, SIGNING, PAVEMENT MARKING, LIGHTING AND INCIDENTALS

WEST FARGO/FARGO 12TH AVE NW FROM CR19 TO 45TH ST

CASS COUNTY

DBE Race Neutral Goal - 0%

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 October 09, 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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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

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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.

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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.

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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

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION(RN)

North Dakota Department of Transportation, Civil Rights Division
SFN 52012 (Rev. 07-2012)

FORM A

Contractor		Phone
Job No.	Project No.	Bid Opening Date

By noon (Central time) on the next work day following the bid opening, all apparent low bidders must provide a list of the DBE firms intended for use on this project to the NDDOT Civil Rights Division. The information provided may be submitted on this Form A or on a computer-generated form, giving the same information, attached to this Form A. If the prime contractor intends to use DBE quotes received from a subcontractor, the prime contractor **must** include the subcontractor's Form A information in the prime contractor's Form A.

PRINT ALL NUMBERS CLEARLY AND LEGIBLY.

1. For each DBE firm, list the specific bid item numbers to be performed and the total dollar value of the contract:
   a. If the DBE firm will perform only a portion of a bid item (supply, haul, etc.), this **must** be so noted, in parenthesis, after the bid item number. **The bidder must state why the DBE was not used for the entire bid item.**
   b. For DBE subcontractors, suppliers (regular dealers), and manufacturers, **list only the amount of work to be completed with each DBE's own employees and equipment.**
   c. For DBE trucking firms, **list the amount of hauling to be performed by the DBE with its own trucks and employees;** or the fees or commissions earned on non-DBE leased trucks. However, if the DBE is leasing trucks from a non-DBE firm, including an owner-operator, you can count the total value of the services provided by the non-DBE, not to exceed the total value of the services provided by the DBE-owned trucks. (See page 9, number 4, of this special provision for more detailed information.)
2. DBE prime contractors **must** list the work they will perform with their **own forces** and any work subcontracted to or materials purchased from other DBEs.
3. If the information provided on Form C **differs** from the information provided on this Form A (bid item numbers, quantities, or dollar amounts), the apparent low bidder or subcontractor **must** provide, with the Form C, a written explanation for the difference.
4. The apparent low bidder or subcontractor **must** use the DBEs listed for the intended work indicated on Form C.
5. DBE bidders **must** list the work they will perform with their **own employees and equipment** and any work subcontracted to or materials purchased from other DBEs.

DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			Total Contract Dollar Value $
Percent DBE will do with own equipment/forces Percent Non-DBE will do (trucking only)	= =	% %	If Regular Dealer, X 60% = $

DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			Total Contract Dollar Value $
Percent DBE will do with own equipment/forces Percent Non-DBE will do (trucking only)	= =	% %	If Regular Dealer, X 60% = $

DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			Total Contract Dollar Value $
Percent DBE will do with own equipment/forces Percent Non-DBE will do (trucking only)	= =	% %	If Regular Dealer, X 60% = $

FORM A (continued)

DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			Total Contract Dollar Value $
Percent DBE will do with own equipment/forces = % Percent Non-DBE will do (trucking only) = %		If Regular Dealer, X 60% =	$

DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			Total Contract Dollar Value $
Percent DBE will do with own equipment/forces = % Percent Non-DBE will do (trucking only) = %		If Regular Dealer, X 60% =	$

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DBE Firm			
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DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			Total Contract Dollar Value $
Percent DBE will do with own equipment/forces = % Percent Non-DBE will do (trucking only) = %		If Regular Dealer, X 60% =	$

Use additional pages, following the same format, if necessary.

The NDDOT DBE Liaison Officer can be contacted at:

CIVIL RIGHTS DIVISION
ND DEPARTMENT OF TRANSPORTATION
608 E BOULEVARD AVE
BISMARCK ND 58505-0700

dlaub@nd.gov
phone (701) 328-2576
fax (701) 328-1965, (701) 328-0343

BID ITEMS

Project: SU-8-992(036)037 (PCN-20057)

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	107	0100	RAILWAY PROTECTION INSURANCE	L SUM	1.				
003	201	0330	CLEARING & GRUBBING	L SUM	1.				
004	202	0112	REMOVAL OF CONCRETE	SY	523.				
005	202	0130	REMOVAL OF CURB & GUTTER	LF	366.				
006	202	0165	REMOVE & SALVAGE BASE & SURFACING	TON	38,332.				
007	202	0170	REMOVAL OF CULVERTS-ALL TYPES & SIZES	LF	2,158.				
008	202	0174	REMOVAL OF PIPE ALL TYPES AND SIZES	LF	1,647.				
009	202	0210	REMOVAL OF MANHOLES	EA	4.				
010	202	0235	REMOVAL OF CATCH BASIN	EA	1.				
011	202	0312	REMOVE EXISTING FENCE	LF	269.				
012	203	0101	COMMON EXCAVATION-TYPE A	CY	41,576.				
013	203	0109	TOPSOIL	CY	49,087.				
014	203	0121	TOPSOIL-WETLAND	CY	1,625.				
015	203	0138	COMMON EXCAVATION-SUBCUT	CY	19,909.				
016	203	0140	BORROW-EXCAVATION	CY	88,127.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
017	216	0100	WATER	M GAL	3,998.				
018	251	0100	SEEDING CLASS I	ACRE	7.100				
019	251	0200	SEEDING CLASS II	ACRE	32.500				
020	253	0101	STRAW MULCH	ACRE	32.400				
021	253	0201	HYDRAULIC MULCH	ACRE	7.100				
022	255	0103	ECB TYPE 3	SY	868.				
023	256	0100	RIPRAP GRADE I	CY	66.800				
024	260	0200	SILT FENCE SUPPORTED	LF	2,685.				
025	260	0201	REMOVE SILT FENCE SUPPORTED	LF	2,685.				
026	261	0112	FIBER ROLLS 12IN	LF	37,570.				
027	261	0113	REMOVE FIBER ROLLS 12IN	LF	17,505.				
028	262	0100	FLOTATION SILT CURTAIN	LF	45.				
029	262	0101	REMOVE FLOTATION SILT CURTAIN	LF	45.				
030	302	0050	TRAFFIC SERVICE AGGREGATE	TON	1,500.				
031	302	0100	SALVAGED BASE COURSE	TON	59,653.				
032	411	0105	MILLING PAVEMENT SURFACE	SY	243.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
033	430	0500	COMMERCIAL GRADE HOT MIX ASPHALT	TON	427.				
034	430	2000	PATCHING	TON	225.				
035	550	0312	10.5IN NON REINF CONCRETE PVMT CL AE-DOWELED	SY	72,990.				
036	702	0100	MOBILIZATION	L SUM	1.				
037	704	0100	FLAGGING	MHR	500.				
038	704	1000	TRAFFIC CONTROL SIGNS	UNIT	4,266.				
039	704	1051	TYPE II BARRICADE	EA	2.				
040	704	1052	TYPE III BARRICADE	EA	55.				
041	704	1060	DELINEATOR DRUMS	EA	200.				
042	704	1072	FLEXIBLE DELINEATORS	EA	42.				
043	706	0500	AGGREGATE LABORATORY	EA	1.				
044	708	1531	INLET PROTECTION-FIBER ROLL 12IN	EA	73.				
045	708	1533	REMOVAL INLET PROTECTION-FIBER ROLL 12IN	EA	48.				
046	708	1540	INLET PROTECTION-SPECIAL	EA	165.				
047	708	1541	REMOVE INLET PROTECTION-SPECIAL	EA	39.				
048	709	0151	GEOSYNTHETIC MATERIAL TYPE R1	SY	88,231.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
049	710	0250	TEMPORARY BYPASS DRAINAGE SYSTEM	EA	1.				
050	714	0115	PIPE CONC REINF 12IN CL III-STORM DRAIN	LF	265.				
051	714	0210	PIPE CONC REINF 15IN CL III-STORM DRAIN	LF	5,574.				
052	714	0315	PIPE CONC REINF 18IN CL III-STORM DRAIN	LF	1,702.				
053	714	0405	PIPE CONC REINF 21IN CL III-STORM DRAIN	LF	1,871.				
054	714	0620	PIPE CONC REINF 24IN CL III-STORM DRAIN	LF	1,882.				
055	714	0710	PIPE CONC REINF 27IN CL III-STORM DRAIN	LF	1,797.				
056	714	0825	PIPE CONC REINF 30IN CL III-STORM DRAIN	LF	930.				
057	714	0910	PIPE CONC REINF 36IN CL III-STORM DRAIN	LF	1,098.				
058	714	1010	PIPE CONC REINF 42IN CL III-STORM DRAIN	LF	394.				
059	714	1110	PIPE CONC REINF 48IN CL III-STORM DRAIN	LF	780.				
060	714	1212	PIPE CONC REINF 54IN CL III-STORM DRAIN	LF	928.				
061	714	1312	PIPE CONC REINF 60IN CL III-STORM DRAIN	LF	512.				
062	714	1412	PIPE CONC REINF 66IN CL III STORM DRAIN	LF	281.				
063	714	1512	PIPE CONC REINF 72IN CL III STORM DRAIN	LF	449.				
064	714	3000	END SECT-CONC REINF 12IN	EA	3.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
065	714	3005	END SECT-CONC REINF 15IN	EA	17.				
066	714	3010	END SECT-CONC REINF 18IN	EA	1.				
067	714	3015	END SECT-CONC REINF 21IN	EA	1.				
068	714	3020	END SECT-CONC REINF 24IN	EA	3.				
069	714	4108	PIPE CONDUIT 27IN	LF	187.				
070	714	4163	PIPE CONDUIT 27IN-JACKED OR BORED	LF	100.				
071	714	5805	END SECT CORR STEEL .064IN 15IN	EA	1.				
072	714	5825	END SECT CORR STEEL .079IN 30IN	EA	1.				
073	714	5845	END SECT CORR STEEL .109IN 54IN	EA	1.				
074	714	5855	END SECT CORR STEEL .109IN 72IN	EA	1.				
075	714	7040	SANITARY SEWER SERVICE CONNECTION	EA	14.				
076	714	8050	PIPE STEEL SMOOTH WALL .719IN 54IN BORED	LF	135.				
077	714	8500	CASING PIPE 20IN	LF	153.				
078	714	8516	CASING PIPE 36IN	LF	100.				
079	714	9680	PLUG PIPE-ALL TYPES & SIZES	EA	1.				
080	714	9696	EDGEDRAIN NON PERMEABLE BASE	LF	26,753.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
081	722	0100	MANHOLE 48IN	EA	60.				
082	722	0110	MANHOLE 60IN	EA	23.				
083	722	0120	MANHOLE 72IN	EA	5.				
084	722	0130	MANHOLE 84IN	EA	5.				
085	722	0140	MANHOLE 96IN	EA	8.				
086	722	0220	MULTI MANHOLE	EA	5.				
087	722	0300	MANHOLE SANITARY	EA	27.				
088	722	2490	MANHOLE STORM CONNECTION	EA	9.				
089	722	2500	MANHOLE SPECIAL	EA	2.				
090	722	3291	ABANDON SANITARY SEWER MANHOLE	EA	12.				
091	722	3295	ABANDON STORM SEWER MANHOLE	EA	9.				
092	722	3297	ABANDON STORM SEWER	LF	14,011.				
093	722	3499	INLET	EA	41.				
094	722	3510	INLET-TYPE 2	EA	30.				
095	722	3520	INLET-TYPE 2 DOUBLE	EA	14.				
096	722	6140	ADJUST GATE VALVE BOX	EA	27.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
097	722	6200	ADJUST MANHOLE	EA	4.				
098	722	6240	ADJUST UTILITY APPURTENANCE	EA	1.				
099	724	0210	FITTINGS-DUCTILE IRON	LBS	4,180.				
100	724	0270	REMOVE GATE VALVE & BOX	EA	3.				
101	724	0300	GATE VALVE & BOX 6IN	EA	3.				
102	724	0314	GATE VALVE & BOX 12IN	EA	4.				
103	724	0410	HYDRANT-INSTALL 5IN	EA	4.				
104	724	0427	ADJUST HYDRANT	EA	15.				
105	724	0430	REMOVE HYDRANT	EA	1.				
106	724	0530	TAPPING SLEEVE & VALVE 12IN X 6IN	EA	2.				
107	724	0540	TAPPING SLEEVE & VALVE 12IN X 8IN	EA	1.				
108	724	0719	WATER LINE 1 1/2IN PVC	LF	90.				
109	724	0810	WATERMAIN 6IN PVC	LF	174.				
110	724	0830	WATERMAIN 8IN PVC	LF	111.				
111	724	0850	WATERMAIN 12IN PVC	LF	1,829.				
112	724	0852	WATERMAIN 16IN PVC	LF	40.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
113	724	0944	CONNECTION TO EXISTING MAIN	EA	21.				
114	724	1095	BORE SANITARY SEWER PIPE	LF	593.				
115	724	1100	SANITARY SEWER 4IN	LF	82.				
116	724	1110	8IN SANITARY SEWER PIPE	LF	642.				
117	724	1115	10IN SANITARY SEWER PIPE	LF	432.				
118	724	1117	12IN SANITARY SEWER PIPE	LF	2,598.				
119	724	1118	15IN SANITARY SEWER PIPE	LF	1,385.				
120	724	1120	6IN SEWER SERVICE PIPE	LF	700.				
121	724	1121	18IN SANITARY SEWER PIPE	LF	1,562.				
122	724	1125	24IN SANITARY SEWER PIPE	LF	3,575.				
123	724	6005	CORPORATION COCK & SWIVEL BEND 1IN	EA	1.				
124	724	6013	ABANDON VALVE BOX	EA	10.				
125	724	7018	1IN CURB STOP & BOX-NEW SERVICE	EA	1.				
126	724	7020	1IN CU-TYPE K	LF	112.				
127	748	0120	CURB & GUTTER MOUNTABLE-TYPE I	LF	434.				
128	748	0140	CURB & GUTTER-TYPE I	LF	2,723.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
129	748	0190	CURB & GUTTER-TYPE I 30IN	LF	26,777.				
130	750	0030	PIGMENTED IMPRINTED CONCRETE	SY	1,483.				
131	750	0100	SIDEWALK CONCRETE	SY	9,315.				
132	750	0115	SIDEWALK CONCRETE 4IN	SY	4,459.				
133	750	0210	CONCRETE MEDIAN NOSE PAVING	SY	58.500				
134	750	1020	DRIVEWAY CONCRETE 8IN	SY	1,254.				
135	750	2115	DETECTABLE WARNING PANELS	SF	598.				
136	752	0600	FENCE CHAIN LINK	LF	37.				
137	752	0911	TEMPORARY SAFETY FENCE	LF	5,019.				
138	752	0922	FENCE REMOVE & RESET	LF	2,435.				
139	752	2100	VEHICLE GATE	EA	1.				
140	754	0110	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	824.700				
141	754	0112	FLAT SHEET FOR SIGNS-TYPE IV REFL SHEETING	SF	121.700				
142	754	0141	BARRICADE ASSEMBLY A	EA	6.				
143	754	0206	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	1,696.				
144	754	0592	RESET SIGN PANEL	EA	7.				

BID ITEMS

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price $$$$$	Unit Price 000	Amount $$$$$	Amount 00
145	754	0805	OBJECT MARKERS - CULVERTS	EA	25.				
146	754	9003	SALVAGE SIGN-TYPE D	EA	4.				
147	762	0112	EPOXY PVMT MK MESSAGE	SF	445.				
148	762	0430	SHORT TERM 4IN LINE-TYPE NR	LF	3,240.				
149	762	1280	PREFORMED THERMO PLASTIC PVMT MK MESSAGE	SF	1,524.				
150	762	1305	PREFORMED PATTERNED PVMT MK 4IN LINE-GROOVED	LF	31,104.				
151	762	1309	PREFORMED PATTERNED PVMT MK 8IN LINE-GROOVED	LF	3,817.				
152	762	1317	PREFORMED PATTERNED PVMT MK 16IN LINE-GROOVED	LF	142.				
153	762	1325	PREFORMED PATTERNED PVMT MK 24IN LINE-GROOVED	LF	326.				
154	766	0100	MAILBOX-ALL TYPES	EA	1.				
155	770	0001	LIGHTING SYSTEM	EA	1.				
156	772	0003	SIGNAL STANDARD FOUNDATION	EA	1.				
157	772	0100	PULL BOX	EA	2.				
158	772	0240	2IN DIAMETER RIGID CONDUIT	LF	258.				
159	772	0325	DETECTOR LOOP-POLYETHYLENE CONDUIT PRE-WIRED	LF	836.				
160	772	0330	LOOP LEAD-IN CONDUCTOR	LF	1,762.				

BID ITEMS

Project: SU-8-992(036)037 (PCN-20057)

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
161	772	0400	NO12 AWG 2 CONDUCTOR CABLE	LF	335.				
162	772	0401	NO12 AWG 3 CONDUCTOR CABLE	LF	15.				
163	772	0405	NO12 AWG 7 CONDUCTOR CABLE	LF	335.				
164	772	0490	SAW SLOT	LF	346.				
165	772	0695	TYPE V SIGNAL STANDARD	EA	1.				
166	772	9205	IT-PULL BOX	EA	10.				
167	772	9210	IT-2-2IN CONDUITS-TRENCHED	LF	5,387.				
168	910	0010	VIDEO INSPECTION - UNDERGROUND PIPE	EA	1.				
169	910	0480	TRASH RACK	EA	7.				
170	910	0570	MODIFY MANHOLE	EA	9.				
171	920	0099	PUMPING EQUIPMENT	EA	1.				
172	970	2011	AMUR MAPLE	EA	4.				
173	970	2050	COMMON HACKBERRY	EA	5.				
174	970	2155	SKYLINE HONEYLOCUST	EA	4.				
175	970	2456	PRAIRIE EXPEDITION AMERICAN ELM	EA	1.				
176	970	5295	COMMON PURPLE LILAC	EA	35.				

BID ITEMS

Project: SU-8-992(036)037 (PCN-20057)

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		Amount	
						$$$$$	000	$$$$$	00
177	**990**	**0400**	**PIPE CLEANOUT**	**EA**	**8.**				
178	**990**	**0450**	**ABANDON WELL**	**EA**	**8.**				
			TOTAL SUM BID						

Project: SU-8-992(036)037 (PCN-20057)

Type of Work: GRADING, SALVAGED BASE, PCC PAVEMENT, CURB & GUTTER, SIDEWALK, STORM SEWER, SANITARY SEWER, WATERMAIN, SIGNING, PAVEMENT MARKING, LIGHTING AND INCIDENTALS

County: CASS

Length: 2.5590 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 **NA**. 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.

THE FINAL COMPLETION DATE FOR THE PROJECT IS NOVEMBER 1, 2017. REFER TO PLAN NOTE 704-P01 FOR PHASES AND INTERIM COMPLETION DATES. REFER TO PLAN NOTE 704-P03 WINTER SUSPENSION REQUIREMENTS.

Project: SU-8-992(036)037 (PCN-20057)

Type of Work: GRADING, SALVAGED BASE, PCC PAVEMENT, CURB & GUTTER, SIDEWALK, STORM SEWER, SANITARY SEWER, WATERMAIN, SIGNING, PAVEMENT MARKING, LIGHTING AND INCIDENTALS

County: CASS

Length: 2.5590 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 #25, Project No. SU-8-992(036)037

Grading, Salvaged Base, PCC Pavement, Curb & Gutter, Sidewalk, Storm Sewer, Sanitary Sewer, Watermain, Signing, Pavement Marking, Lighting, and Incidentals

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NDDOT Supplemental Specifications dated October 1, 2015

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

SP DBE Program - Race Neutral dated November 9, 2012

E.E.O. Affirmative Action Requirements dated March 15, 2014

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

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

Required Contract Provisions Federal Aid Construction Contracts
(Form FHWA 1273 Rev. May 1, 2012)

Labor Rates from U.S. Department of Labor dated January 2, 2015, revised 6-5-15
(Mod. No. 1)

On-The-Job Training Program dated October 1, 2015

SP 3(14) Temporary Erosion & Sediment Best Management Practices

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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.

NOTICE

U.S. DEPARTMENT OF TRANSPORTATION

"HOT LINE"

As part of its continuing investigation into Highway Construction Contract Bid Rigging and abuses in the Disadvantaged Business Enterprise Program, the Inspector General for the Department of Transportation (DOT) has established a "HOT LINE" to receive information from contractors, suppliers, or anyone with knowledge of such activities.

The toll-free "HOT LINE' telephone number is 1-800-424-9071 and will be manned during normal working hours (8 a.m. to 5 p.m. EST). This operation is under the direction of DOT's Inspector General. All information will be treated confidentially and anonymity will be respected.

CALL
Inspector General's 'HOT LINE'
Toll Free 1-800-424-9071
Washington, DC Area:
202-366-1461
Fax: 202-366-7749

WRITE
Inspector General
Post Office Box 23178
Washington, DC 20026-0178

Email: hotline@oig.dot.gov

The field office address and telephone number for NORTH DAKOTA is:

CHICAGO REGIONAL OFFICE

Special Agent-in-Charge
Commercial: 312-353-0106
111 N. Canal St., Suite 677
Chicago, Illinois 60606

CERTIFICATION

I hereby certify the attached supplemental specifications effective on October 1, 2015.

/S/ 6/1/15

Bob Fode, P.E., Director
Office of Project Development

Date

North Dakota
Department of Transportation

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SUPPLEMENTAL SPECIFICATION
REVISIONS

Effective Date: 10/01/2015

The following specifications are supplementary to the 2014 Edition of the *Standard Specifications for Road and Bridge Construction* as they apply to this Contract. Page references in this document apply to the hard bound, printed edition of the specifications (the "blue book") and the "as printed" version of the specifications on the Department's website.

101.03 ABBREVIATIONS **PAGE 8** **10/01/15**

Delete the line for "ACPA American Concrete Precast Association" and replace it with the following:

ACPA American Concrete Pipe Association

Add the following item to Section 101.03:

NPCA National Precast Concrete Association
SWPPP Storm Water Pollution Prevention Plan

101.04 DEFINITIONS **PAGE 10** **10/01/15**

Delete the definition for "Sieve" and replace it with the following:

Sieve. U.S.A. Standard Sieve, as defined in ASTM E 11. The specified percent passing for each sieve is measured by weight.

104.02 C Significant Changes to the Character of Work **PAGE 34** **10/01/15**

Delete the following paragraph in its entirety:

If the Contractor believes an alteration in the work is a significant change that necessitates a contract revision, the Contractor shall notify the Engineer in accordance with Section 104.03, "Contractor Requested Contract Revisions".

104.05 A Submission of the Claim **PAGE 37** **10/01/15**

Replace the fourth paragraph of Section 104.05 with the following:

Provide a claim submittal to the Engineer that contains, at a minimum, the following information for each claim issue included on the *Notice of Intention to File a Claim* (SFN 16743). Failure to supply the following information for each claim issue constitutes a waiver of claim for addional compensation for each submitted claim item.

105.03 B Scheduling **PAGE 45** **10/01/15**

Replace Section 105.03 B with the following:

B. Scheduling.

1. General.
In order to minimize interference with traffic operations, the Contractor, Engineer, and utility owner shall agree to a detailed schedule before starting work.

2. Utility Coordination Meeting.
If the contract requires a utility coordination meeting, arrange the meeting with the utility owners and the Engineer to occur no later than two weeks after the notice to proceed. At the meeting, provide an agenda and a tentative construction schedule for planning utility relocations and adjustments; after the meeting, publish minutes and distribute a copy to all meeting attendees.

106.02 D Aggregate Source Limitations **PAGE 58** **10/01/15**

Delete number 8 and replace it with the following:

8. In Stark County, within the 2-mile radius from the center of Section 30-137-92;

Delete number 11 and replace it with the following:

11. In Hettinger County, within the 1-mile radius from the center of Section 28-135-91;

107.17 REMOVED MATERIAL **PAGE 80** **10/01/15**

Replace Section 107.17 with the following:

107.17 REMOVED MATERIAL
Unless otherwise designated in the contract, removed material becomes the property of the Contractor.

If the Contractor determines that the material will be disposed of, the material must be disposed in one of the following ways:

A. Dispose of the material through a beneficial use. Apply for a beneficial use permit from the NDDoH by completing an *NDDOT Projects-Inert Waste Beneficial Use Application* (SFN 58981). Provide the Engineer with copies of all documents submitted to the NDDoH.

B. Dispose of the material at an approved permanent waste management facility.

C. If waste cannot be reasonably managed at a permanent waste management facility, obtain approval from the NDDoH for a variance to dispose of the inert waste at another site. Apply for a variance by completing an *NDDOT Projects-Inert Waste Disposal Variance Application* (SFN 54344). Provide the Engineer with copies of all documents submitted to the NDDoH.

   Obtain locations of permanent waste facilities, applications, and guidelines from the NDDoH, Division of Waste Management. View a list of municipal and inert waste landfills and review guidance on the NDDoH website: http://www.ndhealth.gov.

Include the cost of material disposal in the contract unit price of the relevant contract item.

108.03 D Measurement and Payment **PAGE 91** **10/01/15**

Replace Table 108-01 with the following:

Table 108-01
CPM Schedule Price Reductions

Days Late Submitting Update Schedule	Percentage Price Reduction to the Prorated Amount[1]
1	20
2	40
3	60
4	80
5	100

[1] The "prorated amount" is equivalent to the amount calculated for each update schedule submission in Section 108.03 D, Item 2.

108.06 B.1 General **PAGE 93** **10/01/15**

Replace the 6th paragraph of Section 108.06 B.1 with the following:

The Contractor's plea that the contract time was insufficient is not a valid reason for an extension of time. For calendar day and completion date contracts, the Department will not extend the contract time for delays encountered on holidays and during the period from November 15 to April 15. When the time as extended by the Department falls on a date that is a holiday, the Engineer will extend the contract time to the next business day.

109.01 J.2.b Computerized Loader Bucket Scales **PAGE 103** **10/01/15**

Delete the first paragraph and replace with the following:

Loader bucket scales may be used to weigh materials when the quantity of material included in the bid item list is less than 10,000 tons and for aggregates specified under Sections 420 "Bituminous Seal Coat", 421 "Microsurfacing", and 422 "Slurry Seal" regardless of quantity.

109.01 J.4.b(2) Hopper or Batch Scales **PAGE 105** **10/01/15**

Replace Section 109.01 J.4.b(2) with the following:

After the material has been weighed on the project scale and placed in a truck, weigh the loaded truck on a certified scale owned and operated by an entity other than the Contractor. Provide the tare weight of the truck along with the comparison weigh ticket.

109.01 J.6.a General **PAGE 106** **10/01/15**

Delete the second paragraph and replace with the following:

Document the weight of each load on a separate, sequentially numbered weigh ticket that has a maximum size of 5.5 × 8.5 inches. Provide one copy to the driver of the truck. The truck driver shall deliver the weigh ticket to the Engineer at the location where the material is incorporated into the work. The Engineer will reject loads that are not accompanied by a legible weigh ticket.

155.03 A.3 Water Measuring **PAGE 143** **10/01/15**

Replace the second paragraph in Section 155.03 A.3 with the following:

Use a water measuring system that:

- Delivers the designated quantity of water for each batch within the tolerance specified in Section 802.03 B.4, “Batching Water”;
- Automatically stops the water flow when the designated quantity has been delivered; and
- Is adjustable and has a calibrated indicator showing the quantity of water measured for each batch.

155.07 D Bridge Deck Overlay Finishing Machines **PAGE 147** **10/01/15**

Replace Section 155.07 D with the following:

D. Bridge Deck Overlays Finishing Equipment.

Use a finishing machine that is:

- Equipped with an oscillating screed or screeds with an effective weight of at least 75 pounds for each square foot of bottom face area, and provided with positive control of vertical position, the angle of tilt, and the shape of the crown. At least one oscillating screed shall be capable of consolidating the concrete to the specified density;
- Long enough to uniformly strike off and consolidate the width of lane to be paved
- Capable of forward and reverse motion under positive control;
- Travelling on rails with fully-adjustable and stable supports;
- Supported without the use of shims; and
- Not anchored to the concrete using powder actuated fasteners, unless that concrete will be subsequently overlaid.

203.02 EQUIPMENT **PAGE 163** **10/01/15**

Replace the equipment list in Section 203.02 with the following:

Equipment	Section
Vibratory Sheepsfoot/Pad Foot/Extended Pad Foot Rollers	151.01 E

203.04 B.1 Topsoil - Wetland **PAGE 165** **10/01/15**

Replace the second paragraph of Section 203.04 B.1 with the following:

Spread a minimum of 6 inches of wetland topsoil at mitigation sites and temporary wetland impact areas.

203.04 C Subcut **PAGE 165** **10/01/15**

Add the following paragraph to the end of Section 203.04 C:

Dispose of material removed from the subcut area as specified in Section 107.17, “Removed Material”.

216.06 Basis of Payment **PAGE 175** **10/01/15**

Replace Section 216.06 with the following:

Pay Item	Pay Unit
Water	M Gal

An “M Gal” is equivalent to 1,000 gallons.

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

251.03 D Seed Class **PAGE 182** **10/01/15**

Add the following footnote to Table 251-01:

[1] Substitute Thickspike or Stream bank Wheatgrass of the Critana, Banstock, Sodar, AC Polar or Elbee variety if Sideoats Grama is unavailable.

253.03 C Straw Mulch **PAGE 188** **10/01/15**

Delete the following sentence from this section:

At least 50 percent of the mulch by weight must be at least 8 inches in length.

262.04 A Installation **PAGE 201** **10/01/15**

Replace the first paragraph of Section 262.04 A with the following:

Attach anchor lines to the flotation device.

265.06 Basis of Payment **PAGE 204** **10/01/15**

Replace the first paragraph after the list of pay items with the following:

Include the cost for pipe, geosynthetic material, topsoil, and seed in the price bid for “Stabilized Construction Access”.

302.03 MATERIALS **PAGE 209** **10/01/15**

Replace table in Section 302.03 with the following:

Material	Section
Aggregates	816
Salvaged Base Course	817
Traffic Service Aggregate	816 Class 5; or 817

302.04 A.2 Gradation **PAGE 209** **10/01/15**

Replace the first paragraph in Section 302.04 A.2 with the following:

The Engineer will collect three samples for each 1,000 tons of material placed, except when more than 1,000 tons are placed in a day. If more than 1,000 tons are placed in a day, the Engineer will collect three samples for that day's placement. If the aggregate fails to meet the specified gradation, the Engineer will apply a price reduction as specified in Section 302.06 B, "Contract Price Adjustments".

302.04 C Surface Tolerance **PAGE 210** **10/01/15**

Replace Section 302.04 C with the following:

C. Surface Tolerance.
Unless one of the following surface tolerances is specified, construct the surface to within 0.08 feet of the proposed elevation.

1. Surface Tolerance Type B.
Use trimming equipment, including motor graders, equipped with automatic grade control to adjust for the cross slope and longitudinal profile. Construct the finished surface to within 0.04 feet of the proposed elevation.

Reincorporate material removed from high points during trimming into other portions of the base.

2. Surface Tolerance Type C.
Use roadbed planers to construct the finished surface. The Engineer will allow the base or surface course to be used as the grade reference when trimming shoulders. Construct the finished surface to within 0.04 feet of the proposed elevation.

Reincorporate material removed from high points during trimming into other portions of the base.

306.04 A.1 Gradation **PAGE 213** **10/01/15**

Replace the first paragraph in Section 306.04 A.1 with the following:

The Engineer will collect three samples for each 1,000 tons of material placed, except when more than 1,000 tons are placed in a day. If more than 1,000 tons are placed in a day, the Engineer will collect three samples for that day's placement. If the aggregate fails to meet the specified gradation, the Engineer will apply a price reduction as specified in Section 302.06 B, "Contract Price Adjustments".

401.03 B Tack Coat and Fog Seal. **PAGE 221** **10/01/15**

Delete Section 401.03 B and add the following:

B. Tack Coat.
Use a material from Table 401-01.

Table 401-01

Material	Section
SS-1h	818.02 F
MS-1	818.02 F
CSS-1h	818.02 E.1

When MS-1 is used it may be diluted by the supplier or the Contractor.

C. Fog Seal.
Use a material from Table 401-02.

Table 401-02

Material	Section
SS-1h	818.02 F
CSS-1h	818.02 E.1

401.04 A Application of Bitumen **PAGE 221** **10/01/15**

Delete Section 401.04 A and add the following:

A. Application of Bitumen.

1. General.
Prepare the surface by removing loose dirt and deleterious material.

Provide the Engineer with the manufacturer recommended application temperature ranges. During application, maintain the temperature of bitumen within the ranges recommended by the manufacturer.

Apply bitumen with a distributor on a compacted and stable surface. Use hand sprayers to cover irregular areas. Completely cover the area receiving the bitumen application.

If applying bitumen in multiple passes, overlap the bitumen along adjoining edges of the passes.

Protect the surfaces of structures and other roadway appurtenances against tracking and splattering.

2. Prime Coat.
Apply prime coat when the ambient air temperature is at least 40°F.

Allow the prime coat to cure a minimum of 48 hours before placing pavement.

3. Tack Coat.
Apply tack coat when the air temperature and existing mat temperature are at least 35°F.

Apply tack coat to a dry surface.

Allow tack coat to cure before applying surfacing material.

4. Fog Coat.
Apply fog coat when the ambient air temperature is at least 40°F.

Apply fog coat to a dry surface.

420.04 A General **PAGE 224** **10/01/15**

Replace Section 420.04 A with the following:

A. General.
Do not start seal work after September 1.

Allow material to cure as shown in Table 420-01 before applying seal coat materials.

Table 420-01 Curing Period	
Material Type	**Curing Period**
Prime Coat	4 days
Asphalt Cement Pavements	7 days
Emulsion Pavements	15 days

Schedule the work so that the last bitumen application of the day is sufficiently cured to allow installation of the short-term pavement marking before sunset.

420.04 D Cover Coat Material Application **PAGE 225** **10/01/15**

Replace the third paragraph with the following:

Within one minute following the application of the bitumen, spread the cover coat material uniformly over the bituminous material with an aggregate spreader. Apply cover material by hand to areas that are inaccessible to the aggregate spreader.

420.04 D Cover Coat Material Application **PAGE 225** **10/01/15**

Delete the eighth paragraph in its entirety.

430.03 F Commercial Grade Asphalt **PAGE 238** **10/01/15**

Replace the second paragraph of Section 430.03 F with the following:

The requirements of the following sections will not be applied to commercial grade asphalt:
- Section 430.04 A, “Contractor Quality Control Plan”;
- Section 430.04 B, “Engineer’s Quality Assurance Plan”;
- Section 430.04 C.2, “Determination of Specific Gravity”;
- Section 430.04 E, “QC Testing”; and
- Section 430.04 M, “Acceptance”.

430.04 D.1 General **PAGE 241** **10/01/15**

Replace the third paragraph of Section 430.04 D.1 with the following:

Submit the mix design a minimum of 10 calendar days before beginning paving operations. The Engineer will review the mix design. If the Engineer does not approve the mix design, revise the mix design and submit the revised mix design. Allow 10 calendar days for the Engineer to review a revised mix design before beginning paving operations.

430.04 D.2 Items to be Submitted **PAGE 242** **10/01/15**

Add the following item to Section 430.04 D.2:

e. If the mix contains RAP, submit a 50 pound sample of the milled material.

430.04 F Surface Preparation **PAGE 246** **10/01/15**

Replace the second paragraph of Section 430.04 F with the following:

Correct local irregularities in the existing surface before placing the first lift of bituminous material. If milling is specified, correct local irregularities after milling. Apply a tack coat to the surface before correcting the irregularities. Use the same type of mix that is required for the subsequent lift Use a pneumatic roller as specified in Section 151.01 A.3. “Self-Propelled Pnuematic-Tired Roller” to compact the mix.

430.04 G Patching **PAGE 247** **10/01/15**

Replace Section 430.04 G with the following:

G. Patching.
Remove existing broken or unstable surface material and replace that material with the same mixture specified for the next course.

Place the bituminous material in lifts not to exceed 3 inches and compact the material. Allow the patch material to cool to 130°F before placing additional material. If patching is required during the paving operation, allow the patch material to cool to 185°F before placing additional material.

430.04 H.1 General **PAGE 248** **10/01/15**

Delete the ninth paragraph of Section 430.04 H.1

430.04 I.3.c Intermediate Rolling **PAGE 250** **10/01/15**

Replace the second paragraph of Section 430.04 I.3.c with the following:

If roller tires pick up the bituminous material or there are excessive roller marks in the mat, the Engineer may allow the removal of the intermediate rolling operation if it appears to the Engineer that compaction is being achieved.

430.04 J Joints **PAGE 250** **10/01/15**

Replace Section 430.04 J with the following:

J. Joints.

1. General.
Place pavement against the surface of curbing, gutters, manholes, and similar structures uniformly near the contact surfaces so the pavement is slightly higher than the edge of the structure after compaction. Do not construct a joint on top of a joint from a previous lift.

2. Longitudinal Joints.
Construct longitudinal joints on successive lifts between 6 and 12 inches from the previous longitudinal joint.

Place and follow markings to guide the paver. Construct joints in a uniform line. Correct pavement edges that deviate from the uniform line and correct areas of the joint that vary from the intended location of the joint by more than 2 inches. Construct joints with tight seams and no visible segregation.

3. Transverse Joints.
Construct transverse joints on successive lifts a minimum of 12 feet from the previous transverse joint.

550.03 Materials **PAGE 261** **10/01/15**

Add the following to Section 550.03:

Develop a mix design with a maximum water-cement ratio of 0.40 when placing concrete with a slip form paving machine. Use the water-cement ratio shown in Section 802.01 B.2, “Concrete Class Designation” for all other paving methods.

550.04 H.1.d Final Surface Finish **PAGE 268** **10/01/15**

Replace Section 550.04 H.1.d with the following:

d. Final Surface Finish.

(1) General.
Uniformly texture the surface by dragging a seamless strip of stiff-fiber artificial grass carpet longitudinally along the full width of the pavement in a single pass.

Use and maintain a taut string line for operating the carpet drag. Attach the leading edge of the carpet drag to a bridge. If the Engineer determines it is not feasible to use a bridge or string line, other texturing methods will be allowed.

Maintain a clean carpet free of encrusted concrete.

Provide a minimum texture depth of 0.031 inches.

(2) Roadways with Speed Limits Less than 45 MPH.
The Engineer will test the texture achieved by the carpet drag in accordance with ASTM E 965 and the Field Sampling and Testing Manual. The Engineer will determine the test location.

If three or more lots have texture depths less than 0.031 inches but greater than or equal to 0.025 inches, perform diamond grinding on those lots.

Perform diamond grinding any lot having a texture depth of less than 0.025 inches.

Perform grinding as specified in Section 550.04 M.4, “Grinding.”

The Engineer will determine the limits of any failing test by running additional tests at 100 foot intervals before and after the failing test. The Engineer will determine the location of the additional tests.

(3) Roadways with Speed Limits 45 MPH or Greater.
Run a clean, metal tine longitudinally along the surface immediately following the carpet drag. Exclude areas within 3 inches of the edge of the slab and longitudinal joints. Run the tine continuously across transverse joints.

Use a tine that provides:
- 1/8 inch ±1/64 inch groove width;
- 3/16 inch ±1/16 inch groove depth; and
- 3/4 inch spacing of between grooves.

If the concrete has becomes too stiff to receive the metal tine finish, use diamond bladed equipment to produce the longitudinal grooves.

550.04 I.3 Impervious Membrane Cure **PAGE 271** **10/01/15**

Replace the first paragraph of Section 550.04 I.3 with the following:

Use a curing compound that meets the requirements of Section 810.01 B.2, “Type 2, Class B”.

570.03 A General **PAGE 281** **10/01/15**

Add the following item to the table:

Impervious Membrane Cure	810.01 B.1

570.03 B.2.a Concrete **PAGE 281** **10/01/15**

Replace Section 570.03 B.2.a with the following:

a. Concrete.
Use Class AE concrete with cement that meets the requirements of AASHTO M 85, Type I or Type IA for spall repairs.

570.03 D Curing Compound **PAGE 281** **10/01/15**

Delete Section 570.03 D.

570.04 A.1.b Full Depth Repairs **PAGE 282** **10/01/15**

Replace Section 570.04 A.1.b with the following:

b. Full Depth Repairs.
Use the lift out method to remove concrete in full depth repair areas with minimal disruption to the subgrade and without damage to the remaining concrete. Do not operate equipment, other than compaction equipment, in areas where concrete has been removed. Fill voids deeper than 1 inch with aggregate and compact the material to the level of the existing subgrade.

Place concrete for repairs less than 100 feet long the same day that removals are initiated. Place concrete for repairs longer than 100 feet within 48 hours of initiating removals. Dampen the faces of existing concrete before placing new concrete.

Place, consolidate, finish, and cure concrete according to the following portions of Section 550.04, "Construction Requirements":

- 550.04 C, "Roadbed Condition";
- 550.04 D, "Placing and Spreading Concrete";
- 550.04 E, "Placing Reinforcing Steel and Tie Bars";
- 550.04 F, "Uncontrolled Cracking";
- 550.04 G, "Joints";
- 550.04 H, "Finishing Concrete", except parts 1.d, "Final Surface Finish" and 1.e, "Imprinting Pavement";
- 550.04 J, "Removing Forms";
- 550.04 K, "Sealing Joints"; and
- 550.04 L, "Opening to Traffic".

Provide finished concrete that is flush with all adjacent pavement surfaces. Before the concrete sets, check the repair utilizing a 10 foot straight edge and correct areas that deviate by 1/8 inch or greater.

Texture the repair by dragging a carpet of artificial grass longitudinally over the repaired area.

If repairs involve multiple lanes, fill the gap between the lane under repair and the existing concrete with cold bituminous material. Remove this material before making the repair to the adjacent lane.

(1) Repairs One Lane Wide.
Use a bond breaker along the centerline joint. Tie bars are not required on repairs that are one lane wide.

When the repair falls in a ramp, restore the longitudinal joints crossing the repair, but do not use tie bars.

(2) Repairs Wider Than One Lane.
Before placing the concrete in the second lane, install 30 inch #5 tie bars in the longitudianl joint using the original tie bar pattern. Drill holes for the bars and secure the bars in the holes using epoxy.

(3) Impervious Membrane Cure.
Use a curing compound that meets the requirements of Section 810.01 B.1, “Type 2”.

Apply the cure at a minimum rate of 1 gallon per 150 square feet of pavement in one or two applications. If applying two coats, apply the second application within 30 minutes of the first application.

Protect joints that require sealing from infiltration of the curing compound.

Immediately cover the exposed sides of the concrete pavement with curing compound if removing forms exposes curing concrete before the expiration of the curing period.

Immediately reapply curing compound to damaged areas within the curing period.

570.04 A.2.c Dowel Bars **PAGE 284** **10/01/15**

Replace the first paragraph of Section 570.04 A.2.c with the following:

Drill 1-3/8 inch diameter holes using a rigid frame-mounted drill. Clean the hole, inject epoxy into the hole, and insert dowels.

570.04 A.3.a Concrete Removal **PAGE 285** **10/01/15**

Replace the third paragraph of Section 570.04 A.3.a with the following:

If existing reinforcing steel is damaged or bent within the 18 inch lap area, replace the damaged reinforcing steel.

570.04 C Grinding **PAGE 285** **10/01/15**

Replace the first paragraph of Section 570.04 C with the following:

Allow new concrete and dowel bar retrofit patch material to cure for a minimum of 24 hours before grinding.

570.04 C.6 Slurry Removal **PAGE 286** **10/01/15**

Replace Section 570.04 C.6 with the following:

6. Slurry Removal.
Continuously collect all slurry or residue resulting from the grinding operation.

In areas with speed limits of 45 mph or less and in areas with curb and gutter, dispose of slurry as specified in Section 107.17, “Removed Material”.

In areas with speeds greater than 45 mph and without curb and gutter, slurry may be place on the foreslope of the roadway. Prevent slurry from entering pipes, culverts, storm drains, ravines, streams, waterways, wetlands, and all other water conveyances. Install erosion control features as necessary to prevent contamination, or dispose of slurry as specified in Section 107.17, “Removed Material”.

570.06 BASIS OF PAYMENT **PAGE 289** **10/01/15**

Delete the following paragraph from Section 570.06:

Include all costs for saw cuts, steel reinforcing, bar supports, tie bars, and joint sealing in the unit price bid for "__Inch Concrete Pavement Repair - Full-Depth _____".

602.04 J Penetrating Water Repellent Treatment of Concrete Surfaces **PAGE 307**
10/01/15

Replace section 602.04 J with the following:

J. Penetrating Water Repellent Treatment.
Apply penetrating water repellant to the driving surface of the bridge deck after barrier forms have been removed.

Before treating the deck, use sandblasting or water washing equipment to clean the surfaces of material that might inhibit the coverage and penetration of the solution.

Prepare the deck by applying pre-treatment cleaning agents before the use of water washing cleansing methods. Add detergent to the cleansing water, if necessary. After washing, rinse with clear water.

Use solvents and hand tools to remove bonded foreign materials.

Use a cleaning process that does not remove or alter the existing deck finish and does not expose the coarse aggregate.

Before treatment, allow the deck to dry to meet the requirements of the repellent manufacturer.

Apply penetrating water repellent treatment solution when the air or concrete surface temperature is 40°F and rising. Use airless application equipment with 15 to 40 psi application pressure. Apply treatment solution at the rate recommended by the solution manufacturer.

602.04 K.1 General **PAGE 307** **10/01/15**

Replace Section 602.04 K.1 with the following:

1. General.
When shown in the plans, apply membrane and primer in dry weather and when the air temperature is above 40°F. Apply to surfaces that are dry, clean, free of sharp protrusions and above 40°F.

604.03 B.3 Trial Mix **PAGE 310** **10/01/15**

Replace the "AASHTO T 23" test requirement with "ND T 23:

604.03 E.1 Concrete **PAGE 310** **10/01/15**

Replace the "AASHTO T 23" test requirement with "ND T 23:

606.04 A Design and Manufacture **PAGE 314** **10/01/15**

Replace the second paragraph in Section 602.04 A with the following:

Use an ACPA or NPCA certified plant in the construction.

702.06 Basis of Payment **PAGE 355** **10/01/15**

Replace the Table 702-01 with the following:

Table 702-01

Payment for Mobilization

Original Contract Amount Earned	Payment will be the Lesser of:	
	Mobilization Bid Amount	Original Contract Amount
5%	25%	2.5%
10%	50%	5.0%
50%	100%	7.5%
75%	100%	10.0%

704.04 B Traffic Control Device Condition Classifications **PAGE 359** **10/01/15**

Replace all instances of “ATSAA” in Section 704.04 B with “ATSSA”.

704.04 M Protection Vehicle with Truck Mounted Attenuation Device (TMA) **PAGE 366** **10/01/15**

Replace the last paragraph of 704.04 M with the following:

Equip the protection vehicle with an advance warning flashing or sequencing arrow panel conforming to Section 704.03 M, “Advance Warning Flasher or Sequencing Arrow Panel” and the MUTCD.

704.04 O Traffic Control for Uneven Pavement **PAGE 367** **10/01/15**

Replace all instances of “Sign W20-52-24” in Section 704.04 O with “W20-52-54”.

Change the title of Section 704.04 O.3.b to “Uneven Pavement Greater Than 2 Inches.”

706.02 B Aggregate Laboratory **PAGE 372** **10/01/15**

Replace Section 706.02 B with the following:

B. Aggregate Laboratory.
Place the laboratory at a location acceptable to the Engineer. The Engineer will have the full control and the exclusive use of the laboratory.

Provide a laboratory with a minimum floor area of 230 square feet, minimum exterior width of 8 feet, and a minimum ceiling height of 7 feet.

Partition the building into a minimum of two rooms, a smaller room having a floor area of approximately 70 square feet.

Provide a workbench with a length of 7 feet in the smaller room:

Provide the following equipment in the larger room:

1. Mechanical shaker capable of receiving 6 trays that have a screen size of 14 inches by 14 inches and the following compatible sieves:
   - 1-1/2 inch;
   - 1-1/4 inch;
   - 1 inch;
   - 3/4 inch;
   - 1/2 inch;
   - 3/8 inch;
   - No. 4; and
   - An enclosed dust pan.
2. Mary Ann shaker capable of being adjusted to receive 8 and 12 inch diameter sieves;
3. Splitter with a maximum hopper capacity of 0.6 cubic feet;
4. Splitter with a minimum hopper capacity of 1.0 cubic feet; and
5. An exhaust fan capable of changing the air in the room every minute.

709.04 C Geosynthetic Geogrid (Type G) **PAGE 376** **10/01/15**

Replace Section 709.04 C with the following:

C. Geosynthetic Geogrid (Type G).

Unroll geogrid parallel to the centerline of the road. Do not drag the geogrid across the underlying material. Use geogrid widths that produce overlaps of parallel rolls at the centerline and at the shoulders and so that no overlaps are required along wheel paths.

Overlap geogrid a minimum of 30 inches at all splices and joints when placing on subgrade. Overlap geogrid a minimum of 12 inches at all splices and joints when placing on base.

Construct overlaps at the end of a roll so the previous roll laps over the subsequent roll in the direction of the cover material placement. Mechanically tie transverse joints to maintain the minimum overlap. Place pins, staples, or small piles of aggregate to maintain the geogrid position before placement of cover material.

Stagger end overlaps at least 10 feet from other end overlaps in parallel rolls. Cut or increase overlaps to conform to curves.

Patch damaged areas of geogrid. Place a patch that overlaps the damaged area by 36 inches on all sides. Mechanically tie the patch to the underlying grid.

Place the first lift of material over geogrid installed on subgrade to a depth of 10 inches of loose material. Place the first lift of material over geogrid installed on base to a depth of 6 inches of loose material.

Use low ground pressure equipment to spread the initial lift of material. If rutting occurs, fill the ruts with additional material before placing the subsequent lift. Do not blade out ruts. Do not turn construction equipment on the first layer of material.

714.04 A.1 Bedding **PAGE 379** **10/01/15**

Delete the first paragraph from Section 714.04 A.1.

714.04 A.6 Connection to Manholes, Inlets, and Pipes **PAGE 380** **10/01/15**

Replace Section 714.04 A.6 with the following:

6. Connection to Manholes, Inlets, and Pipes.
If connections are required to a manhole, inlet barrel, or pipe entrance, connect pipe by cutting the opening and grouting in the connecting pipe.

714.04 A.7 Compaction Control for Aggregate **PAGE 380** **10/01/15**

Replace Section 714.04 A.7 with the following:

7. Compaction Control for Aggregate.
Compact aggregate according to Section 203.04 E.2, “Compaction Control, Type A” The moisture content of the aggregate at the time of compaction shall be not less than 2.0 percentage points below, nor more than 3.0 percentage points above the optimum moisture content.

Compact aggregate for approach pipes according to the conduit manufacturer’s recommendation

Use a maximum lift thickness of 6 inches.

714.04 A.8 Compaction Control for Non-Aggregate Material **PAGE 380** **10/01/15**

Replace Section 714.04 A.8 with the following:

8. Compaction Control for Non-Aggregate Material.
If Common Excavation Type A is specified, follow the compaction requirements in Section 203.04 E.2, “Compaction Control, Type A”. If Common Excavation Type B is specified, follow the compaction requirements in Section 203.04 E.3, “Compaction Control, Type B”.

Compact material for approach pipes according to the conduit manufacturer’s recommendations.

748.03 MATERIALS **PAGE 393** **10/01/15**

Add the following item to the table:

Impervious Membrane Cure	810.01 B.1 or 810.01 B.2

750.03 MATERIALS **PAGE 395** **10/01/15**

Add the following item to the table:

Impervious Membrane Cure	810.01 B

Replace the paragraph directly after the table with the following:

For imprinted concrete use any size coarse aggregate specified in Section 802.01 C.2, “Coarse Aggregate”. Produce a mix that consists of 60 percent fine aggregate and 40 percent coarse aggregate.

754.04 D.2 Anchor for Telescoping Perforated Tubes Supports **PAGE 403** **10/01/15**

Replace the last two paragraphs in Section 754.04 D.2 with the following:

If installation is in either concrete or bituminous material, omit the soil plate or use a surface mount anchor base.

Core concrete and bituminous surfacing before installing the anchor unit and fill the cored area with like material that matches the surrounding surfacing.

754.04 F Removing and Resetting Signs and Supports **PAGE 407** **10/01/15**

Replace the Section 754.04 F with the following:

F. Removing and Resetting Signs and Supports.

1. General.
Remove and reset existing signs and supports as specified. Stockpile all signs and supports not to be reset at designated locations within the project limits. The Engineer will arrange to have stockpiled signs removed from the project limits and delivered to the Department’s facility.

Replace removed or reset signs and supports that are damaged during removing, resetting, or stockpiling at no additional cost to the Department.

Remove existing signs and supports as construction progresses, and immediately reset or install new signs.

The Engineer will allow the temporary reset of existing signs, or the temporary installation of new signs. Include the cost of installing and resetting signs temporarily in the price bid for other items.

2. Reset Sign Panel.
Remove sign panels from existing supports. Reinstall sign panels, angles, stringers, and steel channels on new supports.

Provide all necessary brackets and hardware to attach sign panels, angles, stringers, and steel channels on new supports.

754.04 I Overlay Panel Sign Refacing **PAGE 407** **10/01/15**

Replace the second paragraph of Section 754.04 I with the following:

Remove the legend, border, and symbol on those signs that have demountable copy and remove any existing sign overlays and place overlay panels on the signs. Do not remove direct applied sheeting legends, borders, and symbols. Direct apply the new legends, borders, and symbols to the overlay panels and install on the existing signs.

754.04 J Auxiliary Signs **PAGE 408** **10/01/15**

Replace the Section 754.04 J with the following:

J. Auxiliary Signs.
Install auxiliary signs used with route markers with the same background color as the route markers:

- Interstate, Blue;
- Interstate Business Loop, Green;
- State, White;
- US, White; and
- County, Blue.

754.05 METHOD OF MEASUREMENT **PAGE 408** **10/01/15**

Add the following to Section 754.05:

D. Reset Sign Panel.
The Engineer will measure the item “Reset Sign Panel” by the number of locations a sign or sign assembly has been reset.

E. Reset Sign Support.
The Engineer will measure the item “Reset Sign Support” by each leg of a sign support that has been reset.

760.03 Materials **PAGE 410** **10/01/15**

Replace Section 760.03 with the following:

760.03 MATERIALS
Use one of the following materials when applying a fog coat to rumple strips:

- SS-1h, Section 818.02 F, “Anionic Emulsified Asphalt”;
- MS-1 Section 818.02 F, “Anionic Emulsified Asphalt”; or
- CSS-1h Section 818.02 E.1 “Cationic Emulsified Asphalt”.

When MS-1 is used it may be diluted by the supplier or the Contractor.

760.04 F Traffic Control **PAGE 411** **10/01/15**

Replace Section 760.04 F with the following:

F. Traffic Control.

1. **General.**
   Use a TMA as specified in Section 704.04 M, “Protection Vehicle with Truck Mounted Attenuation Device (TMA)”.

2. **Centerline Rumble Strip Installation.**
   Provide flaggers and 2 sets of the required flagger signing for each direction of travel. Ensure that at least one set of the required flagger signing is in place in each direct of travel whenever work centerline installation is performed. Limit the work area to a maximum of 3 miles.

760.05 METHOD OF MEASUREMENT **PAGE 411** **10/01/15**

Add the following paragraph to the end of Section 760.05:

The Engineer will measure flagging and traffic control signs as specified in Section 704.05, “Method of Measurement”.

760.06 BASIS OF PAYMENT **PAGE 411** **10/01/15**

Add the following paragraph after the list of pay items in Section 760.05:

Flagging and traffic control signs will be paid for as specified in Section 704.06, “Basis of Payment”.

762.04 A.4.c Grooves for Epoxy Paint **PAGE 414** **10/01/15**

Replace the “Depth” row of Table 762-02 with the following:

Depth	45 to 55 mils

762.04 D.2 Short-Term Pavement Marking – Type NR (Non-Removable) **PAGE 418** **10/01/15**

Replace the second paragraph of Section 762.04 D.2 with the following:

Place the short term pavement markings at the rate specified in Section 762.04 C.2.b, “Rate of Application” with the following exception:

Exception: When the permanent pavement marking is specified as epoxy paint, apply the short term pavement marking at a thickness of 10 mils.

762.04 D.3 Short-Term Pavement Marking – Type R (Removable) PAGE 419 10/01/15

Replace Section 762.04 D.3 with the following:

3. **Short-Term Pavement Marking – Type R (Removable).**
   Install Type R markings when the air and pavement temperatures are at a minimum of 50°F and expected to remain above 50°F.

   If the air or pavement temperature falls below 50°F during installation, Type NR markings may be installed as specified in Section 762.04 D.2, "Short-Term Pavement Markings – Type NR (Non-Removable)". Install Type R markings once the specified temperatures exist.

Remove Type R markings once they are no longer necessary for traffic control operations. If Type NR markings were substituted for Type R markings, remove the Type NR markings using a method that does not leave a scar on the pavement.

762.06 Basis of Payment PAGE 419 10/01/15

Add the following to the end of the first paragraph:

If Type NR markings are substituted for Type R markings due to temperature requirements, the markings will be paid for at the contract unit price for Type R markings.

766.04 CONSTRUCTION REQUIREMENTS PAGE 425 10/01/15

Replace Section 766.04 with the following:

766.04 CONSTRUCTION REQUIREMENTS

A. General.
The mailbox owner will furnish a postal service approved mailbox. Install the furnished mailbox on the new support system.

B. Temporary Relocation.
If construction activities require the removal of the support system and delayed installation of the new support system, reset the existing support system at a location approved by the Engineer and postal service.

If construction activities require the removal of the support system and delayed installation of the new support system, relocate mailboxes to a location approved by the Engineer and postal service.

If existing mailboxes meet NCHRP 350 or MASH requirements, they may be reset adjacent to the roadway. If existing mailboxes do not meet NCHRP 350 or MASH requirements perform one of the following actions:

- Place them outside the clear zone;
- Place them on a 4 × 4 inch post; or
- Reset them using assemblies shown in the plans.

After construction has progressed to allow permanent installation, install the mailbox assemblies and mailboxes at the specified locations.

770.04 D.1 General **PAGE 428** **10/01/15**

Add the following to the end of Section 770.04 D.1:

Install duct seal on all conduits containing cables at controller cabinets, traffic signal bases, and pull boxes.

772.03 D Wiring Diagrams **PAGE 434** **10/01/15**

Replace the first paragraph with the following:

At the time the cabinet and control equipment is accepted, furnish a traffic signal cabinet wiring diagrams showing all circuits and parts in detail. Place the wiring diagram in the signal cabinet and submit one PDF copy to the Engineer.

772.04 A General **PAGE 435** **10/01/15**

Replace the second paragraph with the following:

Provide and bear all costs for the electrical service necessary to operate and maintain the traffic signal system until the system is accepted as specified in Section 772.04 N.3, “Supplemental Inspections and Final Acceptance”.

772.04 E.8 Final Testing **PAGE 439** **10/01/15**

Replace Section 772.04 E.8 with the following:

After installing sealer, perform the tests specified in Section 772.04 E.6, “Initial Testing”. Record the test results on SFN 60844 *Traffic Signal Loop Detector Test Report* and submit the form to the Engineer.

772.04 G Traffic Signal Standards and Combination Signal and Light Standards **PAGE 439**
10/01/15

Replace number 3 with the following:

Install and tighten the anchor bolts as specified in Section 754.04 D.5, “Overhead Sign Structures”.

772.04 N Tests and Acceptance **PAGE 442** **10/01/15**

Replace 772.04 N with the following:

1. **General.**
   Furnish all instruments and personnel required for testing and record test results. If a subcontractor performed electrical work, ensure the subcontractor is present during testing and inspection.

   The Engineer will perform the initial and final inspections when:
   - Winds are 30 mph or less;
   - Ambient temperature is 15°F or greater; and

– It is not raining or snowing.

a. Malfunction Management Unit Test.
Before uncovering the signal heads, perform a malfunction management unit test. Record the test results on SFN 60836 *Traffic Signal Malfunction Management Unit Test* and submit the results to the Engineer.

b. Ground Test.
Before opening to traffic, perform a ground test. The maximum allowable resistance at the controller cabinet is 10 Ohms. The maximum allowable resistance at each traffic signal standard is 25 Ohms. Record and submit the test results on SFN 60834, *Traffic Signal Ground Test*.

2. Initial Inspection.
After the signal system is operational and open to traffic, submit a request to schedule the initial inspection. The system must be fully operational for a minimum of 15 days before the Engineer will perform the initial inspection. The Engineer will record the inspection results on form SFN 59867, *Traffic Signal Inspection* Checklist or SFN 60845 *Flashing Beacon Inspection Checklist*. Copies of completed forms will be sent to the Contractor.

3. Supplemental Inspections and Final Acceptance.
After performing corrections, submit a request for a supplemental inspection. The Engineer will perform a supplemental inspection within 30 days of receiving the request.

If this inspection discloses any unsatisfactory items, the Engineer will provide the Contractor with a written list of items that require correction. After correcting the items, request another supplemental inspection.

If the Engineer determines that the work is complete, the signal system must operate for 14 consecutive days without interruption from defective equipment or improper workmanship.

If the signal system fails within the 14 days, make necessary repairs. After repairs are complete, request another supplemental inspection.

If the signal system operates for 14 consecutive days without interruption from defective equipment or improper workmanship, the Engineer will consider the last supplemental inspection as the final inspection and will accept the signal system.

802.01 A.1 Development **PAGE 453** **10/01/15**

Replace the second paragraph with the following:

Design a mix that will attain a compressive strength of 3,000 psi after 7 days or a flexural strength of 450 psi after 7 days. Measure compressive strength according to AASHTO T 22 and flexural strength according to AASHTO T 97. Apply a correction factor of 0.92 when using 4 inch by 8 inch concrete cylinders.

802.01 C.2 Coarse Aggregate **PAGE 454** **10/01/15**

Replace Table 802-02 with the following:

Table 802-02
Miscellaneous Coarse Aggregate Properties

Test	Method	Max. Percent by Weight of the Plus No. 4 fraction
Shale	NDDOT 3	0.7
Iron oxide particles	NDDOT 3	4.0[1]
Lignite and other coal	NDDOT 3	0.5
Soft Particles (Excluding Shale, Iron oxide particles and Lignite and other coal)	NDDOT 3	2.5
Thin or Elongated Pieces	NDDOT 3	15
L.A. Abrasion	AASHTO T 96	40.0
Soundness (Sodium Sulfate)	AASHTO T 104	12

[1] For concrete for spall repairs and bridge deck overlays, the maximum iron oxide particles shall be 2.0 percent.

802.01 C.3 Fine Aggregate **PAGE 454** **10/01/15**

Replace the second paragraph of Section 802.01 C.3 with the following:

Test fine aggregates in accordance with AASHTO T 21. If the results of the analysis are darker than the standard color, determine the compressive strength of mortar mixed using the aggregate in accordance with AASHTO T 71. If the results of the AASHTO T 71 test result in a relative strength less than 95 percent, do not use the fine aggregate.

810.01 B Liquid-Membrane-Forming Compounds **PAGE 464** **10/01/15**

Add the following to the end of Section 810.01 B:

3. **Curing Compound for Pigmented Concrete.**
   Use a curing compound when curing pigmented concrete that meets the requirements of ASTM C 309 Type 1-D.

816.04 AGGREGATE FOR MICRO SURFACING **PAGE 467** **10/01/15**

Replace Section 816.04 with the following:

816.04 AGGREGATE FOR MICRO SURFACING

A. General.
Use aggregate that is manufactured crushed stone such as granite, slag, limestone, or other high quality aggregate or combination thereof.

Before stockpiling aggregate, perform the tests specified in Table 816-03.

Table 816-03

Test	Test Method	Requirement
Soundness of Aggregates by Use of Sodium Sulfate	AASHTO T 104	15% Max
Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine[1]	AASHTO T 96	30% Max
Deleterious Substances	ND T 176	60 or Higher

[1] Perform the AASHTO T 96 test on the parent aggregate

B. Mix Design.

Develop a mix design using aggregate that meets the requirements of Table 816-04. Establish mix design target values for each sieve and submit the mix design before beginning placement operations.

Table 816-04
Aggregate Gradation for Development of Mix Design

SIEVE SIZE	TYPE II %PASSING	TYPE III %PASSING
3/8”	100	100
#4	90 – 100	70 – 90
#8	65 – 90	45 – 70
#16	45 – 70	28 – 50
#30	30 – 50	19 – 34
#50	18 – 30	12 – 25
#100	10 – 21	7 – 18
#200	5 – 15	5 – 15

C. Stockpile Tolerances.

The mix design target values will be used for acceptance of material. Gradation tests may vary from the mix design target values based on the stockpile tolerance shown in Table 816-05. The percent passing each sieve for gradation tests may not fall outside the gradation limits specified in Table 816-04.

Table 816-05

SIEVE SIZE	STOCKPILE TOLERANCE
3/8”	-
#4	± 5%
#8	±5%
#16	±5%
#30	±5%
#50	±4%
#100	±3%
#200	±2%

D. Acceptance.

1. Stockpile Testing.

Perform a gradation test in accordance with ND T 11 and ND T 27 for every 500 tons of material produced and placed in the stockpile. Also perform test ND T 176 when performing gradation tests. Submit the test results to the Engineer.

The Engineer will perform acceptance testing. If the result of the Engineer’s testing lead to rejection of the stockpile, additional material may be blended with the stockpiled material so that

the stockpile meets the requirements. The Engineer will resample and retest for both gradation and deleterious substances to determine if the stockpiled material will be accepted.

If choosing to blend additional material into the stockpile, use additional material that meets the requirements of Table 816-06. After blending, develop and submit a new mix design.

2. Gradation.
The Engineer will obtain 5 independent samples from the stockpile and perform a gradation analysis in accordance with ND T 11 and ND T 27. If the average gradation for each sieve is within the stockpile tolerance of the mix design target values, the Engineer will accept the material.

If the stockpile is rejected, additional material may be blended with the stockpiled material to obtain the required gradation. The Engineer will resample and retest to determine if the stockpiled material will be accepted.

If choosing to blend additional material into the stockpile, use additional material that meets the requirements of Table 816-03. After blending, develop and submit a new mix design.

3. Deleterious Substances.
The Engineer will determine the amount of deleterious substances in the aggregate using the same samples obtained in Section 816.05 D.2, "Gradation". If the average of the test results is 60 or higher, the Engineer will accept the material.

816.05 AGGREGATE FOR SLURRY SEAL PAGE 469 10/01/15

Replace Section 816.05 with the following:

816.05 AGGREGATE FOR SLURRY SEAL

A. General.
Use aggregate that is manufactured crushed stone such as granite, slag, limestone, or other high quality aggregate or combination thereof. Use aggregate with 100 percent of the parent aggregate larger than the largest stone in the specified gradation.

Before stockpiling aggregate, perform the tests specified in Table 816-06.

Table 816-06

Test	Test Method	Requirement
Soundness of Aggregates by Use of Sodium Sulfate	AASHTO T 104	15% Max
Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine[1]	AASHTO T 96	35% Max
Deleterious Substances	ND T 176	60 or Higher

[1] Perform the AASHTO T 96 test on the parent aggregate

B. Mix Design.
Develop a mix design using aggregate that meets the requirements of Table 816-07. Establish mix design target values for each sieve and submit the mix design before beginning placement operations.

Table 816-07
Aggregate Gradation for Development of Mix Design

SIEVE SIZE	TYPE II %PASSING	TYPE III %PASSING
3/8”	100	100
#4	90 – 100	70 – 90
#8	65 – 90	45 – 70
#16	45 – 70	28 – 50
#30	30 – 50	19 – 34
#50	18 – 30	12 – 25
#100	10 – 21	7 – 18
#200	5 – 15	5 – 15

C. Stockpile Tolerances.

The mix design target values will be used for acceptance of material. Gradation tests may vary from the mix design target values based on the stockpile tolerance shown in Table 816-08. The percent passing each sieve for gradation tests may not fall outside the gradation limits specified in Table 816-07.

Table 816-08

SIEVE SIZE	STOCKPILE TOLERANCE
3/8”	-
#4	± 5%
#8	±5%
#16	±5%
#30	±5%
#50	±4%
#100	±3%
#200	±2%

D. Acceptance.

1. Stockpile Testing.

Perform a gradation test in accordance with ND T 11 and ND T 27 for every 500 tons of material produced and placed in the stockpile. Also perform test ND T 176 when performing gradation tests. Submit the test results to the Engineer.

The Engineer will perform acceptance testing. If the result of the Engineer’s testing lead to rejection of the stockpile, additional material may be blended with the stockpiled material so that the stockpile meets the requirements. The Engineer will resample and retest for both gradation and deleterious substances to determine if the stockpiled material will be accepted.

If choosing to blend additional material into the stockpile, use additional material that meets the requirements of Table 816-06. After blending, develop and submit a new mix design.

2. Gradation.

The Engineer will obtain 5 independent samples from the stockpile and perform a gradation analysis in accordance with ND T 11 and ND T 27. If the average gradation for each sieve is within the stockpile tolerance of the mix design target values, the Engineer will accept the material.

3. **Deleterious Substances.**
The Engineer will determine the amount of deleterious substances in the aggregate using the same samples obtained in Section 816.05 D.2, “Gradation”. If the average of the test results is 60 or higher, the Engineer will accept the material.

817.01 D.2.a Extraction Test Method **PAGE 472** **10/01/15**

Replace the second paragraph of Section 817.01 D.2.a with the following:

The Engineer will determine the percentage of asphalt binder in the stockpile in accordance with AASHTO T 164 and average the results obtained from the three samples. The material will be rejected if any single sample has a value greater than 4.0 percent or the average extraction is greater than 3.5 percent. If the stockpile is rejected, the stockpiled material may be blended with other material.

818.03 Bituminous Materials for Micro Surfacing **PAGE 475** **10/01/15**

Replace Table 818-01 with the following:

Table 818-01

Test	Specification	Requirement
Settlement and Storage Stability of Emulsified Asphalts, 24-h	AASHTO T 59	1% Minimum
Distillation of Emulsified Asphalt[1]	AASHTO T 59	62% Minimum
Tests on Emulsified Asphalt Residue		
Softening Point of Bitumen (Ring and Ball Apparatus)	AASHTO T 53	135°F Minimum

[1] Hold the temperature for this test at 350°F for 20 minutes.

830.01 CONCRETE PIPE AND DRAINAGE STRUCTURES **PAGE 480** **10/01/15**

Replace the second paragraph of Section 830.01 with the following:

Use an ACPA or NPCA certified plant in the construction.

856.01 A General **PAGE 495** **10/01/15**

Replace the “Slope Gradient” row in Table 856-01 with the following:

Slope Gradient Application	≤ 3H:1V	< 3H:1V - 2H:1V	≤ 2H:1V	< 2H:1 - 1.5H:1V

860.02 A Barbed Wire **PAGE 501** **10/01/15**

Replace Section 860.02 A with the following:

A. Barbed Wire.
Provide barbed wire that meets the requirements of AASHTO M 280. Provide wire that has a minimum gage of 12½ and at least 2 point barbs.

860.02 B Woven Wire **PAGE 501** **10/01/15**

Replace Section 860.02 B with the following:

Provide woven wire that meets the requirement of AASHTO M 279, Design Number 939-6-12½.

862.04 C 3-Cable **PAGE 505** **10/01/15**

Replace the Section 862.04 C with the following:

C. 3-Cable.
Provide round treated timber posts used for three-cable guardrail that are between 4.5 and 6.5 inches in diameter.

880.02 B.2 Epoxy Resin Material **PAGE 509** **10/01/15**

Replace Section 880.02 B.2 with the following:

2. Color.
Provide material that meets the requirements of Table 880-03 and 880-04 when tested in accordance with ASTM D 2805.

Table 880-03
CIE Chromaticity limits using illuminant "C" for Yellow Epoxy

x	0.470	0.485	0.520	0.048
y	0.440	0.460	0.450	0.420

Table 880-04
Daylight Directional Reflectance (Y)

Color	Minimum Value
White	83
Yellow	50

896.10 Controller Cabinet **PAGE 557** **10/01/15**

Replace the 3 with the following:

3. Provide a metal weatherproof cover that blocks air flow in cold weather, and adequately covers the fan vent assembly and the louver on the door. Install a gasket to the cover and attach the cover to the inside of the cabinet. Construct the cover of the same material as the cabinet.

   Provide a weep hole in the bottom loop on each end of the cabinet full-size door.

Build the cabinet to contain the following items:

- All items of control equipment specified in these Specifications.

- Provide a thermostatically-controlled minimum 250 watt strip-type heater mounted on the full-size door cover with a protective wire-mesh shield installed around the heater. Use a heavy-duty thermostat capable of being set within a temperature range of 30°F to 90°F. Activate the power to the fan and to the heater using a three-position toggle switch located on the auxiliary switch panel.

  Use a switch that operates vertically up and down with the:

  - Up position being FAN (power to the fan on and power to the heater off);
  - Center position being OFF (power to both the fan and the heater off); and
  - Down position being HEATER (power to the heater on and power to the fan off).

  Provide an electrical three-prong twist lock-type plug between the switch and the heater. Mount the heater thermostat on the auxiliary switch panel. Make the connection to the heater with stranded copper wire having 200°C insulation and noninsulated, solderless terminals.

- Provide three duplex receptacles with ground fault interrupter. Fuse the receptacles ahead of the main circuit breaker.

- Provide a switched lamp socket, fuse the lamp socket ahead of the main circuit breaker.

- Include the following in the maintenance switches inside the cabinet:

  - Stop time control.
  - Timer power.
  - Flash.
  - Vehicle detector input for each phase in use and all future phases.
  - Pedestrian input for each phase in use and all future phases.

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.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

PROJECT SU-8-992(036)037 (PCN-20057)

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INTRODUCTION

49 Code of Federal Regulations Part 26 (CFR) states that the contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractors shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

The paragraph above applies to every contractor on the project, including every tier of subcontractor. <u>It is the prime contractor's or subcontractor's responsibility to include the above paragraph in every subcontract.</u>

In this special provision:

"Apparent low bidder" means the bidder whose bid is read as low bid at the bid opening.

"Blanket Quote" means when a business provides the same quote, for all projects, at a bid opening, using the same price or when a business provides one quote for an entire season, at one rate, that is not project specific. Generally this is done by trucking firms.

"Contractor" means ALL DBE (including MBE and WBE) and non-DBE firms, including prime contractors, subcontractors (under/over $500,000), suppliers, brokers, vendors, regular dealers, and manufacturers.

"Equipment supplier" is a firm who provides equipment for sale or lease, without operators, and whose primary business function is equipment sales or leasing.

"Prime Contractor" means bidders or contractors who are submitting proposals on this project, regardless of the size of the project.

"Quoter" means a DBE or a non-DBE subcontractor (under/over $500,000), supplier, broker, vendor, regular dealer, or manufacturer who submits quotes to another contractor.

"Subcontractor quoting over $500,000" means a subcontractor whose quote is over $500,000 on any project and who is not a supplier, broker, vendor, regular dealer, or manufacturer. All aggregate providers are considered subcontractors, regardless of the amount of their quote.

"Aggregate providers" are considered subcontractors rather than suppliers, regardless of the amount of their quote.

When counting DBE participation the following definitions will apply as per 49 CFR Part 26:

"Broker" means an agent who negotiates contracts of purchase, work, lease, or sale; or buys and sells goods; or negotiates between buyers and sellers; but without having custody of the property. A broker may assist in the procurement of facilities, materials or supplies required for the performance of the contract. A broker is not regarded as a supplier, manufacturer, or regular dealer for the purposes of this program.

"Manufacturer" means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

"Regular dealer" means a DBE firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

- A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

"Supplier" means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

- "Materials" is defined as aggregate, steel, petroleum products, concrete, asphalt, and other construction materials.

SOLICITATION EFFORTS

The following is a list of actions to be taken or documentation to be provided by all bidders (including DBE primes) to obtain DBE participation. Efforts shall include, but are not limited to, the following steps:

STEP 1: ADVERTISE

- The prime contractor may place an advertisement soliciting DBE participation in either general circulation media or the supportive services newsletter before the bid opening. "General circulation media" means a newspaper in the area of a project or a trade association publication such as the Construction Bulletin

- The ad should state a date and time by which all quotes may be submitted for consideration, and where quotes should be sent.

- The supportive services newsletter is published two weeks before each bid opening. Requests for ads in the newsletter must be received, in writing, by the Civil Rights Division no later than noon (Central time), 2 weeks before the bid opening date. Advertisements maybe be emailed to: subquotes@nd.gov or faxed to 701-328-0343, 701-328-1965, or mailed to the Civil Rights Division, 608 East Boulevard, Bismarck, ND 58505-0700. Bidders are also encouraged to publish an email address for their company where subcontractors and suppliers can email their quotes to.

STEP 2: SIGN IN

DBE and non-DBE prime contractors and subcontractors over $500,000, (excluding suppliers, brokers, vendors, regular dealers, and manufacturers), are not required but are strongly encouraged to do the following:

- Prior to 11 a.m. (Central), the day before the bid opening date, may electronically sign-in at: https://apps.nd.gov/dot/cr/csi/login.htm and click on "***Sign-in for*** **Prime Contractor and Subcontractor Quoting Over $500,000,"** providing information (location, phone, email and/or fax number) where they can be contacted by businesses wishing to submit quotes, to them, between 11:00 a.m. and 8 p.m. that same day.

- Designate at that time which jobs they are bidding or quoting on.

- Between 11:00 a.m. and 8 p.m. (Central), the day before the bid opening the prime contractor and subcontractors over $500,000 should have a representative available to receive and discuss quotes at the contact location, phone/fax numbers, or email, as required above.

NOTE: To facilitate the flow of information subcontractors quoting over $500,000 are not required but are strongly encouraged to complete each phase in Step 1 above.

DBE and non-DBE suppliers, brokers, vendors, regular dealers, manufacturers, and subcontractors quoting either over/under $500,000 are not required but are strongly encouraged to:

- After 11:00 a.m. (Central), the day before the bid opening, retrieve the **"Report for Prime Contractor and Subcontractor Quoting Over $500,000,"** which will be posted electronically at https://apps.nd.gov/dot/cr/csi/public/listBidOpenings.htm A copy can be obtained by fax, by calling 701-328-3116, 701-328-2637, or 701-328-2576.

GUIDELINES FOR SUBMITTING QUOTES TO BIDDERS

All DBE and non-DBE businesses are **strongly encouraged** to follow these guidelines when quoting.

- The night before the bid opening,
  - By 2 p.m. (Central) all DBE and non-DBE suppliers, regular dealers, vendors, manufacturers, and brokers should cease quoting.
  - By 5 p.m. (Central) all subcontractors under $500,000 should cease quoting.
  - By 8 p.m. (Central) all subcontractors over $500,000 should cease quoting.

- Indicate the date of the bid opening, job number, and project number being quoted.

- Include bid item numbers and units or quantities.

- Use bid items and quantities from the proposal rather than from the Notice to Bidders.

- Show all calculations on the quote.

- Indicate whether mobilization is included, cost of bond if required, and any other special conditions.

- Indicate if a quote does not include something required by the specifications for a particular bid item.

- Include on all trucking quotes the type and number of units available and their capacity.

- Provide separate quotes for each project (each quote on a separate page).

- Indicate on all quotes for more than one bid item whether the bid items are tied or not tied.

- Subcontractors over $500,000 should attach a copy of their Form A to their quote when submitting it to the prime contractor.

- DBEs should state on their quote the dollar value of the work to be actually performed by their own forces or other DBEs they intend to use.

- Blanket quotes for an entire bid opening or the construction season are not allowed (i.e. trucking, striping, signing, etc.)

- Faxed quotes must clearly indicate the date and time the fax was sent.

SUBMITTING QUOTES TO DEPARTMENT OF TRANSPORTATION

By the times listed in the chart below, the night before a bid opening, all DBE and non-DBE subcontractors (under/over $500,000), suppliers, regular dealers, vendors, manufacturers, or brokers **should submit a copy** of all phone or paper quotes given for each project. Quotes may be emailed to subquotes@nd.gov or faxed to the DBE Liaison Officer, 701-328-1965, 701-328-0343, 701-328-4545.

DBE AND NON-DBE	SHOULD TURN IN QUOTES
Suppliers, brokers, vendors, regular dealers, and manufacturers	3:00 p.m. (Central)
Subcontractors **under** $500,000	6:00 p.m. (Central)
Subcontractors **over** $500,000	9:00 p.m. (Central)

FORM A

By noon (Central) on the next work day following the bid opening, the apparent low bidder **must** submit Form A to the DBE Liaison Officer. Form A is a list of all the DBEs intended for use on the project including DBE's intended to perform work in the first tier(or below) of subcontracting**.**

FORM B OR COPIES OF QUOTES

Within 5 working days after the bid opening, all bidders must either:

- Submit Form B to include all tiers of subcontracting on the project or
- Provide copies of all quotes received to include all tiers of subcontracting on the project to the DBE Liaison Officer, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700**.** Copies may be faxed to: 701-328-1965, 701-328-0343 or emailed to subquotes@nd.gov

When submitting a Form B, copies of all quotes **must** be retained, by each bidder, for **45 days after the bid opening date**. If a quoter has not provided a copy of their quote to the Department, the bidder **must** provide a copy of the quote, upon request, by the Department.

FORM C

Within 10 working days after the bid opening, the apparent low bidder **must** submit a Form C for each DBE listed on Form A to the address below, unless NDDOT grants a time extension.

No award will be made on a project until all Form C's, for each DBE, are submitted to NDDOT. The contractor and DBE **must both** sign the form. Form C applies to all tiers of subcontractors working with DBEs.

Form Cs may be faxed to NDDOT's Civil Rights Division at 701-328-1965, 701-328-0343 or mailed to the DBE Liaison Officer, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700.

Signatures need not be original; faxed signatures are acceptable.

If Form C contains additional pages or an attachment, each page or attachment must be signed by the intended DBE.

If Form A and Form C contain different information (e.g., bid items numbers, quantities, or dollar amounts), the prime contractor or subcontractor must explain the difference in writing to NDDOT when submitting Form C.

FAILURE TO PROVIDE REQUIRED DOCUMENTATION

Prime contractors and subcontractors are encouraged to discuss the requirements of this special provision with all businesses providing quotes on a specific project.

Apparent low bidders may be denied future quoting or bidding privileges for failure to submit Form A and Form C as required.

LIST OF DBE PARTICIPATION

Generally, two working days after the bid opening, the DBE Participation list is posted to the NDDOT website: http://www.dot.nd.gov/dbebidinfo.html To request a paper copy of the DBE participation web site listing, contact Civil Rights Division, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700, fax 701-328-1965 or 701-328-0343, phone 701-328-2637 or 701-328-3116.

CONSTRUCTION PROGRESS CHART

Before the award of the contract, the apparent low bidder must create a construction progress chart for each DBE to be used on the contract (excluding oil haulers, suppliers, brokers, vendors, regular dealers, or manufacturers). The chart must state the type of work to be performed and when it will be performed.

The apparent low bidder must supply all charts to the Department and the appropriate chart to each DBE to be used on the contract. Any subsequent charts noting a change in schedule **must** also be provided to the Department and all DBEs.

AWARD OF CONTRACT

Contract award will be made to the bidder who submits the lowest responsive proposal meeting the pre-bid and pre-award requirements.

PRE-JOB CONFERENCE

It is the prime contractors' responsibility to invite all DBEs listed on Form C to the pre-job conference and to encourage attendance. If the DBE is unable to attend the pre-job conference **it is the prime contr act ors' responsi bil it y t o provi de a copy of the pre-job conference minutes to each DBE.**
In addition, it is the prime contractors' responsibility to discuss any project issues necessary for joint DBE program compliance on the part of the prime contractor, non-DBEs subcontractors and their DBE subcontractors, manufacturers, or regular dealers.

CONTRACT MONITORING, RESPONSIBILITIES, AND REPORTING

For the life of the project, the prime contractor is responsible for the DBEs listed on Form C and for the specific bid items or products that the bidder committed to during the pre-award process.

It is the prime contractors' responsibility to:

- monitor DBE performance on the project, to ensure that the DBE performs a commercially useful function, and

- to ensure both the prime contractor and their subcontractors, suppliers, manufacturers, and regular dealers comply with the requirements of this special provision.

DBEs are responsible for performing a commercially useful function. Should the DBE be unable to perform a commercially useful function or perform as stated on Form C it is their responsibility to **immediately notify** the prime contractor orally and in writing. See pages **8 through 10** of this special provision for information regarding commercially useful function.

The prime contractor must submit a completed copy of the DBE Participation Certification (SFN 14268), signed by the prime contractor and the DBE, to the project engineer upon completion of the contract to verify DBE participation. This includes DBEs used that were not included on Form A. The project will be monitored to ensure the DBE is performing a commercially useful function.

MAINTAINING RECORDS AND TRACKING PAYMENTS

The Department will require prime contractors and subcontractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. The three year period will commence upon acceptance of the final payment from NDDOT. These records will be made available for inspection, upon request, by an authorized representative of the NDDOT or USDOT. This reporting requirement also applies to any certified DBE.

Prime contractors and subcontractors must keep a running tally of actual payments to DBEs for work committed to them at any time during the life of the contract. Prime contractors and subcontractors will be required to complete the Record of DBE Project Payments (SFN 53664) on a semi-annual basis. The record must be submitted to the NDDOT by the tenth working day after the October-March period, and the tenth working day after the April-September period. The form must be signed by a company representative. Send the record to the Civil Rights Division, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700 or fax to 701-328-0343 or 701-328-1965.

NDDOT may perform interim audits of contract payments to DBEs to ensure that the actual amount paid to DBEs equals or exceeds the dollar amount stated on Form C.

MONITORING AND ENFORCEMENT MECHANISMS

The Department will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, or referral to the USDOT Inspector General for action under Suspension and debarment or Program Fraud and Civil Remedies rules) provided in subsection 26.107 of 49 CFR Part 26. The Department will also consider similar action under its own legal authorities, including responsibility determination in future contracts.

COUNTING DBE PARTICIPATION

The Department will count DBE participation toward our overall annual goal as provided in 49 CFR 26.55 as noted below:

1. When a DBE participates in a contract, the Department counts only the value of the work actually performed by the DBE toward DBE goals.

   A. The Department counts the entire amount of that portion of a construction contract (or other contract not covered by paragraph 1B of this section) that is performed by the DBE's own forces. Included are the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

   B. The Department counts the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, if the Department determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

   C. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is also a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

2. When a DBE performs as a participant in a joint venture, the Department counts a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

3. The Department counts expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

   A. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Department must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

   B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Department must examine similar transactions, particularly those in which DBEs do not participate.

   C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department must presume that it is not performing a commercially useful function.

D. When a DBE is presumed not to be performing a commercially useful function as provided in paragraph 3C of this section, the DBE may present evidence to rebut this presumption. The Department may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

E. The Department's decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to USDOT.

4. The Department will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

C. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks its owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm, including an owner-operator certified as a DBE. The DBE leasing trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

E. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

F. For purposes of this paragraph (4), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

5. The Department counts expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

A. If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals.

(1) For purposes of this paragraph (5A), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

B. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(1) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

a. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

b. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (5B[1]) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

c. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (5B).

C. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, if the Department determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

6. If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the Department does not count the firm's participation toward any DBE goals, except as provided for in 26.87(i).

7. The Department does not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward the Department’s overall annual goal.

8. The Department does not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

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DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (RN)

North Dakota Department of Transportation, Civil Rights Division
SFN 52012 (Rev. 07-2012)

FORMA

Contractor		Phone
Job No.	Project No.	Bid Opening Date

By noon (Central time) on the next work day following the bid opening, all apparent low bidders must provide a list of the DBE firms intended for use on this project to the NDDOT Civil Rights Division. The information provided may be submitted on this Form A or on a computer-generated form, giving the same information, attached to this Form A. If the prime contractor intends to use DBE quotes received from a subcontractor, the prime contractor **must** include the subcontractor's Form A information in the prime contractor's Form A.

PRINT ALL NUMBERS CLEARLY AND LEGIBLY.

1. For each DBE firm, list the specific bid item numbers to be performed and the total dollar value of the contract:
   a. If the DBE firm is perform do only a portion of a bid item (supply, haul, etc.), this **must** be so noted, in parenthesis, after the bid item number **the bidder must state why the DBE was not used for the entire bid item..**
   b. For DBE subcontractors, suppliers (regular dealers), and manufacturers, **list only the amount of work to be completed with each DBE's own employees and equipment.**
   c. For DBE trucking firms, **list the amount of hauling to be performed by the DBE with its own trucks and employees:** or the fees or commissions earned on non-DBE leased trucks. However, if the DBE is leasing trucks from a non-DBE firm, including an owner-operator, you can count the total value of the services provided by the non-DBE, not to exceed the total value of the services provided by the DBE-owned trucks). (See page 9, number 4, of this special provision for more detailed information.)
2. DBE prime contractors **must** list the work they will perform with their **own forces** and any work subcontracted to or materials purchased from other DBEs.
3. If the information provided on Form C **differs** from the information provided on this Form A (bid item numbers, quantities, or dollar amounts), the apparent low bidder or subcontractor **must** provide, with the Form C, a written explanation for the difference.
4. The apparent low bidder or subcontractor **must** use the DBEs listed for the intended work indicated on Form C.
5. DBE bidders **must** list the work they will perform with their **own employees and equipment** and any work subcontracted to or materials purchased from other DBEs.

DBE Firm		
List Specific Bid Item Numbers or Products to be Supplied		;otal Contract Dollar Value
Percent DBE will do with own equipment/forces= Percent Non-DBE will do (trucking only) =	0;:l %	If Regular Dealer, X 60% = $

DBE Firm		
List Specific Bid Item Numbers or Products to be Supplied		;otal Contract Dollar Value
Percent DBE will do with own equipment/forces – Percent Non-DBE will do (trucking only) =	0/1 %	If Regular Dealer, X 60% = $

DBE Firm		
List Specific Bid Item Numbers or Products to be Supplied		;otal Contract Dollar Value
Percent DBE will do with own equipment/forces = Percent Non-DBE will do (trucking only) =	0/1 %	If Regular Dealer, X 60% = $

FORM A (continued)

DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			;otal Contract Dollar Value
Percent DBE will do with own equipment/forces – Percent Non-DBE will do (trucking only) =	%1	If Regular Dealer, X 60% = $	

DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			;otal Contract Dollar Value
Percent DBE will do with own equipment/forces – Percent Non-DBE will do (trucking only) =	%1	If Regular Dealer, X 60% = $	

DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			;otal Contract Dollar Value
Percent DBE will do with own equipment/forces – Percent Non-DBE will do (trucking only) =	%1	If Regular Dealer, X 60% = $	

DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			1 ;otal Contract Dollar Value
Percent DBE will do with own equipment/forces – Percent Non-DBE will do (trucking only) =	%1	If Regular Dealer, X 60% = $	

DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			1 ;otal Contract Dollar Value
Percent DBE will do with own equipment/forces – Percent Non-DBE will do (trucking only) =	%1	If Regular Dealer, X 60% = $	

DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			;otal Contract Dollar Value
Percent DBE will do with own equipment/forces – Percent Non-DBE will do (trucking only) =	%1	If Regular Dealer, X 60% = $	

DBE Firm			
List Specific Bid Item Numbers or Products to be Supplied			;otal Contract Dollar Value
Percent DBE will do with own equipment/forces – Percent Non-DBE will do (trucking only) =	%1	If Regular Dealer, X 60% = $	

Use additional pages, following the same format, if necessary.

The NDDOT DBE Liaison Officer can be contacted at:

CIVIL RIGHTS DIVISION
NO DEPARTMENT OF TRANSPORTATION
608 E BOULEVARD AVE
BISMARCK NO 58505-0700

dlaub@nd.gov
phone (701) 328-2576
fax (701) 328-1965, (701) 328-0343

LIST OF BUSINESSES THAT SUBMITTED QUOTES (RN)

North Dakota Department of Transportation, Civil Rights Division
SFN 52013 (Rev. 12-2011)

FORMB

Contractor		Phone
Job No.	Project No.	Bid Opening Date

SUBMIT WITHIN 5 WORKING DAYS OF BID OPENING

Within 5 working days after the bid opening, all bidders must either:

- Submit Form B to include all tiers of subcontracting on the project or
- Provide copies of all quotes received to include all tiers of subcontracting on the project to the DBE Liaison Officer, North Dakota Department of Transportation, 608 E Boulevard Ave., Bismarck, ND 58505-0700. Copies may be faxed to (701) 328-0343 or emailed to subquotes @nd.gov

When submitting a Form B, copies of all quotes m.u.s.t be retained, by each bidder, for **45 days after the bjd openjng date.** If a quoter has not provided a copy of their quote to the Department, the bidder.JD.l.IS provide a copy of the quote, upon request by the Department.

This includes information from all tiers of subcontractors for the project.

List below the names of all businesses, including subcontractors, suppliers, vendors, regular dealers, manufacturers, and brokers who

Name of Business	Contact Person	Phone
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone
Mallmg Address		Type OT WorK (See Reverse Side for Codes)
Name or l::lusmess	contact 1-'erson	1-'none
Mailing Address		Type of Work (See Reverse Side for Codes)
Name OT l::lUSineSS	contact 1-'erson	1-'none
Mailing Address		Iype OT WorK (See Reverse Side for Codes)
Name of Business	Contact Person	Phone
Mailing Address		Iype OT WorK (See Reverse Side for Codes)

Use additional pages, following the same format, if necessary.

FORM B (continued)

A-1	**Engineering** -Professional services such as design or construction inspections performed by an engineering firm.
A-5	**Other-** other professional services such as supportive services and research contracts.
B-1	**Grading/Drainage-** Grading, drainage, clearing, and related construction items.
B-2	**Paving** -Construction of base course, pavements, and related items.
B-3	**Structures/Buildings-** Bridge construction operations, including piling, substructure, superstructure, etc.; and building construction, including plumbing, heating, electrical, etc.
B-4	**Trucking** - Hauling of earthwork or other materials for a construction project.
B-5	**Traffic Control-** Permanent traffic control items such as signs, signals, and markings; and temporary traffic control items such as barricades and flagging.
B-6	**Landscaping** -Landscaping, seeding, sodding, erosion control, and related items.
B-7	**Other-** other construction activities such as lighting contracts and guardrail.
C-	**Supplies-** The packaging and shipment of a product (materials, goods, and supplies) and the furnishing of BULK ITEMS which are incorporated into a construction project. C-1 Aggregate C-2 Concrete C-3 Electrical C-4 General C-5 Petroleum Products C-6 Pipe C-7 Ready Mix
D	**Manufacturing** -The physical production of materials and supplies through standard manufacturing processes obtained by a contractor for incorporation into a construction project.
E	**Equipment-** Purchases and rental of equipment for use on a specific construction project.

The DBE Liaison Officer can be contacted at:

CIVIL RIGHTS DIVISION
ND DEPT OF TRANSPORTATION
608 E BOULEVARD AVE
BISMARCK ND 58505-0700

E-mail: dlaub@nd.gov
Phone: (701) 328-2576
Fax: (701)328-1965, (701) 328-0343

FORMC

1. The prime contractor and any subcontractors who listed DBE Participation on Form A must complete a Form C for each of their respective, intended DBEs. The prime contractor is responsible for the completion and submission of a Form C for each DBE commitment made by any lower-tier subcontractor.

2. If the information on a Form C differs from the information provided on Form A (bid item numbers, quantities, or dollar amounts), a written explanation for the difference must be provided by the prime contractor or subcontractor with the Form C.

3. The Form C must be signed by the prime contractor or subcontractor and their respective, intended DBE. If Form C contains additional pages or an attachment, each page must be signed by the intended DBE. Signatures do not have to be original (faxed signatures are acceptable).

4. The forms must be returned to the NDDOT Civil Rights Division within ten working days after the bid opening. Forms may be faxed to the Civil Rights Division at (701) 328-1965 or (701) 328-0343. Award will not be made until a Form C is received for each intended DBE listed on Form A.

This form is NOT a contract and does not take the place of any contract. It is an indication to NDDOT that all DBEs listed on Form A understand they will be used on this project.

Prime Contractor or Subcontractor	Project No.	
Intended DBE	Bid Opening Date	Job No.

Bid Item Nos.	Work Description	Units	Approx. Quantity	Unit Costs	Amount
				Total	$0.00

Comments

Prime Contractor/Subcontractor Signature	Title	Date
Intended DBE Signature	Title	Date

The NDDOT DBE Liaison Officer can be contacted at the Civil Rights Division, ND Department of Transportation, 608 E. Boulevard Ave., Bismarck, ND 58505-0700, dlaub@nd.gov, phone (701) 328-2576, or fax (701) 328-1965, (701) 328-0343.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
EEO AFFIRMATIVE ACTION REQUIREMENTS

March 15, 2014

Bidders shall become familiar with the following requirements and be prepared to comply in good faith with all of them:

APPENDIX A

Notice or Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

   a. Goals for Female Participation in Each Trade – Statewide 6.9%

   b. Goals for Minority Participation in Each Trade by County:
      Barnes, Cass, Dickey, Eddy, Foster, Griggs, LaMoure, Logan,
      McIntosh, Ransom, Richland, Sargent, Steele, Stutsman, Traill 0.7%

      Grand Forks 1.2%

      Benson, Cavalier, Nelson, Pembina, Ramsey, Towner, Walsh 2.0%

      Burleigh, Morton 0.4%

      Adams, Billings, Bowman, Dunn, Emmons, Golden Valley, Grant,
      Hettinger, Kidder, Mercer, Oliver, Sheridan, Sioux, Slope, Stark, Wells . . .1.3%

      Bottineau, Burke, Divide, McHenry, McKenzie, McLean, Mountrail,
      Pierce, Renville, Rolette, Ward, Williams 4.4%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR 60-4 shall be based on its implementation of the Equal Opportunity Clause specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a),

and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall notify the Office of Federal Contract Compliance Programs, in writing, within ten working days of award of any subcontract in excess of $10,000. The notification shall include the name, address, and telephone number of the subcontractor and their employer identification number; dollar amount of the contract, estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed.

   Notification should be sent to:

   U.S. Department of Labor/ESA
   OFCCP
   Denver District Office
   1244 Speer Boulevard
   Denver, Colorado 80202
   Phone: 720-264-3200
   Fax: 720-264-3211

4. As used in this "Notice" and in the contract for this project, the "covered area" is the State of North Dakota.

APPENDIX B

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

   a. "Covered area" means the geographical area described in the proposal from which this contract resulted.

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   d. "Minority" includes:

(1) Black (all persons having origins in any of the Black African racial groups, not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish Culture or origin, regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation of community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the proposal from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted

in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor. (Training programs approved by the North Dakota Department of Transportation are recognized by the U.S. Department of Labor.)

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

    a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all Foremen, Superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

    b. Establish and maintain a current list of minority and female recruitment sources; provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.

    c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

    d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

    e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to

the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the Company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the Company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the Company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on- site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing it with the Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minorities and women, and where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring

all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and Company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and Suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

p. Conduct a review, at least annually, of all Supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligation.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor- union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. Goals for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minorities, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termina-

tion, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the Company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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).

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

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

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) 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 performing 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;

(3) 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 (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

LABOR RATES FROM U.S. DEPARTMENT OF LABOR

NDDOT's *Davis-Bacon Wage and Payroll Requirements Handbook* is available at:
www.dot.nd.gov/manuals/civilrights/davisbacon.pdf

U.S. DEPARTMENT OF LABOR

STATE	COUNTY	DECISION NO.	PAGE
NORTH DAKOTA	STATEWIDE	ND150002	1
		DATE OF DECISION 1-2-15	

Revised 06-05-15 (Mod. No. 1)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W/Pensions	Vacation	App. Tr	Others
CARPENTERS	$26.40	$ 4.90			
CEMENT MASONS/FINISHERS	26.40	4.90			
LINE CONSTRUCTION:					
Lineman	36.30	5.00 + 29.5%			
Cable Splicer	34.15	5.00 + 29.5%			
Line Equipment Operator	32.67	5.00 + 29.5%			
Groundman	21.78	5.00 + 29.5%			
ELECTRICIANS:					
Electrician	34.06	5.00 + 29.5%			
Cable Splicer	34.46	5.00 + 29.5%			
(Adams, Billings, Bottineau, Bowman, Burke, Burleigh, Divide, Dunn, Emmons, Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Pierce, Renville, Rolette, Sheridan, Sioux, Slope, Stark, Ward, and Williams Counties)					
Electrician	27.59	11.37			
Cable Splicer	28.30	11.26			
(Barnes, Benson, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, Kidder, La-Moure, Logan, McIntosh, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Stutsman, Towner, Traill, Walsh, and Wells Counties)					
Electrician (Cass County)	14.72	3.40			
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental					
LABORERS:					
Group 1 Drill Runner Tender; Flaggers and Pilot Car Drivers; General Construction Laborer; Light Truck and Pickup Driver; Pipe Handler; Sack Shaker (cement and mineral filler); Salamander Heater and Blower Tender	18.80	1.00			

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W/Pensions	Vacation	App. Tr.	Others
LABORERS: (CONT.)					
Group 2 Bituminous Worker (Shoveler, Dumper, Raker, and Floater); Brick and Mason Tender; Bulk Cement Handler; Carpenter Tender; Chain Saw Operator; Chipping Hammer, Grinders, and Paving Brakers (tamper-dirt); Concrete Bucket Signalman; Concrete Curing Man (not water); Concrete Saw Operator; Concrete Vibrator Operator; Conduit Layer, telephone or electrical; Culvert Pipe Layer; Form Setter (pavement); Gas, Electric, or Pneumatic Tool Operator; Kettleman (bitum. or lead); Multiplate Pipe Layer; Power Buggy Operator; Semi Skilled Laborer	$19.05	$ 1.00			
Group 3 Bottom Man (sanitary sewer, storm sewer, water, and gas lines); Caisson Worker; Concrete Mixer Operator (one bag capacity); Mortar Mixer	19.20	1.00			
Group 4 Drill Runner (includes Wagon Churn or Air Track); Pipe Layers (sanitary sewer, storm sewer, water, and gas lines); Powderman, gunite and sandblast; Nozzleman; Reinforcing Steel Setters/Tiers: Concrete Finisher Tender	19.95	1.00			
POWER EQUIPMENT OPERATORS:					
Group 1 All Cranes, 60 tons and over; Cranes doing piling, sheeting, dragline/clam work; Derrick (Guy and Stiff);Gentry Crane Operator; Helicopter Operator; Mole Operator or Tunnel Mucking Machine; Power Shovel, 3-1/2 cy and over; Traveling Tower Crane	26.45	14.35			
Group 2 All Cranes, 21 tons and up to 59 tons; Backhoe Operator, 3 cy and over; Creter Crane; Dredge Operator, 12” and over; Equipment Dispatcher; Finish Motor Grader; Front End Loader Operator, 8 cy and over; Master Mechanic (when super-vising 5 or more Mechanics); Mon-O-Rail Hoist Operator; Power Shovel, up to and including 3-1/2 cy; Tugboat	25.55	14.35			

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W/Pensions	Vacation	App. Tr.	Others
POWER EQUIP. OPERATORS: (CONT.)					
Group 3 All Cranes, 20 tons and under; Asphalt Paving Machine Operator; Asphalt Plant Operator; Automated Grade Trimmer; Backhoe Operator, 1 cy up to and including 2-1/2 cy; Boom Truck, Hydraulic, 8 tons and over; Cableway Operator; Concrete Batch Plant Operator (electronic or manual); Concrete Mixer Paving Machine Operator; Concrete Paver, Bridge Decks; Concrete Pump; Concrete Spreader Operator and Belt Placer; Crushing Plant Operator; Dozer Operator; Dredge Operator or Engineer, 11" and under; Drill Rigs, Heavy Duty Rotary or Churn or Cable Drill; Front End Loader Operator, 3-1/2 cy up to and including 7-1/2 cy; Gravel Washing and Screening Plant Operator; Locomotive, all types; Mechanic or Welder, Heavy Duty; Motor Grader Operator; Pavement Breaker, Non-Hydro Hammer Type: Pipeline Wrapping, Cleaning, and Bending Machine Operator; Power Actuated Auger and Horizontal Boring Machine Operator, 6" and over; Refrigeration Plant Engineer; Roto Milling Machine (Surface Planer), 43" and over; Scraper Operator; Slip Form Concrete Paving Operator; Tandem Pushed Quad 9 or similar; Tractor with Boom Attachment; Trenching Machine Operator, 100 H.P. and over	$25.30	$14.35			
Group 4 Articulated/Off Road Hauler; Asphalt Dump Person; Asphalt Paving Screed Operator; Backhoe, up to and including 1/2 cy; Boring Machine Locator: Con-sole Board Operator; Distributor Operator (Bituminous); Forklift Operator; Front End Loader, 1-1/2 cy up to and including 3 cy; Grade Person; Gravel Screening Plant Operator (not Crushing or Washing); Greaser; Lazer Screed Operator; longitudinal Float and Spray Operator; Micro Surfacer Machine; Motor Grader Operator (Haul Road); Paving Breaker, Hydro Hammer Type; Pugmill Operator; Push Tractor; Roller, Steel and Rubber on Hot Mix Asphalt Paving; Rotomill Machine (Surface Planer), up to and including 42"; Rumble Strip Machine; Sand and Chip Spreader; Self-Propelled Sheepsfoot Packer with or without Blade Attachment; Self-Propelled Traveling Soil Stabilizer; Sheepsfoot					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W/Pensions	Vacation	App. Tr.	Others
POWER EQUIP. OPERATORS: (CONT.)					
Group 4 (cont.)					
Packer with Dozer Attachment, 100 H.P. and over; Shouldering Machine; Slip Form, Curb and Gutter Operator; Slurry Seal Machine; Tamping Machine Operator; Tie Tamper and Ballast Machine; Trenching Machine Operator, 46 H.P. up to and including 99 H.P.; Truck Mechanic; Tub Grinder; Well Points; Fuel/Lube Operator	$25.15	$14.35			
Group 5					
Boom Truck, A-Frame or Hydraulic, 2 tons up to and including 7 tons; Broom, Self-Propelled; Concrete Saw (power operated); Cure Bridge Operator; Front End Loader Operator, less than 1-1/2 cy; Mobile Cement Mixer; Oiler; Power Actuated Auger and Horizontal Boring Machine Operator, up to and including 5"; Roller (on other than hot mix asphalt paving); Vibrating Packer Operator (Pad Type) (Self-Propelled); Water Spraying Equipment, Self-Propelled; Skidsteer Operator with attachments	24.30	14.35			
Group 6					
Brakeman or Switchman; Curb Machine Operator (Manual); Dredge or Tugboat Deckhand; Drill Truck Gravel/Testing Operator; Form Trench Digger (Power); Gunite Operator Gunall; Paint Machine Striping Operator; Pick-up Sweeper, 1 cy and over Hopper Capacity; Scissor Jack (Self-Propelled) Platform Lift; Straw Mulcher and Blower; Stump Chipper Operator; Tractor Pulling Compaction or Areating Equipment; Trenching Machine Operator, up to and including 45 H.P.; Assistant/Apprentice Operator	23.00	14.35			
TRUCK DRIVERS:					
Single-Axle Truck	25.67	11.20			
Tandem- and Tri-Axle Truck	25.79	11.20			
Tandem- and Tri-Axle Semi	26.10	11.20			
Lowboy	26.10	11.20			
Off Road Heavy Duty End Dumps, 20 Yards and Under	26.10	11.20			
Euclid, Over 20 Yards	27.62	11.20			

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses [29 CFR, 5.5 (a) (1) (ii)].

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION (NDDOT)

2016 ON-THE-JOB TRAINING SPECIAL PROVISION

The bidder's signature on the proposal sheet indicates the bidder agrees to take part in the On-the-Job Training (OJT) Program and to follow this OJT Special Provision. Contractors that fail to follow this special provision will be subject to suspension of progress payments or sanctions up to and including revocation of bidding privileges.

I. POLICY STATEMENT

The purpose of the 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. Training and upgrading minorities and women in highway construction trades is the primary goal of the program.

The Contractor shall take all necessary and reasonable steps to ensure that minorities and women have the opportunity to compete for and participate as trainees or apprentices and to develop as journey-level workers in the type of trade or job classification employed. Contractors may use the NDDOT OJT preapproved training programs, apprentices in approved Bureau of Apprenticeship and Training (BAT) programs, or submit their own on-the job training curriculum for approval by NDDOT and Federal Highway Administration (FHWA).

II. ASSIGNED OJT POSITIONS

A. Contractors are assigned trainee positions based on federal highway dollars awarded by NDDOT to a contractor from October 1 to September 30. Trainee assignments are not project specific. The number of trainee positions assigned will be determined by formula outlined in the OJT Program Manual. https://www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf.

B. Contractors will receive the number of positions assigned and links to resources necessary for completion of program requirements via email.

C. The number of trainee positions assigned to each contractor will increase proportionately, as shown in the OJT Program Manual, for any applicable federally funded projects awarded to them.

Failure to follow this OJT Special Provision and the accompanying OJT Program Manual may result in suspension of progress payments or sanctions up to and including revocation of bidding privileges.

III. ONLINE RESOURCES

OJT Program Manual: Includes program requirements, wage rates, and curriculum: https://www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf

SFN 9762 Request for On-the-Job Training Program Approval: http://www.dot.nd.gov/forms/sfn09762.pdf

SFN 60226 Request for On-the-Job Trainee Approval: http://www.dot.nd.gov/forms/sfn60226.pdf

SFN 51023 Voucher for On-the-Job Training Program Hourly Reimbursement: http://www.dot.nd.gov/forms/sfn51023.pdf

Davis-Bacon and Related Acts (DBRA) Handbook: https://www.dot.nd.gov/manuals/civilrights/davisbacon.pdf

IV. APPROVALS REQUIRED

A. Requests for Approval of Training Programs and Trainee Candidates must be submitted to Civil Rights Division (CRD). Contractors must request and receive program and trainee candidate approval in order to pay trainees less than the established Davis-Bacon wage for the job classification concerned. 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. Submit *SFN 9762 Request for On-the-Job Training Program Approval* and the pre-approved training curriculum for each trainee position assigned by April 1 or within fifteen (15) calendar days of notification of any additional position assignments. http://www.dot.nd.gov/forms/sfn09762.pdf

2. Submit SFN 60226 *Request for On-the-Job Trainee Approval* and each trainee's employment application. http://www.dot.nd.gov/forms/sfn60226.pdf

3. Submit *SFN 7857 Application for Eligibility,* completed/approved by Job Service North Dakota (JSND) to qualify an economically disadvantaged individual for participation in the OJT Program.

B. Pre-approved curriculum: NDDOT's OJT Program Manual contains pre-approved training curriculum for a number of skilled trade positions. Contractors should select a training program(s) based on their company's employment/staffing needs.

C. Customized curriculum: To request a training curriculum not included in the pre-approved curriculum, submit a written request for approval by NDDOT and FHWA.

The request must include:

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

If approved, each new classification must comply with the provisions specified in the OJT Program Manual. No hours worked prior to approval will be credited toward completion of the customized training program. Training programs for classifications not covered by the Davis-Bacon and Related Acts (DBRA) will be considered on a limited basis.

The contractor may commence its "customized" training as of the date of the written approval.

D. Union apprenticeship and on-the-job training programs registered with the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, 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 only be used when the contractor has requested and received approval, from the Department, for additional trainee positions. The apprenticeship indenture agreements serve as the trainee's job application and must be provided prior to any hours being credited toward OJT Program completion.

E. Power Equipment Operators:

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 DBRA 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.

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."

V. NDDOT'S RESPONSIBILITIES

A. The NDDOT OJT supportive services (OJTSS) consultant will monitor 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 assess when the trainees have completed the specified number of hours and their wages are increased accordingly. The OJTSS consultant will also assure that applicable fringe benefits are paid either directly to the trainees or for the trainee into approved plans, funds, or programs.

B. The OJTSS consultant is charged with visiting 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 weekly.

VI. CONTRACTOR'S RESPONSIBILITIES

A. Appoint a company employee to be available and respond to weekly contacts by the OJTSS consultant. OJTSS monitors the status of assigned trainee positions (e.g., program and trainee approvals, trainees' progress, etc.). The OJTSS consultant will contact the individual listed on the company's approved SFN 60226 Request for OJT Trainee Approval. The appointed must reply to communications from the Department and the OJTSS consultant in a timely manner.

B. Take steps to ensure trainees are aware they are formally enrolled in the OJT program.

C. Make trainees available to the OJTSS consultant for at least two on-site visits during the construction season.

D. Identify trainees on the payroll excerpts, for example: "grp. 4 roller operator trainee." This includes trainees in job classifications not covered by DBRA. Handwritten notes are appropriate for identification.

E. Assign each trainee to a particular person–either a supervisor or an employee proficient in the skills to be trained–who shall see that the trainee is given timely, instructional experience. This person must be familiar with the OJT Program, keep proper records, and ensure completion of the required training hours in accordance with the training curriculum.

F. Make the trainer and project superintendent available to the OJTSS consultant for at least two on-site visits each construction season.

G. May notify the Department to "propose graduation" or discontinue the training period of a trainee who has completed 90% or more of their hours and thereafter advance the trainee to journeyworker status.

H. Notify the Department when a trainee completes the number of hours required to graduate from the OJT Program. The Department will issue a certificate of completion and a wallet-sized card to the trainee.

I. May upgrade proficient trainees from one power equipment operator group or truck driver group to another, with the approval of CRD. Fewer hours are required to complete the upgraded position.

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 CRD.

K. May transfer trainees from one project to another in order to complete the OJT Program. If transfers are made, CRD 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 CRD. 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 CRD 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).

VII. CLASSROOM TRAINING

A. Classroom training may be used to train employees. Each classroom training curriculum must be pre-approved by CRD if the contractor wishes to count the classroom hours as training hours and be reimbursed.

Submit a proposed classroom training curriculum to CRD for approval. Define the type of training the individual will receive, classroom training curriculum, and the minimum number of hours required. The Department will determine the number of hours of credit each trainee will receive toward their training. 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 NDDOT Transportation Technician Qualification Program will be at the NDDOT 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 DBRA wage in effect at the time of award of the state funded contract.

VIII. WAGE RATES

A. In no case shall the minimum wage be less than that of the Group 1 Laborer classification in the federal

DBRA wage rates contained in the contract proposal. A trainee working on a state funded only project, must be paid the DBRA wage rate in effect at the time of award for the type of work the trainee is performing.

B. 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.

- 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 trainee's 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.
- For the purpose of the OJT Program, a quarter is 25% of the hours the trainee works toward completion of their approved program. 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.

C. Trainees shall be paid full fringe benefit amounts, where applicable, in accordance to DBRA requirements.

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

IX. RECRUITMENT AND SELECTION

A. Trainee Prerequisites:

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. Place notices and posters setting forth the contractor's Equal Employment Opportunity (EEO) Policy and the availability of the OJT Program in areas readily accessible to employees, applicants for employment, and potential employees.
2. Employ members of the targeted group (minority, female, or economically disadvantaged individuals) for all trainee positions assigned in accordance with the OJT Program. Additional positions requested by the contractor may be filled by individuals outside of the targeted groups.
3. Conduct systematic and direct recruitment through public and private employee referral sources.
4. Screen present employees for upgrading to higher skilled crafts. 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 CRD.

D. Selection:

1. Hire and enroll OJT trainee candidates who qualify as an individual in the targeted group.
2. Select a training program(s) based on their company's employment/staffing needs.

3. Individuals in the targeted group having experience in the selected curriculum may be eligible to participate in the OJT Program providing they:
    - are not or have not been journeyworkers in the selected curriculum, and/or
    - have not been previously trained in the selected curriculum
4. Non-minority males who are economically disadvantaged must obtain written certification from Job Service North Dakota (JSND) to qualify for the OJT Program. Contractors wishing to hire and enroll economically disadvantaged candidates must provide JSND's certification along with SFN 60226 and the employment application when requesting trainee approval.
    - JSND is the only agency that may certify an individual as economically disadvantaged. If JSND refers the candidate to the contractor, written certification under this category will be provided to the contractor at the time of the interview.
    - Any person wishing to obtain this certification must apply to JSND and complete the Workforce Investment Act Program's Application for Eligibility (SFN 7857). A contractor recruiting a candidate who may qualify must contact the Workforce Investment Act Program Manager at JSND. JSND contacts are also online: http://www.dot.nd.gov/divisions/civilrights/docs/jobservice-workforce-invest-contacts.pdf

X. BASIS OF PAYMENT

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

B. Reimbursement will be made directly to the contractor. Complete SFN 51023 Voucher for On-the-Job Training Program Hourly Reimbursement for each trainee. Attach excerpts from the weekly certified payrolls showing the trainee's hours, rate of pay, and how applicable fringe benefits were paid. Excerpts from weekly payrolls are also required 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 paid and the trainee's hours will not be credited toward completion. http://www.dot.nd.gov/forms/sfn51023.pdf

C. Submit completed vouchers to CRD 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 CRD 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 CRD no later than October 15 in order to be reimbursed. This is due to state and federal end-of-the-year budget fiduciary requirements.

XI. 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 deduct the amount paid from the contractor's progress payment.

C. A trainee should be hired to begin training as soon as feasible after start of work utilizing the skill involved and remain employed as long as training opportunities exist in the approved work classification or until the trainee 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 Special Provision if it has provided acceptable training to

the number of trainees assigned. The number trained shall be determined on the basis of the total number enrolled for a significant period.

XII. UNFILLED OR INCOMPLETE TRAINEE POSITIONS

A. Provide written explanation for unfilled or incomplete trainee assignments to CRD by October 1 of the current construction season. CRD will decide, on a case-by-case basis, whether to carry the assigned positions over to the next construction season.

B. Positions carried over from the previous construction season must be among the first positions filled at season startup. To notify CRD of the trainee's rehiring, submit *SFN 60226 Request for On-the-Job Trainee Approval*, marking 'Check if Carryover Trainee' in the Approved Training Program section of the form. There is no need for the training position or a returning trainee to be re-approved.

C. Sanctions, up to and including revocation of bidding privileges, may be imposed on the contractor for failure to provide sufficient explanation and documentation for reasons assigned trainee positions when unfilled or incomplete.

XIII. DEFINITIONS

Carryover Position: Incomplete 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.

CRD: NDDOT's Civil Rights Division administers the NDDOT On-the-Job Training Program.

Good Faith Efforts: A contractor's documented efforts to fulfill the OJT Program requirements, e.g., a new hires list, examples and locations of advertisements, list of current employees reviewed for skills upgrades, and any other means of demonstrating the contractor's efforts.

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): A consultant under contract with the Department to provide in-person oversight, support, and guidance to contractors and trainees to increase the effectiveness of approved training programs.

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

Trainer/Supervisor: Contractor's employee assigned to mentor, train, supervise, and support a OJT Program trainee.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

TEMPORARY EROSION AND SEDIMENT BEST MANAGEMENT PRACTICES

1. GENERAL

Install, maintain and remove appropriate Temporary Best Management Practices (BMPs).

Definitions:

A. Temporary Erosion and Sediment BMPs are to be installed and maintained before and during the term of the land disturbance activity. These items are removed when permanent erosion and sediment BMPs are installed.

B. Permanent Erosion and Sediment BMPs are to be installed and maintained once the project is completed so that the applicable permits can be terminated.

In some instances, individual temporary and permanent erosion and sediment BMPs for a site may consist of identical BMPs. In these cases, the temporary erosion and sediment BMPs may be used as the permanent erosion and sediment BMPs if they meet the following criteria:

1. The BMP was installed correctly,
2. Is in a functional condition,
3. Has had all accumulated sediment removed.

C. The Stormwater Pollution Prevention Plan (SWPPP) is the document that identifies potential sources of sediment or other pollution from construction activity and ensures practices are used to reduce the contribution of pollutants from construction site runoff.

D. Contractor Controlled Areas are areas not included in the contract, but are obtained and solely controlled by the Contractor (e.g., concrete or asphalt batch plants, concrete washout areas, equipment staging yards, material storage areas, excavated material disposal areas, Contractor furnished borrow areas, etc.).

E. Maintenance is any action taken to keep a BMP in working condition. These actions may consist of repairing failures of the BMP itself.

F. **Noncompliance** is any action or inaction that violates the regulations imposed by the applicable permits or the requirements of this special provision and other contract documents. Failure of a BMP does not necessarily constitute noncompliance as long as the BMP is repaired, replaced or supplemented within the timelines established in the applicable permits and no sediment is discharged from the site or into a water of the state.

2. CONSTRUCTION REQUIREMENTS

Develop a SWPPP specific to the project. The creation of the SWPPP is a cooperative effort between the NDDOT who creates the project plan sheets and the Contractor who creates a complete SWPPP which incorporates the plan sheets and the Contractor's means and methods. The project plan sheets by themselves do not meet the requirements of a complete SWPPP and should not be considered as such. The Contractor has the flexibility to modify the design and implementation of the temporary erosion and sediment controls to match the Contractor's means and methods and/or field conditions. These changes must be documented in the SWPPP and meet all regulatory requirements.

Obtain appropriate permit coverage for the activities conducted in Contractor Controlled Areas. A permit will be required for these areas regardless of their size. The NDDOT will have no responsibility for these areas.

Install perimeter erosion and sediment BMPs according to the plans/SWPPP prior to site disturbance.

Change the location of temporary erosion and sediment BMPs to fit the field conditions.

Update the SWPPP as work progresses, or as directed by the Engineer. Update the SWPPP to show changes due to revisions in work schedules or sequence of construction. Update the site map to reflect erosion and sediment BMPs that have been installed, changed, or removed.

Do not rely on perimeter BMPs as the sole method of controlling erosion. As the project progresses, install temporary erosion and sediment BMPs within the perimeter BMPs to control erosion resulting from the construction of the project.

Use temporary erosion and sediment BMPs to prevent contamination of adjacent streams or other watercourses, lakes, ponds or other areas of water impoundment.

Coordinate temporary erosion and sediment BMPs with the construction of permanent erosion and sediment BMPs to provide continuous erosion control. Do not install temporary erosion and sediment BMPs when permanent erosion and sediment BMPs are able to be installed. Once the permit is terminated or transferred to the Department, the maintenance of the permanent erosion and sediment BMPs becomes the responsibility of the NDDOT.

Install stabilization BMPs (mulch, seeding and mulch, etc.) in areas that have been disturbed where work has temporarily or permanently ceased following the timelines established in the applicable permits. If implementation of stabilization is precluded by snow cover, undertake such measures as soon as conditions allow.

Maintain the effectiveness of the temporary erosion and sediment BMPs as long as required to contain sediment runoff. Inspect the temporary erosion and sediment BMPs and complete the inspection and maintenance reports every 14 days and within 24 hours of a rainfall event of 0.25 inch or more. During prolonged rainfall (more than 1 day), conduct an inspection within 24 hours of the first day of the event and within 24 hours after the end of the event. Inspections are required only during normal business hours. Install a rain gauge to monitor rainfall amounts as required by the appropriate permit.

Correct any deficiencies in the BMPs within the timelines established in the applicable permits. If conditions do not permit access to the BMP, corrective actions can be taken by installing additional BMPs. Correct the original deficiencies as soon as conditions allow access to their location without causing additional damage to the slopes. In the inspection logs, document the conditions that prohibit access.

Provide copies of all inspections, documentation, record keeping, maintenance, remedial actions, and repairs required by the applicable permits to the Engineer. Provide inspection and maintenance reports within 3 working days after an inspection has been conducted.

Provide immediate written notification to the Engineer of proposed changes to the erosion control plan or SWPPP. The Engineer will review the proposed changes and determine if they are adequate. Documentation of maintenance and inspections that does not affect the erosion control plan or SWPPP does not require approval by the Engineer.

Remove the temporary devices when directed by the Engineer or when permanent erosion and sediment controls are installed.

3. Erosion and Sediment Control Supervisor.

A. General. Designate an erosion and sediment control supervisor. Provide the name and contact information for the supervisor at the preconstruction meeting. If this erosion and sediment control supervisor becomes unavailable on the project, designate a replacement supervisor. Notify the Engineer if this supervisor changes and provide the contact information for the new supervisor.

B. Qualifications. The supervisor shall be:

1. An employee of the Prime Contractor;

2. Familiar with installation, maintenance and removal of BMPs and the requirements of the erosion and sediment control plans, applicable permit requirements, specifications, plans and this provision; and

3. Competent to supervise personnel in erosion and sediment control operations.

C. Duties. The supervisor shall:

1. Provide erosion and sediment control as required by the SWPPP, Plans, and Specifications.

2. Be on the site to supervise the installation, operation, inspection, maintenance, and removal of the erosion and sediment BMPs.

3. Update the SWPPP as work progresses to show changes due to revisions in work schedules or sequence of construction, or as directed by the Engineer. Update the site map to reflect erosion and sediment BMPs that have been installed, changed, or removed.

4. Propose changes to improve erosion and sediment control.

5. Be accessible to the job site within 24-hours.

6. Provide the Engineer with documentation of all erosion and sediment control activities and inspections as required above.

3. PERFORMANCE

Correct all areas of noncompliance within 24 hours after notification of noncompliance. If corrective actions are not taken within 24 hours, the Engineer may:

1. Assess a contract price reduction of $500 per day per instance;

2. Have deficiencies corrected by another Contractor and deduct the cost of the work from the monies due or to become due to the Contractor;

3. Suspend all work; or

4. Withhold payment on other contract items/pay estimates.

These actions will be applied until deficiencies have been corrected.

4. BASIS OF PAYMENT

BMP installation will be paid for at the contract unit price for erosion and sediment control for the appropriate items and sections. The plans will detail the required BMPs for temporary and permanent installations. The same bid items may be used for temporary and permanent BMPs.

BMP items will be measured as specified in the “Method of Measurement” portion of the appropriate section of the specifications.

BMP item removal will be paid for at the contract unit price for “Remove _____”in the appropriate section of the specifications.

Include the costs for labor, materials, maintenance, equipment, disposal, adherence to the permit, and SWPPP modifications in the respective pay items.

When the Engineer directs the replacement of temporary erosion and sediment BMPs that are no longer functional because of deterioration or functional incapacity and those items were installed as specified in the Contract or as directed by the Engineer, the Department will pay for replacement BMPs

No payment will be made for replacing temporary erosion and sediment BMPs that the Engineer determines are ineffective because of improper installation, lack of maintenance, or the Contractor’s failure to pursue timely installation of permanent erosion and sediment BMPs as required in the Contract.

No payment will be made for replacing temporary erosion and sediment BMPs due to contractor operations. Include the cost to move Flotation Silt Curtain as work progresses in the price bid for “Flotation Silt Curtain”.

Erosion and sediment controls for Contractor Controlled Areas are the responsibility of the Contractor and will not be paid for by the Department.

Removal of sediment from silt fence and fiber rolls will be paid for at the price listed in the “Price Schedule PS-1.”

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

LOCAL AGENCY CONTRACTS

References to NDDOT, Department, Director, or Engineer in the Standard Specifications for Road and Bridge Construction and other portions of the Contract must be construed as referring to the Owner of the project.

If the Contractor intends to file a claim for additional compensation for work or material not covered by the Contract, the Contractor is required to prosecute the claim in accordance with the 2014 Standard Specifications for Road and Bridge Construction, Section 104.05, “Claims for Adjustment”. The provisions of Section 104.05 D, “Conditions Precedent to Contractor’s Demand for Arbitration”, are not applicable to this Contract, nor are the provisions of North Dakota Century Code §24-02-26 et seq. regarding arbitration applicable, as the North Dakota Department of Transportation is not a party to the Contract.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

RAILROAD REQUIREMENTS

PROJECT SU-8-992(036)037, PCN 20057

This special provision incorporates the following licenses and agreements entered into by and between the City of West Fargo, ND, and the BNSF Railway Company:

- Pipeline License No. 14-51090
- Pipeline License No. 14-51091
- Grade Crossing Construction and Maintenance Agreement

Bidders shall become familiar with all the provisions of these licenses and agreements (attached), and submit their bid for the construction of this project based on a plan for construction which will meet all conditions of the attached licenses and agreements.

The Contractor on this project shall be responsible for fulfilling all the applicable requirements and complying with all the terms and conditions as contained in the licenses and agreements attached hereto.

(Pipeline License No. 14-51090 attached)
(Pipeline License No. 14-51091 attached)
(Grade Crossing Construction and Maintenance Agreement attached)

Jones Lang LaSalle Brokerage, Inc
4300 Amon Carter Blvd., Suite 100
Fort Worth, Texas 76155-2685
tel +1 817-230-2600, fax +1 817 306-8265

January 16, 2015

Tracking # 14-51090

City of West Fargo
Attention: Mr Chris Brungardt
810 12th Avenue, NW
West Fargo, ND 58078

Dear Chris:

Enclosed please find one (1) fully executed Pipeline Agreement. **A copy of the executed Agreement must be available upon request at the job site allowing authorization to do the work.** Please contact Roadmaster at telephone *(701) 280-7232 or cell (701) 541-1727*, at least ten (10) days in advance of entry for each location and **BEFORE YOU DIG, CALL 1-800-533-2891, Option1, 2 then 4.**

If you need additional information please contact me at (817) 230-2627.

Sincerely,

Camille Barbosa

Camille Barbosa
Contract Specialist

Enclosure

cc: Jason Randash, Roadmaster – Jason.Randash@bnsf.com

PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective January 16, 2015 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF WEST FARGO**, a North Dakota municipality ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline, twelve (12") inches in diameter inside a twenty (20") inch steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of West Fargo, County of Cass, State of North Dakota, Line Segment 0291, Mile Post 0.83 as shown on the attached Drawing No. 62012, dated September 22, 2014, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").

2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.

4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry *municipal sewage water*, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.

5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, the sum of Three Thousand and No/100 Dollars ($3,000.00) as compensation for the use of the Premises.

7. Costs and Expenses.

   7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

   7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger

services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging **costs** shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. **Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this Section 7.**

8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;

9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or

9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. Right to Require Relocation. If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. Construction and Maintenance of the Pipeline.

11.1 Licensee shall notify Licensor's Roadmaster, *801 Main Avenue, Fargo, ND 58102, telephone (701) 280-7232*, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.

11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.

11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.

11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and

expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (*e.g.*, consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

12.3 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

12.3.1 filled in to surrounding ground level with compacted bentonite grout; or

12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs,

damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**

13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**

13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**

13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**

13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**

13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

15.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.

- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is $1,150.00.

☑ I **elect** to participate in Licensor's Blanket Policy;

☐ I **elect not** to participate in Licensor's Blanket Policy.

15.5 Pollution Legal Liability (PLL) Insurance. Intentionally deleted; not required for this permit.

15.6 Other Requirements:

15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.

15.6.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.

15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

15.6.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

15.6.10 Failure to provide evidence as required by this **Section 15** shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.

15.6.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

15.6.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.

15.6.13 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.

16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.

16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.

16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Pipeline on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 17.2**.

17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH**

RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.

LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, **"Taxes"**) levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the **"Improvements"**) or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.

23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.

23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;

24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;

24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the **"Restoration Obligations"**), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically

enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. Assignment.

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.

26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the

custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: City of West Fargo
810 12th Avenue, NW
West Fargo, ND 58078
Attn: Chris Brungardt

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties. 32.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

35. Interpretation.

35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.

36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155

By: _____

Name: Ed Darter

Title: Senior Vice President, National Accounts

Date: _____

LICENSEE:

CITY OF WEST FARGO a North Dakota municipality

810 12th Avenue, NW
West Fargo, ND 58078

By: _____

Name: CHRIS BRUNGARDT

Title: DIRECTOR

Date: 12/19/14

COORDINATE SYSTEM: ND_S

TRACKING NO. 14-51090

MAP REF. s50723

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN

BNSF RAILWAY COMPANY

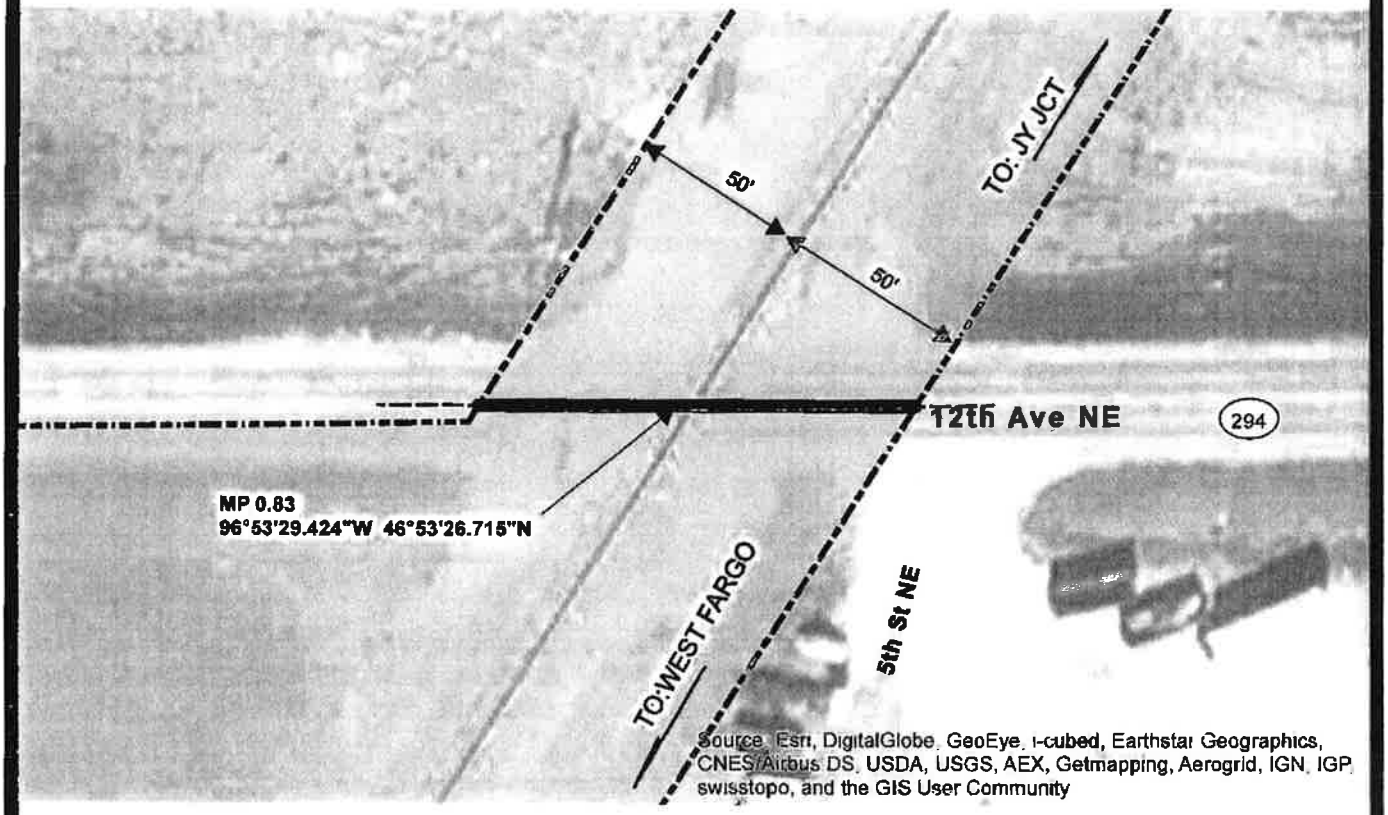
AND

CITY OF WEST FARGO

N

SCALE: 1 IN.= 100 FT.
TWIN CITIES DIV.
W FAR-JYJCT COAL RT SUBDIV.
L.S. 0291 MP 0.83
DATE 09/22/2014

SECTION: 32
TOWNSHIP: 140N
RANGE: 49W
MERIDIAN: 5PM



DESCRIPTION OF PIPELINE
PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	12"	20"	LENGTH ON R/W:	119'	119'
CONTENTS:	MUNICIPAL SEWAGE WATER		WORKING PRESSURE:	-	
PIPE MATERIAL:	PVC	STEEL	BURY: BASE/RAIL TO TOP OF CASING		21'
SPECIFICATIONS / GRADE:	SDR 26	35,000 PSI	BURY: NATURAL GROUND		20.5'
WALL THICKNESS:	0.481"	0.375"	BURY: ROADWAY DITCHES		20.5'
COATING:	N/A	N/A	CATHODIC PROTECTION		N/A

VENTS: NUMBER - SIZE - HEIGHT OF VENT ABOVE GROUND -
NOTE: CASING TO BE JACKED OR DRY BORED ONLY

NEAR WEST FARGO
COUNTY OF CASS

STATE OF ND

JRB

DRAWING NO. 62012

Jones Lang LaSalle Brokerage, Inc
4300 Amon Carter Blvd., Suite 100
Fort Worth, Texas 76155-2685
tel +1 817-230-2600, fax +1 817 306-8265

April 30, 2015

Tracking # 14-510901

City of West Fargo
Attention: Mr Chris Brungardt
810 12th Avenue, NW
West Fargo, ND 58078

Dear Chris:

Enclosed please find one (1) fully executed Pipeline Agreement. **A copy of the executed Agreement must be available upon request at the job site allowing authorization to do the work.** Please contact Roadmaster at telephone *(701) 280-7232 or cell (701) 541-1727*, at least ten (10) days in advance of entry for each location and **BEFORE YOU DIG, CALL 1-800-533-2891, Option1, 2 then 4.**

If you need additional information please contact me at (817) 230-2627.

Sincerely,

Camille Barbosa

Camille Barbosa
Contract Specialist

Enclosure

cc: Jason Randash, Roadmaster – Jason.Randash@bnsf.com

PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective April 30, 2015 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF WEST FARGO**, a North Dakota municipality ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) steel pipeline, fifty four (54") inches in diameter (the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of West Fargo, County of Cass, State of North Dakota, Line Segment 0291, Mile Post 0.839 as shown on the attached Drawing No. 62013, dated September 25, 2014, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").

2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.

4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry *storm water*, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.

5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, the sum of Three Thousand and No/100 Dollars ($3,000.00) as compensation for the use of the Premises.

7. Costs and Expenses.

   7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

   7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's

representative. Flagging **costs** shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. **Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this Section 7.**

8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;

9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or

9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. Right to Require Relocation. If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. Construction and Maintenance of the Pipeline.

11.1 Licensee shall notify Licensor's Roadmaster, *801 Main Avenue, Fargo, ND 58102, telephone (701) 280-7232*, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.

11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.

11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.

11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and

expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (*e.g.*, consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

12.3 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

12.3.1 filled in to surrounding ground level with compacted bentonite grout; or

12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs,

damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**

13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**

13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**

13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**

13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**

13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

15.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.

- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is $1,150.00.

☒ **I elect** to participate in Licensor's Blanket Policy;

☐ **I elect not** to participate in Licensor's Blanket Policy.

15.5 Pollution Legal Liability (PLL) Insurance. Intentionally deleted; not required for this permit.

15.6 Other Requirements:

15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.

15.6.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.

15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

15.6.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

15.6.10 Failure to provide evidence as required by this **Section 15** shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.

15.6.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

15.6.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.

15.6.13 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.

16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.

16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.

16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Pipeline on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 17.2**.

17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH**

RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.

LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.

23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.

23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;

24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;

24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the **"Restoration Obligations"**), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically

enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. Assignment.

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.

26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the

custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: City of West Fargo
810 12th Avenue, NW
West Fargo, ND 58078
Attn: Chris Brungardt

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties. 32.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

35. Interpretation.

35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.

36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155

By: _____

Name: Ed Darter

Title: Senior Vice President, National Accounts

Date: _____

LICENSEE:

CITY OF WEST FARGO a North Dakota municipality

810 12th Avenue, NW
West Fargo, ND 58078

By: _____

Name: CHRIS BRUNGARDT

Title: DIRECTOR of PUBLIC WORK

Date: _____

COORDINATE SYSTEM: ND_S

TRACKING NO. 14-51091

MAP REF. s50723

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN

BNSF RAILWAY COMPANY

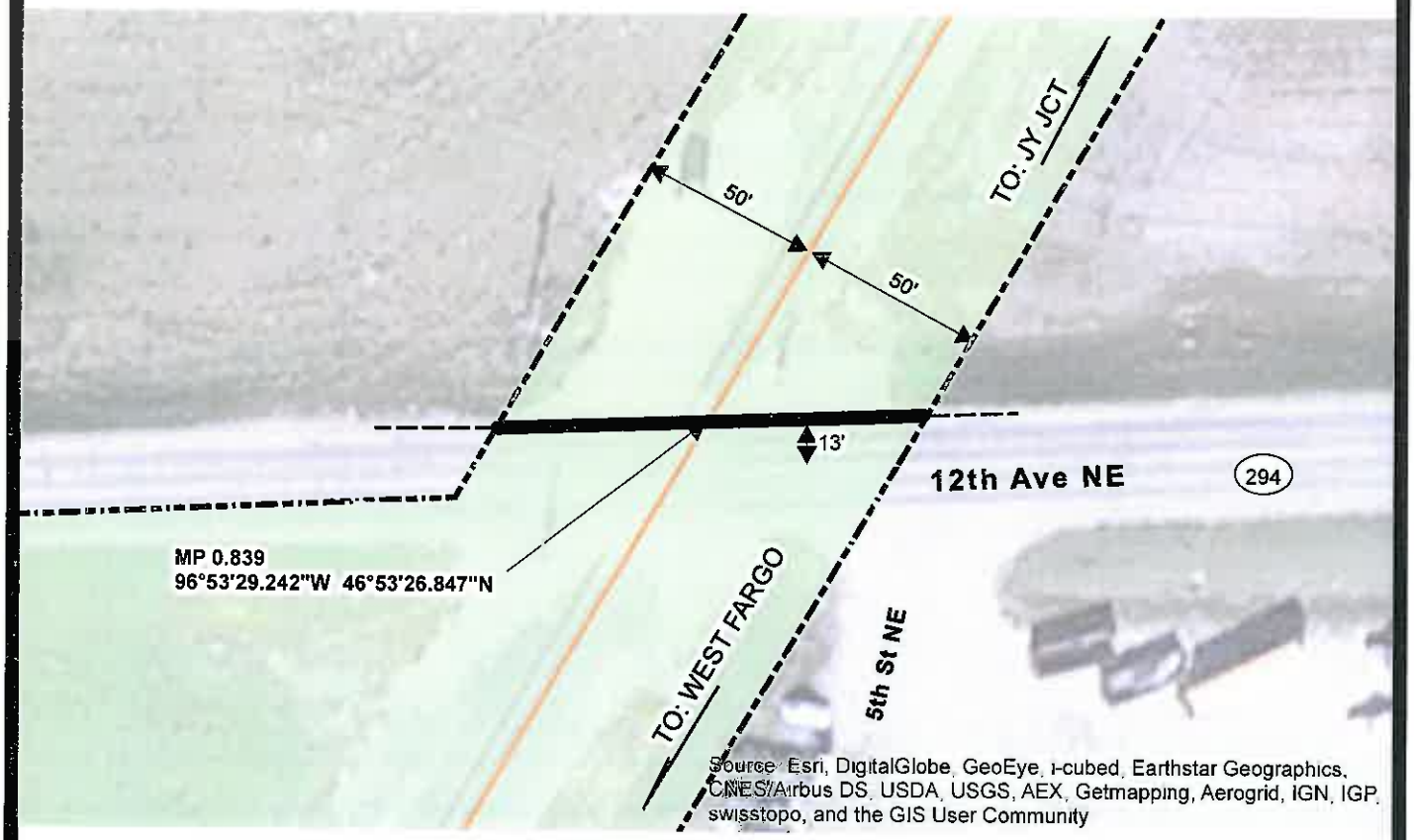
AND

CITY OF WEST FARGO

N

SCALE: 1 IN.= 50 FT.
TWIN CITIES DIV.
W FAR-JY JCT COAL RT SUBDIV.
L.S. 0291 MP 0.839
DATE 09/25/2014

SECTION: 32
TOWNSHIP: 140N
RANGE: 49W
MERIDIAN: 5PM



DESCRIPTION OF PIPELINE
PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	54"	-	LENGTH ON R/W:	112'	-
CONTENTS:	STORM WATER		WORKING PRESSURE:	N/A	
PIPE MATERIAL:	STEEL	-	BURY: BASE/RAIL TO TOP OF PIPE		9.4'
SPECIFICATIONS / GRADE:	35,000 PSI	-	BURY: NATURAL GROUND	9.0'	
WALL THICKNESS:	0.719"	-	BURY: ROADWAY DITCHES	9.0'	
COATING:	YES	-	CATHODIC PROTECTION	YES	

VENTS: NUMBER - SIZE - HEIGHT OF VENT ABOVE GROUND -
NOTE: CASING TO BE JACKED OR DRY BORED ONLY

NEAR WEST FARGO
COUNTY OF CASS

STATE OF ND

TR

REVISION 1

DRAWING NO. 62013

BNSF RAILWAY

GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT

BNSF File No.: BF10007154
Mile Post 0.83
Line Segment 291
U.S. DOT Number 086420T
JY Connector

This Agreement **("Agreement")**, is executed to be effective as of this 2nd day of June, 2015 **("Effective Date")**, by and between BNSF RAILWAY COMPANY, a Delaware corporation **("BNSF"),** and the City of West Fargo, a political subdivision of the State of North Dakota **("Agency").**

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of West Fargo, State of North Dakota;

WHEREAS, in the interest of aiding vehicular travel and public safety, the Agency is undertaking a project to improve the existing 12th Ave N at-grade crossing, located at BNSF Line Segment 291 and Milepost 0.83, and designated by D.O.T. No. 086420T, by reconstructing and widening the roadway and installing railroad crossing signals and activation equipment within the existing roadway easement across the BNSF right-of-way as indicated on the Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the parties agree that BNSF will receive no ascertainable benefit from the installation of advance warning signs, pavement marking stop bars or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment"); and

WHEREAS, the Agency also desires BNSF to install a new crossing surface at 12th Ave N with a new concrete and rubber crossing surface;

WHEREAS, the Agency is paying for the acquisition and installation of crossing signal equipment and the new crossing surface at 12th Ave N

WHEREAS, the BNSF agrees to purchase and install, at AGENCY'S sole expense, the crossing signal equipment and the new crossing surface described in the scope of work herein, and upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I) SCOPE OF WORK

1. The term **"Project"** as used herein includes any and all work related to the reconstruction/widening/construction of the 12th Ave N by Agency and installation of crossing signals/activation equipment/new crossing surfaces at U.S. D.O.T No. 086420T, (hereinafter referred to as the **"Crossing"**) by BNSF, more particularly described on the Exhibit A, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

RAILROAD OBLIGATIONS

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand and No/100 Dollars ($2,000), together with the Temporary Construction License Fee in the sum of Seven Thousand Five Hundred Fifty-Nine and 25/100 Dollars ($7,559.25), BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to enter upon and use the portion of BNSF's right-of-way as is necessary to reconstruct, widen, and thereafter maintain, the Crossing as described further on Exhibit A-1, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

(a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;

(b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate;

(c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate.

The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Structure, or (ii) 36 months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind,

express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Crossing only and shall not be used by Agency for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Structure for any other purpose than construction. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

(a) Procurement of materials, equipment and supplies necessary for the railroad work;

(b) Preliminary engineering, design, and contract preparation;

(c) Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof;

(d) Furnishing engineering and inspection as required in connection with the construction of the Project;

(d) Removal and disposal of the existing crossing surfaces from the Crossing;

(e) Installation of one 112-foot concrete crossing surface for the one track complete with new rail, ties, ballast, fasteners, along with appropriate surfacing, to carry the improved roadway and sidewalks;

(f) Installation of Crossing Signal Equipment and Crossing Signal Control House as shown on Exhibit A;

(g) Make such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of the construction of the Project.

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

4. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

ARTICLE II) AGENCY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

1. Agency must furnish to BNSF plans and specifications for the Project. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work on BNSF right-of-way and marked as Exhibit A, attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.

2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.

3. Agency must acquire all rights of way necessary for the construction of the Project.

4. Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (http://www.bnsf.com/communities/faqs/pdf/utility.pdf), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

5. Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:

(a) Design and Reconstruction/Construction of 12th Ave N;

(b) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");

(c) Installation of advance warning signs in accordance with the MUTCD

(d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;

(e) Provide suitable drainage, both temporary and permanent;

(f) Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing, during the installation of the concrete crossing surfaces, and also during the installation of the Crossing Signal Equipment.

(g) Construct asphalt/concrete roadway surface on approaches to each track. Roadway surface will match elevation of the Main (and Siding) Track crossing surface(s) and remain level to a point at least thirty (30) feet from nearest rail. Any concrete headers will be constructed no closer than 5'-6" (preferably 6'-0") from centerline of each track to provide for a minimum of 11'-0" (preferably 12'-0") opening for track and railroad crossing surface;

(h) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

6. The Agency will approve the location of the signals and signal bungalow prior to the installation by BNSF.

7. The Agency must have advanced railroad crossing signs and standard pavement markings in place at the crossing shown on Exhibit A (if the same are required by the MUTCD) prior to the acceptance of this Project by the Agency.

8. The Agency must give BNSF's Manager Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad portion of the work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written Notice to Proceed is received from Agency.

9. The Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

10. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "www.contractororientation.com"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

11. Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

12. Agency must include the following provisions in any contract with its contractor(s) performing work on said Project:

(a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been

included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

(b) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative Manager Public Projects at (763) 782-3482 to stop construction at no cost to the Agency or BNSF until these items are completed.

(c) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

(d) In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies).**THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

13. Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III and IV; and (ii) the provisions set forth in Exhibit C and Exhibit C-I, attached hereto and by reference made a part hereof.

14. Except as otherwise provided below in this Section 13, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

(a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;

(b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;

(c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-I, and (ii) delivered to and secured BNSF's approval of the required insurance; and

(d) If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.

(e) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's Roadmaster 90 days advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

15. Agency must advise the appropriate BNSF Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.

16. **TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF. For the purposes of Chapter 32-12.1 of the North Dakota Century Code, the employees and officers of Agency are deemed to be employees of Agency. Under no circumstances will Agency, irrespective of whether it may have waived the limit on liability set forth in Chapter 32-12.1 of the North Dakota Century Code, be required to pay on behalf of itself or any other party, any amounts in excess of the limits on liability**

established in Chapter 32-12.1 of the North Dakota Century Code applicable to any one party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for each party. Nothing herein will be deemed a waiver by Agency of the limitations on liability set forth in N.D.C.C. § 32-12.1-03, as amended from time to time

ARTICLE III) JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.

2. The work hereunder must be done in accordance with the Exhibit A and the detailed plans and specifications approved by BNSF.

3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations of either BNSF or its related railroads, or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by

Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Chris Brungardt
Public Works Director
City of West Fargo
810 12th Ave NW
West Fargo, ND 58078

5. Agency must supervise and inspect the operations of all Agency contractors to ensure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of BNSF. If BNSF determines that proper supervision and inspection are not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify Chris Brungardt for appropriate corrective action.

6. Pursuant to this section and Article II, Section 6 herein, Agency must, "out of funds made available to it for the construction of the Project", reimburse BNSF in full for the **actual costs** of all work performed by BNSF under this Agreement (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes),

7. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Title 23 U.S. Code, Title 23 Code of Federal Regulations, and the Federal-Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

8. The construction of the Project will not commence until Agency gives BNSF's Manager Public Projects thirty (30) days prior written notice of such commencement.

The commencement notice will reference BNSF's file number BF10007154 and D.O.T. Crossing No. 086420T and must state the time that construction activities will begin.

9. In addition to the terms and conditions set forth elsewhere in this Agreement, BNSF and the Agency agree to the following terms upon completion of construction of the Project:

(a) Agency will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the 12th Ave N roadway.

(b) Agency will maintain the elevation of the 12th Ave N roadway approaches to match the elevation on the railroad track crossing surfaces and to be no more than three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail..

(c) Agency will maintain the advanced railroad crossing warning signs and pavement markings and agrees to hold harmless and indemnify BNSF for any claims, damages or losses, in whole or in part, caused by or due to the Agency's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.

(d) Agency will do nothing and permit nothing to be done in the maintenance of the 12th Ave N roadway, which will interfere with or endanger facilities of BNSF.

(e) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.

(f) BNSF will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment, Crossing Signal Control House, and the new crossing surfaces, from end-of-tie to end-of-tie, in proper condition, and the new crossing surfaces, from end-of-tie to end-of-tie,

(g) Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency's portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.

(h) If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, Crossing Signal House, or the new crossing surface installed hereunder, the costs for such

rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.

(i) If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:

(j) In the event the BNSF's sole negligence destroys or damages the Crossing Signal Equipment and/or the Crossing Signal House, BNSF must, at its sole cost and expense, replace or repair such Crossing Signal Equipment and/or Crossing Signal House.

(k) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, Agency must reimburse BNSF for the costs to replace or repair such Crossing Signal Equipment and/or Crossing Signal House.

(l) If the Crossing Signal Equipment and/or Crossing Signal House installed hereunder cannot, through age, be maintained, or by virtue of its obsolescence, requires replacement, the cost of installation of the new crossing signal equipment and/or new crossing signal house will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable Agency at the time of such replacement is warranted.

10. Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **Inspection and Maintenance** purposes and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.

11. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of North Dakota and the Federal Highway Administration, for a period of three (3) years from the date of final BNSF invoice under this Agreement.

12. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

13. In the event construction of the Project does not commence within thirty-six (36) months of the Effective Date, this Agreement will become null and void.

14. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

15. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

16. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

17. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF: BNSF's Manager Public Projects
80 44th Ave NE
Minneapolis, MN 55421

Agency: Chris Brungardt
Public Works Director
City of West Fargo
810 12th Ave NW
West Fargo, ND 58078

18. All questions concerning the interpretation or application of provisions of this Agreement will be decided according to the substantive law of the State of North Dakota without regard to conflicts of law provisions.

BNSF RAILWAY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____

Printed Name: Greg Delnaway

Title: AVP Engineering Services

WITNESS:

_____

AGENCY
City of West Fargo

WITNESS:

_____
Matthew T. Kinsella

By: _____

Printed Name: CHRIS BRUNGARDT

Title: DIRECTOR of PUBLIC WORKS

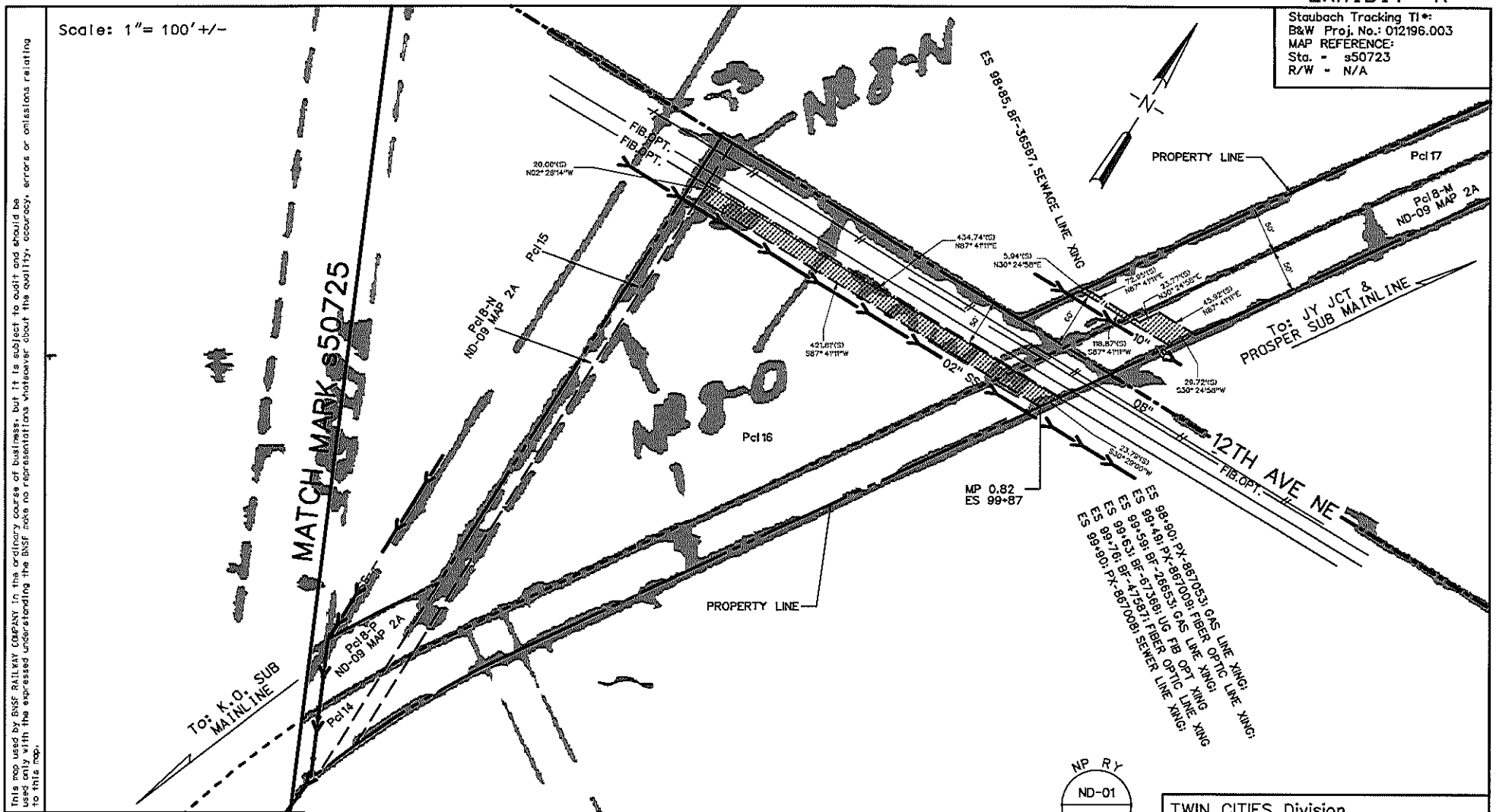
BNSF RAILWAY

Exhibit A-1

EXHIBIT "A"

Staubach Tracking TI #:
B&W Proj. No.: 012196.003
MAP REFERENCE:
Sta. - s50723
R/W - N/A

Scale: 1"= 100'+/-



This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.

To: CITY OF WEST FARGO, ND

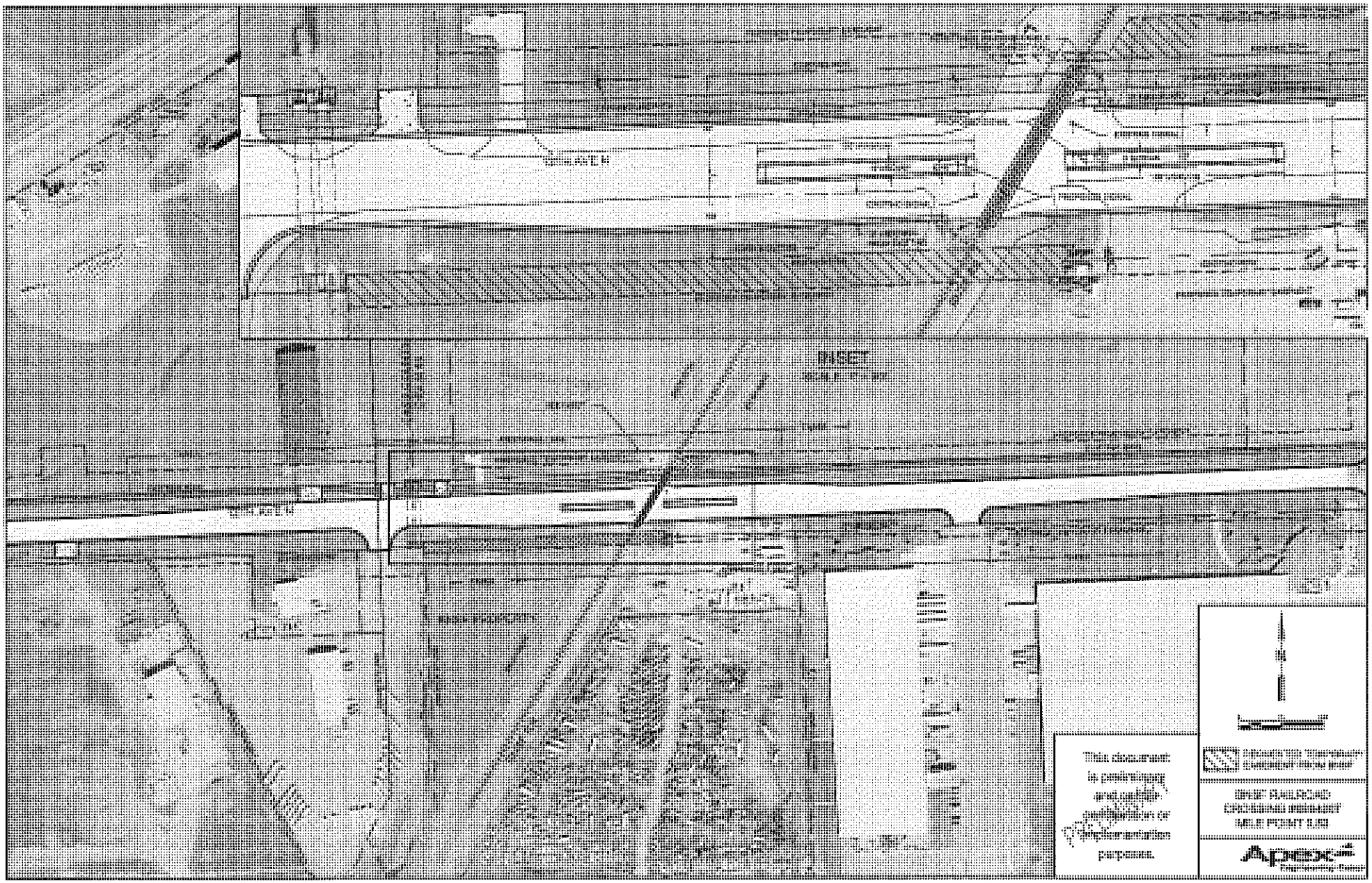
At: WEST FARGO
CASS COUNTY
NORTH DAKOTA

Legend:
▨ Temporary Easement Area

MEASUREMENTS BASED ON PROVIDED SURVEYS
(S) MEASUREMENTS TAKEN OFF SURVEY
(M) MEASUREMENT

TWIN CITIES Division
K.O. Subdivision - L.S. 0026-4
Val. Sec. 54034
NP RY ND-01, Map 02
Sec. 32&5, T140&139N, R49W 5PM
October 9, 2014
M.P. 0.82 AMM

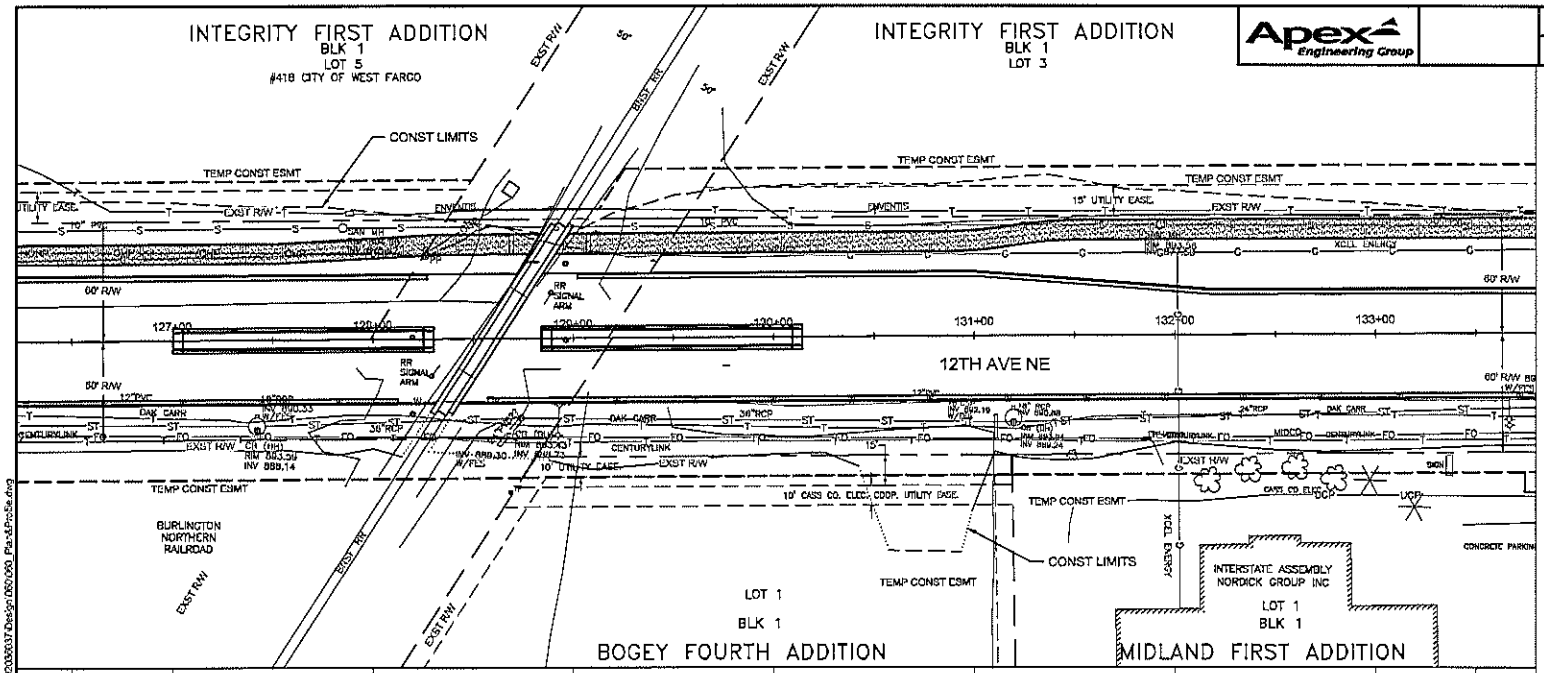
DRAWING NO. 3-62185

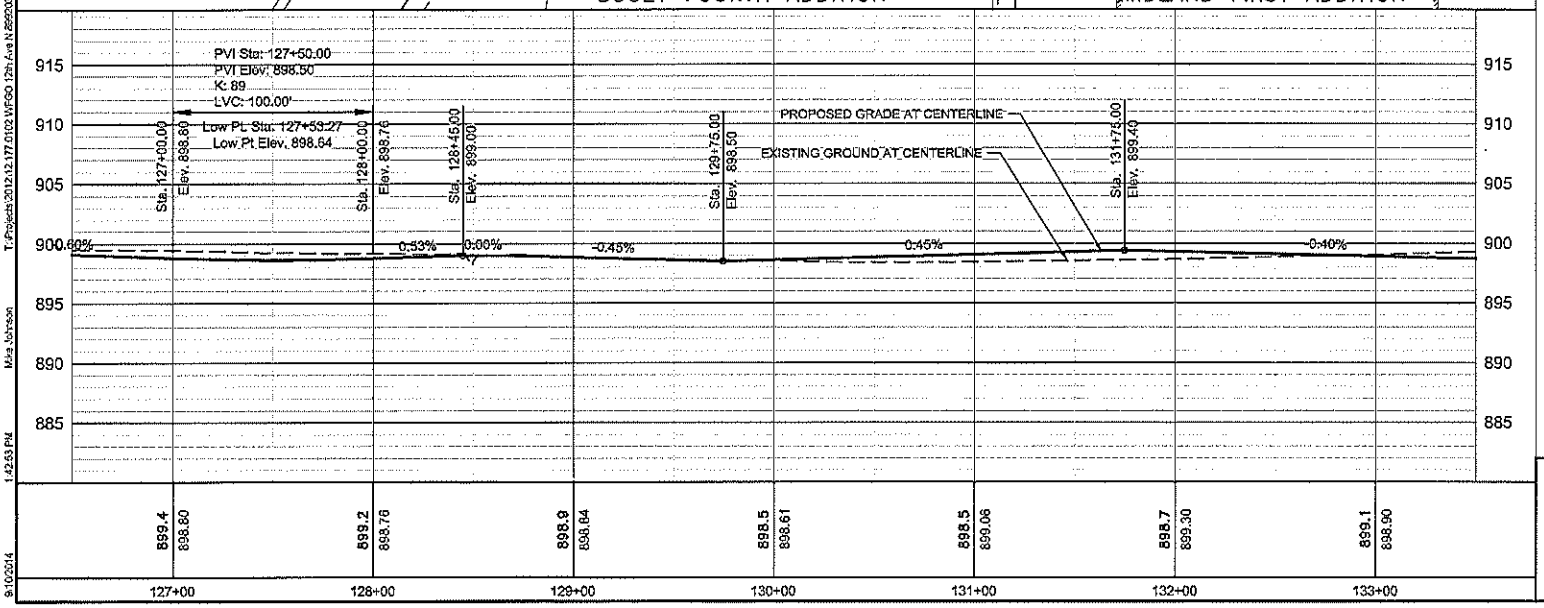


9/10/2014 1:42:51 PM Brent Musche T:\Projects\2012\2.177.0102 WFOO 12th Ave N\B992003037\Exhibits\Railroad_Crossing.dwg

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SU-8-992(036)037	60	10

Apex Engineering Group





This document is preliminary and not for construction or implementation purposes.

PRELIMINARY

12TH AVENUE NORTH RECONSTRUCTION

PLAN & PROFILE

STA 126+50 - 133+50

T:\Projects\2012\12.177.0102 WFGO 12th Ave N.8926\036\037\Design\050.000_Plan&Profile.dwg

Mike Johnson

1:42:53 PM

9/10/2014

Law Department Approved

TEMPORAY EASEMENT AGREEMENT
FOR ROADWAY CONSTRUCTION, MAINTENANCE AND USE

THIS TEMPORARY EASEMENT AGREEMENT FOR CONSTRUCTION AND MAINTAINANCE AND USE OF PUBLIC ROADWAY AND RELATED SURFACE IMPROVEMENTS ("**Easement Agreement**") is made and entered into as of the ____ day of _____ 20___ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), and City of West Fargo ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of City of West Fargo, County of Cass State of North Dakota, LS 0026 at Mile Post.82 [Project # SU-8-992(306)037,PCN20057], as described or depicted on **Exhibit "A"** attached hereto and made a part hereof (the "**Premises**").

B. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

C. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be the construction, maintenance and use of a public roadway and related surface improvements (collectively, "**Improvements**") to be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the Plans and Specifications (as hereinafter defined). Grantee expressly acknowledges and agrees that the Easement Purpose does not include, and no rights are granted hereunder, for an elevated roadway or related improvements or any subsurface rights.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all Laws (as hereinafter defined), including without limitation zoning laws, regulations, and ordinances of municipal and other governmental authorities, if any.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

(a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;

(b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

(c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

1.4 Term of Easement. The term of the Temporary Easement, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is 36 months after the Effective Date.

Section 2 **Compensation.** Grantee shall pay Grantor, prior to the Effective Date, the sum of Seven Thousand Five Hundred Fifty Nine and 25/100 Dollars ($7,559.25) as compensation for the grant of this Easement.

Section 3 **No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 **Nature of Grantor's Interest in the Premises.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 **Plans and Specifications for Improvements.** Grantee shall submit to Grantor for its review detailed information concerning the design, location and configuration of the Improvements ("**Plans and Specifications**"). As soon as reasonably practicable after Grantor's receipt of the Plans and Specifications and other information required by Grantor about the proposed location of the Improvements, Grantor will notify Grantee in writing whether or not,, in Grantor's sole judgment, construction, maintenance, operation or removal of all or any part of the Improvements constructed in accordance with the Plans and Specifications would cause Grantee to violate any of the provisions of Section 6.3 hereof. Following any notice from Grantor that implementation of the Plans and Specifications would in Grantor's judgment cause Grantee to violate any of the provisions of Section 6.3 hereof, Grantee shall have the right to modify the location, configuration or other aspects of the Plans and Specifications of the proposed Improvements and to resubmit such modified information to Grantor for its further review. Despite Grantor's review of the Plans and Specifications, any deficiency in design or construction shall be solely the responsibility of Grantee.

Section 6 **Improvements.**

6.1 Construction of Improvements. Grantee, and Grantee's Contractors, at Grantee's sole cost and expense, shall locate, configure, construct and maintain the Improvements: (i) in a good and workmanlike manner and in strict accordance with the Plans and Specifications pursuant to the provisions of **Section 5** above, (ii) in conformance with applicable building uses and all applicable engineering, safety and other Laws, (iii) in accordance with the highest accepted industry standards of care, skill and diligence, and (iv) in such a manner as shall not adversely affect the structural integrity or maintenance of the Premises, any structures on or near the Premises, or any lateral support of structures adjacent to or in the proximity of the Premises. The construction of the Improvements within the Premises shall be completed by Grantee and Grantee's Contractors

within two (2) years after the Effective Date. Grantee shall provide as built drawings of all Improvements to Grantor promptly upon completion of construction and shall use its best efforts to cause such as built drawings to be electronically accessible to Grantor.

6.2 Maintenance of Improvements. Grantee shall at all times during the term of this Easement Agreement, at Grantee's sole cost and expense, keep and maintain the Improvements located upon the Premises in a structurally safe and sound condition, in good repair and in compliance with the Plans and Specifications and this Easement Agreement. Grantee shall also promptly repair any damage to the Premises or the Improvements caused, either in whole or in part, by Grantee Parties (as hereinafter defined). Grantee shall not cause or permit another person to cause any damage to the Premises or the Improvements, and Grantee shall be responsible for any such damage which may occur as a result of any Grantee Party's action or inaction. Grantee shall not permit the existence of any nuisance or the accumulation of junk, debris or other unsightly materials on the Premises and shall keep the Premises in a clean and safe condition. Grantee shall keep the Premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on the Premises, said work of cutting and removal to be done at such times and with such frequency as to comply with local Laws and regulations and abate any and all hazard of fire. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain the Improvements in the Premises.

6.3 No Interference. During the construction of, and any subsequent maintenance performed on, operation of, or removal of, all or any portion of the Improvements, Grantee, at Grantee's sole cost, shall perform all activities and work on or near Grantor's rail corridor or property and/or the Premises in such a manner as to preclude injury to persons or damage to the property of Grantor, or any party on or with property on Grantor's rail corridor or property, and shall ensure that there is no interference with the railroad operations or other activities of Grantor, or anyone present on Grantor's rail corridor or property with the authority or permission of Grantor. Grantee shall not disturb any improvements of Grantor or Grantor's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements. Grantor may direct one of its field engineers to observe or inspect the construction, maintenance, operation or removal of the Improvements, or any portion thereof, at any time to ensure such safety and noninterference, and to ensure that the Improvements comply with the Plans and Specifications. If any Grantee Party is ordered at any time to leave the Premises or to halt any activity on the Premises, then the party conducting that activity immediately shall cease such activity and leave the Premises, if the order was issued by Grantor's personnel to promote safety, such noninterference with other activities or property, or because the Improvements were not in compliance with this Easement Agreement. Notwithstanding the foregoing right of Grantor, Grantor has no duty or obligation to observe or inspect, or to halt work on, the Premises, it being solely Grantee's responsibility to ensure that the Improvements are constructed, maintained, operated and removed in strict accordance with all Laws, safety measures, such noninterference and the Plans and Specifications and in compliance with all terms hereof. Neither the exercise nor the failure by Grantor to exercise any right set forth in this **Section 6.3** shall alter the liability allocation set forth in this Easement Agreement.

6.4 No Alterations. Except as may be shown in the Plans and Specifications for the Easement, Grantee may not make any alterations to the Premises, or permanently affix anything to the Premises, without Grantor's prior written consent. If Grantee desires to change either the location of any of the Improvements or any other aspect of the Plans and Specifications of any of the Improvements, Grantee shall submit such change and modified Plans and Specifications to Grantor in writing for its review in the same manner as provided for in **Section 5**. Grantee shall have no right to commence any such change until after Grantee has received Grantor's written comments of its review.

6.5 Approvals; Compliance with Laws and Safety Rules.

(a) Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required approvals or authorizations from applicable governmental authorities.

(b) Prior to entering the Premises, and at all times during the term of this Easement Agreement, Grantee shall comply, and shall cause its contractor, any subcontractor, any

assignee, and any contractor or subcontractor of any assignee performing work on the Premises or entering the Premises on behalf of Grantee (collectively, "**Grantee's Contractors**"), to comply, with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) (collectively, "**Laws**"), and all of Grantor's applicable safety rules and regulations including those found on the website noted below in **Section 6.5(c)**.

(c) No employees of Grantee's Contractors, or its subcontractors, agents or invitees, may enter the Premises without first having completed Grantor's safety orientation found on the website: www.contractororientation.com.

6.6 Other Improvements. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist.

6.7 Flagging and Other Costs. Grantee shall not conduct any activities on, or be present on, any portion of the Premises or Grantor's rail corridor or property that is within twenty-five (25) feet of any active railroad track, except in the presence of a flagman. In any case where a flagman or flagmen are required in connection with the presence of individuals on Grantor's rail corridor or the Premises, Grantee shall provide as much advance notice as possible prior to any entry upon the Premises. Grantor shall arrange for the presence of the flagman or flagmen as soon as practicable after receipt of such notice from Grantee. Grantee shall reimburse to Grantor, within thirty (30) days following Grantee's receipt of each bill therefor, Grantor's costs in arranging for and providing the flagman or flagmen, which shall be billed to Grantee at Grantor's then applicable standard rate. The estimated cost of one flagger as of the Effective Date is $800 for an eight hour basic day with time and one-half or double time for overtime, rest days and holidays, plus the cost of any vehicle rental costs or other out-of-pocket costs. Grantee agrees to reimburse Grantor (within ninety(90) days after receipt of a bill therefor) for all other costs and expenses incurred by Grantor in connection with Grantee's use of the Premises or the presence, construction, maintenance, and use of the Improvements situated thereon.

6.8 No Unauthorized Tests or Digging. Grantee, and Grantee's Contractors, must not conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on Grantor's rail corridor or property (whether or not such centerline is located within the Premises), except after Grantee has obtained written approval from Grantor, and then only in strict accordance with the terms and any conditions of such approval.

6.9 Boring. Prior to conducting any boring work on or near Grantor's rail corridor or property (which shall only be permitted within the Premises), Grantee and Grantee's Contractors shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Grantee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Grantee's written request, which shall be made thirty (30) business days in advance of Grantee's proposed construction or modification of Improvements, Grantor will provide to Grantee any information that Grantor has in the possession of its Engineering Department concerning the existence and approximate location of Grantor's underground utilities and pipelines at or near the vicinity of the proposed Improvements. Prior to conducting any boring work, Grantee, and Grantee's Contractors, shall review all such material. Grantor does not warrant the accuracy or completeness of information relating to subsurface conditions and Grantee's, and Grantee's

Contractors', operations at all times shall be subject to the liability provisions set forth herein. For all bores greater than 20 inches in diameter and at a depth less than ten (10) feet below the bottom of a rail, Grantee, and Grantee's Contractors, shall perform a soil investigation which must be reviewed by Grantor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Grantor's reasonable opinion that granular material is present, Grantor may select a new location for Grantee's use, or may require Grantee, and Grantee's Contractors, to furnish for Grantor's review and approval, in Grantor's sole discretion, a remedial plan to deal with the granular material. Once Grantor has approved any such remedial plan in writing, Grantee, and Grantee's Contractors, at Grantee's sole cost, shall carry out the approved plan in accordance with all terms thereof and hereof. Any open hole, boring or well constructed on the Premises by Grantee, or Grantee's Contractors, shall be safely covered and secured at all times when anyone who is not creating it, working in it or using it as permitted hereunder is present in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises shall be promptly filled in by Grantee and Grantee's Contractors to surrounding ground level with compacted bentonite grout, or otherwise secured or retired in accordance with any applicable Laws. No excavated materials may remain on Grantor's rail corridor or property for more than ten (10) days, and must be properly disposed of by Grantee and Grantee's Contractors in accordance with applicable Laws.

6.10 Drainage of Premises and Property. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Premises shall be made and maintained by Grantee in such manner, form and to the extent as will provide adequate drainage of and from the Premises and Grantor's adjoining right of way; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from the Property and Grantor's adjoining right of way, Grantee shall construct and maintain such culverts or drains within the Premises as may be requisite to preserve such natural and pre-existing drainage. Grantee shall wherever necessary, construct extensions of existing drains, culverts or ditches through or along the Premises, such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

6.11 Modification, Relocation or Removal of Improvements. If at any time, Grantor desires the use of its rail corridor in such a manner that, in Grantor's reasonable opinion, would be interfered with by any portion of the Improvements or the Easement, Grantee, at Grantee's sole cost, shall make such changes in the Improvements and/or Premises that, in the sole discretion of Grantor, are necessary to avoid interference with the proposed use of Grantor's property, including, without limitation, Grantee relocating or removing all or a portion of the Improvements from the Premises. Grantor acknowledges that, in some instances, Improvements will not need to be moved or removed from the Premises, but can be protected in place, subject to approval by Grantor's engineering department. Where it is practicable to do so, Grantor shall provide to Grantee at least one hundred twenty (120) days prior written notice that Improvements must be modified, removed or relocated, and in circumstances where one hundred twenty (120) days notice is not practicable, Grantor shall provide to Grantee as much notice as it reasonably can, and in no case less than twenty (20) days prior written notice. Grantee shall ensure that all Improvements are modified, removed or relocated as required on or before the date set forth in Grantor's written notice.

Section 7 Indemnification.

7.1 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL CAUSE GRANTEE'S CONTRACTORS AND SUBCONTRACTORS TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR AND GRANTOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY, "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

(i) THIS EASEMENT AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

(ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS EASEMENT AGREEMENT,

(iii) OCCUPATION AND USE OF THE PREMISES BY GRANTEE OR GRANTEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS, INVITEES, LESSEES OR LICENSEES, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER (INDIVIDUALLY, A "GRANTEE PARTY," AND COLLECTIVELY, "GRANTEE PARTIES"),

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY GRANTEE PARTIES, OR

(v) ANY ACT OR OMISSION OF GRANTEE PARTIES,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH GRANTEE'S CONTRACTORS AND SUBCONTRACTORS ARE NOT REQUIRED TO INDEMNIFY AN INDEMNITEE ARE LIABILITIES (1) TO THE EXTENT THAT THEY ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THAT INDEMNITEE, OR (2) THAT ARE WHOLLY CAUSED BY THE SOLE NEGLIGENCE OF THAT INDEMNITEE.

7.2 GRANTEE SHALL CAUSE GRANTEE'S CONTRACTORS AND SUBCONTRACTORS TO NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT GRANTOR IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE IMPROVEMENTS FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. NOTWITHSTANDING THE LIMITATION IN SECTION 7.1, GRANTEE'S CONTRACTORS AND SUBCONTRACTORS SHALL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. GRANTEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS EASEMENT AGREEMENT SHALL NOT IN ANY WAY SUBJECT GRANTOR TO CLAIMS THAT GRANTOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS, AND GRANTEE'S CONTRACTORS AND SUBCONTRACTORS SHALL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS.

7.3 GRANTEE SHALL CAUSE ITS CONTRACTORS AND SUBCONTRACTORS, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST, AND ASSUME THE DEFENSE OF, ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF GRANTEE OR ANY OF ITS AGENTS, INVITEES, CONTRACTORS OR SUBCONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

7.4 Upon written notice from Grantor, Grantee's Contractors agree to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Easement Agreement for which Grantee's Contractors have an obligation to assume liability for and/or save and hold harmless any Indemnitee. Grantee's Contractors shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. It is understood by the parties that Grantee will have no direct

contract with its contractors' subcontractors and that Grantee shall be deemed to be in compliance with this Section 7 by requiring by contract that Grantee's Contractors require that each of their subcontractors comply with the terms of this Section 7 and Section 8 hereof.

Section 8 **Insurance.** Grantee shall cause Grantee's Contractors to procure and maintain during the life of the project the following insurance coverages:

A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $2,000,000 each occurrence and an aggregate limit of at least $4,000,000. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:

- Grantee's Contractors' statutory liability under the worker's compensation Laws of the state(s) in which the work is to be performed. If optional under State Law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

D. Railroad Protective Liability Insurance is required if there is any construction or demolition activities. This insurance shall name only Grantor as the Insured with coverage of at least $2,000,000 per occurrence and $6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- No other endorsements restricting coverage may be added.
- The original policy must be provided to Grantor prior to entering upon the Easement Premises

If available and in lieu of providing a Railroad Protective Liability Policy, any contractor of Grantee may participate in the Railway's Blanket Railroad Protective Liability Insurance Policy. The limits of coverage are the same as above. Any contractor electing to participate in this policy must make arrangements in writing with Grantor prior to entering upon the Easement Premises.

Other Requirements:

Grantee's Contractors' insurance policies through policy endorsement, must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Grantor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Grantor and Jones, Lang, La Salle Company as additional insureds with respect to work performed under this Easement Agreement. Severability of interest and naming Grantor and Jones, Lang La Salle Company as additional insureds shall be indicated on the certificate of insurance.

Prior to commencing work, Grantee's Contractors shall furnish to Grantor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Grantor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Grantor, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Grantor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the State of North Dakota.

Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by any of Grantee's Contractors, such contractor(s) shall require that each of its subcontractors shall provide and maintain insurance coverages as set forth herein, naming Grantor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Grantor to the same extent and under the same terms and conditions as each of Grantee's Contractors is required to release, defend and indemnify Grantor herein.

Failure to provide evidence as required by this **Section 8** shall entitle, but not require, Grantor to terminate the Easement immediately. Acceptance of a certificate that does not comply with this **Section 8** shall not operate as a waiver of Grantee's Contractors' obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Grantee's Contractors shall not be deemed to release or diminish the liability of Grantee's Contractors, including, without limitation, liability under the indemnity provisions of this Easement Agreement. Damages recoverable by Grantor shall not be limited by the amount of the required insurance coverage.

Section 9 **Environmental.**

9.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

9.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

9.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, and was caused, contributed to, aggravated or made more dangerous by the actions or inaction of Grantee or one of its contractors, subcontractors, agents, lessees, licensees or invitees, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

9.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

9.5 Evidence of Compliance. Grantee agrees to furnish to Grantor, upon receiving a written request from Grantor, proof satisfactory to Grantor that Grantee is in compliance with this **Section 9**. Should Grantee not comply fully with the above-stated obligations of this **Section 9**, or correct any noncompliance within thirty (30) days of its receipt of information concerning such noncompliance, then, notwithstanding anything contained in any other provision hereof, Grantor, at its option, may terminate this Easement Agreement by serving thirty (30) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 12**.

Section 10 PERSONAL PROPERTY WAIVER. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF GRANTEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

Section 11 Default and Termination.

11.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

11.2 Grantor's Termination Rights. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee: (i) if default shall be made in any of the covenants or agreements of Grantee contained in this Easement Agreement, (ii) in case of any assignment or transfer of the Easement by operation of law, or (iii) if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate

this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

11.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any obligation under this Easement Agreement resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 12**.

11.4 Non-exclusive Remedies. The remedies set forth in this **Section 11** shall be in addition to, and not in limitation of, any other remedies that Grantor may have at law or in equity.

Section 12 Surrender of Premises.

12.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

(a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;

(b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;

(c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and

(d) leave the Premises in the condition which existed as of the Effective Date.

12.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any obligation under this Easement Agreement resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 13 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 13** or any other section of this Easement Agreement.

Section 14 Tax Exchange. Grantor reserves the right to assign this Easement Agreement to Apex Property & Track Exchange, Inc. ("**Apex**"). Apex is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.1031(k)-1(g), for the purpose of completing a tax-deferred exchange under said Section 1031. Grantor shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Grantee from and against any and all reasonable and necessary additional costs, expenses, including, attorneys fees, and liabilities which Grantee may incur as a result of Grantor's use of Apex or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Grantee shall cooperate with Grantor with respect to this tax-deferred exchange, and upon Grantor's request, shall execute such documents as may be required to effect this tax-deferred exchange.

Section 15 **Notices**. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Grantor: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, Texas 76131
Attn: Director of Real Estate

If to Grantee: City of West Fargo
810 12th Ave NW
West Fargo, ND 58078

Section 16 **Recordation**. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement.

Section 17 **Miscellaneous**.

17.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of North Dakota without regard to conflicts of law provisions.

17.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

17.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

17.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

17.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee.

17.6 Time is of the essence for the performance of this Easement Agreement.

Law Department Approved

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

CITY OF WEST FARGO

By: _____
Name: _____
Title: _____

Approved as to substance by:

_____
Division Director (typed or printed)

_____
Signature

_____
Date

Form 703; Rev. 06/15/05

Law Department Approved

EXHIBIT "A"

LEGAL DESCRIPTION

Law Department Approved

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of 12th Avenue North Roadway Reconstruction.

- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.

- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to

any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Chris Brungardt
Public Works Director
City of West Fargo
810 12th Ave NW
West Fargo, ND 58078

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

- **1.01.06** The Contractor must notify **(Agency)** at 701-433-5400 and Railway's Manager Public Projects, telephone number (763)782-3492 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file BF10007154.

- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering

and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01 No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.**

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.

- **1.03.02** The Contractor must notify the Railway's Division Engineer Steve Lyne at (701)-280-7239 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.

- **1.03.03** The Contractor must abide by the following temporary clearances during construction:

  - 15'-0" Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
  - 25' Horizontally from centerline of nearest track
  - 23' 6" Vertically above top of rail

- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **(Agency)** and must not be undertaken until approved in writing by the Railway, and until the **(Agency)** has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.

- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by **(Agency)** for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site **www.contractororientation.com**, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's **Roadmaster Jason Randash (telephone 701-280-7232)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

  - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.

  - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

  - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.

  - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

  - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

- **1.05.03** Flagging services will be performed by qualified Railway flaggers.

  - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.

  - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

  - **1.05.03c** The cost of flagger services provided by the Railway will be borne by **(Agency)**. The estimated cost for one (1) flagger is approximately between $800.00-$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE**

TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.

- **1.05.03d** The average train traffic on this route is ___8___ freight trains per 24-hour period at a timetable speed ___10___ MPH and ___0___ passenger trains at a timetable speed of ___0___ MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.

- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.

- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.

- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal

equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.

- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.

- **1.06.12** All power line wires must be considered dangerous and of high voltage

unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative Mark Gjevre (763-782-3482).** All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

BNSF RAILWAY

BNSF RAILWAY

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- ☐ Passenger on train (C)
- ☐ Non-employee (N)
  (i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)
- ☐ Contractor/safety sensitive (F)
- ☐ Contractor/non-safety sensitive (G)
- ☐ Volunteer/safety sensitive (H)
- ☐ Volunteer/other non-safety sensitive (I)
- ☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- ☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- ☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID: _____

Transmit attached information to Accident/Incident Reporting Center by:
Fax 1-817-352-7595 or by Phone 1-800-697-6736 **or email to:** Accident-Reporting.Center@BNSF.com

Officer Providing Information:

_____ _____ _____
(Name) (Employee No.) (Phone #)

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St: _____ 2. Date: _____ Time: _____

County: _____ 3. Temperature: _____ 4. Weather: _____
(if non BNSF location)

Mile Post / Line Segment: _____

5. Driver's License No (and state) or other ID: _____ **SSN (required):** _____

6. Name (last, first, mi): _____

7. Address: _____ City: _____ St: _____ Zip: _____

8. Date of Birth: _____ and/or Age: _____ Gender: _____
(if available)

Phone Number: _____ Employer: _____

9. Injury: _____ 10. Body Part: _____
(i.e., Laceration, etc.) (i.e., Hand, etc.)

11. Description of Accident (To include location, action, result, etc.): _____

_____

_____

_____

12. Treatment:

- ☐ First Aid Only _____
- ☐ Required Medical Treatment _____
- ☐ Other Medical Treatment _____

13. Dr. Name: _____ Date: _____

14. Dr. Address:

Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name: _____

16. Hospital Address:

Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis: _____

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

EXHIBIT "C-1"

Agreement Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR

Railway File: _____

Agency Project: _____

<%Contractor.LegalName%> [Insert contractor's legal name here](hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 201_, **[***Drafter's Note: insert the date of the contract between the Agency and the Contractor here]** with **[Drafter's Note: insert the name of the Agency here]** for the performance of certain work in connection with the following project:_____ Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **[insert Agency name here]** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE,**

EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $2,000,000 each occurrence and an aggregate limit of at least $4,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage of at least $2,000,000 per occurrence and $6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against ***Railway*** for all claims and suits against ***Railway***. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against ***Railway*** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against ***Railway*** for loss of its owned or leased property or property under Contractor's care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of ***Railway.*** If granted by ***Railway***, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all ***Railway*** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to ***Railway*** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify ***Railway*** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to ***Railway*** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration,

cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, ***Railway*** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming ***Railway*** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify ***Railway*** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify ***Railway*** herein.

Failure to provide evidence as required by this section shall entitle, but not require, ***Railway*** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by ***Railway*** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving ***Railway*** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, ***Railway*** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related

to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however,* that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (http://www.bnsf.com/communities/faqs/permits-real-estate/), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative (Manager Public Projects) 763-782-3492 (_8_) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

<%Contractor.LegalName%>

By: _____

Printed Name: _____

Title: _____

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

BNSF Railway Company

By: _____

Name: _____
Manager Public Projects

Accepted and effective this _____day of 20__.

Exhibit D

AUTHORITY FOR EXPENDITURE

(FOR INTERNAL BNSF RAILWAY USE ONLY)

LOCATION :	WEST FARGO	LINE SEGMENT :	291	AFE NUMBER :	
PLANITEM NUMBER :	407700000	MILEPOST :	1.87	RFA NUMBER :	4706215
PROPERTY OF :	BNSF RAILWAY COMPANY	DIVISION :	TC	CPAR NUMBER :	C0000009
OPERATED BY :	BNSF RAILWAY COMPANY	SUBDIVISION :	W FAR-JYJCT COAL RT	BUDGET YEAR :	2015
JOINT FACILITY :	WEST FARGO, ND	TRACK TYPE :	1	BUDGET CLASS :	6
% BILLABLE (+/-) :	100.0	TAX STATE :	ND	REPORTING OFFICE :	718
		SPONSOR :	VP ENGINEERING	CENTER/ROLLUP :	TWCWW

PURPOSE, JUSTIFICATION AND DESCRIPTION

CMT TCW DIV W FAR-JYJCT COAL RT SUB LS 291 MP 1.87

PRIMARY FUNDING SOURCE IS STATE

** BUY AMERICA(N) APPLIES **

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
407700000	291	1.87	1.87	1	WEST FARGO	WEST FARGO	CONSTRUCT MAINLINE TRACK(S)	2015

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	0	0	0	0	36,633	36,633
MATERIAL COSTS	0	0	0	0	56,175	56,175
OTHER COSTS	0	0	0	0	17,528	17,528
TOTALS	0	0	0	0	110,336	110,336

SYSTEM MAINTENANCE AND PLANNING
ESTIMATE REF. NUMBER: 4706215
COSTING DATE: 01/01/2015

PRINTED ON: 10/14/2014
ESTIMATED BY: Elkins
PRINTED BY: Elkins

Exhibit D

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
COMPANY ESTIMATE FOR
WEST FARGO, ND

LOCATION WEST FARGO | DETAILS OF ESTIMATE | PLAN ITEM : 407700000 | VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

PRIMARY FUNDING SOURCE IS STATE
** BUY AMERICA(N) APPLIES **

DESCRIPTION	QUANTITY	U/M	COST	TOTAL $
**********				
LABOR				
**********				
DESTRESS RAIL - CAP	2.7	MH	86	
DESTRESS RAIL - CAP	16.2	MH	419	
MAINTAIN EQUIP - PLACE RAIL/OTM - CAP	1.35	MH	46	
PLACE CROSSING - RAILYARD	129.6	MH	4,064	
PLACE FIELD WELDS - CONSTRUCTION	66.15	MH	2,084	
PLACE FIELD WELDS - CONSTRUCTION	1.35	MH	43	
PLACE RAIL - CAP	16.2	MH	507	
PLACE TRACK PANELS - ADDITION - CAP	18.9	MH	592	
REPLACE CROSS TIES - CAP	47.44	MH	1,433	
UNLOAD RAIL/OTM - ADDITION - CAP	1.35	MH	42	
UNLOAD TRACK PANELS - ADDITION	18.9	MH	592	
PAYROLL ASSOCIATED COSTS			4,028	
DA OVERHEADS			20,587	
PERDIEM			2,110	
TOTAL LABOR COST			36,633	36,633
**********				
MATERIAL				
**********				
BALLAST, FOR GENERIC USE ONLY	300.0	NT **	2,490	
TRACK PANEL, 136 STANDARD RAIL, 40 FT- 10 FT TIES-	3.0	EA **	16,497	
RAIL, TRANSN,BE,40 FT,136 - 1/4 WORN 132	4.0	EA **	5,124	
SPIKE, TBR SCREW 3/4"X13", F/ROAD XING	252.0	EA **	567	
TIE, TRK,10FT,PRE-PLATED,6IN, STD AREA	20.0	EA **	1,915	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	6.0	KT **	407	
CONC 136 08-SEC WITH FILLER FOR 10' WOOD TIES **	112.0	FT **	17,864	
CONCRETE XING RAMP AND PANEL RESTRAINT,	1.0	ST **	228	
STORE EXPENSES			3,862	
ONLINE TRANSPORTATION			3,289	
USE TAX			2,664	
BALLAST EQUIPMENT			1,268	
TOTAL MATERIAL COST			56,175	56,175
**********				
OTHER				
**********				
ADDITIONAL PAVING UP TO THE APPROACHES	1.0	LS	6,000	
EQUIPMENT RENTAL - TRK PANELS	0.4	DAY	1,540	
TOTAL OTHER ITEMS COST			7,540	7,540
PROJECT SUBTOTAL				100,348
CONTINGENCIES				9,988
BILL PREPARATION FEE				0
GROSS PROJECT COST				110,336
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				110,336

Exhibit D

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF WEST FARGO

LOCATION WEST FARGO | DETAILS OF ESTIMATE | PLAN ITEM : 000251897 | VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

12TH AVE N - WEST FARGO, ND; INSTALL FLASHERS / GATES / CANTILEVERS; TWIN CITIES DIV; W FAR-JY JCT COAL RT SUBDIV; LS 291; MP 1.87; DOT# 086420T; SEQ# 56229.

MONTHLY POWER UTILITY COST CENTER : 61740.

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY.

THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.

********** SIGNAL WORK ONLY **********

THE CITY OF WEST FARGO, ND IS FUNDING 100% OF THIS PROJECT.

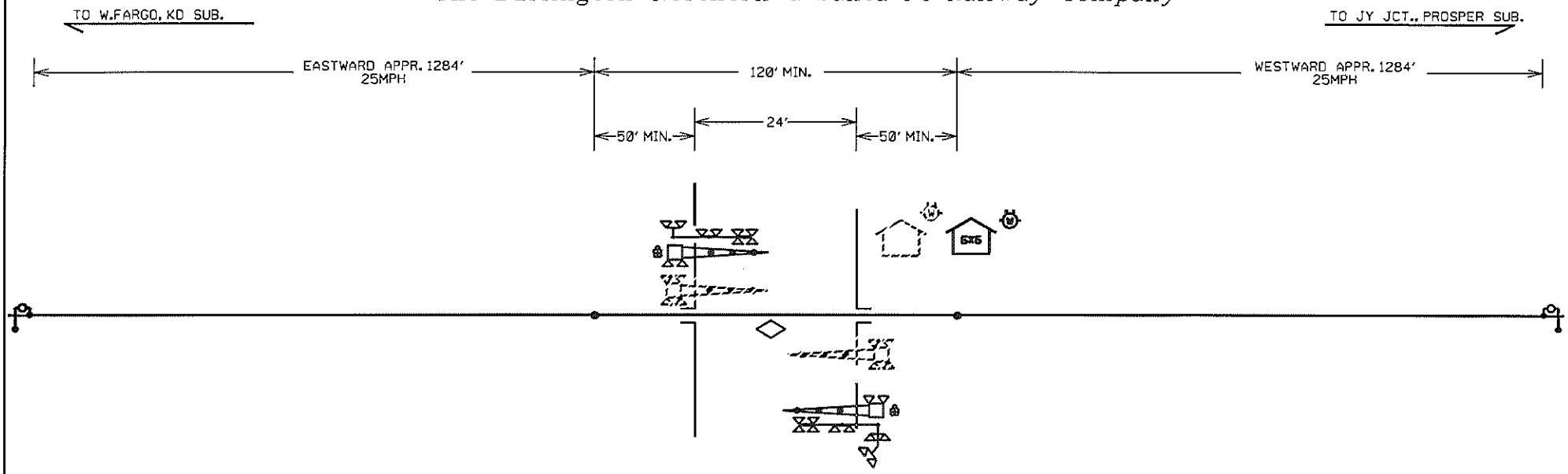
MAINTAIN PROPRIETARY CONFIDENTIALITY.
PRIMARY FUNDING SOURCE IS FHWA
** BUY AMERICA(N) APPLIES **

DESCRIPTION	QUANTITY	U/M		COST	TOTAL $
**********					
LABOR					
**********					
ELECTRICAL LABOR F/POWER TRANS SYS	64.8	MH		1,918	
SIGNAL FIELD LABOR - CAP	952.0	MH		27,666	
SIGNAL SHOP LABOR - CAP	76.8	MH		2,440	
PAYROLL ASSOCIATED COSTS				21,125	
DA OVERHEADS				31,913	
EQUIPMENT EXPENSES				8,956	
INSURANCE EXPENSES				5,376	
TOTAL LABOR COST				99,394	99,394
**********					
MATERIAL					
**********					
BATTERY, 10 VGL-255, 9 VGL-350	1.0	LS	N	5,410	
BELLS	2.0	EA	N	404	
BUNGALOW 6X6	1.0	LS	N	8,844	
BUNGALOW MATERIAL	1.0	LS	N	7,130	
CABLE, 2C/6 TW	750.0	FT	N	1,050	
CABLE, 3C/2	500.0	FT	N	3,350	
CABLE, 5C/10	200.0	FT	N	420	
CABLE, 5C/6	1500.0	FT	N	7,050	
CABLE, 7C/14	1500.0	FT	N	2,880	
CANTILEVER	2.0	EA	N	36,698	
CHARGERS, 12/20, 12/40	1.0	LS	N	894	
CONDUIT, PVC 4", SCH 80	40.0	FT	N	136	
ELECTRICAL MATERIAL	1.0	EA	N	1,500	
EVENT RECORDER	1.0	EA	N	3,511	
FIELD MATERIAL	1.0	LS	N	7,386	
FILL DIRT	20.0	CY	N	500	
FOUNDATION, CANTILEVER	2.0	EA	N	7,222	
FOUNDATION, CONCRETE	2.0	EA	N	574	
GATE KEEPER	2.0	EA	N	3,928	
GATE MECHANISM	2.0	EA	N	13,134	
LED LIGHT	22.0	EA	N	4,664	
LED LIGHT GATE KIT	2.0	EA	N	392	
LIGHT OUT DETECTOR	1.0	EA	N	976	
MISC WIRING	1.0	LS	N	1,000	
SIDELIGHT, 1-WAY W/CANT	1.0	EA	N	934	
SURFACE ROCK	10.0	CY	N	500	
TELLULAR DEVICE (RTU)	1.0	EA	N	2,870	

Exhibit D

USE TAX		7,627	
OFFLINE TRANSPORTATION		1,542	
TOTAL MATERIAL COST		132,526	132,526
**********			
OTHER			
**********			
AC POWER SERVICE	1.0 EA N	10,000	
CONTRACT ENGINEERING	1.0 LS N	12,000	
DIRECTIONAL BORING	200.0 FT N	10,000	
TOTAL OTHER ITEMS COST		32,000	32,000
PROJECT SUBTOTAL			263,920
CONTINGENCIES			26,392
BILL PREPARATION FEE			2,904
GROSS PROJECT COST			293,216
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			293,216

The Burlington Northern & Santa Fe Railway Company



12TH AVE N

DOT # 086 420 T

PROJECT #56229

INSTALL: GATES & FLASHERS

CONTROL DEVICES: CONSTANT WARNING

BOLD - IN

SLASH - OUT

SALVAGE: NONE

- INSTRUMENT HOUSE
- BELL
- METER
- CROSSING CONTROLL CONNECTIONS
- BIDIRECTIONAL CROSSING CONTROL
- UNIDIRECTIONAL CROSSING CONTROL
- COUPLER OR TERMINATION
- GUARD RAIL

Warning device placement:
Clearance to C.L. Track = Min. 12'
Edge of Road to C.L. Foundation:
Min. 4'3" with curb.
Min. 8'3" without curb.
Max. 12'
House Clearance: 25' Min. to Near Rail
30' Min. to Edge of Road
ALL LIGHTS TO BE LED

Exhibit D

BNSF RAILWAY CO.

LOCATION: WEST FARGO, ND
STREET: 12TH AVE N
LS: 291
M.P. 1.87
DOT #086 420 T
DIVISION: TWIN CITIES
SUBDIVISION: W FAR-JYCT COAL RT
KANSAS CITY
NO SCALE
DATE: 11/13/2014
FILE: 56229-STATESKETCH~.dgn
AMW

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

CONCRETE FINAL SURFACE FINISH

DESCRIPTION

This Special Provision replaces the content of 550.04 H.1.d, “Final Surface Finish” with the following:

d. Final Surface Finish.

(1) General.

Uniformly texture the surface by dragging a seamless strip of stiff-fiber artificial grass carpet longitudinally along the full width of the pavement in a single pass.

Use and maintain a taut string line for operating the carpet drag. Attach the leading edge of the carpet drag to a bridge. If the Engineer determines it is not feasible to use a bridge or string line, other texturing methods will be allowed.

Maintain a clean carpet free of encrusted concrete.

Provide a minimum texture depth of 0.031 inches.

(2) Roadways with Speed Limits Less than 45 MPH.

The Engineer will test the texture achieved by the carpet drag in accordance with ASTM E 965 and the Field Sampling and Testing Manual. The Engineer will determine the test location.

If three or more lots have texture depths less than 0.031 inches but greater than or equal to 0.025 inches, perform diamond grinding on those lots.

Perform diamond grinding any lot having a texture depth of less than 0.025 inches.

Perform grinding as specified in Section 550.04 M.4, “Grinding.”

The Engineer will determine the limits of any failing test by running additional tests at 100 foot intervals before and after the failing test. The Engineer will determine the location of the additional tests.

(3) Roadways with Speed Limits 45 MPH or Greater.

Run a clean, metal tine longitudinally along the surface immediately following the carpet drag. Exclude areas within 3 inches of the edge of the slab and longitudinal joints. Run the tine continuously across transverse joints.

Use a tine that provides:

- 1/8 inch ±1/64 inch groove width;
- 3/16 inch ±1/16 inch groove depth; and
- 3/4 inch spacing of between grooves.

If the concrete has becomes too stiff to receive the metal tine finish, use diamond bladed equipment to produce the longitudinal grooves.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

PERMITS AND ENVIRONMENTAL CONSIDERATIONS

PROJECT SU-8-992(036)037, PCN 20057

This special provision incorporates several permits that were obtained or are in the process of being obtained for this project by the City of West Fargo and City of Fargo.

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

- **Section 404 Permit – US Army Corps of Engineers (USACE)**
  USACE Permit No. NWO-2013-1359-BIS authorizes the construction of three (3) storm water outfall structures – a 15" x 165' outfall to the Sheyenne River, and 54" x 128' and 72" x 94' outfall structures to Cass County Drain 45. Outfalls will include 15' x 20' riprap erosion protection pads. The work is authorized to proceed under the terms and conditions of DA Nationwide Permit 43, found in the February 21, 2012 Federal Register (77 FR 10184), Reissuance of Nationwide Permits. The Contractor will adhere to all provisions contained within this Permit. The Section 404 Permit is attached.

- **Sovereign Lands Permit – ND State Water Commission**
  Sovereign Lands Permit No. S-1926 authorizes the construction of a new 24" PVC sanitary sewer main encased within a 36" bored steel casing pipe beneath the Sheyenne River and a new 15" RCP storm water outfall structure with riprap into the Sheyenne River. The Contractor will adhere to all provisions contained within this Permit. The Sovereign Lands Permit is attached.

- **Non-Building Floodplain Permit – City of West Fargo, ND**
  Non-Building Floodplain Permit #1-2014 from the City of West Fargo authorizes the construction of a new 24" PVC sanitary sewer main encased within a 36" bored steel casing pipe beneath the Sheyenne River and a new 15" RCP storm water outfall structure with riprap into the Sheyenne River. The Contractor will adhere to all provisions contained within this Permit. The Non-Building Floodplain Permit and FIRM map are attached.

- **Utility Permits – Southeast Cass Water Resource District**
  These Utility Permits by and between the Southeast Cass Water Resource District and the City of West Fargo and City of Fargo authorize the installation of new storm sewer pipe across the Cass County Drain SM-1 right of way. The Utility Permits are attached.

- **Encroachment Agreement – Magellan Pipeline Company, LP**
  This Encroachment Agreement authorizes the installation within the Magellan pipeline easement of the road reconstruction, curb and gutter, shared use path, a 21" RCP storm sewer pipe and two 2" conduits. The Magellan Encroachment Agreement is attached.

The Contractor shall be responsible for obtaining permits for impacts not authorized by the attached USACE Section 404 Permit, the attached Sovereign Lands Permit, the attached Non-Building Floodplain Permit, the attached SE Cass Water Resource District Utility Permits, and the attached Magellan Pipeline Company Encroachment Agreement.

- **Permits/Agreements to be Obtained during Construction**

  - **Crossing/Encroachment Approval – Cenex Pipeline, LLC**
    Cenex's Crossing/Encroachment Approval Form D-8 will be finalized and completed once work is scheduled at the Cenex pipeline easement, per Cenex standard procedures. The approval will authorize the installation within the Cenex pipeline easement of two 2" conduits. An example of Form D-8 is attached for reference.

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
1513 SOUTH 12TH STREET
BISMARCK ND 58504-6640

September 12, 2014

North Dakota Regulatory Office [NWO-2013-1359-BIS]

Mr. Chris Brungardt
City of West Fargo
810 12th Avenue NW
West Fargo, North Dakota 58078

Dear Mr. Brungardt:

We have reviewed your Department of the Army (DA) application for the 12th Avenue North corridor reconstruction project [Project No. SU-8-992(036)037 PCN 20057]. The project will include the construction of three (3) storm water outfall structures. Specifically, a 15" x 165' outfall will be constructed in the Sheyenne River and a 54" x 128' and a 72" x 94' outfall structure will be constructed in Drain 45. Outalls will include 15' x 20' riprap erosion protection pads. These projects are located in Section 5, Township 139 North, Range 49 West and Sections 31/32, Township 140 North, Range 49 West, Cass County, North Dakota.

Based upon the information you provided, we have determined that you may proceed your project in accordance with the terms and conditions of DA **Nationwide Permit No. 43**, found in the February 21, 2012 Federal Register (77 FR 10184), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General, Regional and Water Quality Certification Conditions that must be adhered to for this authorization to remain valid. **Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.**

This determination is applicable only to the permit program administered by the Corps of Engineers. It does not eliminate the need to obtain other Federal, state, tribal, and local approvals before beginning work.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit, including the Regional Conditions specific to projects undertaken in North Dakota. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit on your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In compliance with General Condition 30, 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 projects as permitted.
[ ] I certify that I have completed a modified version of the projects.
[ ] I certify that I have completed all required mitigation.

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

This verification will be valid until March 18, 2017.

Printed on Recycled Paper

RECEIVED
SEP 15 2014

COPY

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

A copy of this letter is being sent to Mr. Matt Kinsella, Apex Engineering Group, Inc., 4733 Amber Valley Parkway South, Fargo, North Dakota 58104.

The Omaha District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination or jurisdiction, please feel free to contact Mr. Matthew Mikulecky of this office at (701) 255-0015 and reference Corps identification No. **NWO-2013-1359-BIS**.

Sincerely,

Daniel E. Cimarosti
Regulatory Program Manager
North Dakota

Enclosure

Sovereign Land Permit No. S-1926

Permittee: **City of West Fargo**
810 12th Avenue NW
West Fargo, ND 58078

Location: **SE ¼ SE ¼ of Section 31, Township 140 North, Range 49 West, Cass County.**

Project Description:

The Permittee is hereby authorized to construct a sanitary sewer main beneath the Sheyenne River and a new storm water outfall structure into the Sheyenne River as part of the West Fargo 12th Avenue North reconstruction project within the City of West Fargo.

Specifically, the project will involve the construction of a new 24-inch PVC sanitary sewer pipe installed within a 36-inch bored steel casing pipe beneath the Sheyenne River. The project will also include a new 15-inch storm water outfall with riprap into the Sheyenne River. The existing 30-inch storm water outfall will be removed.

This authorization is subject to the conditions listed below and to the attached North Dakota Department of Health "Construction and Environmental Disturbance Requirements." Any other use of sovereign land is prohibited. Any proposed additional use must comply with the application and permitting process and all other requirements of state law.

General Conditions

1. Authorization of this undertaking is a privileged use of a public resource and does not constitute a property right. The public use and enjoyment of the Sheyenne River is of high priority.

2. All construction, maintenance, and reclamation activities shall be carried out in a manner reasonably designed to prevent degradation of the Sheyenne River.

3. The Permittee shall implement measures to minimize the opportunity for sediment to enter the Sheyenne River during construction.

4. The Permittee shall comply with the North Dakota Department of Health's *Construction and Environmental Disturbance Requirements* (copy attached).

5. No work shall be conducted within the waters of the Sheyenne River from April 15 to June 1 in order to protect fishery resources.

6. The Permittee shall comply with all state regulations with regard to the prevention of introduction of Aquatic Nuisance Species (ANS) into the state's waters. The Permittee shall contact Mr. Jerry Weigel, ANS Biologist, North Dakota Game and Fish Department at (701) 220-5342 to schedule an inspection of all vehicles and equipment a minimum of 72 hours prior to those items being launched or placed in the Sheyenne River.

7. Any construction debris or excess material shall be disposed of in a non-wetland, non-timbered upland site or in an approved landfill.

8. Prior to or during construction, if items of substantial archeological value are discovered or a deposit of such items is disturbed, the Permittee shall cease construction activities in the area so affected. The State Engineer shall be promptly notified of the discovery, and construction will not resume until the State Engineer gives written permission.

9. This Authorization is site specific for the project as proposed and outlined in the application and supporting documents. Any changes or deviation from the site or design will need authorization from the State Engineer.

10. At the discretion of the State Engineer, in accordance with the exercise of any of the State Engineer's duties, the project is subject to modification at the expense of the Permittee.

11. The State Engineer or the State Engineer's representative shall have access to inspect the authorized project during construction and associated activities and for the life of the project to ensure that it is being or has been accomplished and maintained in accordance with the terms and conditions of this Authorization.

12. The Permittee is responsible for obtaining any other local, state, or federal permits or approvals that may be necessary prior to construction.

13. By granting this Authorization, no liability for damages of any kind, including those caused by improper construction, operation and maintenance, design or failure in design, materials, or workmanship, is assumed by or transferred to the State of North Dakota, the State Engineer, the State Water Commission or any of their respective employees, agents, or assigns. The Permittee will indemnify and hold harmless the State of North Dakota, its officials, employees, agents, boards, commissions, and assigns for any and all liability for work performed and action taken under this Authorization.

Todd Sando
State Engineer

Date: 11/5/14

FLOODPLAIN DEVELOPMENT PERMIT APPLICATION
NON-BUILDING SITUATION

GENERAL INFORMATION

PERMIT APPLICATION # #1 - 2014 DATE: 10/16/14

Applicant/Contact: Chris Brungardt, PW Director Telephone # 701-433-5400

Address: *City of West Fargo*
810 12th Avenue NW
West Fargo, ND 58078

Brief project description - location of proposed development - legal description:
12th Avenue NW across the Sheyenne River, SE ¼ SE ¼ Sec 31, T140N, R49W

Contractor: *Unknown* Telephone #

Address: *Contract Not Awarded*

Estimated Cost of project: *$15,000,000*

FLOODPLAIN DETERMINATION :

(Complete the appropriate information)

Project is located: 100-year floodplain? (Flood Fringe): Yes, Zone A
Regulatory Floodway: No

Map information: FIRM Date: February 2, 1995 Panel No. 380024 0010 E
FIRM Zone: Zone A
BFE at Development Site: Undetermined
Development will be elevated to: NA

DEVELOPMENT ACTIVITIES: (check all that apply and explain the activity)

_____Fill placement (fill brought in from outside the floodplain)
_____ Excavation (where subgrade fill is removed from the floodplain)
_____ Landscaping (cut and fill, fill borrow and placement)
_____ Construction or maintenance of a dike/levee/floodwall
_____ Removal of fill, embankment, or dikes
_____ Watercourse alterations (river, stream, lake - channel modifications, rip-rap)
__X__ Road, street or bridge construction (new, repair or replacement, realignment)

Project number; SU-8-992(036)037 PCN 20057
Permitting Community; City of West Fargo

__X__ Drainage improvements (including culvert work)
____ Mining (removal of gravel, rock, fill or other natural materials)
__X__ Installation of utilities (water, sewer, pipeline, gas, electric, communications)
____ Well drilling (water, oil, natural gas etc.)
____ Subdivision (new or expansion)
____ Other (please specify and describe)

ADDITIONAL INFORMATION REQUIRED (attach additional information):

-Comments or further explanation of work: *The West Fargo/Fargo 12th Avenue North reconstruction project includes roadway reconstruction, a 24" Sanitary Sewer main crossing and a 15" Storm Sewer outfall at the existing 12th Avenue NW crossing of the Sheyenne River.*
-Copies of project description, plans, blueprints, etc. *See Attached*
-Wetlands - will the activity impact identified wetlands? *USACE Nationwide 404 Permit has been secured.*
-Will the development aggravate flooding elsewhere? *No*

OTHER NOTIFICATION OR PERMITS NECESSARY:

U.S. Army Corps of Engineers? *US Army Corps of Engineering Nationwide 404 Permit has been secured. (NWO-2013-1359-BIS)*
ND Sate Water Commission? *Sovereign Lands Permit Application has been submitted.*

ELEVATION INFORMATION:

Attach information about the completed project elevations(s) with registered professional engineer or registered land surveyor certifications if part of the project:

ACTION / APPROVAL:

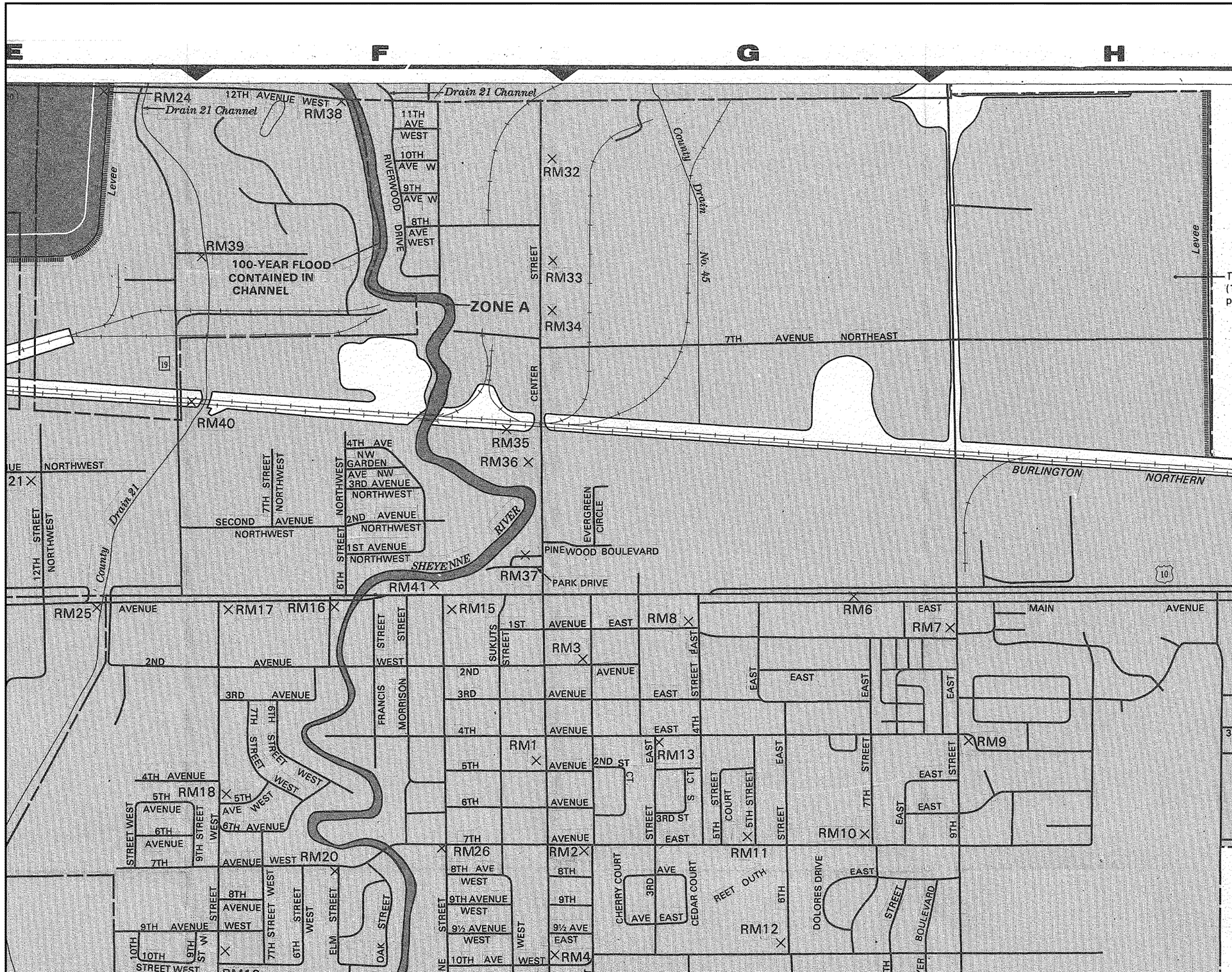
The proposed development is in conformance with applicable community floodplain standards subject to the following conditions with this approval.

PERMIT APPLICATION IS APPROVED
(Conditioned on the description provided. As-built information/certification will be available at the City of West Fargo upon completion of construction.)

Signature (Floodplain Administrator): Mark H

Date: 10/16/14

Project number; SU-8-992(036)037 PCN 20057
Permitting Community; City of West Fargo



APPROXIMATE SCALE IN FEET

1000 0 1000

NATIONAL FLOOD INSURANCE PROGRAM

FIRM

FLOOD INSURANCE RATE MAP

CITY OF
WEST FARGO,
NORTH DAKOTA
CASS COUNTY

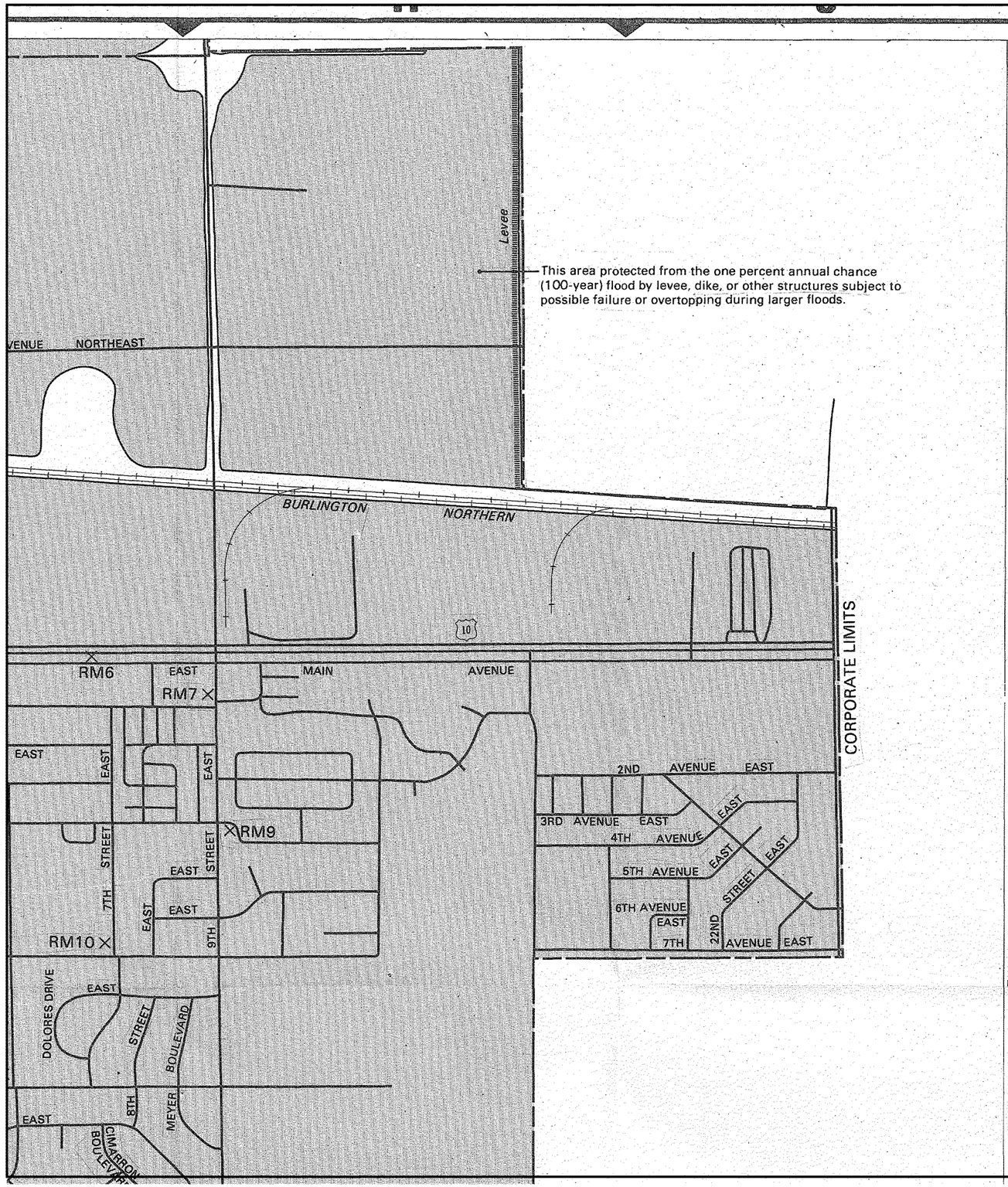
(SEE MAP INDEX FOR PANELS NOT PRINTED)

COMMUNITY-PANEL NUMBER
380024 0010 E

MAP REVISED:
FEBRUARY 2, 1995

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



LEGEND

SPECIAL FLOOD HAZARD AREAS INUNDATED BY 100-YEAR FLOOD

ZONE A	No base flood elevations determined.
ZONE AE	Base flood elevations determined.
ZONE AH	Flood depths of 1 to 3 feet (usually areas of ponding); base flood elevations determined.
ZONE AO	Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
ZONE A99	To be protected from 100-year flood by Federal flood protection system under construction; no base elevations determined.
ZONE V	Coastal flood with velocity hazard (wave action); no base flood elevations determined.
ZONE VE	Coastal flood with velocity hazard (wave action); base flood elevations determined.

FLOODWAY AREAS IN ZONE AE

OTHER FLOOD AREAS

ZONE X	Areas of 500-year flood; areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 100-year flood.

OTHER AREAS

ZONE X	Areas determined to be outside 500-year flood plain.
ZONE D	Areas in which flood hazards are undetermined.

Flood Boundary

Floodway Boundary

Zone D Boundary

Boundary Dividing Special Flood Hazard Zones, and Boundary Dividing Areas of Different Coastal Base Flood Elevations Within Special Flood Hazard Zones.

513 — Base Flood Elevation Line; Elevation in Feet*

D — D — Cross Section Line

(EL 987) — Base Flood Elevation in Feet Where Uniform Within Zone*

RM7 X — Elevation Reference Mark

*Referenced to the National Geodetic Vertical Datum of 1929

NOTES

This map is for use in administering the National Flood Insurance Program; it does not necessarily identify all areas subject to flooding, particularly from local drainage sources of small size, or all planimetric features outside Special Flood Hazard Areas.

Areas of special flood hazard (100-year flood) include Zones A, A1-30, AE, AH, AO, A99, V, V1-30 AND VE.

Certain areas not in Special Flood Hazard Areas may be protected by flood control structures.

Boundaries of the floodways were computed at cross sections and interpolated between cross sections. The floodways were based on hydraulic considerations with regard to requirements of the Federal Emergency Management Agency.

Floodway widths in some areas may be too narrow to show to scale.

APPROXIMATE SCALE IN FEET

1000 0

NATIONAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP

CITY OF
WEST FARGO,
NORTH DAKOTA
CASS COUNTY

(SEE MAP INDEX FOR PANELS NOT PRINTED)

COMMUNITY-PANEL NUMBER
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SOUTHEAST CASS WATER RESOURCE DISTRICT
UTILITY PERMIT

City of West Fargo, a municipal corporation [type of entity and state of incorporation] with a post office address of 800 4th Avenue East, West Fargo, ND 58078 ("Applicant"), applies for this Permit to install storm sewer [describe type of utility, e.g., fiber optic cables, telephone lines, etc.] and related appurtenances under [on, through, under, over] Cass County Drain No. SM-1 (the "Drain") on right of way owned by the Southeast Cass Water Resource District (the "District"), as shown on the plans attached as **Exhibit A** ("Applicant's Utilities").

Applicant may install Applicant's Utilities under [on, through, under, over] the Drain as specifically shown on **Exhibit A**. Installation, operation, and maintenance of Applicant's Utilities on the District's right of way will conform to the following provisions:

1. Applicant will complete construction and maintenance at Applicant's sole expense.

2. Applicant will place Applicant's Utilities at the designated depth below the original design grade as set forth in the plans attached as **Exhibit A**.

3. Within 30 days after construction, maintenance, relocation, or removal of Applicant's Utilities, Applicant will remove any right of way scars; Applicant will restore any disturbed areas to original condition; and Applicant will re-seed the vicinity disturbed by Applicant's activities. Applicant will maintain any disturbed areas for a period of one year from the date of completion.

4. Applicant will install marker posts at all the Drain crossings on the right of way line, or at any other point as designated by the District.

5. Applicant will complete installation, maintenance, relocation, and/or removal of Applicant's Utilities on the District's right of way in a manner satisfactory to the District.

6. The District will not be liable for any damages to Applicant's Utilities resulting from reconstruction or maintenance of the Drain or any of the District's facilities or right of way. Applicant will release, defend, indemnify, and hold harmless the District, and all of the District's employees, officers, agents, and representatives, from and against any and all claims, demands, causes of action, or demands for relief, including costs, expenses, and attorneys' fees, that may arise out of or result from any acts or omissions regarding this Permit or Applicant's installation or maintenance of Applicant's Utilities, or any accident, injury, or damage to person, property, or equipment as a result of Applicant's entry upon or use of the District's right of way or property.

7. Applicant, at Applicant's own cost, will repair or replace the District's structures, facilities, right of way, or any other property owned by the District which may be damaged as a result of Applicant's installation and maintenance of Applicant's Utilities on the District's right of way, or otherwise as a result of Applicant's entry upon or use of the District's right of way.

8. Applicant will promptly remove Applicant's Utilities from the District's right of way, or will relocate or adjust Applicant's Utilities, all at Applicant's sole cost and expense upon notice from the District, as necessary for purposes of constructing, cleaning, inspecting, reconstructing, modifying, operating, maintaining, repairing, or improving the Drain.

9. Applicant will be solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations of any other federal, state, county, or local governments or governmental entities which may be applicable regarding Applicant's Utilities or Applicant's activities. Further, Applicant will be solely responsible for obtaining all applicable licenses, permits, or other approvals necessary, if any, regarding Applicant's Utilities or Applicant's activities under this Permit.

10. Applicant will be solely responsible for all costs and expenses associated with complying with Applicant's obligations under this Permit.

11. Applicant will not transfer or assign this Permit, or any of Applicant's rights or obligations under this Permit, without the express written consent of the District.

12. Special Conditions: See attached

Applicant agrees to the above terms and conditions. This application will become effective as a Permit upon execution by both Applicant and the District.

APPLICANT:

CITY of WEST FARGO

By: _____
Applicant's Signature

Its: CHRIS BRUNGARDT
DIRECTOR of PUBLIC WORKS

SOUTHEAST CASS
WATER RESOURCE DISTRICT

_____
Carol Harbeke Lewis
Secretary-Treasurer

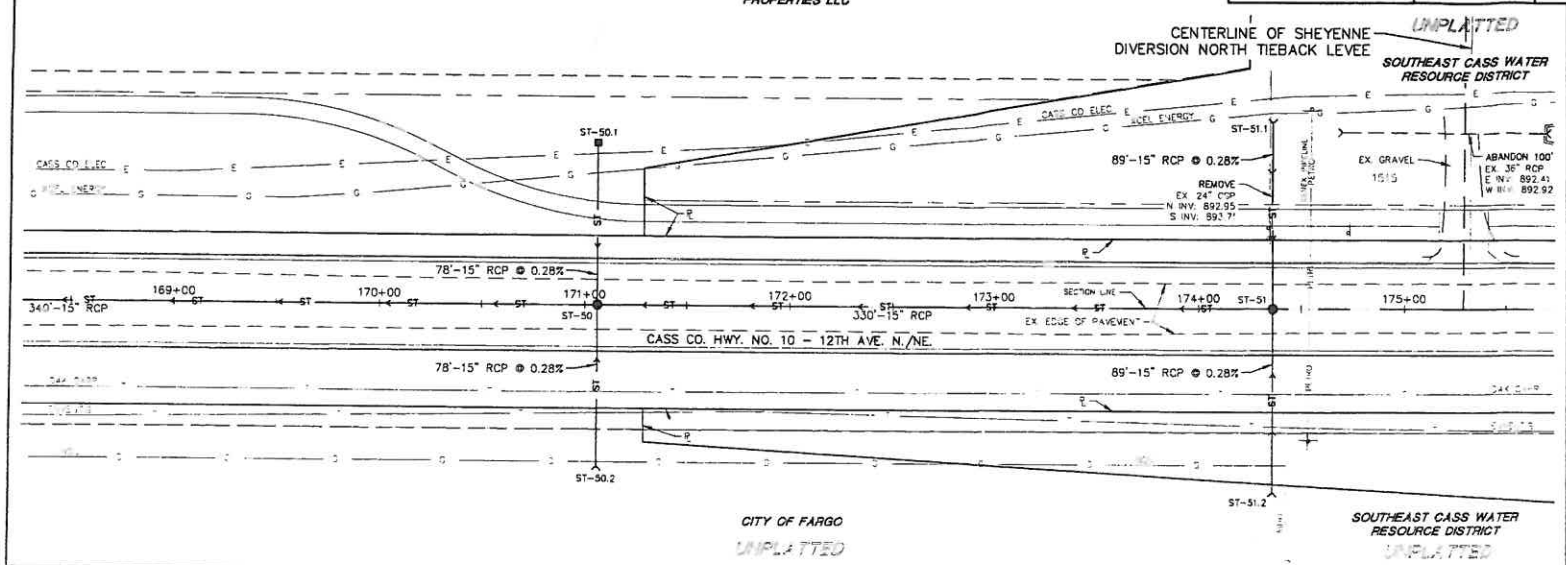
Date Approved: December 10, 2014

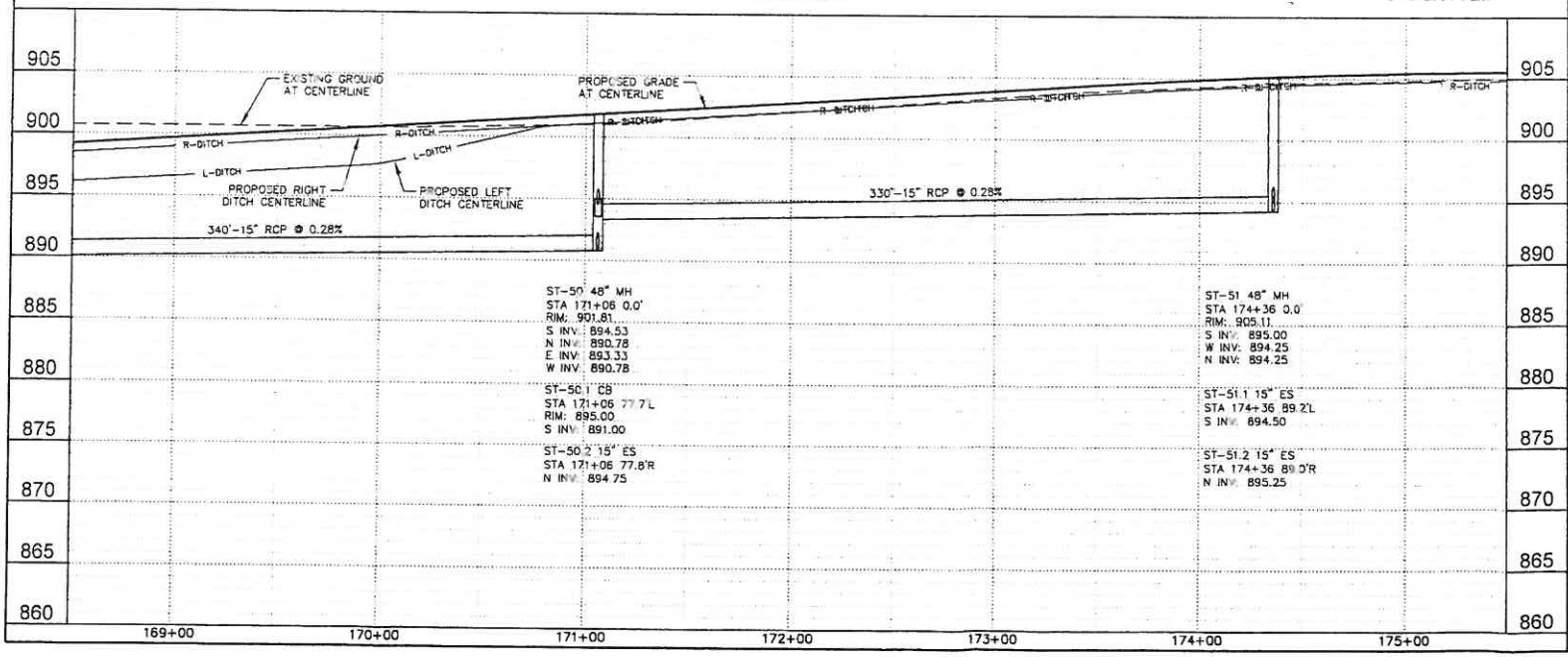
EXHIBIT A

Applicant's Plans

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SU-8-992(036)037	55	16

moore engineering, inc.





202 169 REMOVAL OF END SECTION-ALL TYPES & SIZES
Sta 175+70, 84.3'L — 1 EA

714 210 PIPE CONC REINF 15IN CL III-STORM DRAIN
Sta 168+50 - ST-51 & ST-50 - ST-50.1 — 586 LF & 78 LF
ST-50 - ST-50.2 & ST-51 - ST-51.1 — 78 LF & 89 LF
ST-51 - ST-51.2 — 89 LF

714 3005 END SECT-CONC REINF 15IN
ST-50.2 (Sta 171+06, 77.8' R) & ST-51.1 (Sta 174+36, 89.2' L) — 1 EA & 1 EA
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722 100 MANHOLE 48IN
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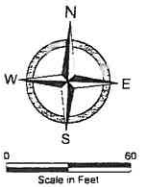
722 4010 INLET CATCH BASIN 6IN BEEHIVE
ST-50.1 (Sta 171+06 77.7' L) — 1 EA



PRELIMINARY

12TH AVENUE NORTH RECONSTRUCTION

DRAINAGE LAYOUTS

STA 168+50 - 175+50

FILE LOCATION R:\Civil 3D Projects\168843\DRAWINGS\DESIGN\168843-PP.dwg

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CONDITIONS TO UTILITY PERMIT FOR
CITY OF WEST FARGO
SHEYENNE-MAPLE FLOOD CONTROL DISTRICT #1
DECEMBER 10, 2014

1. The applicant shall ensure that vegetation is re-established after construction within right of way.
2. The applicant shall ensure that adequate erosion control practices are used to prevent erosion of Water Resource District facilities.
3. The utility shall not be installed below any existing structures, bridges, or culverts.
4. The applicant shall replace the excavated material using a method of compacted horizontal lifts. Replacement of material in layers shall not exceed 9 inches in thickness between compaction. Appropriate mechanical compaction methods such as a sheepsfoot or other device shall be utilized.

SOUTHEAST CASS WATER RESOURCE DISTRICT
UTILITY PERMIT

City of Fargo, a municipal corporation [type of entity and state of incorporation] with a post office address of 200 3rd Street North, Fargo, ND 58102 ("Applicant"), applies for this Permit to install storm sewer and culvert sections [describe type of utility, e.g., fiber optic cables, telephone lines, etc.] and related appurtenances on, through, and under [on, through, under, over] Cass County Drain No. SM-1 (the "Drain") on right of way owned by the Southeast Cass Water Resource District (the "District"), as shown on the plans attached as **Exhibit A** ("Applicant's Utilities").

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3. Within 30 days after construction, maintenance, relocation, or removal of Applicant's Utilities, Applicant will remove any right of way scars; Applicant will restore any disturbed areas to original condition; and Applicant will re-seed the vicinity disturbed by Applicant's activities. Applicant will maintain any disturbed areas for a period of one year from the date of completion.

4. Applicant will install marker posts at all the Drain crossings on the right of way line, or at any other point as designated by the District.

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7. Applicant, at Applicant's own cost, will repair or replace the District's structures, facilities, right of way, or any other property owned by the District which may be damaged as a result of Applicant's installation and maintenance of Applicant's Utilities on the District's right of way, or otherwise as a result of Applicant's entry upon or use of the District's right of way.

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Applicant agrees to the above terms and conditions. This application will become effective as a Permit upon execution by both Applicant and the District.

APPLICANT:

City of Fargo

By: _____
Applicant's Signature Dennis R. Walaker

Its: Mayor

SOUTHEAST CASS
WATER RESOURCE DISTRICT

_____
Carol Harbeke Lewis
Secretary-Treasurer

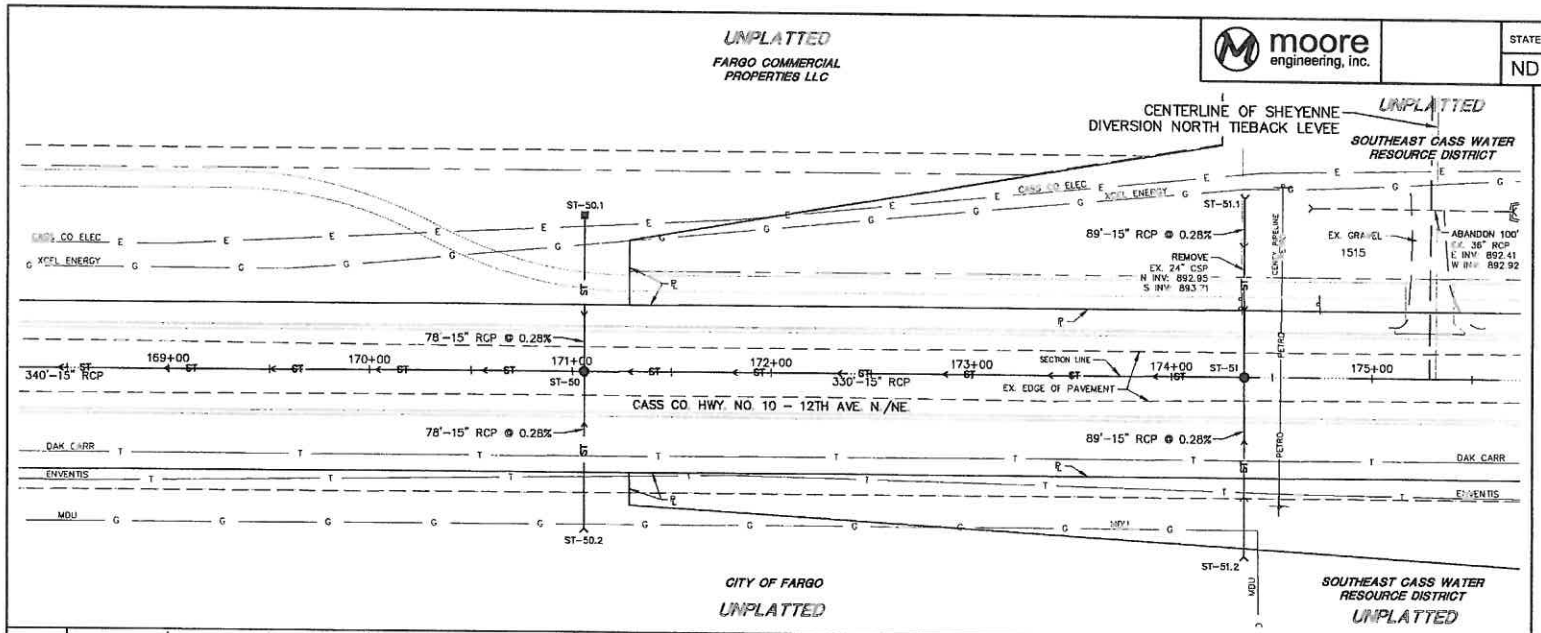
Date Approved: December 10, 2014

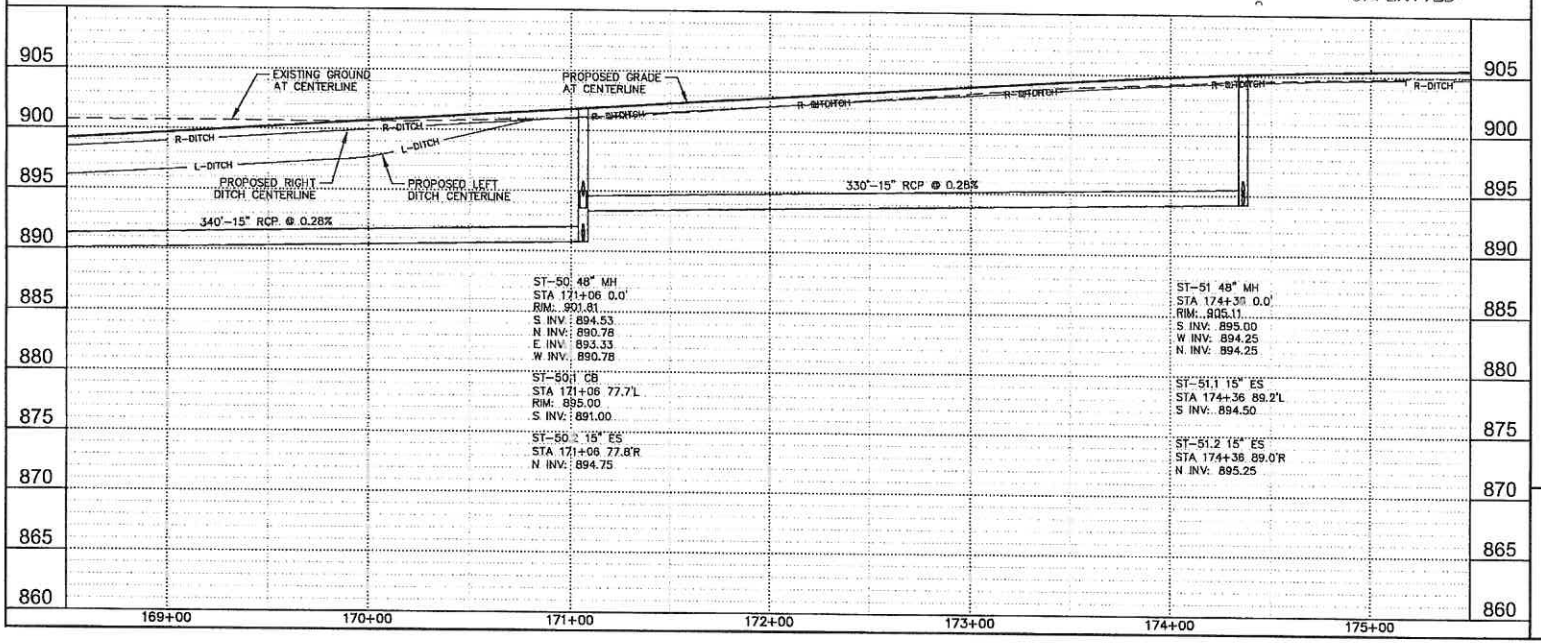
EXHIBIT A

Applicant's Plans

STATE	PROJECT NO.	SECTION NO.	SHEET NO
ND	SU-8-992(036)037	55	16

moore engineering, inc.





202 169 REMOVAL OF END SECTION-ALL TYPES & SIZES
Sta 175+70, 84.3'L — 1 EA

714 210 PIPE CONC REINF 15IN CL III-STORM DRAIN
Sta 168+50 - ST-51 & ST-50 - ST-50.1 — 586 LF & 78 LF
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ST-50.1 (Sta 171+06, 77.7' L) — 1 EA

N
W E
S
0 60
Scale in Feet

PRELIMINARY

12TH AVENUE NORTH RECONSTRUCTION

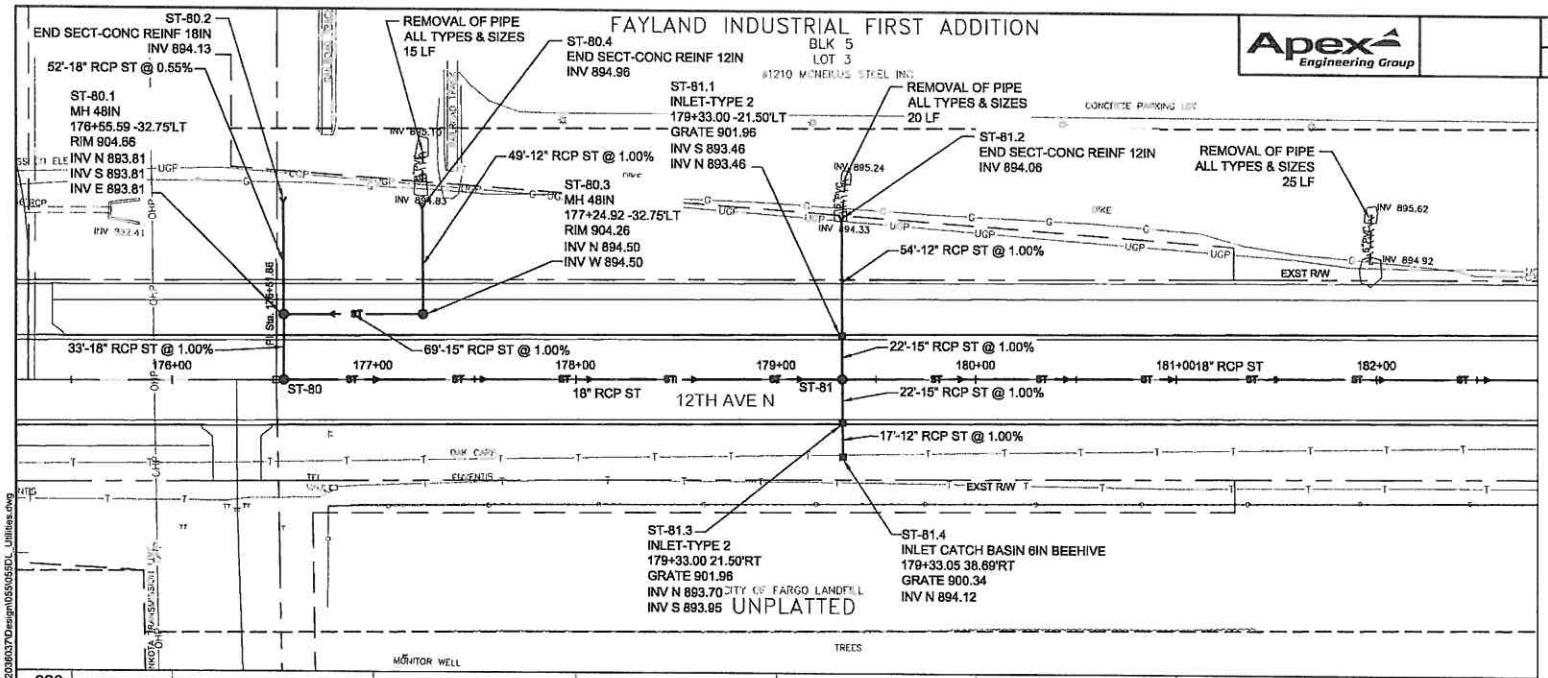
DRAINAGE LAYOUTS

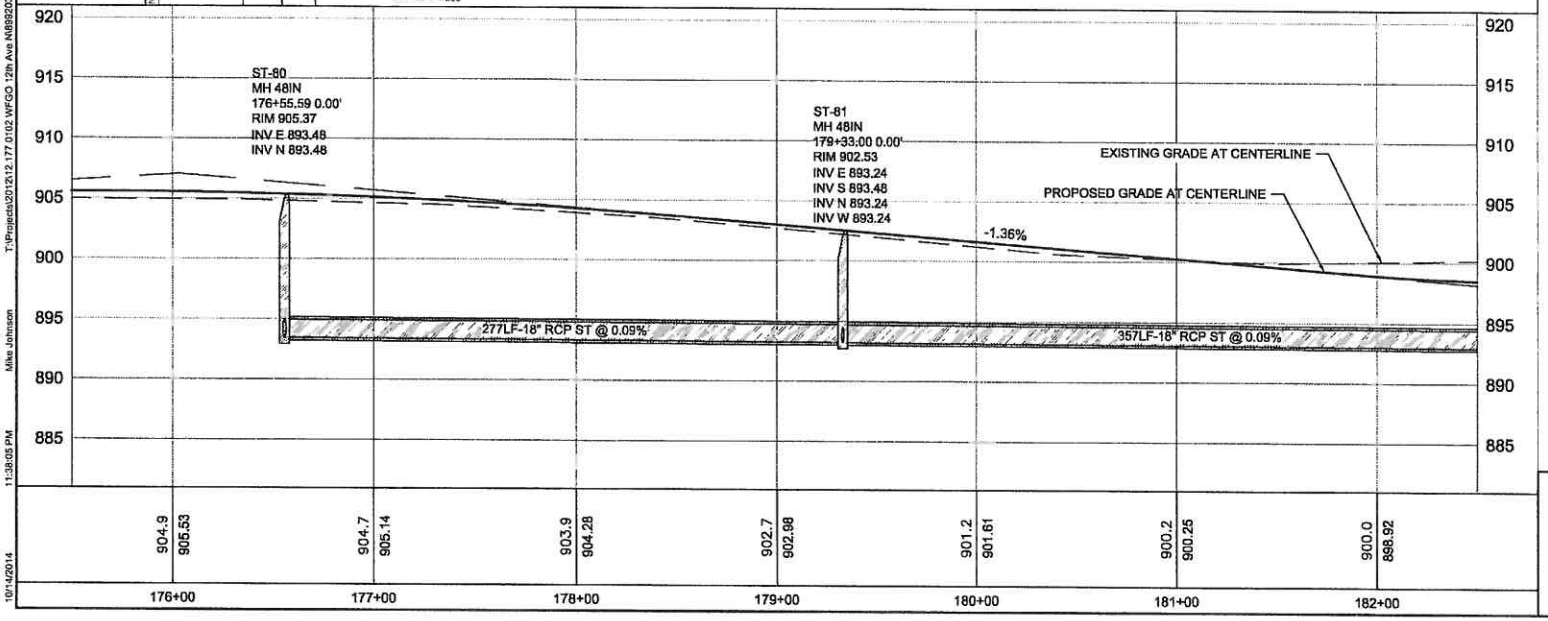
STA 168+50 - 175+50

FILE LOCATION: R:\Civil 3D Projects\16843\DRAWINGS\DESIGN\16843-PP.dwg

10/16/2014 8:09:21 AM

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SU-8-992(036)037	55	17





202 174 REMOVAL OF PIPE ALL TYPES AND SIZES	
Sta 177+25 - 100' LT (6" PVC)	15 LF
Sta 179+34 - 92' LT (6" PVC)	20 LF
Sta 181+97 - 70' LT (6" PVC)	25 LF
714 0115 PIPE CONC REINF 12IN CL III-STORM DRAIN	
ST-80.3 TO ST-80.4	50 LF
ST-81.1 TO ST-81.2	55 LF
ST-81.3 TO ST-81.4	17 LF
714 0210 PIPE CONC REINF 15IN CL III-STORM DRAIN	
ST-80.1 TO ST-80.3	69 LF
ST-81 TO ST-81.1	22 LF
ST-81 TO ST-81.3	22 LF
714 0315 PIPE CONC REINF 18IN CL III-STORM DRAIN	
ST-80 TO ST-80.1	33 LF
ST-80.1 TO ST-80.2	52 LF
ST-80 TO ST-81	277 LF
ST-81 TO ST-82	357 LF
714 3000 END SECT-CONC REINF 12IN	
ST-80.4	1 EA
ST-81.2	1 EA
714 3010 END SECT-CONC REINF 18IN	
ST-80.2	1 EA
722 0100 MANHOLE 48IN	
ST-80	1 EA
ST-80.1	1 EA
ST-80.3	1 EA
ST-81	1 EA
722 3510 INLET-TYPE 2	
ST-81.1	1 EA
ST-81.3	1 EA
722 4010 INLET CATCH BASIN 6IN BEEHIVE	
ST-81.4	1 EA

This document is preliminary and not for construction or implementation purposes.

12TH AVENUE NORTH RECONSTRUCTION

STORM SEWER & WATER

STA 175+50 - 182+50

T:\Projects\2012\12-177 0102 WFGO 12th Ave N\899\2036\037\Design\055\056\FL_Utilities.dwg
Mike Johnson
11:38:05 PM
10/14/2014

CONDITIONS TO UTILITY PERMIT FOR
CITY OF FARGO
SHEYENNE-MAPLE FLOOD CONTROL DISTRICT #1
DECEMBER 10, 2014

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2. The applicant shall ensure that adequate erosion control practices are used to prevent erosion of Water Resource District facilities.
3. The utility shall not be installed below any existing structures, bridges, or culverts.
4. The applicant shall replace the excavated material using a method of compacted horizontal lifts. Replacement of material in layers shall not exceed 9 inches in thickness between compaction. Appropriate mechanical compaction methods such as a sheepsfoot or other device shall be utilized.

(Drafted by & when filed return to: Magellan Pipeline Company, L.P., P. O. Box 22186, MD OTC-9, S. Guthrie, Tulsa, Oklahoma 74121-2186, 918/574-7350.)

ENCROACHMENT AGREEMENT

This Encroachment Agreement ("**Agreement**") is made and entered into by and between Magellan Pipeline Company, L.P., a Delaware limited partnership, whose address is P.O. Box 22186, Tulsa, Oklahoma, 74121-2186, (hereinafter called "**Magellan**"), and City of Fargo, a North Dakota municipal corporation, whose mailing address is 200 3rd Street North, Fargo, North Dakota 58102, and City of West Fargo, a North Dakota municipal corporation, whose mailing address is 810 12 Avenue NW, West Fargo, North Dakota 58078, their successors, assigns and grantees (hereinafter called "**City**", whether one or more).

WITNESSETH:

WHEREAS, **City** represents and warrants that **City** owns the right to construct **road, storm sewer, shared use path, fiber optic conduits and temporary construction easement** on all the certain land (hereinafter "**Subject Land**"), described on attached **Exhibit "A"** and made a part hereof; and

WHEREAS, **Magellan** is the owner of certain pipelines, pipeline facilities and appurtenances (hereinafter referred to as the "**Magellan Facilities**") and easement rights therefor, (hereinafter referred to as the "**Easement**", whether or not rights were granted in one or more documents or acquired by operation of law). For purposes of this **Agreement** only, "**Magellan's Easement Tract**" shall be considered to be any area within Fifty (50) feet of any **Magellan Facilities,** unless a different right of way tract width is specifically described in the **Easement,** in which case such specified width shall define **Magellan's Easement Tract**. The land referenced in the Easement includes a portion of the Northwest Quarter (NW¼) of Section 4 Township 139 North, Range 49 West, and Southwest Quarter (SW¼) of Section 33, Township 140 North, Range 49 West, Cass County, North Dakota, pursuant to those certain instruments recorded in the records of said county and state and described as follows:

1) Right of Way Agreement as to a pipe line or pipe lines dated February 15, 1946, from W.A.N. Laing and Olive M. Laing, husband and wife, in favor of Great

Lakes Pipe Line Company (Magellan's predecessor in title), its successors and assigns, and filed for record in Book U-1 Misc at Page 410 of the Cass County, ND Register's Office; and

2) Right of Way Agreement as to a pipe line or pipe lines dated February 11, 1946, from Ester C. Hanson, Executrix of the Will of August Hanson, deceased, and as the sole heir at law of said August Hanson, deceased, in favor of Great Lakes Pipe Line Company (Magellan's predecessor in title), its successors and assigns, and filed for record in Book U-1 Misc at Page 409 of the Cass County, ND Register's Office; and

3) Right of Way Agreement as to a pipe line or pipe lines dated February 2, 1946, from Carroll O. Barnes and Clara Barnes, husband and wife, in favor of Great Lakes Pipe Line Company (Magellan's predecessor in title), its successors and assigns, and filed for record in Book U-1 Misc at Page 411 of the Cass County, ND Register's Office; and

4) Right of Way Agreement as to a pipe line or pipe lines dated June 25, 1946, from John C. Cassidy, a single man, in favor of Great Lakes Pipe Line Company (Magellan's predecessor in title), its successors and assigns, and filed for record in Book W-1 Misc at Page 98 of the Cass County, ND Register's Office; and

5) Release of Right of Way dated January 3, 1975 and recorded in Misc M-6, Page 408, Cass County, ND, from Williams Pipe Line Company, LLC releasing (E1/2NW1/4 Section 4-T139N-R49W) a portion of the rights granted in the Right of Way Agreement listed above; and

6) Partial Release of Right of Way dated January 25, 1980 and recorded in Book N-8 Misc, Page 84, Office of Register of Deeds Cass County, ND, from Williams Pipe Line Company, LLC to Glacier Park Company, a Minnesota corporation; Vernon Heiden and LaVerne Heiden, husband and wife; Oris Heiden and Marcella Heiden, husband and wife; Jerome C. Brodsho and Marvel Brodsho, husband and wife; Jon Q. Peterson and Janice Peterson, husband and wife; releasing a portion of the rights granted in the Right of Way Agreement listed above; and

WHEREAS, for the purposes of this **Agreement** an "**Encroachment**" is defined as any use of the land within **Magellan's Easement Tract** by someone other than **Magellan** which could interfere with **Magellan's Easement** rights or could create safety concerns related to **Magellan's Facilities** as more fully described in **Magellan's** *General Encroachment Requirements* as set forth in attached **Exhibit "B"** and incorporated herein by reference. **Magellan does not permit or authorize any Encroachments unless specifically approved in a written agreement identifying all "Approved Encroachments"**; and

WHEREAS, **City** desires to obtain **Magellan's** consent for one or more **Encroachments** on **Magellan's Easement Tract;**

NOW, THEREFORE, in consideration of the covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **Magellan,** subject to the following terms and provisions, hereby consents to the **Encroachments** listed below as "**Approved Encroachments**" described and limited pursuant to the following specified plan drawings, which were furnished by **City** to **Magellan** ("**Plan Drawings**") and attached hereto as **Exhibit "C"**:

1) City of Fargo, City of West Fargo and Cass County North Dakota Project Plans, Project No. SU-8-992(036)037 PCN 20057, 12th Avenue (Cass County Road 19 to 45th Street), by Apex Engineering Group, dated approved 11/13/2014, Exhibit "C", 10 pages;

TERMS AND PROVISIONS

1. **Approved Encroachments.** The **Approved Encroachments,** as further identified, described and limited in the **Plan Drawings** as set forth in **Exhibit "C"** are limited to the following:

   (a) **Road reconstruction, curb/gutter**. The project proposes reconstruction of 12th Avenue NE (Cass County Highway 10), and includes adding new curb and gutter. The top of the **Magellan Facilities** must be a minimum of 4 feet below the finished grade of the roadway.

   (b) **21" RCP Storm Sewer**. The project proposes trenching and installing a 21 inch RCP storm sewer under the **Magellan Facilities**. The project plans show 2 feet of vertical clearance of the **Magellan Facilities**. The maximum span width of 60 feet as explained in provision number 11 below will need to be followed.

   (c) **Temporary Construction Easement**. The project includes use of an existing field driveway for access purposes. Provision number 12 must be followed for equipment crossing purposes. Project plans also show removal of the existing culvert under this driveway.

   (d) **Proposed Shared Use Path**. The project plans propose a pathroad on the north side that will cross the **Magellan Easement**. The pathroad cannot be constructed with reinforced concrete pursuant to the Magellan Encroachment Requirements, **Exhibit "B"** and the top of the **Magellan Facilities** must be a minimum of 3 feet below the finished grade of the pathroad.

(e) **Two 2" PVC or HDPE Conduits.** The project proposes to construct two conduits to cross the **Magellan Facilities** with a minimum 4 feet of vertical clearance. The conduits will contain fiber optic cable at the completion of the project.

2. **No Other Encroachments.** Except for the **Approved Encroachments** as defined in the **Agreement**, **City** shall not create, erect, place or construct any other **Encroachment** on, above or below the surface of the ground on **Magellan's Easement Tract**, or change the grade or elevation of the ground surface within **Magellan's Easement Tract** or at any time plant or allow any trees thereon or cause or permit any of these to be done by others, without the express prior written permission of **Magellan**.

3. **Magellan On-Site Representative.** Exclusive of Saturday, Sunday, and legal holidays, **City** shall notify **Magellan** a minimum of 48 hours in advance of any **Encroachment** activities on **Magellan's Easement Tract** so that **Magellan** may arrange to have a representative present. At **Magellan's** option and at **City's** sole cost and expense, **Magellan's** representative may be on site during all **Encroachment** activities over or within ten feet (10') of the **Magellan Facilities** to confirm that no damage occurs to the **Magellan Facilities**. The presence of **Magellan's** representative or any verbal instructions given by such representative shall not relieve **City** of any liability under the **Easement** or this **Agreement,** and will not change the terms of the **Easement** or this **Agreement,** which may only be changed by written agreement by authorized representatives of **City** and **Magellan.** If pipeline, coating, cathodic protection and/or any other repair of **Magellan Facilities** is required by **Magellan** or if the safety of the **Magellan Facilities** is jeopardized, in **Magellan's** sole judgment, **City** shall stop all construction activities on **Magellan's Easement Tract** until said repairs are completed or until any unsafe construction practices are resolved to the satisfaction of **Magellan's** on-site representative. Written notification of such construction activity shall be made to **MAGELLAN PIPELINE COMPANY, Coordinator of Operations & Maintenance, Paul Klabunde, 902 Main Avenue East, West Fargo, ND Office: (701) 282-7134; Cell: (701) 793-8377** or such other representative of **Magellan,** which **Magellan** may from time to time designate.

4. **Protection of Magellan Facilities.** **City** shall protect the **Magellan Facilities** if excavating and backfilling become necessary within **Magellan's Easement Tract**. If excavating within 2 feet of any Magellan pipeline or when otherwise deemed necessary by **Magellan's** on-site representative, **City** shall perform any necessary digging or excavation operations by hand digging. **City** shall reimburse **Magellan** for all costs of having a representative of **Magellan** on-site during construction activities related to the **Approved Encroachments**.

5. **Breach.** If either **City** or **Magellan** breaches this **Agreement** and the non-breaching party commences litigation to enforce any provisions of this **Agreement**, the reasonable cost of attorneys' fees and expenses will be payable to the non-breaching party by the breaching party upon demand, for all claims upon which the non-breaching party prevails.

6. **Insurance.** **City** shall procure or cause its contractors and subcontractors to procure and maintain in force throughout the entire term of this **Agreement** insurance coverage described below with insurance companies acceptable to **Magellan** for work performed related to the construction of the **Approved Encroachments**. All costs and deductible amounts will be the responsibility and obligation of the **City** or its contractors and subcontractors. Prior to commencing any activities related to the construction of the **Approved Encroachments**, the **City** must deliver to **Magellan** certificate(s) of insurance, naming **Magellan Midstream Partners, L.P. and its Affiliates as an additional insured**. The limits set forth below are minimum limits and will not be construed to limit the **City's** liability:

(a) Workers' Compensation insurance complying with the laws of the State or States having jurisdiction over each employee and Employer's Liability insurance with limits of $1,000,000 per accident for bodily injury or disease.

(b) Commercial or Comprehensive General Liability insurance on a claim made policy with a combined statutory limit of $1,500,000 each claim and for project specific, an annual aggregate of $5,000,000. Coverage must include premises/operations, products/completed operations, and sudden and accidental pollution. **Magellan Midstream Partners, L.P. and its Affiliates** (hereinafter defined), and its and their respective directors, officers, partners, members, shareholders, employees, agents, and contractors shall be included as additional insureds. The term "Affiliate(s)" as used herein means, with respect to Magellan Midstream Partners, L.P., any individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, firm, association, joint stock company, trust, unincorporated organization, governmental body, or other entity (collectively, a "Person") that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with Magellan Midstream Partners, L.P. The term "control" (including the terms "controlled by" and "under common control with"), as used in the previous sentence means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Magellan Midstream Partners, L.P. or such Person, as applicable, whether through ownership of voting stock, ownership interest or securities, by contract, agreement or otherwise.

(c) The Sudden and Accidental Pollution can be a separate, stand alone policy, but must still meet the $5,000,000 minimum limit requirement. If the coverage is written on a claims-made policy form, the coverage must be maintained for two (2) years following completion of the work activities related to the Approved Encroachments.

(d) In each of the above policies, the **City** or its contractors and subcontractors agrees to waive and will require its insurers to waive any rights of subrogation or recovery either may have against **Magellan** and its affiliated companies.

(e) Regardless of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the **City** or its contractors and subcontractors, or the failure of any such insurance company to pay claims that occur, such requirements, insolvency, bankruptcy or failure will not be held to waive any of the provisions hereof.

(f) In the event of a loss or claim arising out of or in connection with the construction of the **Approved Encroachments**, the **City** agrees, upon request of **Magellan**, to submit a certified copy of its insurance policies for inspection by **Magellan**.

(g) The **City** shall require all of its contractors and subcontractors for work related to the construction of the **Approved Encroachments** to provide adequate insurance coverage, all to be endorsed with the Waiver of Subrogation wording referenced in Section (d) above; any deficiency in the coverage, policy limits, or endorsements of said contractors and subcontractors, shall be the sole responsibility of the **City**.

7. **Indemnification.** **City** will indemnify, save, and hold harmless **Magellan**, its affiliated companies, directors, officers, partners, employees, agents and contractors from any and all environmental and non-environmental liabilities, losses, costs, damages, expenses, fees (including reasonable attorneys' fees), fines, penalties, claims, demands, causes of action, proceedings (including administrative proceedings), judgments, decrees and orders resulting from **City's** breach of this **Agreement** or caused by or as a result of the construction, use, maintenance, existence or removal of the **Approved Encroachments** and **Other Encroachments** located on the **Magellan Easement Tract**. The presence of **Magellan's** representative or any instructions given by such representative will not relieve **City** of any liability under this **Agreement,** except to the extent that such liability results from Magellan's or its representative's negligence, gross negligence or willful misconduct.

8. **Damage or Loss.** **City** covenants that:

(a) If at any time, in the sole opinion of **Magellan**, it becomes necessary for **Magellan,** to cross, occupy, utilize, move or remove all or portions of the **Approved Encroachments** placed on **Magellan's Easement Tract** or constructed pursuant to this **Agreement**, for any purpose, including but not limited to surveying, constructing new facilities, maintaining, inspecting, operating, protecting, repairing, replacing, removing or changing the size of a pipeline(s) and appurtenances on **Magellan's Easement Tract** and such activities by **Magellan** result in damage to or destruction of the **Approved Encroachments**, then repair, replacement or restoration of such **Approved Encroachments** shall be at the sole cost and responsibility of **City**.

(b) If at any time, any encroachments belonging to or permitted by **City** which are not authorized by this or another written agreement ("**Other Encroachments**") are found to be on **Magellan's Easement Tract, Magellan** may at any time request **City** to remove

such **Other Encroachments,** and if **City** refuses or fails to do so within a reasonable time, **Magellan's** may remove them from **Magellan's Easement Tract** to a location off of **Magellan's Easement Tract** at **City's** expense, unless they are allowed to remain by a written agreement between **Magellan** and **City**. Should such removal activities by **Magellan** result in damage to or destruction of the **Other Encroachments**, then repair, replacement or restoration of such **Other Encroachments** shall be at the sole cost and responsibility of **City,** and such **Other Encroachments** may not be repaired, replaced or rebuilt on **Magellan's Easement Tract** without a written agreement between **Magellan** and **City**.

(c) If during the exercise of the rights granted by the **Easement** or by this **Agreement,** the **Approved Encroachments** and **Other Encroachments**, if any, are damaged, destroyed or suffer loss of value, **City** agrees to release **Magellan,** its affiliates, and its and their respective directors, officers, members, partners, shareholders, employees, agents and contractors from and against any and all liabilities, and damages or losses which may arise as a result of the damage to or loss of use of the **Approved Encroachments** and **Other Encroachments**, if any, caused by **Magellan**, its employees, agents and contractors.

9. **Magellan Rights.** **Magellan** and **City** agree that the existence of the **Approved Encroachments** or this **Agreement** does not constitute a waiver of **Magellan's** rights under the **Easement.** **Magellan** hereby reserves and **City** hereby grants and confirms all of **Magellan's** rights, title and estate as set forth in the **Easement.**

10. The terms and conditions of this **Agreement** will constitute covenants running with the land and be binding upon and inure to the benefit of the parties hereto, their successors, assigns and grantees. This **Agreement** may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. This **Agreement** shall become effective upon its complete execution by the parties hereto.

11. **Maximum Unsupported Span Length (Excavation Requirements).** Certain precautions will need to be implemented to ensure the safety of the **Magellan Facilities**. **Magellan's** standard practice is to conduct non-destructive evaluations and/or weld on reinforcing sleeves on all girth welds that will be fully exposed when the native supporting soil under the pipeline will be removed for a length greater than or equal to the respective pipeline's safe maximum allowable unsupported span length.

    Based on the pipeline specifications and maximum operating pressure for the **Magellan Facilities, the safe maximum unsupported span length is 60 feet**.

    The **City** will need to pay careful attention to the unsupported pipe length of the **Magellan Facilities**. If more than the safe maximum unsupported span length for the **Magellan Facilities** has been exposed, **Magellan** will require non-destructive evaluations of the girth

welds and will make repairs as necessary. Costs associated with repair work or the need for a pipeline contractor for assistance will be the responsibility of the **City**.

12. **Heavy Equipment Crossings**. Pipeline stress calculations have been performed based on an assumed maximum loaded vehicle weight of 80,000 lbs. The stress calculations further assumed that the gross loaded vehicle weight was evenly distributed between two (2) axles resulting in a maximum wheel load of 20,000 lbs. Based upon these assumptions and the pipeline depths of provided by **Magellan**, equipment meeting the aforesaid criteria may safely cross the **Magellan Facilities**; **however, a Magellan field representative will need to be present to verify the pipeline depth of cover prior to allowing equipment to cross. A minimum cover of three (3) feet shall be maintained for all equipment crossings over Magellan Facilities.**

    Tracked equipment and equipment exceeding the maximum wheel load specified above will not be allowed to cross the Magellan Facilities without further evaluation of the pipeline stresses. If equipment exceeding the maximum wheel load specified above will need to cross the pipelines, detailed information will need to be received in order to perform pipe stress calculations. The following information will need to be received to perform a more thorough analysis of wheeled vehicles: loaded vehicle weight, number of axles on the front and rear, and weight distribution between the front and rear axles. For equipment on tracks, the following information is needed: loaded vehicle weight, length of track in contact with the ground, and track width.

IN WITNESS WHEREOF, the parties have set their hands on the dates expressed below.

MAGELLAN PIPELINE COMPANY, L.P.
By: Magellan Pipeline GP, LLC, its general partner

By: _____
Name: H. Cynthia Pierce
Title: Authorized Signatory for Company

Date: 7/13, 2015

CITY OF FARGO, ND

By: April E. Walker
Name: April Walker
Title: City Engineer

Date: 7/1, 2015

CITY OF WEST FARGO, ND

By: _____
Name: Chris Brungardt
Title: Director of Public Works

Date: 7/6/15, 2015

STATE OF OKLAHOMA)
) SS
COUNTY OF TULSA)

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 13th day of July, 2015 personally appeared H. Cynthia Pierce, to me personally known to be the Authorized Signatory for MAGELLAN PIPELINE GP, LLC, a Delaware limited liability company, who being duly sworn did acknowledge to me that he/she executed the foregoing instrument on behalf of said limited liability company as the free and voluntary act and deed, for the uses, purposes and consideration therein set forth.

Witness my hand and official seal.

Sherrie L. Guthrie
Notary Public
SHERRIE L. GUTHRIE

My commission expires:
4-19-19

NOTARY PUBLIC SEAL
SHERRIE L. GUTHRIE
Notary Public
State of Oklahoma
Commission # 03005115 Expires 04/19/19

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STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

Before me, the undersigned, a Notary Public in and for the County aforesaid, on this 1st day of July, 2015, personally appeared **April Walker** to me known personally to be the City Engineer for the CITY OF FARGO, ND, a North Dakota municipal corporation, who being duly sworn did acknowledge to me that she executed the foregoing instrument on behalf of said City of Fargo, ND as the free and voluntary act and deed of said corporation, for the uses, purposes and consideration therein set forth.

Witness my hand and official seal.

Kristi Olson
Notary Public

My Commission Expires:

KRISTI OLSON
Notary Public
State of North Dakota
My Commission Expires Oct. 17, 2019

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

Before me, the undersigned, a Notary Public in and for the County aforesaid, on this 6 day of July, 2015, personally appeared **Chris Brungardt** to me known personally to be the Director of Public Works for the CITY OF WEST FARGO, ND, a North Dakota municipal corporation, who being duly sworn did acknowledge to me that he executed the foregoing instrument on behalf of said City of West Fargo, ND as the free and voluntary act and deed of said corporation, for the uses, purposes and consideration therein set forth.

Witness my hand and official seal.

Tina Wagner
Notary Public

My Commission Expires:

TINA WAGNER
Notary Public
State of North Dakota
My Commission Expires Oct. 13, 2015

EXHIBIT "A"

SUBJECT LAND

The Northwest Quarter of the Northwest Quarter (NW¼NW¼) of Section 4, Township 139 North, Range 49 West; and the Southwest Quarter of the Southwest Quarter (SW¼SW¼) of Section 33, Township 140 North, Range 49 West, Cass County, North Dakota.

EXHIBIT "B"

GENERAL ENCROACHMENT REQUIREMENTS

EXHIBIT "B" TO ENCROACHMENT AGREEMENT, 1 of 4

MAGELLAN PIPELINE COMPANY, L.P.

General Encroachment Requirements

A. **GENERAL** - These requirements define the minimum standards of practice for encroachments by a landowner (including any developer, business entity, utility company or individual working for, or on behalf of, or with permission of landowner) (herein referred to collectively as "Owner") to pipeline corridors and rights of way ("Magellan's Easement Tract") owned or operated by Magellan Pipeline Company, L.P. ("Magellan"). Upon written request by Owner to Magellan, a copy of these minimum requirements shall be provided to any developer, business entity, utility company or individual working on behalf of Owner or with the permission of Owner within Magellan's Easement Tract. Specific circumstances may require additional precautions or more stringent methods in order to protect the integrity of Magellan's pipelines and facilities. Magellan's Easement Tract for purposes of these General Encroachment Requirements shall be considered to be any area within fifty (50) feet of any Magellan pipeline or other Magellan-owned or operated facility unless a different right of way width is specified by one or more recorded right of way or easement documents (herein collectively called "Easement", whether one or more), in which case such specified width shall define Magellan's Easement Tract.

1. **Encroachment Definition.** An "encroachment" is any use of the land within Magellan's Easement Tract which could interfere with Magellan's Easement rights or which could create safety concerns for Magellan pipelines and/or facilities located on Magellan's Easement Tract. Encroachments include, but are not limited to: structures, fixtures, personal property, landscaping, foreign utilities, foreign pipelines, roadways, railroads, waterway crossings, water impoundments, walls, heavy equipment and heavy loads on Magellan's Easement Tract, and also any excavation, digging, drilling, tunneling and addition, removal or disturbance of soil or subsoil within Magellan's Easement Tract.

2. **Magellan Representative Required On-Site.** Magellan pipeline systems operate at high pressures, and for safety reasons, Magellan requires its company representatives to be on-site while Owner is excavating or performing other activities which could endanger the Magellan pipelines or other facilities on

Magellan's Easement Tract. For other activities of the Owner on the Magellan Easement Tract, the Magellan field representative shall determine whether Magellan's continuous presence or periodic monitoring of encroachment activities will be required and shall inform the Owner. A Magellan representative will be made available upon 48 hours notice (exclusive of weekends and holidays) to determine the location and approximate depth of any Magellan pipelines. No excavation shall be commenced without prior written approval from Magellan and verification by Magellan of the location and approximate depth of its pipelines.

3. **Magellan's Facilities.** Magellan's facilities include, but are not limited to, Easement, rights of way, pipelines, meter and valve sites, aboveground piping manifolds and cathodic protection systems.

4. **Land Use Change - Notification.** The landowner and tenant, if any, must notify Magellan at any and every time when the land use will be changed for land on or adjacent to Magellan's Easement Tract. Examples of such land use changes are:

- Change from pasture to cultivation
- Change in depth of tilling (e.g. plowing deeper or deep-breaking the land)
- Change in that terraces will be cut or re-cut
- Change from agricultural use to residential, commercial or industrial use.
- Change from residential to commercial or from commercial to industrial.

5. **Governmental Regulations and Industry Guidelines.** Owner must comply with all applicable laws and regulations, as well as Magellan's policies as expressed herein. Owner is also hereby referred to the Common Ground Alliance Best Practices which can be found on the web site: www.commongroundalliance.com (See "Program Information" / "Best Practices") and which is available from Common Ground Alliance in booklet form for easy reference. Best Practices addresses the most common issues for damage prevention for an encroaching party, including, among others: Planning and Design; One-Call Center; Locating and Marking; Excavation; and Mapping.
In the even of a conflict between laws and regulations, Magellan's policies and the Common Ground Alliance Best Practices, the following priority shall govern encroachments on Magellan's Easement Tract: 1st -- laws and regulations; 2nd -- Magellan policies; and 3rd -- Common Ground Alliance Best Practices.

B. MAGELLAN RIGHT OF WAY PRACTICE

1. **Personal Property and Fixtures To Be Kept Off of Magellan's Easement Tract.** In order to keep Magellan rights of way clear for operations, maintenance, inspection and emergency access, personal property and fixtures shall not be placed, stored or maintained on Magellan's Easement Tract. Personal property and fixtures include, but are not limited to, storage sheds, automobiles, trailers, mobile homes, above-ground swimming pools, business equipment, product inventory, scrap metal, boulders, large rocks, debris, junk and piles of materials.

2. **Encroachments Subject to Being Cleared from Magellan's Easement Tract.** Subject to the terms of its Easement (including right of way agreement[s] and other written agreements), Magellan may keep Magellan's Easement Tract clear of items that may hinder the exercise of Magellan's rights to construct, operate, inspect, maintain, repair and access its pipelines and other facilities. Clearing of the Magellan's Easement Tract shall include, but not be limited to the following: removal of trees, brush, crops, other vegetation and non-permitted encroachments located on or overhanging all or part of any Magellan's Easement Tract. Trees or other vegetation overhanging Magellan's Easement Tract may be side-trimmed.

C. ENCROACHMENT PLANNING

1. **Plan Review Required by Magellan.** For any encroachment, Magellan must be provided project plans to review and approve, *prior to the encroachment occurring*, for purposes of damage prevention.

2. **Submission of Complete Plans.** Owner must submit complete plans to Magellan for review. Incomplete plans could delay Magellan's engineering impact study and insufficient information could result in increased costs. Plans must include:

- A plan view of the project with the pipeline(s) location included.
- An illustration in profile of the existing surface elevations, the proposed surface elevations and the elevation of the Magellan pipeline(s).
- A comprehensive utility /structure /grading plan depicting the relationship to the pipeline(s).
- A proper legal description of the project location.
- Complete landscaping plans.
- Complete plans for backfilling and compaction of backfill material.

3. **Plans Must Show Magellan's Easement Tract, Pipelines and Facilities.** All construction plans (prints) showing lands where all or any part of Magellan's Easement Tract, any Magellan pipeline or facility is located must contain the

following:

- Location and depth of all Magellan pipelines and facilities
- The width of Magellan's Easement Tract
- A standard warning statement *conspicuously displayed* containing the following language:

WARNING
HIGH-PRESSURE PIPELINE(S)
Excavation and/or Construction Prohibited Without compliance with State One-Call AND Without Written Permission From MAGELLAN PIPELINE COMPANY, L.P.

4. **Written Encroachment Agreement Required.** A written, fully executed Encroachment Agreement must be in place between Magellan and Owner before Owner commences work on any encroachment.

5. **Costs.** Unless otherwise agreed in writing, all costs to Magellan that result from any encroachment should be paid by Owner. Such costs shall include, but not be limited to: modification, replacement, lowering, and protection of pipelines, including engineering evaluation and design, field labor and real estate research and document preparation and handling.

6. **Pipeline Integrity Inspection.** Prior to the installation of any structure, parking lot, roadway or other facility which might interfere with or hinder Magellan's inspection of any pipeline or facility, Magellan will perform an integrity review of its pipeline and any other assets which may be affected by the proposed structure, parking lot, roadway or other encroaching facility in order to determine that Magellan's assets comply with integrity requirements and to allow Magellan to make any needed changes prior to construction of any encroachments.

7. **Soil On Magellan's Easement Tract -- Removing and Adding.** No soil shall be removed from or added to Magellan's Easement Tract without written authorization from Magellan. Any soil added must be clean (without contaminants, trash or debris) fill dirt and must be *limited in amount* so that the

resulting cover (vertical distance from the surface of the land to the top of Magellan's pipeline) is not greater than eight feet (8').

8. **Erosion Control Materials.** Erosion-control materials may be allowed on Magellan's Easement Tract for temporary periods of construction and restoration.

9. **Proof of Title to Property.** Magellan may require Owner to provide proof of current ownership of the land where the proposed encroachment is to be located. Such proof may be in the form of a Title Commitment, Title Policy, or a copy of a recorded Warranty Deed.

10. **Subdivision Plat.** Magellan requires a copy of the Subdivision Plat, if applicable. If the plat has been recorded, Magellan requires a copy indicating the book and the page of the recording.

11. **Location and Approximate Depth of Pipelines.** A Magellan representative is normally available with 48 hours notice (exclusive of weekends and holidays) to determine the location and approximate depth of the pipeline(s). Determining actual depths of pipelines may require pot-holing or hand-digging by, and at the expense of Owner in the presence of an authorized Magellan representative. No excavation on Magellan's Easement Tract shall take place without approval by Magellan.

12. **Vertical Separation Between Magellan Pipeline or Facility and an Encroaching Object or Structure.** Vertical separation is defined in this document as the vertical distance between the outermost part of a Magellan pipeline, facility or appurtenance (for example, the outside of the pipe [for uncased pipe] or the outside of the pipe casing [for cased pipe]) and the outermost part of the encroaching object (for example, the outside of the encroaching pipeline or the outside of its conduit).

13. **Construction Equipment Information.** Owner shall provide to Magellan information as to the type, size, and weight of construction equipment that will be used over or in the vicinity of the pipeline(s).

D. ENCROACHMENT DESIGN REQUIREMENTS & STANDARDS

1. **Risk of Loss and Damage.** Owner shall bear the risk of loss, damage and/or destruction to any structure, fence, landscaping or improvement placed within the boundaries of Magellan's Easement Tract and shall hold Magellan harmless

EXHIBIT "B" TO ENCROACHMENT AGREEMENT, 2 of 4

for damages, destruction of structures and for any consequential damages which may arise out of Magellan or its designees exercising Magellan's Easement rights or which may arise out of accessing Magellan's Easement Tract, pipelines or facilities.

2. **Buildings, Structures and Fences.**

a. **Buildings and Structures.** No buildings, houses, barns, garages, patios, playhouses, sheds, septic systems or drain fields, swimming pools (above-ground or below-ground), reinforced concrete slabs or other similar structures will be permitted on the Magellan's Easement Tract.

b. **Septic System not permitted.** No septic-system, including any lateral lines will be permitted on Magellan's Easement Tract.

c. **Retaining Walls.** Retaining walls are not permitted on Magellan's Easement Tract.

d. **Fences.** No fence shall be constructed or maintained on Magellan's Easement Tract without a written agreement.

e. **Requirements for Fences.** If fencing on Magellan's Easement Tract is authorized by a written agreement with Magellan, the fencing must comply with the following:

1) **Not Parallel to Pipeline.** No fence shall be allowed to be constructed parallel closer than 10 feet to any Magellan pipeline, within the boundaries of Magellan's Easement Tract.

2) **Fence Posts Location.** No fence posts will be allowed to be within five (5) feet of any Magellan pipeline or facility.

3) **Gates Required.** Magellan may require any fence constructed within the boundaries of Magellan's Easement Tract to have gates of such size and suitability as is necessary or convenient for Magellan to access its pipelines and/or facilities for its operations, including inspections, at each point where the fence crosses a Magellan pipeline or facility boundary. Magellan shall be allowed to put a Magellan lock on such gates, which will allow access to Magellan's Easement Tract and/or facilities through such gates.

4) **Angle of Fence Crossing.** It is preferred that fence crossings be as close to 90 degrees as possible.

3. **Landscaping, Elevation Changes and Water.**

a. **Landscaping Definition.** Landscaping shall include, but not be limited to, trees, shrubs, underground irrigation or sprinkler systems, sidewalks or other paths, retaining walls, terraces or other land grade changes, within

Magellan's Easement Tract.

b. **General Landscaping Requirements.** The following are the general rules for landscaping on Magellan's Easement Tract:

1) **Written Approval.** Landscaping proposed to be done on Magellan's Easement Tract must be approved by Magellan in a **written** ***encroachment agreement.*** Among other terms, the encroachment agreement will release Magellan from any liability for damages to the landscaping from the exercise of Magellan's Easement rights.

2) **Trees Not Permitted.** Trees are not permitted on Magellan's Easement Tract.

3) **Shrubs.** Shrubs exceeding 3 feet in height and/or obstructing the view of any Magellan pipeline marker posts are not permitted on Magellan's Easement Tract.

4) **Irrigation Systems, Field Drain Lines, and Sidewalks.** Irrigation systems, field drain lines and sidewalks that are to cross a Magellan pipeline must cross such pipeline at an angle as close to 90 degrees as possible, but in no event at an angle less than 45 degrees and must comply with other applicable provisions of this document.

c. **No Water Bodies on Magellan's Easement Tract.** Retention of water, including but not limited to, Livestock ponds, lakes, retention ponds, or wetlands may not be constructed or formed on Magellan's Easement Tract.

d. **Surface Grade and Elevation Changes.** Surface grade or elevation changes must be reviewed and approved in writing by Magellan.

4. **Foreign Pipeline & Utility Crossings.** No foreign pipelines or utility lines of any type shall be allowed to be constructed parallel to any Magellan pipeline within the boundaries of Magellan's Easement Tract.

a. **Minimum Angle for Pipeline/Utility Crossing.** Any foreign pipeline or utility that is proposed to cross a Magellan pipeline must cross the Magellan pipeline at an angle as close to 90 degrees as possible, but in no event at an angle less than 45 degrees.

b. **Vertical Separation Requirements for Crossing.** Foreign pipeline(s), utilities (except high-voltage lines – see below) or flow lines should cross Magellan pipeline(s) with at least 24 inches of vertical separation. Special written authorization must be given in the event vertical separation is less than that specified in these General Encroachment Requirements. The preferred method for a foreign pipeline or utility to cross a Magellan pipeline is to cross ***below*** the Magellan pipeline.

c. **Warning Tape Required.** When any foreign pipeline or utility line is proposed to cross a Magellan pipeline, Owner must place 6" wide McMaster-Carr No. 8288T12 or equal within Magellan's Easement Tract

in the following manner:

1) The tape must be placed directly over (parallel to) and at least 15 inches above the foreign line for the entire distance that it occupies Magellan's Easement Tract. Additionally, the tape must be placed directly over (parallel to) and at least 15 inches above each Magellan pipeline that is crossed for a minimum distance which is the greater of:

(a) a minimum distance of 20 feet on each side of the Magellan pipeline, or

(b) across the entire width of Magellan's Easement Tract

2) The placement of warning tape on each side of ***Magellan*** pipeline(s) **will** not be required for utility cables that are installed using the directional drill or jacking method.

d. **Crossings By Metal Pipelines or Conduits.** Metallic pipe crossing Magellan pipeline(s) may require Magellan to perform a cathodic protection interference survey. If interference with Magellan's cathodic protection system is detected and remediation is necessary, Owner agrees to cooperate with Magellan and to make necessary adjustments in Owner's interfering metallic pipe or other remediation to correct such interference problem insure that the Magellan cathodic protection system is operating properly.

e. **Crossing Requirements.** Electrical, fiber optic, local service communication, long distance carrier telephone, and utility cables should cross Magellan pipeline(s) with a ***minimum of 24-inches of vertical separation.*** All such lines must be covered with a *Concrete Slab* for the full width of the Easement Tract, if requested by Magellan. If such lines have an exposed concentric neutral, a test point from the ground wire shall be installed by the power company.

f. **Crossing Requirements For Lines Going Over a Magellan Pipeline.** In the event the electrical, fiber optic, local service communication, long distance carrier telephone, and utility cables cable crosses ***over*** a Magellan pipeline, such line shall be ***encased in red concrete across the full width of Magellan's Easement Tract,*** unless a variance is granted by Magellan, as set forth below.

g. **Written Authorization for Variance.** Owner must have written authorization from Magellan for any variance from the vertical separation requirements listed above and/or for any variance from the requirement for

encasement of high-voltage electrical lines in red concrete.

h. **Utility Poles and Guy Anchors.** Utility poles and guy anchors shall not be placed on Magellan's Easement Tract without a written agreement. With a written agreement, poles and anchors may be placed no closer than 20 feet to any Magellan pipeline Poles shall not be allowed to run parallel to a Magellan pipeline within the Magellan Easement Tract.

i. **Directional Drilling / Boring.**

1) Prior to commencing any horizontal directional drilling, Owner shall submit plans showing procedure and material descriptions for Magellan's approval. The plans and description shall include, but not be limited to the following:

- Profile and plan showing location of entry and exit points
- Work space required to perform the work
- Mud containment and disposal sites

2) Owner shall positively locate and stake the location of Magellan's existing pipelines and other underground facilities, including exposing any facilities located within 10 feet of the designed drilled path. Prior to commencing drilling operations, Owner shall modify drilling practices and down-hole assemblies to prevent damage to Magellan's existing pipelines and other facilities. Owner shall be responsible for losses and repairs occasioned by damage all Magellan pipelines and other facilities resulting from drilling or boring operations.

3) At all times, Owner shall provide and maintain instrumentation to document and accurately locate the pilot hole and the drill bit, to measure drill-string axial and torsional loads, and to measure drilling fluid discharge rate and pressure. At Magellan's request, Owner shall promptly provide Magellan with reasonable access to information and readings provided by these instruments, including copies of any written documentation.

4) Pilot Hole.

- The pilot hole shall be drilled along the path shown in the plan and profile drawings. No pilot hole shall be made that will result in any of the encroaching utility being installed in violation of laws and regulations or of Magellan's requirements described herein. However, safety for any adjacent utilities and/or structures is of utmost importance. Therefore, the listing of separation distances or tolerances herein does not relieve Owner from responsibility for safe operations or for damage to adjacent utilities and structures.
- If tolerances are not specified in the plan and profile drawings, the pilot hole shall have the following tolerances:

- Elevation of +0 feet and -15 feet
- Alignment of +/-20 feet as long as it does not come to within 10 feet of Magellan's pipeline
- Initial penetration of ground surface at exact location shown in the plan and profile drawings
- Final penetration of the ground surface within +/-10 feet of the alignment and within +30 feet and -0 feet of the length shown in the plan and profile drawings
- Curves shall be drilled at a radius equal to or greater than that specified in the plan and profile drawings. The drilled radius will be calculated over any 3 joints (range 2 type drill pipe) segment using the following formula:

  Rdrilled = (Ldrilled/Aavg) x 180/π

  Where: Rdrilled =drilled radius over Ldrilled

  Ldrilled = length drilled: no less than 75 feet and no greater than 100 feet

  Aavg = total change in angle over Ldrilled

- At the completion of the pilot-hole drilling, Owner shall provide to Magellan a tabulation of horizontal and vertical coordinates, referenced to the drilled entry point, which accurately describe the location of the pilot hole.

5) **Drilling Fluids.**

- The composition of drilling fluids proposed for use shall comply with all applicable laws and regulations.
- Owner is responsible for obtaining, transporting and storing any water required for drilling fluids.
- Disposal of drilling fluids and drill cuttings shall be Owner's responsibility and shall be conducted in compliance with applicable laws and regulations. Drilling fluid shall *not* be disposed of by placing fluids on or under the surface of Magellan's Easement Tract.
- Owner shall employ best efforts to maintain full annular circulation of drilling fluids. Drilling fluid returns at locations other than entry and exit points shall be minimized. If annular circulation is lost, Owner shall take steps to restore circulation. If inadvertent surface returns of drilling fluids occur, they shall be immediately contained with hand-placed barriers (e.g., hay bales, sand bags, silt fences, etc.) and collected using pumps as practical. If the amount of surface return is not great enough to allow practical collection, the affected area will be diluted with fresh water and the fluid will be allowed to dry and dissipate naturally. If

the amount of surface return exceeds that which can be contained with hand-placed barriers, small collection sumps (less than 5 cubic yards) may be used unless permits or other regulations prohibit the use of collection sumps. If the amount of surface return exceeds that which can be contained and collected using barriers or small sumps, or if the return of drilling fluids occurs in the body of water proper, drilling operations will be suspended until surface return volumes can be controlled.

6) **As-Built Drawing.** Owner shall provide to Magellan an as-built plan and profile drawing of the drilled crossing showing the location of the new crossing as well as the location of Magellan's pipeline.

5. **Roadway, Driveway, Railroad and Equipment Crossings.** No roadway, driveway, railroad or equipment crossings of any type shall be allowed to be constructed parallel to any Magellan pipeline within the boundaries of Magellan's Easement Tract.

a. **Pipeline Integrity Inspection.** A pipeline integrity review shall be performed by Magellan as described in provision "6" under "*C. Encroachment Planning*" (above).

b. **Load Bearing and Stress Limit Requirements.** Prior to any road, driveway, rail bed or equipment crossing construction, Magellan's engineer must determine whether the proposed compacted cover meets load-bearing requirements and provides adequate protection to limit stress on Magellan's pipeline or other facilities and must advise Owner of any additional requirements necessary to provide adequate protection.

c. **No Crossing Over Pipeline Bend.** Paved surfaces or rail beds shall not be allowed to cross a pipeline bend (point of inflection).

d. **Minimum Angle of Crossing.** Crossings should be as close to 90 degrees to Magellan pipeline(s) as possible, but not less than 30 degrees.

e. **Pipeline Casing Issues.** Magellan prefers that cased roadway and railroad crossings no longer be installed. If the carrier pipe under roadways and railroads requires adjustment or relocation, then instead of using casing, the carrier pipe will consist of extra strength material or heavier wall thickness to accommodate the additional longitudinal stress due to external loads. If a road or railroad crossing currently uses casing and the road or railroad is being widened and no other adjustment or relocation of the carrier pipe is required, then Magellan may elect to extend the casing pipe on the existing crossing(s) to accommodate additional road surface. If casing is used, it must not end under the roadway surface or track structure, but must extend across the entire length of the roadway or railroad right of way.

f. **Railroad Crossing Requirements.** Railroads shall be installed with a minimum compacted cover over the carrier pipe, as measured from the base of the rail to the top of the pipe, as follows (*see Figures 1 and 3*):

Location of Pipeline	Minimum Compacted Cover Over Top of Pipeline
Under track structure proper (Below bottom of rail)	6.0 feet
Under all other surfaces within the right of way or from the bottom of ditches	3.0 feet

g. **Roadway and Driveway Crossings.** Roadways and driveways, shall be installed with a minimum compacted cover over the carrier pipe, as measured from the top of the roadway surface to the top of the pipe, as follows (*see Figures 2 and 4*):

Location of Pipeline	Minimum Compacted Cover Over Top of Pipeline
Under roadway surface proper (Below surface of pavement)	4.0 feet
Under all other surfaces within the right of way or from the bottom of ditches	3.0 feet

h. **Crossing Pipelines Transporting Highly Volatile Liquids.** For Magellan pipelines transporting highly volatile liquids, minimum cover for a crossing at a drainage ditch must be 4.0 feet.

i. **When Additional Depth Required.** Depth greater than the minimum depths stated above may be required for a pipeline due to the combined stress of internal pipeline pressure and external loading pressure. Magellan will analyze each proposed crossing based on information provided by Owner to determine any additional depth that may be required for the pipeline for safe operation.

j. **Temporary Roads and Equipment Crossings.** Any such road or crossing must meet the following requirements:

- Must be located at a site approved by a Magellan field representative.
- Must provide adequate protection for Magellan's pipeline and other facilities, as determined by the appropriate Magellan engineer, so that the compacted cover meets load-bearing requirements and provides adequate protection to limit stress on the pipeline or other facilities.
- Owner shall place Six-inch wide plastic warning tape, McMaster-Carr No. 8288T12 or equal, over each pipeline for the width of the temporary road or equipment crossing, plus an additional 20 feet past each outside edge of such temporary road or equipment crossing

k. **Owner Required to Protect Magellan Pipelines.** Magellan may require Owner to put in place additional cover and/or stabilization (timbers, steel plate, crushed rock, concrete slab, etc.) at any approved equipment crossing in order to protect Magellan pipelines, taking into account possible effects of weather, pipeline depth, and type of vehicles proposed to cross the pipelines. Magellan will analyze each proposed crossing based on information provided by Owner to determine any additional depth or protection that may be required for safe pipeline operation.

l. **Heavy Equipment - Definition and Requirements.** Heavy equipment shall be defined as vehicles having a *gross weight* in excess of 80,000 pounds. Heavy equipment shall be prohibited from working directly on top of the active pipeline. For vehicles having a *gross weight* of 80,000 pounds or less, the pipeline must have a minimum of 4 feet of cover. Magellan must analyze the additional longitudinal stress due to external loads if the vehicles have a *gross weight* in excess of 80,000 pounds in order to determine required pipeline depth for safe operation.

6. **Parking Lots and Other Pavement.**

a. **Parking Lot and Pavement Requirements.** All parking lots and other pavement installed on Magellan's Easement Tract shall consist of a flexible surface such as asphalt. No reinforced concrete will be allowed.

b. **Pipeline Depth Under Parking Lot.** The depth of Magellan's pipelines under a parking lot must meet or exceed compacted cover requirements listed in the previous "Roadway, Driveway, Railroad, and Equipment Crossings" section above

7. **Waterway Crossings.**

a. **Pipeline Depth Requirements.** If Owner proposes to cross a Magellan pipeline with a waterway (river, stream, creek, irrigation canal, or drainage ditch), such crossing must result in Magellan's pipelines meeting or exceeding the minimum depth below the bottom of the waterway for compliance with then current pipeline construction standards and federal, state, and local regulations.

b. **Requirements for Waterway Crossings:**

1) Minimum Angle or Crossing. Crossings should be as close to 90 degrees to Magellan pipeline(s) as possible, but not less than 45 degrees.

2) **Vertical Separation Requirements for Waterway Crossing.** Pipelines to be crossed must have a minimum vertical separation of five (5) feet, as measured from the bottom of the waterway to the outermost part of a Magellan pipeline, facility or appurtenance

3) **Adding Weight to Pipeline for Negative Buoyancy.** Owner shall bear the cost of Magellan adding sufficient weight or mechanical devices to any Magellan pipeline crossed by a waterway in order to create negative buoyancy for such pipeline.

8. **Blasting.**

a. **Magellan Written Approval Required – Plan To Be Submitted.** Magellan must approve any proposed blasting operations that could affect its pipelines or facilities. Should blasting be necessary, a comprehensive plan must be submitted to Magellan for review and written approval.

b. **Safety Considerations – Damage Prevention Plan.** For safety and preservation of Magellan assets, all blasting shall be in accordance with federal, state, and local governing agencies and the Magellan's "Damage Prevention Plan for Blasting Near Company Facilities". A copy of said plan will be made available upon request.

E. **EXCAVATION NEAR MAGELLAN PIPELINES.**

1. **STATE "ONE-CALL" REQUIRED.** No excavation or activity listed in "*A. GENERAL - 1. Encroachment Definition*" above shall be performed by Owner in the vicinity of Magellan's facilities or within Magellan's Easement Tract until proper telephone notification has been made to the appropriate "One Call" system and a Magellan representative is on-site to monitor excavation activities. All of the states in which Magellan conducts pipeline operations have "One Call" laws, which require 48-72-hours notification prior to any excavation related activities. After making a One-Call, the state One-Call agency will notify Magellan to mark accurately, in a reasonable and timely manner, the location of the Magellan's pipeline facilities in the vicinity of the proposed encroachment.

2. **ONE-CALL NOTIFICATION.** *The following list is provided for convenience, but is not warranted by Magellan to be complete or accurate (telephone numbers were copied from each state's web site on 1/5/2004).* **Owner is required to acquire and call the appropriate One-Call number(s) for its location of activity.**

EXHIBIT "B" TO ENCROACHMENT AGREEMENT, 4 of 4

Current "ONE-CALL" numbers and information can be found on each state's "ONE-CALL" website:

Arkansas - www.arkonecall.com/ - 800 482-8998
Colorado - www.uncc2.org/ - 800 922-1987
Illinois - www.illinoisicall.com/ - 800 892-0123
Iowa - www.iowaonecall.com/ - 800 292-8989
Kansas - www.kansasonecall.com/ - 800 344-7233
Minnesota -www.gopherstateonecall.org/ - - 800 252-1166
Missouri - www.mo1call.com/ - 800 344-7483
Nebraska - www.ne-diggers.com/ - 800 331-5666
North Dakota -www.ndonecall.com/ - 800 795-0555
Oklahoma - www.callokie.com/ - 800 522-6543
South Dakota -www.sdonecall.com/index.asp - 800 781-7474
Texas - www.texasonecall.com/ - 800 245-4545
Wisconsin - www.diggershotline.com/ - 800 242-8511

Alternatively, the National One-Call number – (888) 258-0808 - may be used to register a proposed excavation and to subsequently notify underground utility operators with assets in the vicinity.

3. Excavation Plan Approval. Owner shall submit to Magellan for its approval plans for any proposed excavation on the Magellan Easement Tract. No excavation on Magellan's Easement Tract shall be commenced until Owner has secured Magellan's written approval of the plans. The excavation work shall be in compliance with all applicable laws and regulations. Owner is also referred to the Common Ground Alliance Best Practices (referenced in this document).

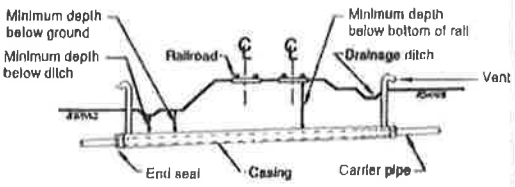
4. Magellan Representative On-Site for Excavation. A Magellan representative must be on-site when an excavation is occurring on Magellan's Easement Tract (*see provision "2" under "A. General" beginning on page 1*).

5. Removal of Side-Cutting Teeth from Equipment. Side-cutting teeth shall be removed from buckets of excavating equipment.

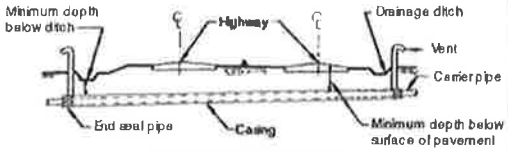
6. Parallel Excavating Required. When, in preparation for crossing any Magellan pipeline with any other pipeline or with electric line, communication line, roadway or any other structure or facility, Owner needs to locate a Magellan pipeline by use of mechanical means, Owner must perform such locating activity by excavating parallel to the Magellan pipeline with such mechanical means, but shall cease using the mechanical means when it reaches a point within two feet of the Magellan pipeline (*see next provision*).

7. Exposing Pipeline by Hand. Excavating within 2 feet of any Magellan pipeline shall be done by *hand-digging* until the pipeline is exposed and its location is accurately known. Then, Owner must position the excavation equipment so that from the point of operations the equipment will not reach within 2 feet of any Magellan pipeline.

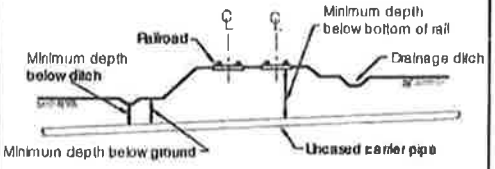
RAILROAD AND HIGHWAY CROSSINGS



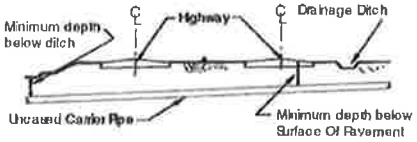
CASED RAILROAD CROSSING
FIGURE 1



CASED HIGHWAY CROSSING
FIGURE 2



UNCASED RAILROAD CROSSING
FIGURE 3



UNCASED HIGHWAY CROSSING
FIGURE 4

EXHIBIT "C"

PLAN DRAWINGS

DESIGN DATA				
Traffic CR 19 to 9th St	Average Daily			Max Hr.
Current 2014	Pass 5,020	Trucks 860	Total 5,880	590
Forecast 2045	Pass: 9,860	Trucks 1,690	Total 11,550	1,155
Traffic 9th St to 45th St	Average Daily			Max Hr.
Current 2014	Pass 6,120	Trucks: 980	Total: 7,100	710
Forecast 2045	Pass: 13,100	Trucks: 2,090	Total: 15,190	1,520
Clear Zone Distance 28 ft	Design Speed 45 mph			
Minimum Sight Dist. for Stopping 360 ft	Bridges N/A			
Sight Dist. for No Passing Zone 700 ft				
Pavement Design Life 30 years	Rigid Design ESALs 4,979,000 (CR 19 to Center) 5,903,000 (Center to 9th St)			

STATE	PROJECT NO.	PCN	SECTION NO	SHEET NO
ND	SU-8-992(036)037	20057	1	1

Job #__

City of West Fargo, City of Fargo, and Cass County North Dakota

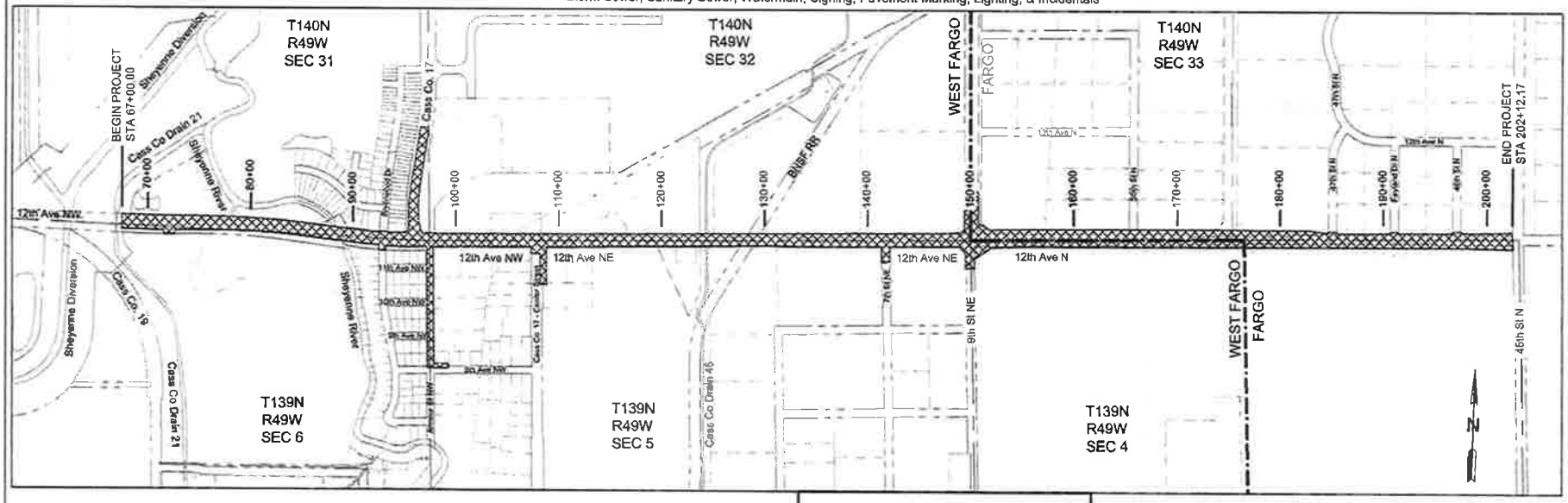
SU-8-992(036)037

West Fargo Improvement District 1279
Fargo Improvement District PN-15-A1
Cass County Project CH-1501
T140N R49 W Sec 31,32,33 & T139N R 49W Sec 4, 5, 6
12th Avenue North
Cass County Road 19 to 45th Street
Grading, Salvaged Base, PCC Pavement, Curb & Gutter, Sidewalk,
Storm Sewer, Sanitary Sewer, Watermain, Signing, Pavement Marking, Lighting, & Incidentals

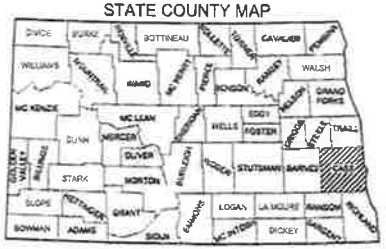
GOVERNING SPECIFICATIONS
2014 Standard Specifications adopted by the North Dakota Department of Transportation and the Supplemental Specifications effective on the date the project is advertised.

PROJECT NUMBER \ DESCRIPTION	NET MILES	GROSS MILES
SU-8-992(036)037	2.559	2.559

ALL ELEVATIONS NGVD 29



STATE COUNTY MAP



DESIGNERS

Mike Johnson	Austin Yates
Tony Lapp	Crystal Topping
Scott Schneider	Tim Golka
Yang Liu	
Dave Monge	

APPROVED DATE 11/13/14
Chris Brungardt /s/
PUBLIC WORKS DIRECTOR
CITY OF WEST FARGO

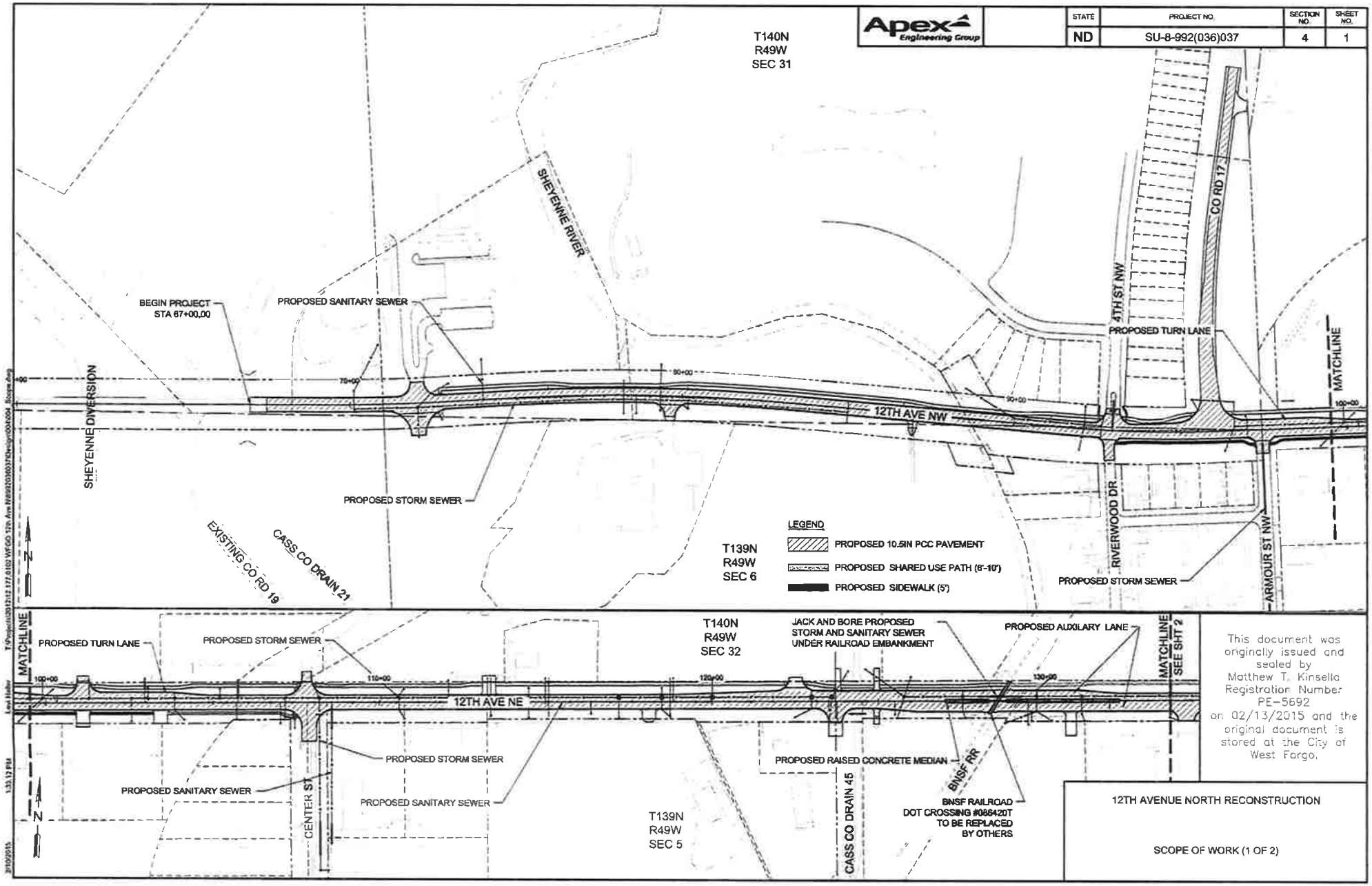
APPROVED DATE 11/13/14
April E. Walker /s/
CITY ENGINEER
CITY OF FARGO

APPROVED DATE 11/13/14
Jason P. Benson /s/
COUNTY ENGINEER
CASS COUNTY HIGHWAY DEPARTMENT

I hereby certify that the attached plans were prepared by me or under my direct supervision and that I am a duly registered professional engineer under the laws of the state of ND.

APPROVED DATE 11/12/14
Matthew T. Kinsella /s/
Apex Engineering Group

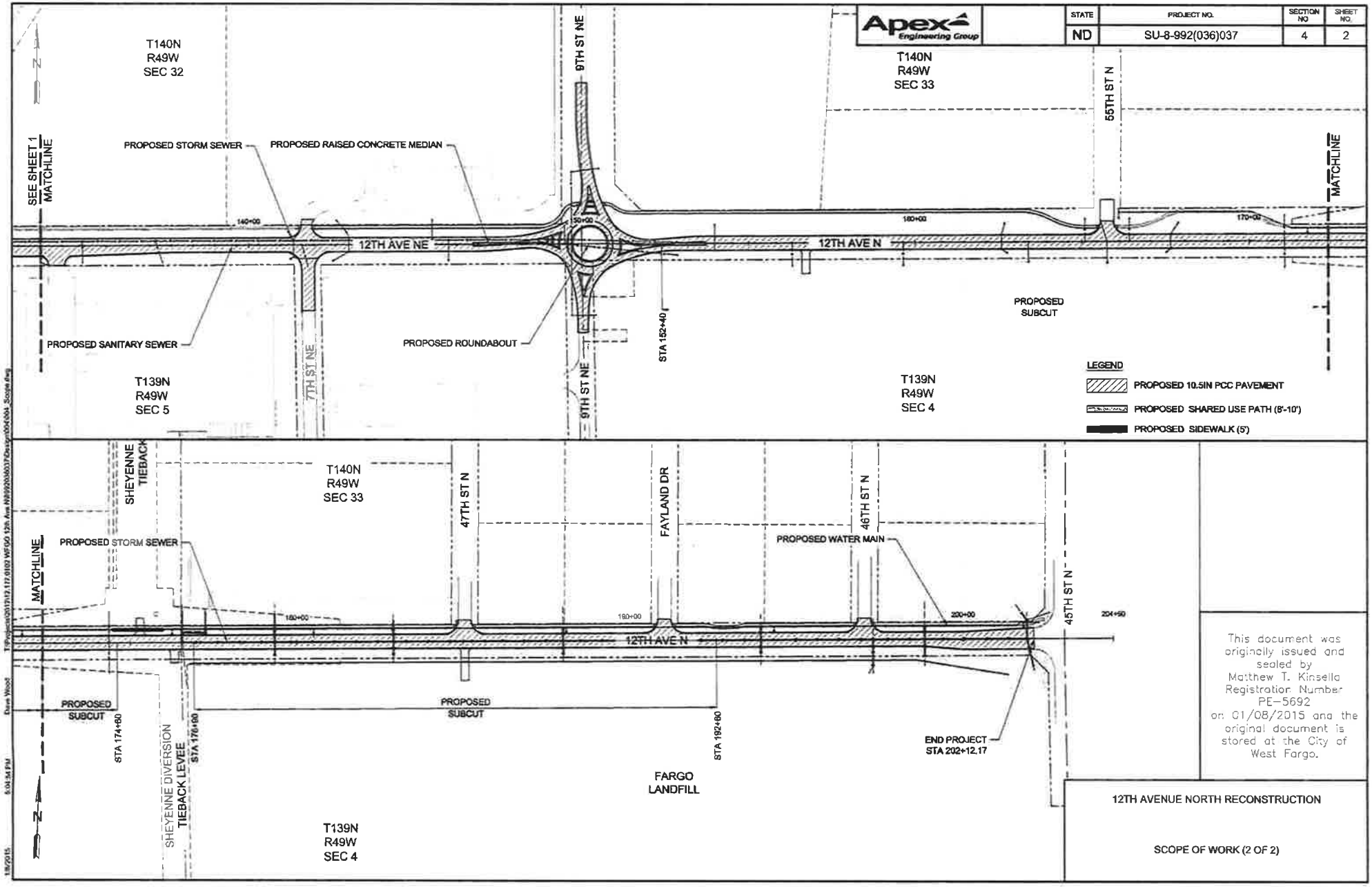
This document was originally issued and sealed by Matthew T. Kinsella Registration Number PE-5692, on 11/12/2014 and the original document is stored at the City of West Fargo



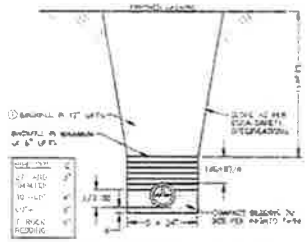
This document was originally issued and sealed by Matthew T. Kinsella Registration Number PE-5692 on 02/13/2015 and the original document is stored at the City of West Fargo.

12TH AVENUE NORTH RECONSTRUCTION

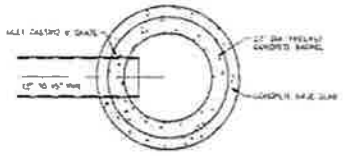
SCOPE OF WORK (1 OF 2)


Apex Engineering Group
STATE
ND
PROJECT NO.
SU-8-992(036)037
SECTION NO
4
SHEET NO.
2
T140N
R49W
SEC 32
T140N
R49W
SEC 33
T139N
R49W
SEC 5
T139N
R49W
SEC 4
SEE SHEET 1
MATCHLINE
PROPOSED STORM SEWER
PROPOSED RAISED CONCRETE MEDIAN
PROPOSED SANITARY SEWER
PROPOSED ROUNDABOUT
12TH AVE NE
12TH AVE N
9TH ST NE
7TH ST NE
55TH ST N
STA 152+40
PROPOSED SUBCUT
LEGEND
PROPOSED 10.5IN PCC PAVEMENT
PROPOSED SHARED USE PATH (8'-10')
PROPOSED SIDEWALK (5')
SHEYENNE TIEBACK
47TH ST N
FAYLAND DR
46TH ST N
45TH ST N
PROPOSED WATER MAIN
PROPOSED SUBCUT
STA 174+80
SHEYENNE DIVERSION TIEBACK LEVEE
STA 176+80
STA 192+80
FARGO LANDFILL
END PROJECT
STA 202+12.17
This document was originally issued and sealed by Matthew T. Kinsella Registration Number PE-5692 on 01/08/2015 and the original document is stored at the City of West Fargo.
12TH AVENUE NORTH RECONSTRUCTION
SCOPE OF WORK (2 OF 2)

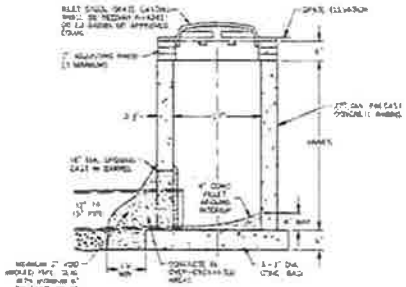
moore engineering, inc.	STATE	PROJECT NO.	PCN	SECTION NO	SHEET NO
	N.D.	SU-8-992(036)037	19892	20	9



RCP STORM SEWER TRENCH
NO SCALE CITY OF WEST FARGO (STA 68+00 TO 175+32)

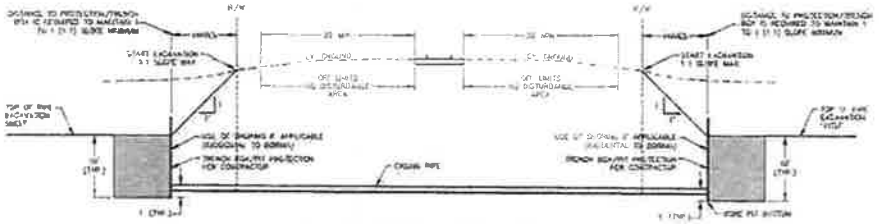


INLET (PLAN VIEW)

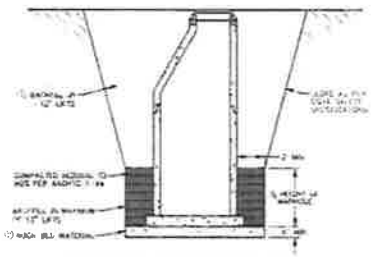


INLET (SIDE VIEW)

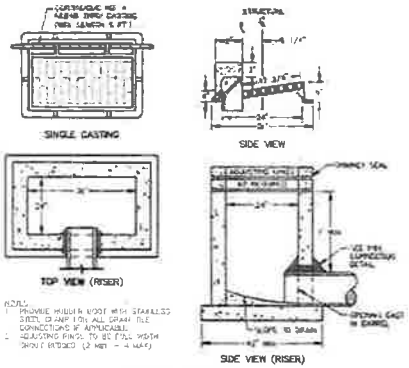
INLET
CITY OF WEST FARGO (STA 68+00 TO 175+32)



RAILROAD BORE & CASING LIMITS
CITY OF WEST FARGO (STA 68+00 TO 175+32)

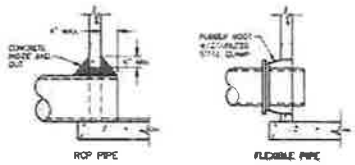


MANHOLE/INLET/CATCH BASIN TRENCH
CITY OF WEST FARGO (STA 68+00 TO 175+32)



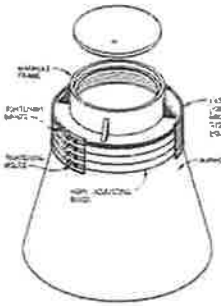
SINGLE CASTING
SIDE VIEW
TOP VIEW (RISER)
SIDE VIEW (RISER)

INLET - TYPE 2
CITY OF WEST FARGO (STA 68+00 TO 175+32)

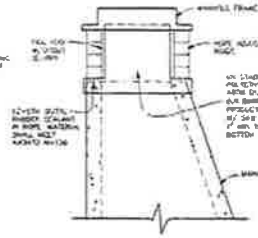


RCP PIPE
FLEXIBLE PIPE

STORM SEWER PIPE CONNECTION
CITY OF WEST FARGO (STA 68+00 TO 175+32)

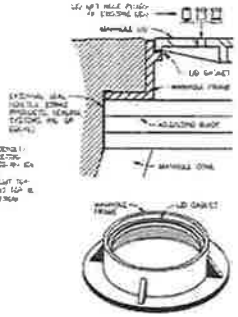


EXTERNAL MANHOLE SEAL (OPTION 1)

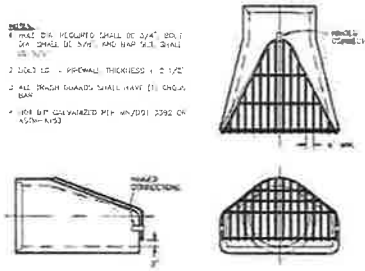


EXTERNAL MANHOLE SEAL (OPTION 2)

MANHOLE SEALS DETAIL
CITY OF WEST FARGO (STA 68+00 TO 175+32)



MANHOLE LID GASKET DETAIL



TRASH RACK
CITY OF WEST FARGO (STA 68+00 TO 175+32)

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12TH AVENUE NORTH RECONSTRUCTION

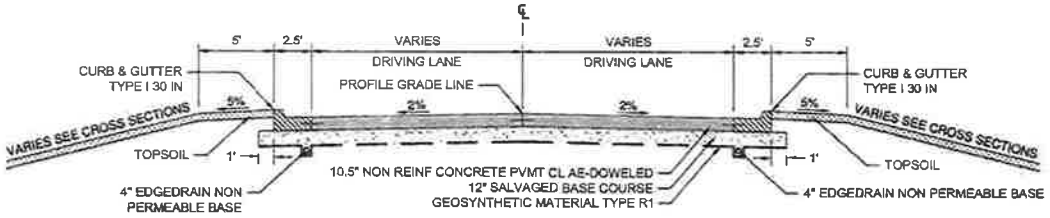
DETAILS

WEST FARGO STORM SEWER & LANDSCAPING

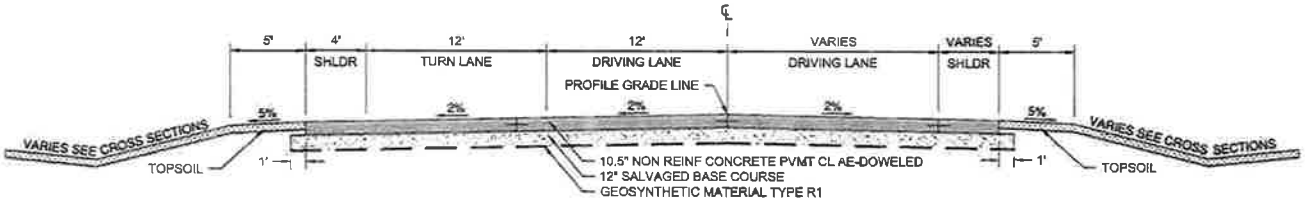
FILE LOCATION: R:\Civil 3D Projects\15843\DRAWINGS\DESIGN\15843-DETAILS.dwg

12/11/2014 10:35:50 AM

Apex Engineering Group	STATE	PROJECT NO.	SECTION NO.	SHEET NO.
	ND	SU-8-992(036)037	30	8



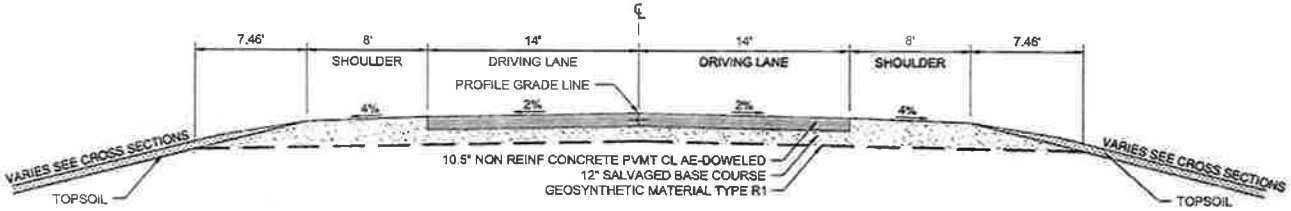
PROPOSED TYPICAL SECTION 14 - 9TH ST NE
STA 447+82.06 to STA 448+41.01
STA 451+75.32 TO STA 452+25.88



PROPOSED TYPICAL SECTION 15 - CASS COUNTY ROAD 17
STA 1+06.44 TO STA 3+05.63

Notes:

1. Southbound right turn lane taper from sta 3+03.63 to Sta 4+44.22



PROPOSED TYPICAL SECTION 16 - CASS COUNTY ROAD 17
STA 4+44.22 TO STA 11+00.00

This document was originally issued and sealed by Brent Muscha Registration Number PE-7123 on 12/31/2014 and the original document is stored at the City of West Fargo.

12TH AVENUE NORTH RECONSTRUCTION

TYPICAL SECTIONS

PROPOSED

12/31/2014 11:12:59 AM Dave Wood T:\Projects\2012\12.177.0102 WFDO 12th Ave N\6\2013\03\7-Design\03\0003TP_Typical Sections.dwg

FILE LOCATION: R:\Civil 3D Projects\18843\DRAWINGS\UESNG\18843-PP.dwg

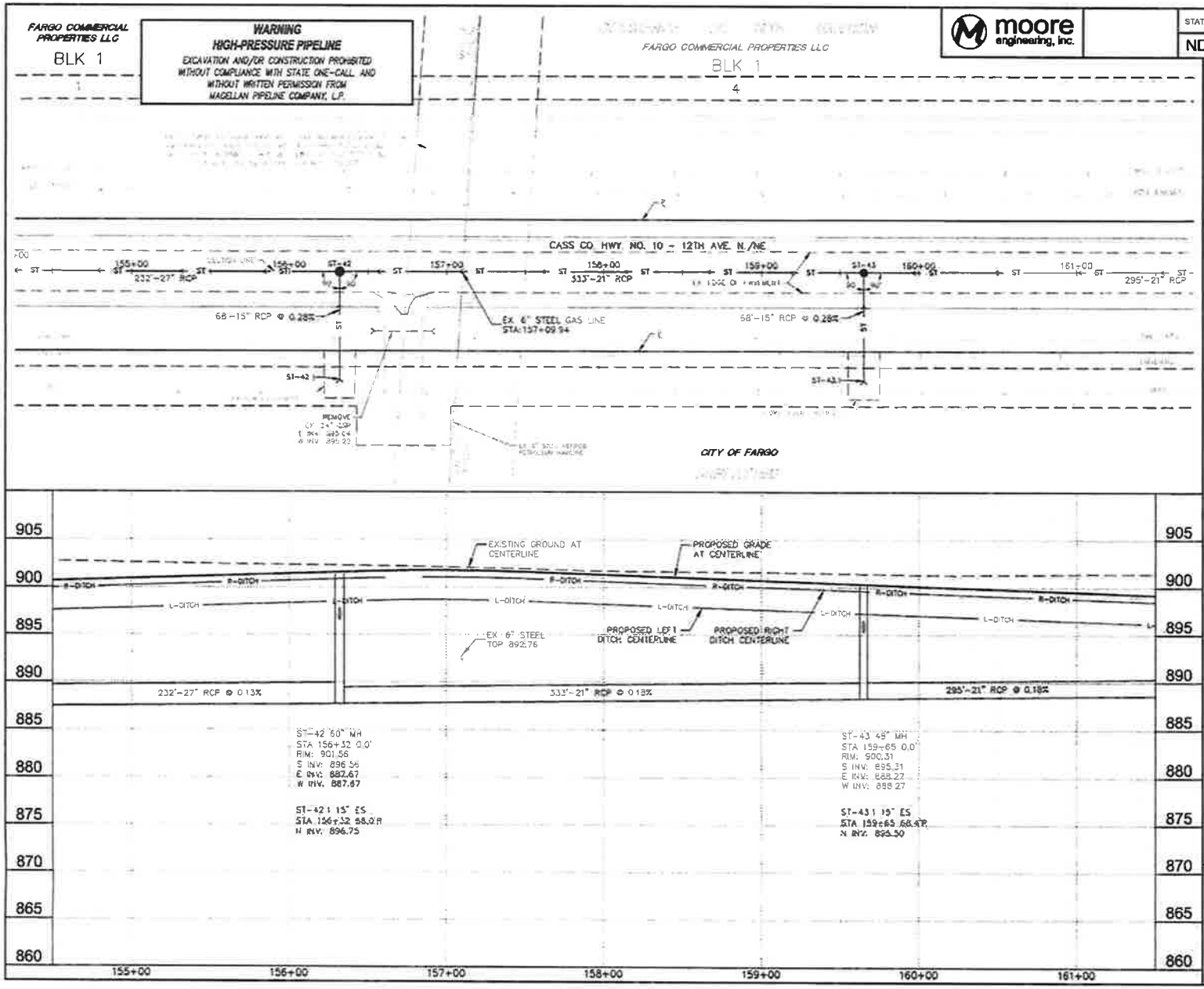
12/11/2014 10:41:36 AM

FARGO COMMERCIAL PROPERTIES LLC
BLK 1

WARNING
HIGH-PRESSURE PIPELINE
EXCAVATION AND/OR CONSTRUCTION PROHIBITED WITHOUT COMPLIANCE WITH STATE ONE-CALL AND WITHOUT WRITTEN PERMISSION FROM MAGELLAN PIPELINE COMPANY, L.P.

moore engineering, inc.

STATE	PROJECT NO	SECTION NO	SHEET NO
ND	SU-8-992(036)037	55	14



714 210 PIPE CONC REINF 15IN CL III-STORM DRAIN
ST-42 - ST-42.1 & ST-43 - ST-43.1 — 68 LF & 68 LF

714 405 PIPE CONC REINF 21IN CL III-STORM DRAIN
ST-42 - Sta 161+50 — 518 LF

714 710 PIPE CONC REINF 27IN CL III-STORM DRAIN
Sta 154+50 - ST-42 — 182 LF

714 3005 END SECT-CONC REINF 15IN
ST-42.1 (Sta 156+32, 68.0' R) & ST-43.1 (Sta 159+65, 68.4' R) — 1 EA & 1 EA

722 100 MANHOLE 48IN
ST-43 (Sta 159+65, 0.0') — 1 EA

722 110 MANHOLE 60IN
ST-42 (Sta 156+32, 0.0') — 1 EA

N
W
E
S
0 60
Scale in Feet

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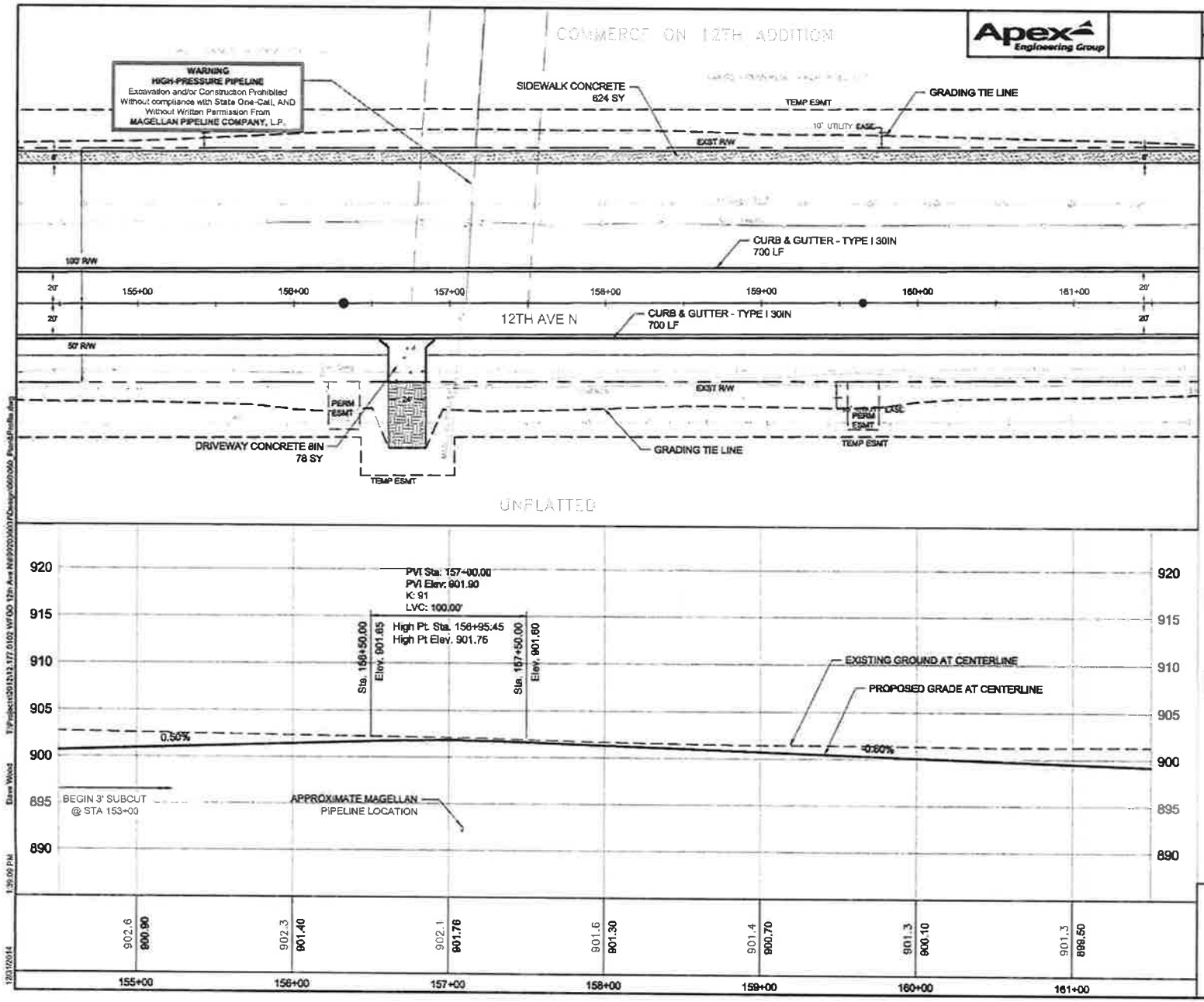
12TH AVENUE NORTH RECONSTRUCTION

DRAINAGE LAYOUTS

STA 154+50 - 161+50



Apex Engineering Group

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SU-8-992(036)037	60	14

302 0100 SALVAGED BASE COURSE

Sta 154+50 to Sta 161+50	2285 TON
Sta 154+50 to Sta 161+50 LT - SIDEWALK	130 TON
Sta 156+70 RT - DRIVEWAY	17 TON

550 0312 10 SIN NON REINF CONCRETE PVMT CL AE - DOWELED

Sta 154+50 to Sta 161+50	3112 SY

746 0190 CURB & GUTTER - TYPE I 30IN

Sta 154+50 to Sta 161+50 LT	700 LF
Sta 154+50 to Sta 161+50 RT	700 LF

750 0115 SIDEWALK CONCRETE 4IN

Sta 154+50 to Sta 161+50 LT	624 SY

750 1020 DRIVEWAY CONCRETE 8IN

Sta 156+70 RT	78 SY

Legend

- Salvaged Base Course
- Commercial Grade Hot Mix Asphalt
- Pigmented Imprinted Concrete
- Sidewalk Concrete
- Concrete Median Nose Paving
- Driveway Concrete 8IN

N

0 30 60

This document was originally issued and sealed by David L. Wood Registration Number PE-6537 on 12/31/2014 and the original document is stored at the City of West Fargo.

12TH AVENUE NORTH RECONSTRUCTION

PLAN & PROFILE

STA 154+50 - 161+50

benesch

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SU-8-992(036)037	140	8

STREET LIGHT POLE B-1-5
STA 154+15, 26' LT

CIRCUIT B-1 (TYP)
(3) #6 RHW

STREET LIGHT POLE B-1-4
STA 156+35, 26' LT

STREET LIGHT POLE B-1-3
STA 158+47, 26' LT

154+00 155+00 156+00 157+00 158+00 159+00 160+00

12TH AVE N

WARNING
HIGH-PRESSURE PIPLEINE
Excavation and/or Construction Prohibited
Without compliance with State On-Call, AND
Without Written Permission
MAGELLAN PIPELINE COMPANY, LP.

STREET LIGHT POLE B-1-2
STA 160+74, 26' LT

CIRCUIT B-1 (TYP)
(3) #6 RHW

STREET LIGHT POLE B-1-1
STA 162+94, 26' LT

FEED POINT (B)
STA 165+04, 56' LT
INSTALL PAD MOUNTED, METERED, FEED POINT
(2 CIRCUITS) WITH 2-400A CIRCUITS (SYSTEM B)

2" CONDUIT (STUB)

STREET LIGHT POLE B-2-1
STA 165+03, 26' LT

55TH ST N

CIRCUIT B-2 (TYP)
(3) #6 RHW

STREET LIGHT POLE B-2-2
STA 167+23, 26' LT

161+00 162+00 164+00 166+00 167+00

12TH AVE N

LEGEND

POLE A-1-2
POLE NUMBER
CIRCUIT NUMBER
FEED POINT NUMBER

STREET LIGHT STANDARD 40' MOUNTING HEIGHT AND 215W LED LUMINAIRE

2" INNERDUCT / CONDUCTOR

PROPOSED FEED POINT

NOTE:

1. EXISTING UNDERGROUND AND OVERHEAD UTILITIES HAVE BEEN PLOTTED FROM AVAILABLE INFORMATION. THEREFORE, THEIR LOCATIONS MUST BE CONSIDERED APPROXIMATE ONLY. IT IS THE RESPONSIBILITY OF THE INDIVIDUAL CONTRACTOR TO EXACTLY LOCATE EACH UTILITY BEFORE ACTUAL CONSTRUCTION. CONTRACTOR SHALL COORDINATE WITH THE PROJECT ENGINEER FOR NEWLY CONSTRUCTED UTILITIES LOCATIONS.
2. STREET LIGHT SYSTEM B AND C SHALL BE INSTALLED PER CITY OF FARGO SPECIFICATIONS.
3. CONTRACTOR SHALL INSTALL ONE EXTRA 2" CONDUIT IN FEED POINT B FOUNDATION. CONTRACTOR SHALL CAP CONDUIT FOR FUTURE USE.
4. SEE SECTION 6 FOR CIRCUIT B CONDUCTOR INFORMATION.

N

0 30 60

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12TH AVENUE NORTH RECONSTRUCTION

LIGHTING

STA 168+00 - 183+00

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Topping, Crystal
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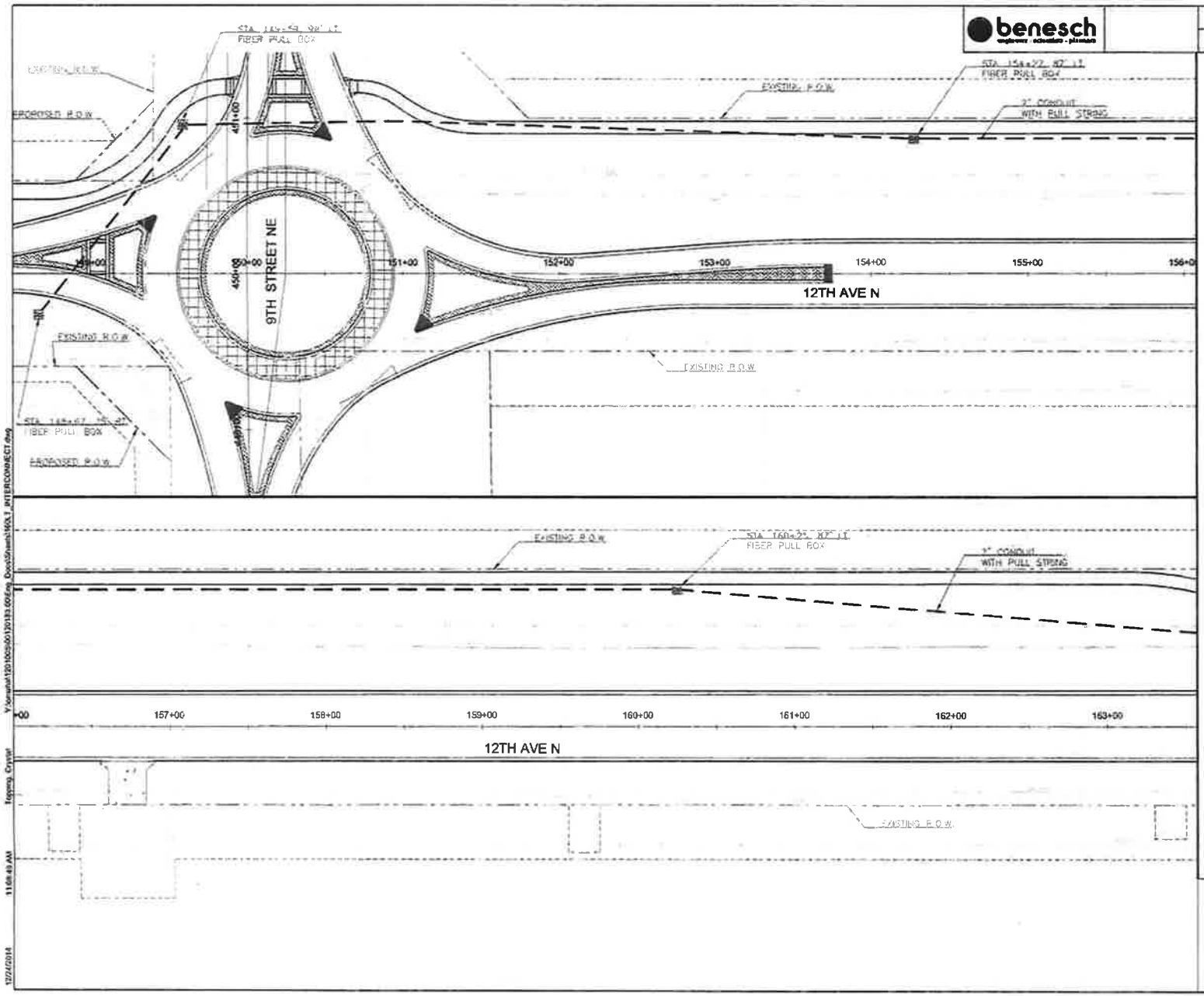
12/24/2014



STATE	PROJECT NO	SECTION NO	SHEET NO
ND	SU-8-992(036)037	160	1

NOTES:

1. Existing underground and overhead utilities have been plotted from available information. Therefore, their locations must be considered approximate only. It is the responsibility of the individual contractor to exactly locate each utility before actual construction. Contractor shall coordinate with the project engineer for newly constructed utilities locations.
2. Conduit and fiber pull boxes shall be in accordance to the City of Fargo Specifications.

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12TH AVENUE NORTH RECONSTRUCTION

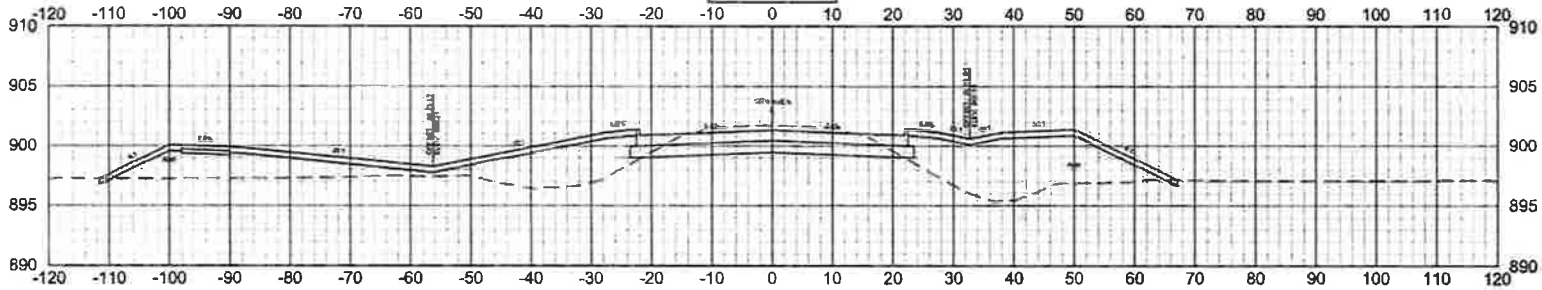
IT CONDUIT PLAN

STA 148+50 - 163+00

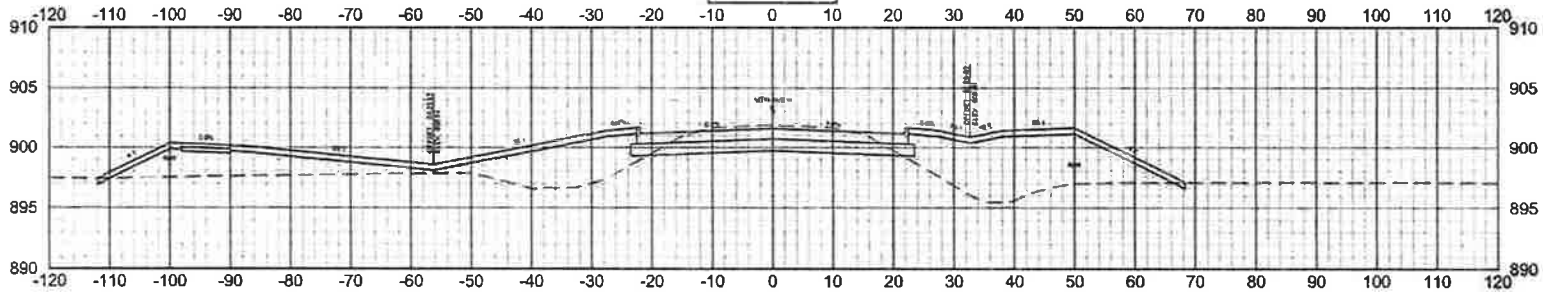
Apex Engineering Group	STATE	PROJECT NO.	SECTION NO.	SHEET NO.
	ND	SU-8-992(036)037	200	82

ALL ELEVATIONS ARE BASED ON THE VERTICAL DATUM OF NGVD 29 (UNLESS NOTED OTHERWISE)

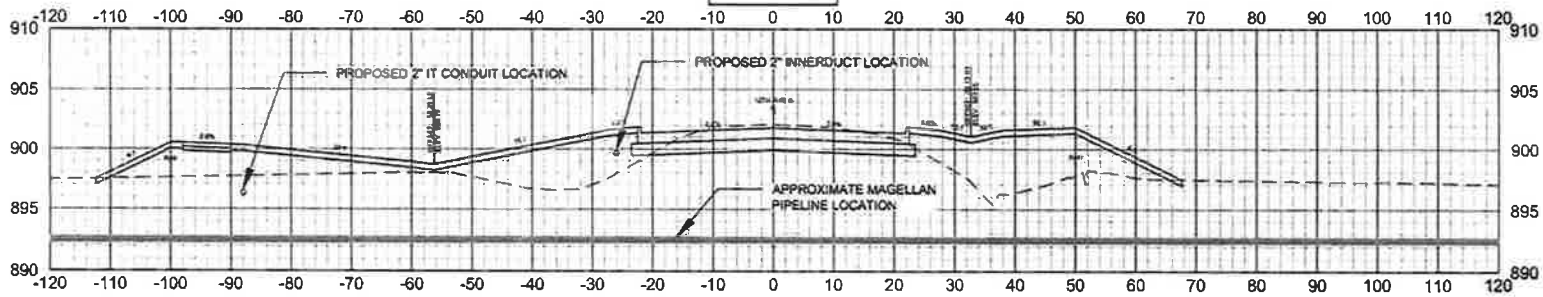
158+00.00



157+50.00



157+00.00



11/21/2014 3:46:33 PM Brent Muscha T:\Projects\2012\12.177.0102 WFGO 12th Ave N\SU-8-992(036)037\Utilities\Magellan Permit\CROSS SECTION.dwg

FORM D-8
(Rev. 12/05)

Crossing/Encroachment Approval

Cenex Pipeline, LLC
Front Range Pipeline, LLC

Pipeline System: Cenex Pipeline LLC Pipeline Segment: Minot to Fargo

Location: MP_____ Stationing: _____ Lat _____ Long _____ Datum_____

Company: Apex Engineering Group Contractor: _____

X Crossing ___ Encroachment One-Call ID # or reference # _____

Type of crossing/ encroachment: ___ HDD ___ Conventional bore ___ Conventional Trench ___ Pipe Pushing Operation
___ Other _____

Section 1: Contact contractor performing work and confirm details of Crossing/Encroachment Plan:		
Confirm that the exact location of the proposed excavation been marked in **WHITE** or that temporary survey marks **PINK** have been set.		
Type of utility:	___ Gas, oil, steam, petroleum or other hazardous liquid or gaseous materials **YELLOW** ___ Electric power lines, cables or conduits, and lighting cables **RED** ___ Water, irrigation, and slurry lines **BLUE** ___ Communications, cable TV, alarm or signal lines, cables, or conduits. **ORANGE** ___ Sewers, storm sewer facilities, or other drain lines **GREEN** ___ Reclaimed water, irrigation and slurry lines **PURPLE** X Other **Street Improvements**	
Is drilling profile available?	__ No __ Yes If Yes, attach a copy **NA**	
For crossing, what type of location technique will be used to positively ID CHS Inc pipeline location	X Potholing __ Conventional Excavation __ Other* (Note: If potholing, document on Form I-8: Potholed, unable to perform detailed external inspection.)	
Will existing grade be lower?	X No __ Yes*	* Requires approval per Section 2
Planned minimum clearance for crossing (below CHS Facility):	__ 24 inches below __ Other* __ 18 inches below* **NA**	* Requires approval per Section 2
Planned minimum separation for encroachment:	__ 25 feet from outside wall to outside wall __ Other* X Not Applicable	* Requires approval per Section 2
Will foreign body be under Cathodic Protection?	__ No __ Yes* **NA**	* Requires approval per Section 2

Review contractor's Crossing/Encroachment Plan with Manager, Pipeline and Terminals or Engineering Manager, keep in mind the following items

- Which CHS Inc. staff should be onsite
- Who will expose the CHS Inc. pipeline
- Minimum clearance/separation
- Casing requirements
- CP requirements, i.e. bond, test lead, shielding, etc
- Verification of location during drilling/boring activities, i.e. potholing, exposing pipeline, electronic tracking
- Tracking techniques to be used during the bore, HDD or pushing operation
- Review drill/bore profile
- Changes in existing grade profile
- Scheduling
- Etc.

Section 2: Convey the following CHS Inc. Right of Way Development Provisions to Contractor/Company:

- CHS Inc. maintains its pipelines in accordance with industry standards for safe operations. Should a Developer/Landowner/Utility Company (hereinafter referred to as "Developer") propose plans to alter the area through which a CHS Inc. pipeline passes, causing the pipeline not to meet these standards, modifications will be made. The cost of such modifications will be borne by the Developer.
- No buildings, engineering works, septic systems or other similar permanent structures will be allowed over any portion of our easement.
- Roads overlying a CHS Inc. pipeline will be allowed only with Developer's execution of a Hold Harmless Agreement which releases CHS Inc. from all damages to the asphalt and concrete associated with any maintenance performed by CHS Inc. All roads passing over a CHS Inc. pipeline where the pipeline depth is less than 48 inches (including barrow ditches) will require the installation of concrete coating around our line for the entire length that lies under the road. In addition, it may be necessary to lower or reroute the line at the point of crossing to insure that it is not subjected to excessive stress from movement of traffic. Any such modification to the line will be made at the Developer's expense.
- At any point in the easement where the existing grade profile will be lowered by the removal of earth, the CHS Inc. pipeline must be lowered to a depth that provides a minimum cover of 36 inches (residential areas may require 48 inches) after final grading. Any lowering which is necessary shall be done at Developer's expense and shall include coating and wrapping the entire exposed portion of the line.
- Construction of concrete parking lots over the pipeline will not be allowed. Asphalt parking lots overlying the line will be allowed only with Developer's execution of a Hold Harmless Agreement that releases CHS Inc. from all damages to the asphalt associated with any maintenance performed on our pipeline.
- All utilities that cross CHS Inc. pipeline must pass underneath the existing line by a minimum of 18 inches, and the crossing shall be as close to 90° as possible and adequately marked on both sides of the pipeline. Telephone cables, electric cables and PVC gas lines must be encased in a conduit of no less than 2" diameter and/or covered with a red concrete casing 10 feet on both sides of the pipeline. All utilities that parallel to a CHS Inc. pipeline will maintain a minimum separation distance of 25 feet from the utility's outside wall to CHS Inc. pipeline's outside wall. A CHS Inc. representative will be onsite during crossing or exposure.
- If any lines crossing a CHS Inc. pipeline that requires cathodic protection, an interference survey shall be made and the necessary steps will be taken to prevent the sacrifice of either line. This will be done at Developer's expense.
- CHS Inc. requires a minimum of five working days notice prior to any excavation or construction across our right of way so that the CHS Inc. pipeline can be marked to minimize to possibility of accidental damage. A CHS Inc. representative will be present when a CHS Inc. pipeline is exposed.
- Changes or modifications to these provisions must be approved by the Manager, Pipelines and Terminals or Engineering Manager

___Acceptable: Company/Contractor: _____

Representative: _____Date: _____

___Not acceptable: Have Company/Contractor Representative resolve issues with Manager, Pipeline and Terminals or Engineering Manager

___Resolved: attach approved changes

CHS Inc. Representative _____Date:_____

Developer Representative _____Date:_____

Make sure the following items are scheduled and assigned to the appropriate qualified employee:

- Location and marking of CHS Inc.'s pipeline assigned to: _____
- CHS Inc. on-site personnel to follow through on crossing/encroachment requirements, and monitor progress assigned to: _____
- Inform affected staff, i.e. Supervisor, Instrument Technicians, Local Instrument Technicians, Control Center Operators, etc.

Make sure applicable forms are completed

- ___ Form I-8 External Inspection of Pipe Exposed
- ___ Form I-2 Pipeline Repair Form
- ___ Other_____
- ___ Other_____

Report Submitted by:	Date:
Reviewed by:	Date:

Supply a duplicate copy to Engineering Manager

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

PERMITS AND ENVIRONMENTAL CONSIDERATIONS

PROJECT SU-8-992(036)037, PCN 20057

This special provision incorporates several permits that were obtained or are in the process of being obtained for this project by the City of West Fargo and City of Fargo.

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

- **Section 404 Permit – US Army Corps of Engineers (USACE)**
  USACE Permit No. NWO-2013-1359-BIS authorizes the construction of three (3) storm water outfall structures – a 15" x 165' outfall to the Sheyenne River, and 54" x 128' and 72" x 94' outfall structures to Cass County Drain 45. Outfalls will include 15' x 20' riprap erosion protection pads. The work is authorized to proceed under the terms and conditions of DA Nationwide Permit 43, found in the February 21, 2012 Federal Register (77 FR 10184), Reissuance of Nationwide Permits. The Contractor will adhere to all provisions contained within this Permit. The Section 404 Permit is attached.

- **Sovereign Lands Permit – ND State Water Commission**
  Sovereign Lands Permit No. S-1926 authorizes the construction of a new 24" PVC sanitary sewer main encased within a 36" bored steel casing pipe beneath the Sheyenne River and a new 15" RCP storm water outfall structure with riprap into the Sheyenne River. The Contractor will adhere to all provisions contained within this Permit. The Sovereign Lands Permit is attached.

- **Non-Building Floodplain Permit – City of West Fargo, ND**
  Non-Building Floodplain Permit #1-2014 from the City of West Fargo authorizes the construction of a new 24" PVC sanitary sewer main encased within a 36" bored steel casing pipe beneath the Sheyenne River and a new 15" RCP storm water outfall structure with riprap into the Sheyenne River. The Contractor will adhere to all provisions contained within this Permit. The Non-Building Floodplain Permit and FIRM map are attached.

- **Utility Permits – Southeast Cass Water Resource District**
  These Utility Permits by and between the Southeast Cass Water Resource District and the City of West Fargo and City of Fargo authorize the installation of new storm sewer pipe across the Cass County Drain SM-1 right of way. The Utility Permits are attached.

- **Encroachment Agreement – Magellan Pipeline Company, LP**
  This Encroachment Agreement authorizes the installation within the Magellan pipeline easement of the road reconstruction, curb and gutter, shared use path, a 21" RCP storm sewer pipe and two 2" conduits. The Magellan Encroachment Agreement is attached.

The Contractor shall be responsible for obtaining permits for impacts not authorized by the attached USACE Section 404 Permit, the attached Sovereign Lands Permit, the attached Non-Building Floodplain Permit, the attached SE Cass Water Resource District Utility Permits, and the attached Magellan Pipeline Company Encroachment Agreement.

- **Permits/Agreements to be Obtained during Construction**

  - **Crossing/Encroachment Approval – Cenex Pipeline, LLC**
    Cenex's Crossing/Encroachment Approval Form D-8 will be finalized and completed once work is scheduled at the Cenex pipeline easement, per Cenex standard procedures. The approval will authorize the installation within the Cenex pipeline easement of two 2" conduits. An example of Form D-8 is attached for reference.

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
1513 SOUTH 12TH STREET
BISMARCK ND 58504-6640

September 12, 2014

North Dakota Regulatory Office [NWO-2013-1359-BIS]

Mr. Chris Brungardt
City of West Fargo
810 12th Avenue NW
West Fargo, North Dakota 58078

Dear Mr. Brungardt:

We have reviewed your Department of the Army (DA) application for the 12th Avenue North corridor reconstruction project [Project No. SU-8-992(036)037 PCN 20057]. The project will include the construction of three (3) storm water outfall structures. Specifically, a 15" x 165' outfall will be constructed in the Sheyenne River and a 54" x 128' and a 72" x 94' outfall structure will be constructed in Drain 45. Outalls will include 15' x 20' riprap erosion protection pads. These projects are located in Section 5, Township 139 North, Range 49 West and Sections 31/32, Township 140 North, Range 49 West, Cass County, North Dakota.

Based upon the information you provided, we have determined that you may proceed your project in accordance with the terms and conditions of DA **Nationwide Permit No. 43**, found in the February 21, 2012 Federal Register (77 FR 10184), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General, Regional and Water Quality Certification Conditions that must be adhered to for this authorization to remain valid. **Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.**

This determination is applicable only to the permit program administered by the Corps of Engineers. It does not eliminate the need to obtain other Federal, state, tribal, and local approvals before beginning work.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit, including the Regional Conditions specific to projects undertaken in North Dakota. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit on your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In compliance with General Condition 30, 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 projects as permitted.
[ ] I certify that I have completed a modified version of the projects.
[ ] I certify that I have completed all required mitigation.

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

This verification will be valid until March 18, 2017.

Printed on Recycled Paper

RECEIVED
SEP 15 2014

COPY

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

A copy of this letter is being sent to Mr. Matt Kinsella, Apex Engineering Group, Inc., 4733 Amber Valley Parkway South, Fargo, North Dakota 58104.

The Omaha District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination or jurisdiction, please feel free to contact Mr. Matthew Mikulecky of this office at (701) 255-0015 and reference Corps identification No. **NWO-2013-1359-BIS**.

Sincerely,

Daniel E. Cimarosti
Regulatory Program Manager
North Dakota

Enclosure

Sovereign Land Permit No. S-1926

Permittee: **City of West Fargo**
810 12th Avenue NW
West Fargo, ND 58078

Location: **SE ¼ SE ¼ of Section 31, Township 140 North, Range 49 West, Cass County.**

Project Description:

The Permittee is hereby authorized to construct a sanitary sewer main beneath the Sheyenne River and a new storm water outfall structure into the Sheyenne River as part of the West Fargo 12th Avenue North reconstruction project within the City of West Fargo.

Specifically, the project will involve the construction of a new 24-inch PVC sanitary sewer pipe installed within a 36-inch bored steel casing pipe beneath the Sheyenne River. The project will also include a new 15-inch storm water outfall with riprap into the Sheyenne River. The existing 30-inch storm water outfall will be removed.

This authorization is subject to the conditions listed below and to the attached North Dakota Department of Health "Construction and Environmental Disturbance Requirements." Any other use of sovereign land is prohibited. Any proposed additional use must comply with the application and permitting process and all other requirements of state law.

General Conditions

1. Authorization of this undertaking is a privileged use of a public resource and does not constitute a property right. The public use and enjoyment of the Sheyenne River is of high priority.

2. All construction, maintenance, and reclamation activities shall be carried out in a manner reasonably designed to prevent degradation of the Sheyenne River.

3. The Permittee shall implement measures to minimize the opportunity for sediment to enter the Sheyenne River during construction.

4. The Permittee shall comply with the North Dakota Department of Health's *Construction and Environmental Disturbance Requirements* (copy attached).

5. No work shall be conducted within the waters of the Sheyenne River from April 15 to June 1 in order to protect fishery resources.

6. The Permittee shall comply with all state regulations with regard to the prevention of introduction of Aquatic Nuisance Species (ANS) into the state's waters. The Permittee shall contact Mr. Jerry Weigel, ANS Biologist, North Dakota Game and Fish Department at (701) 220-5342 to schedule an inspection of all vehicles and equipment a minimum of 72 hours prior to those items being launched or placed in the Sheyenne River.

7. Any construction debris or excess material shall be disposed of in a non-wetland, non-timbered upland site or in an approved landfill.

8. Prior to or during construction, if items of substantial archeological value are discovered or a deposit of such items is disturbed, the Permittee shall cease construction activities in the area so affected. The State Engineer shall be promptly notified of the discovery, and construction will not resume until the State Engineer gives written permission.

9. This Authorization is site specific for the project as proposed and outlined in the application and supporting documents. Any changes or deviation from the site or design will need authorization from the State Engineer.

10. At the discretion of the State Engineer, in accordance with the exercise of any of the State Engineer's duties, the project is subject to modification at the expense of the Permittee.

11. The State Engineer or the State Engineer's representative shall have access to inspect the authorized project during construction and associated activities and for the life of the project to ensure that it is being or has been accomplished and maintained in accordance with the terms and conditions of this Authorization.

12. The Permittee is responsible for obtaining any other local, state, or federal permits or approvals that may be necessary prior to construction.

13. By granting this Authorization, no liability for damages of any kind, including those caused by improper construction, operation and maintenance, design or failure in design, materials, or workmanship, is assumed by or transferred to the State of North Dakota, the State Engineer, the State Water Commission or any of their respective employees, agents, or assigns. The Permittee will indemnify and hold harmless the State of North Dakota, its officials, employees, agents, boards, commissions, and assigns for any and all liability for work performed and action taken under this Authorization.

Todd Sando
State Engineer

Date: 11/5/14

FLOODPLAIN DEVELOPMENT PERMIT APPLICATION
NON-BUILDING SITUATION

GENERAL INFORMATION

PERMIT APPLICATION # #1 - 2014 DATE: 10/16/14

Applicant/Contact: Chris Brungardt, PW Director Telephone # 701-433-5400

Address: *City of West Fargo*
810 12th Avenue NW
West Fargo, ND 58078

Brief project description - location of proposed development - legal description:
12th Avenue NW across the Sheyenne River, SE ¼ SE ¼ Sec 31, T140N, R49W

Contractor: *Unknown* Telephone #

Address: *Contract Not Awarded*

Estimated Cost of project: *$15,000,000*

FLOODPLAIN DETERMINATION :

(Complete the appropriate information)

Project is located: 100-year floodplain? (Flood Fringe): Yes, Zone A
Regulatory Floodway: No

Map information: FIRM Date: February 2, 1995 Panel No. 380024 0010 E
FIRM Zone: Zone A
BFE at Development Site: Undetermined
Development will be elevated to: NA

DEVELOPMENT ACTIVITIES: (check all that apply and explain the activity)

_____Fill placement (fill brought in from outside the floodplain)
_____ Excavation (where subgrade fill is removed from the floodplain)
_____ Landscaping (cut and fill, fill borrow and placement)
_____ Construction or maintenance of a dike/levee/floodwall
_____ Removal of fill, embankment, or dikes
_____ Watercourse alterations (river, stream, lake - channel modifications, rip-rap)
__X__ Road, street or bridge construction (new, repair or replacement, realignment)

Project number; SU-8-992(036)037 PCN 20057
Permitting Community; City of West Fargo

__X__ Drainage improvements (including culvert work)
____ Mining (removal of gravel, rock, fill or other natural materials)
__X__ Installation of utilities (water, sewer, pipeline, gas, electric, communications)
____ Well drilling (water, oil, natural gas etc.)
____ Subdivision (new or expansion)
____ Other (please specify and describe)

ADDITIONAL INFORMATION REQUIRED (attach additional information):

-Comments or further explanation of work: *The West Fargo/Fargo 12th Avenue North reconstruction project includes roadway reconstruction, a 24" Sanitary Sewer main crossing and a 15" Storm Sewer outfall at the existing 12th Avenue NW crossing of the Sheyenne River.*
-Copies of project description, plans, blueprints, etc. *See Attached*
-Wetlands - will the activity impact identified wetlands? *USACE Nationwide 404 Permit has been secured.*
-Will the development aggravate flooding elsewhere? *No*

OTHER NOTIFICATION OR PERMITS NECESSARY:

U.S. Army Corps of Engineers? *US Army Corps of Engineering Nationwide 404 Permit has been secured. (NWO-2013-1359-BIS)*
ND Sate Water Commission? *Sovereign Lands Permit Application has been submitted.*

ELEVATION INFORMATION:

Attach information about the completed project elevations(s) with registered professional engineer or registered land surveyor certifications if part of the project:

ACTION / APPROVAL:

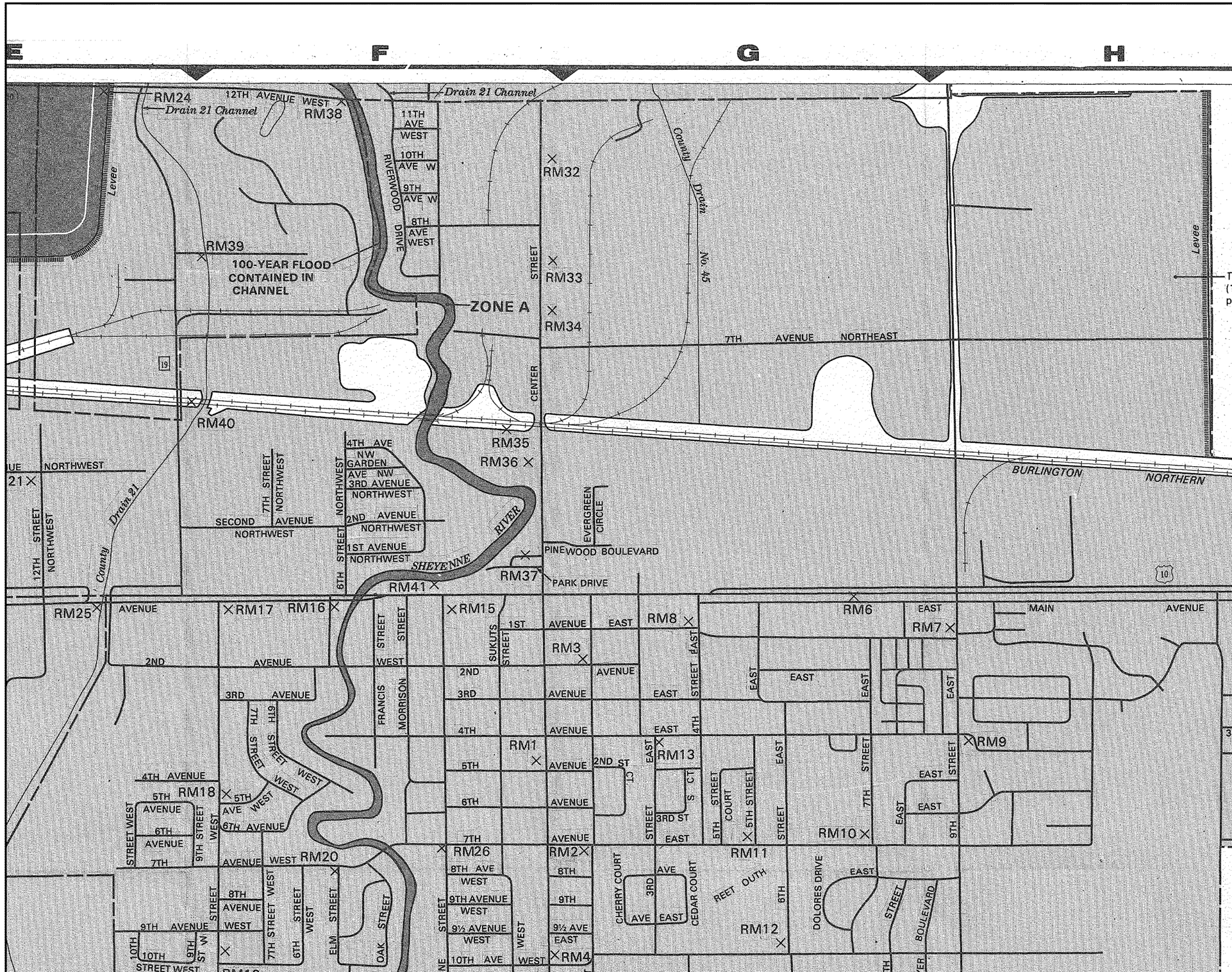
The proposed development is in conformance with applicable community floodplain standards subject to the following conditions with this approval.

PERMIT APPLICATION IS APPROVED
(Conditioned on the description provided. As-built information/certification will be available at the City of West Fargo upon completion of construction.)

Signature (Floodplain Administrator): Mark H

Date: 10/16/14

Project number; SU-8-992(036)037 PCN 20057
Permitting Community; City of West Fargo



APPROXIMATE SCALE IN FEET

1000 0 1000

NATIONAL FLOOD INSURANCE PROGRAM

FIRM

FLOOD INSURANCE RATE MAP

CITY OF
WEST FARGO,
NORTH DAKOTA
CASS COUNTY

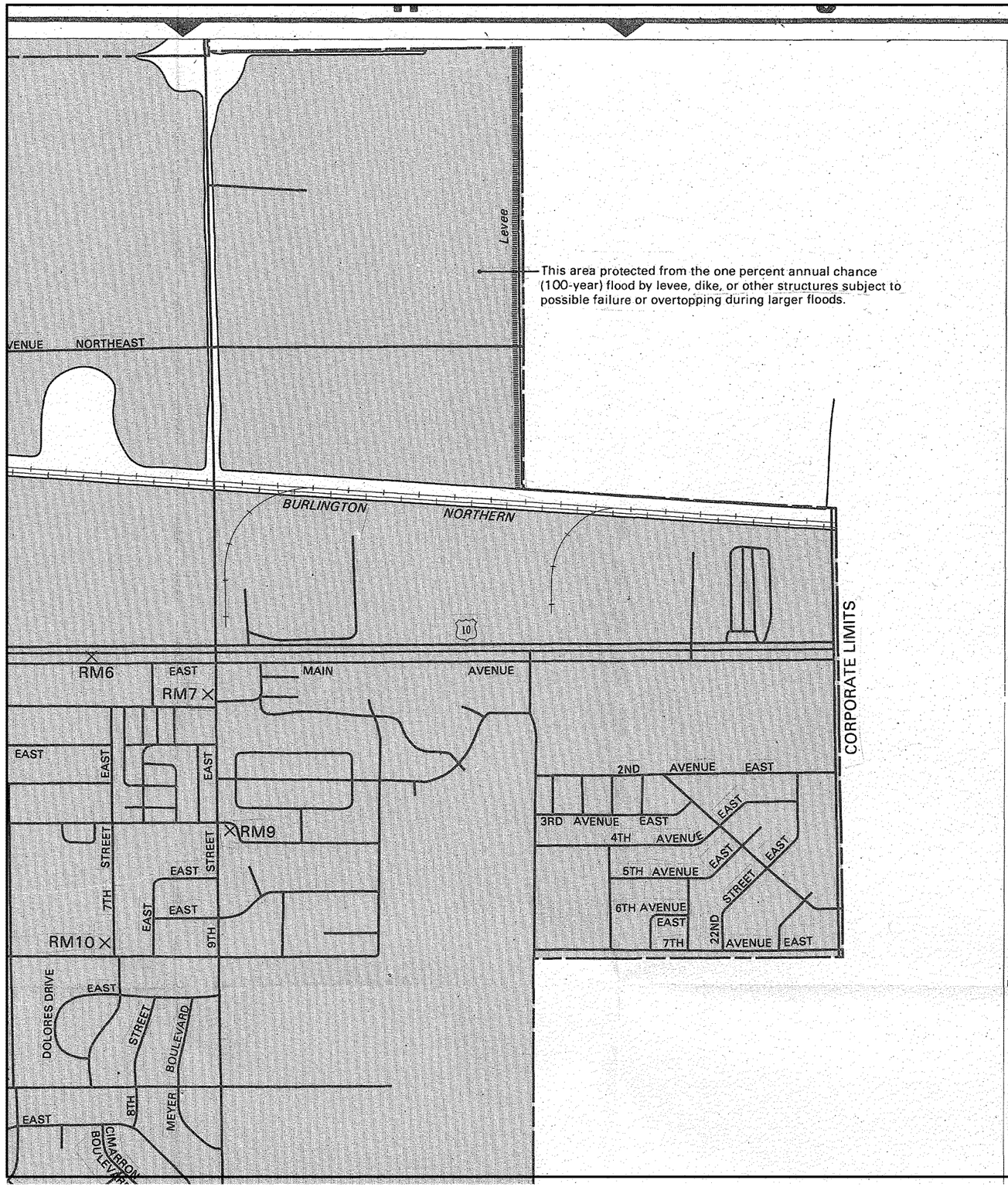
(SEE MAP INDEX FOR PANELS NOT PRINTED)

COMMUNITY-PANEL NUMBER
380024 0010 E

MAP REVISED:
FEBRUARY 2, 1995

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



LEGEND

SPECIAL FLOOD HAZARD AREAS INUNDATED BY 100-YEAR FLOOD

ZONE A	No base flood elevations determined.
ZONE AE	Base flood elevations determined.
ZONE AH	Flood depths of 1 to 3 feet (usually areas of ponding); base flood elevations determined.
ZONE AO	Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
ZONE A99	To be protected from 100-year flood by Federal flood protection system under construction; no base elevations determined.
ZONE V	Coastal flood with velocity hazard (wave action); no base flood elevations determined.
ZONE VE	Coastal flood with velocity hazard (wave action); base flood elevations determined.

FLOODWAY AREAS IN ZONE AE

OTHER FLOOD AREAS

ZONE X	Areas of 500-year flood; areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 100-year flood.

OTHER AREAS

ZONE X	Areas determined to be outside 500-year flood plain.
ZONE D	Areas in which flood hazards are undetermined.

Flood Boundary

Floodway Boundary

Zone D Boundary

Boundary Dividing Special Flood Hazard Zones, and Boundary Dividing Areas of Different Coastal Base Flood Elevations Within Special Flood Hazard Zones.

513 — Base Flood Elevation Line; Elevation in Feet*

D — D — Cross Section Line

(EL 987) — Base Flood Elevation in Feet Where Uniform Within Zone*

RM7 X — Elevation Reference Mark

*Referenced to the National Geodetic Vertical Datum of 1929

NOTES

This map is for use in administering the National Flood Insurance Program; it does not necessarily identify all areas subject to flooding, particularly from local drainage sources of small size, or all planimetric features outside Special Flood Hazard Areas.

Areas of special flood hazard (100-year flood) include Zones A, A1-30, AE, AH, AO, A99, V, V1-30 AND VE.

Certain areas not in Special Flood Hazard Areas may be protected by flood control structures.

Boundaries of the floodways were computed at cross sections and interpolated between cross sections. The floodways were based on hydraulic considerations with regard to requirements of the Federal Emergency Management Agency.

Floodway widths in some areas may be too narrow to show to scale.

APPROXIMATE SCALE IN FEET

1000 0

NATIONAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP

CITY OF
WEST FARGO,
NORTH DAKOTA
CASS COUNTY

(SEE MAP INDEX FOR PANELS NOT PRINTED)

COMMUNITY-PANEL NUMBER
380024 0010 E

MAP REVISED:
FEBRUARY 2, 1995

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SOUTHEAST CASS WATER RESOURCE DISTRICT
UTILITY PERMIT

City of West Fargo, a municipal corporation [type of entity and state of incorporation] with a post office address of 800 4th Avenue East, West Fargo, ND 58078 ("Applicant"), applies for this Permit to install storm sewer [describe type of utility, e.g., fiber optic cables, telephone lines, etc.] and related appurtenances under [on, through, under, over] Cass County Drain No. SM-1 (the "Drain") on right of way owned by the Southeast Cass Water Resource District (the "District"), as shown on the plans attached as **Exhibit A** ("Applicant's Utilities").

Applicant may install Applicant's Utilities under [on, through, under, over] the Drain as specifically shown on **Exhibit A**. Installation, operation, and maintenance of Applicant's Utilities on the District's right of way will conform to the following provisions:

1. Applicant will complete construction and maintenance at Applicant's sole expense.

2. Applicant will place Applicant's Utilities at the designated depth below the original design grade as set forth in the plans attached as **Exhibit A**.

3. Within 30 days after construction, maintenance, relocation, or removal of Applicant's Utilities, Applicant will remove any right of way scars; Applicant will restore any disturbed areas to original condition; and Applicant will re-seed the vicinity disturbed by Applicant's activities. Applicant will maintain any disturbed areas for a period of one year from the date of completion.

4. Applicant will install marker posts at all the Drain crossings on the right of way line, or at any other point as designated by the District.

5. Applicant will complete installation, maintenance, relocation, and/or removal of Applicant's Utilities on the District's right of way in a manner satisfactory to the District.

6. The District will not be liable for any damages to Applicant's Utilities resulting from reconstruction or maintenance of the Drain or any of the District's facilities or right of way. Applicant will release, defend, indemnify, and hold harmless the District, and all of the District's employees, officers, agents, and representatives, from and against any and all claims, demands, causes of action, or demands for relief, including costs, expenses, and attorneys' fees, that may arise out of or result from any acts or omissions regarding this Permit or Applicant's installation or maintenance of Applicant's Utilities, or any accident, injury, or damage to person, property, or equipment as a result of Applicant's entry upon or use of the District's right of way or property.

7. Applicant, at Applicant's own cost, will repair or replace the District's structures, facilities, right of way, or any other property owned by the District which may be damaged as a result of Applicant's installation and maintenance of Applicant's Utilities on the District's right of way, or otherwise as a result of Applicant's entry upon or use of the District's right of way.

8. Applicant will promptly remove Applicant's Utilities from the District's right of way, or will relocate or adjust Applicant's Utilities, all at Applicant's sole cost and expense upon notice from the District, as necessary for purposes of constructing, cleaning, inspecting, reconstructing, modifying, operating, maintaining, repairing, or improving the Drain.

9. Applicant will be solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations of any other federal, state, county, or local governments or governmental entities which may be applicable regarding Applicant's Utilities or Applicant's activities. Further, Applicant will be solely responsible for obtaining all applicable licenses, permits, or other approvals necessary, if any, regarding Applicant's Utilities or Applicant's activities under this Permit.

10. Applicant will be solely responsible for all costs and expenses associated with complying with Applicant's obligations under this Permit.

11. Applicant will not transfer or assign this Permit, or any of Applicant's rights or obligations under this Permit, without the express written consent of the District.

12. Special Conditions: See attached

Applicant agrees to the above terms and conditions. This application will become effective as a Permit upon execution by both Applicant and the District.

APPLICANT:

CITY of WEST FARGO

By: _____
Applicant's Signature

Its: CHRIS BRUNGARDT
DIRECTOR of PUBLIC WORKS

SOUTHEAST CASS
WATER RESOURCE DISTRICT

_____
Carol Harbeke Lewis
Secretary-Treasurer

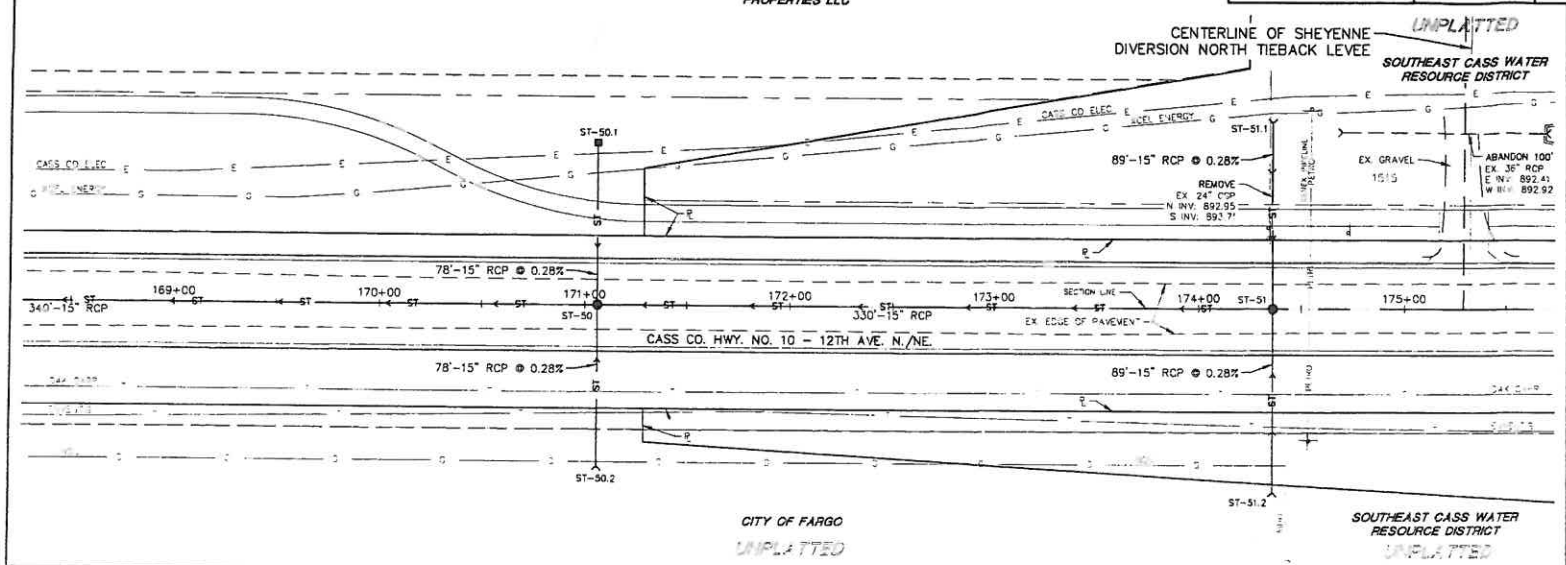
Date Approved: December 10, 2014

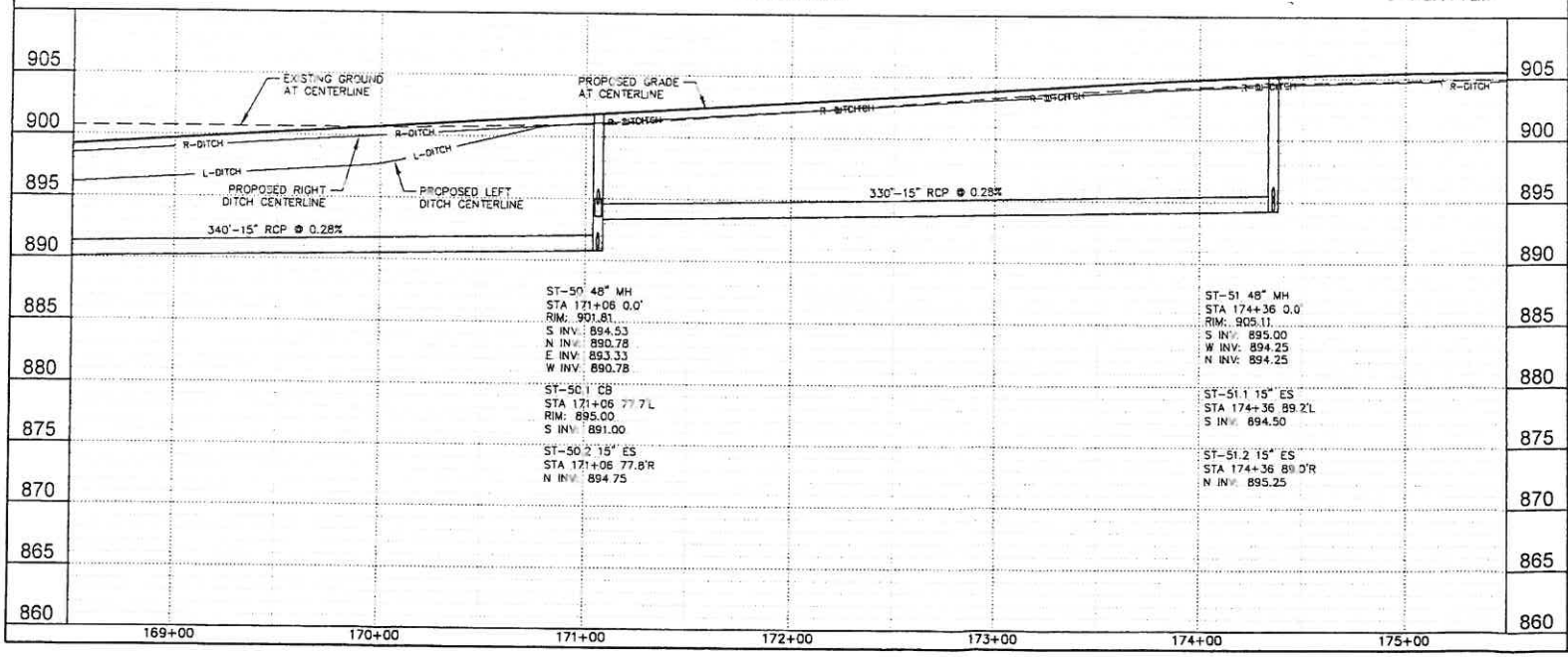
EXHIBIT A

Applicant's Plans

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SU-8-992(036)037	55	16

moore engineering, inc.





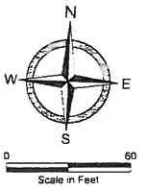
202 169 REMOVAL OF END SECTION-ALL TYPES & SIZES
Sta 175+70, 84.3'L — 1 EA

714 210 PIPE CONC REINF 15IN CL III-STORM DRAIN
Sta 168+50 - ST-51 & ST-50 - ST-50.1 — 586 LF & 78 LF
ST-50 - ST-50.2 & ST-51 - ST-51.1 — 78 LF & 89 LF
ST-51 - ST-51.2 — 89 LF

714 3005 END SECT-CONC REINF 15IN
ST-50.2 (Sta 171+06, 77.8' R) & ST-51.1 (Sta 174+36, 89.2' L) — 1 EA & 1 EA
ST-51.2 (Sta 174+36, 89.0' R) — 1 EA

722 100 MANHOLE 48IN
ST-50 (Sta 171+06, 0.0') & ST-51 (Sta 174+36,0.0') — 1 EA & 1 EA

722 4010 INLET CATCH BASIN 6IN BEEHIVE
ST-50.1 (Sta 171+06 77.7' L) — 1 EA



PRELIMINARY

12TH AVENUE NORTH RECONSTRUCTION

DRAINAGE LAYOUTS

STA 168+50 - 175+50

FILE LOCATION R:\Civil 3D Projects\168843\DRAWINGS\DESIGN\168843-PP.dwg

WW 17 20 & 9:10:20 (1h)

CONDITIONS TO UTILITY PERMIT FOR
CITY OF WEST FARGO
SHEYENNE-MAPLE FLOOD CONTROL DISTRICT #1
DECEMBER 10, 2014

1. The applicant shall ensure that vegetation is re-established after construction within right of way.
2. The applicant shall ensure that adequate erosion control practices are used to prevent erosion of Water Resource District facilities.
3. The utility shall not be installed below any existing structures, bridges, or culverts.
4. The applicant shall replace the excavated material using a method of compacted horizontal lifts. Replacement of material in layers shall not exceed 9 inches in thickness between compaction. Appropriate mechanical compaction methods such as a sheepsfoot or other device shall be utilized.

SOUTHEAST CASS WATER RESOURCE DISTRICT
UTILITY PERMIT

City of Fargo, a municipal corporation [type of entity and state of incorporation] with a post office address of 200 3rd Street North, Fargo, ND 58102 ("Applicant"), applies for this Permit to install storm sewer and culvert sections [describe type of utility, e.g., fiber optic cables, telephone lines, etc.] and related appurtenances on, through, and under [on, through, under, over] Cass County Drain No. SM-1 (the "Drain") on right of way owned by the Southeast Cass Water Resource District (the "District"), as shown on the plans attached as **Exhibit A** ("Applicant's Utilities").

Applicant may install Applicant's Utilities on, through, and under [on, through, under, over] the Drain as specifically shown on **Exhibit A**. Installation, operation, and maintenance of Applicant's Utilities on the District's right of way will conform to the following provisions:

1. Applicant will complete construction and maintenance at Applicant's sole expense.

2. Applicant will place Applicant's Utilities at the designated depth below the original design grade as set forth in the plans attached as **Exhibit A**.

3. Within 30 days after construction, maintenance, relocation, or removal of Applicant's Utilities, Applicant will remove any right of way scars; Applicant will restore any disturbed areas to original condition; and Applicant will re-seed the vicinity disturbed by Applicant's activities. Applicant will maintain any disturbed areas for a period of one year from the date of completion.

4. Applicant will install marker posts at all the Drain crossings on the right of way line, or at any other point as designated by the District.

5. Applicant will complete installation, maintenance, relocation, and/or removal of Applicant's Utilities on the District's right of way in a manner satisfactory to the District.

6. The District will not be liable for any damages to Applicant's Utilities resulting from reconstruction or maintenance of the Drain or any of the District's facilities or right of way. Applicant will release, defend, indemnify, and hold harmless the District, and all of the District's employees, officers, agents, and representatives, from and against any and all claims, demands, causes of action, or demands for relief, including costs, expenses, and attorneys' fees, that may arise out of or result from any acts or omissions regarding this Permit or Applicant's installation or maintenance of Applicant's Utilities, or any accident, injury, or damage to person, property, or equipment as a result of Applicant's entry upon or use of the District's right of way or property.

7. Applicant, at Applicant's own cost, will repair or replace the District's structures, facilities, right of way, or any other property owned by the District which may be damaged as a result of Applicant's installation and maintenance of Applicant's Utilities on the District's right of way, or otherwise as a result of Applicant's entry upon or use of the District's right of way.

8. Applicant will promptly remove Applicant's Utilities from the District's right of way, or will relocate or adjust Applicant's Utilities, all at Applicant's sole cost and expense upon notice from the District, as necessary for purposes of constructing, cleaning, inspecting, reconstructing, modifying, operating, maintaining, repairing, or improving the Drain.

9. Applicant will be solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations of any other federal, state, county, or local governments or governmental entities which may be applicable regarding Applicant's Utilities or Applicant's activities. Further, Applicant will be solely responsible for obtaining all applicable licenses, permits, or other approvals necessary, if any, regarding Applicant's Utilities or Applicant's activities under this Permit.

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11. Applicant will not transfer or assign this Permit, or any of Applicant's rights or obligations under this Permit, without the express written consent of the District.

12. Special Conditions: See attached

Applicant agrees to the above terms and conditions. This application will become effective as a Permit upon execution by both Applicant and the District.

APPLICANT:

City of Fargo

By: _____
Applicant's Signature Dennis R. Walaker

Its: Mayor

SOUTHEAST CASS
WATER RESOURCE DISTRICT

_____
Carol Harbeke Lewis
Secretary-Treasurer

Date Approved: December 10, 2014

EXHIBIT A

Applicant's Plans

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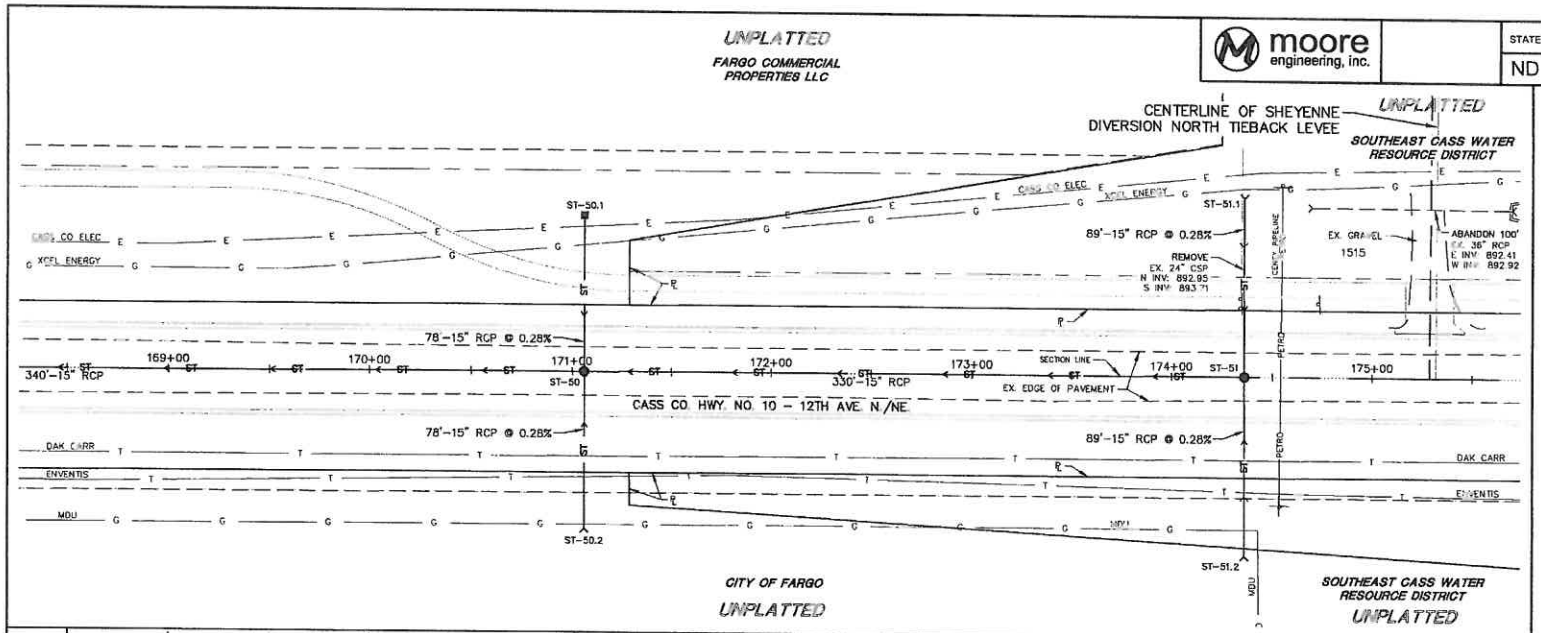

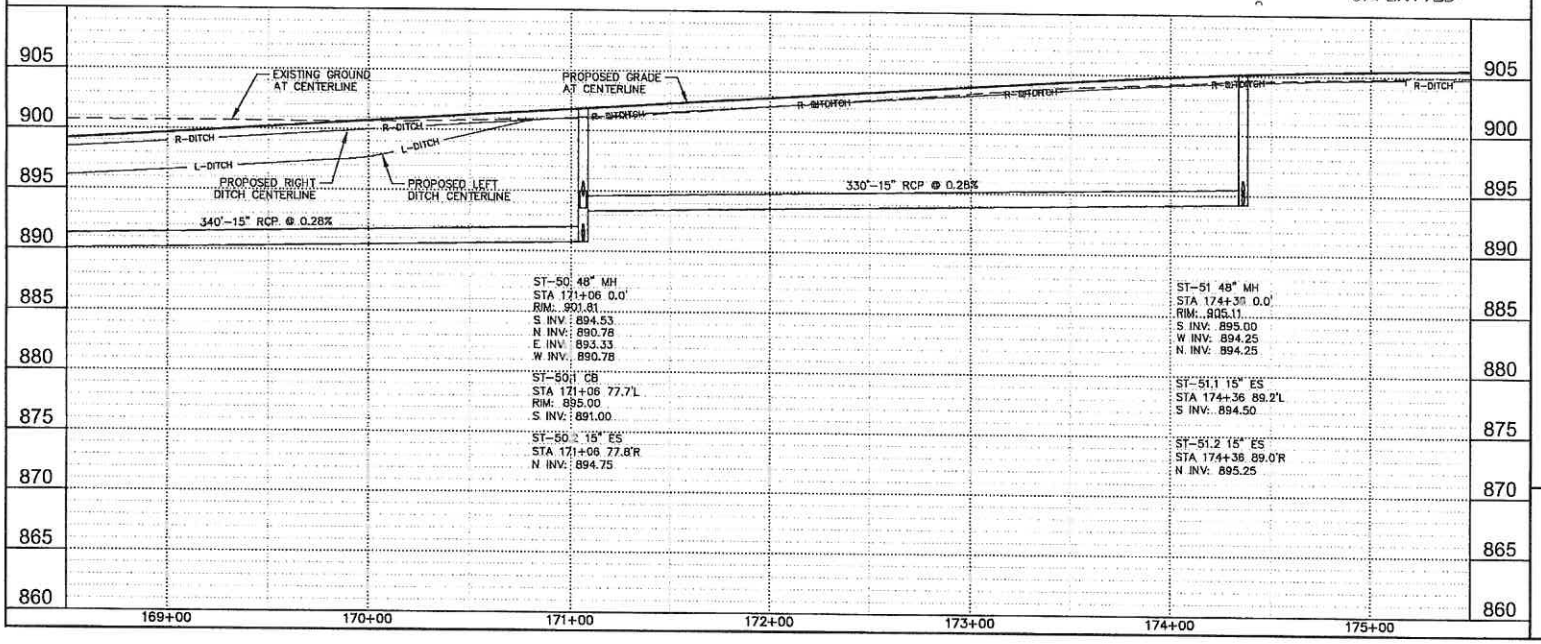

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ST-51 - ST-51.2 — 89 LF

714 3005 END SECT-CONC REINF 15IN
ST-50.2 (Sta 171+06, 77.8' R) & ST-51.1 (Sta 174+36, 89.2' L) — 1 EA & 1 EA
ST-51.2 (Sta 174+36, 89.0' R) — 1 EA

722 100 MANHOLE 48IN
ST-50 (Sta 171+06, 0.0') & ST-51 (Sta 174+36,0.0') — 1 EA & 1 EA

722 4010 INLET CATCH BASIN 6IN BEEHIVE
ST-50.1 (Sta 171+06, 77.7' L) — 1 EA

N
W E
S
0 60
Scale in Feet

PRELIMINARY

12TH AVENUE NORTH RECONSTRUCTION

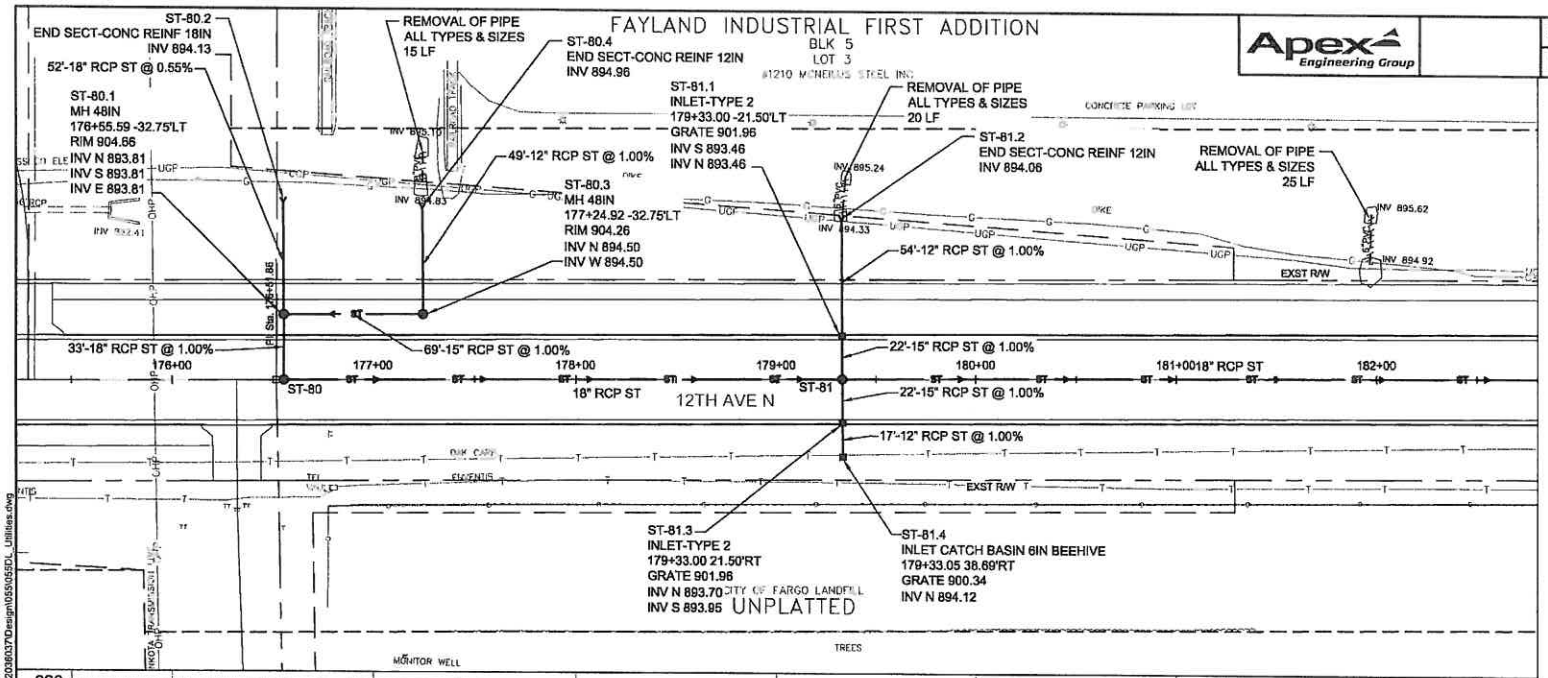
DRAINAGE LAYOUTS

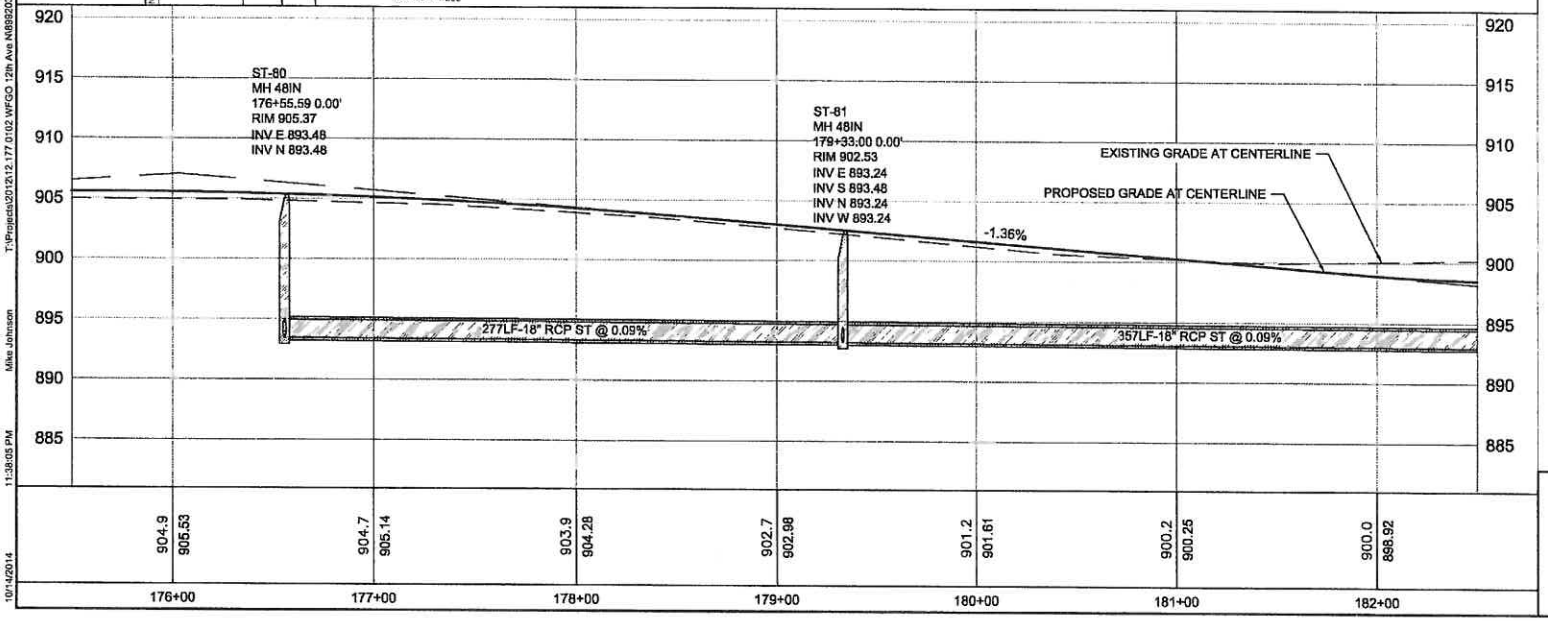
STA 168+50 - 175+50

FILE LOCATION: R:\Civil 3D Projects\16843\DRAWINGS\DESIGN\16843-PP.dwg

10/16/2014 8:09:21 AM

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SU-8-992(036)037	55	17





202 174 REMOVAL OF PIPE ALL TYPES AND SIZES	
Sta 177+25 - 100' LT (6" PVC)	15 LF
Sta 179+34 - 92' LT (6" PVC)	20 LF
Sta 181+97 - 70' LT (6" PVC)	25 LF
714 0115 PIPE CONC REINF 12IN CL III-STORM DRAIN	
ST-80.3 TO ST-80.4	50 LF
ST-81.1 TO ST-81.2	55 LF
ST-81.3 TO ST-81.4	17 LF
714 0210 PIPE CONC REINF 15IN CL III-STORM DRAIN	
ST-80.1 TO ST-80.3	69 LF
ST-81 TO ST-81.1	22 LF
ST-81 TO ST-81.3	22 LF
714 0315 PIPE CONC REINF 18IN CL III-STORM DRAIN	
ST-80 TO ST-80.1	33 LF
ST-80.1 TO ST-80.2	52 LF
ST-80 TO ST-81	277 LF
ST-81 TO ST-82	357 LF
714 3000 END SECT-CONC REINF 12IN	
ST-80.4	1 EA
ST-81.2	1 EA
714 3010 END SECT-CONC REINF 18IN	
ST-80.2	1 EA
722 0100 MANHOLE 48IN	
ST-80	1 EA
ST-80.1	1 EA
ST-80.3	1 EA
ST-81	1 EA
722 3510 INLET-TYPE 2	
ST-81.1	1 EA
ST-81.3	1 EA
722 4010 INLET CATCH BASIN 6IN BEEHIVE	
ST-81.4	1 EA

This document is preliminary and not for construction or implementation purposes.

12TH AVENUE NORTH RECONSTRUCTION

STORM SEWER & WATER

STA 175+50 - 182+50

T:\Projects\2012\12-177 0102 WFGO 12th Ave N\899\2036\037\Design\055\056\FL_Utilities.dwg
Mike Johnson
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10/14/2014

CONDITIONS TO UTILITY PERMIT FOR
CITY OF FARGO
SHEYENNE-MAPLE FLOOD CONTROL DISTRICT #1
DECEMBER 10, 2014

1. The applicant shall ensure that vegetation is re-established after construction within right of way.
2. The applicant shall ensure that adequate erosion control practices are used to prevent erosion of Water Resource District facilities.
3. The utility shall not be installed below any existing structures, bridges, or culverts.
4. The applicant shall replace the excavated material using a method of compacted horizontal lifts. Replacement of material in layers shall not exceed 9 inches in thickness between compaction. Appropriate mechanical compaction methods such as a sheepsfoot or other device shall be utilized.

(Drafted by & when filed return to: Magellan Pipeline Company, L.P., P. O. Box 22186, MD OTC-9, S. Guthrie, Tulsa, Oklahoma 74121-2186, 918/574-7350.)

ENCROACHMENT AGREEMENT

This Encroachment Agreement ("**Agreement**") is made and entered into by and between Magellan Pipeline Company, L.P., a Delaware limited partnership, whose address is P.O. Box 22186, Tulsa, Oklahoma, 74121-2186, (hereinafter called "**Magellan**"), and City of Fargo, a North Dakota municipal corporation, whose mailing address is 200 3rd Street North, Fargo, North Dakota 58102, and City of West Fargo, a North Dakota municipal corporation, whose mailing address is 810 12 Avenue NW, West Fargo, North Dakota 58078, their successors, assigns and grantees (hereinafter called "**City**", whether one or more).

WITNESSETH:

WHEREAS, **City** represents and warrants that **City** owns the right to construct **road, storm sewer, shared use path, fiber optic conduits and temporary construction easement** on all the certain land (hereinafter "**Subject Land**"), described on attached **Exhibit "A"** and made a part hereof; and

WHEREAS, **Magellan** is the owner of certain pipelines, pipeline facilities and appurtenances (hereinafter referred to as the "**Magellan Facilities**") and easement rights therefor, (hereinafter referred to as the "**Easement**", whether or not rights were granted in one or more documents or acquired by operation of law). For purposes of this **Agreement** only, "**Magellan's Easement Tract**" shall be considered to be any area within Fifty (50) feet of any **Magellan Facilities,** unless a different right of way tract width is specifically described in the **Easement,** in which case such specified width shall define **Magellan's Easement Tract**. The land referenced in the Easement includes a portion of the Northwest Quarter (NW¼) of Section 4 Township 139 North, Range 49 West, and Southwest Quarter (SW¼) of Section 33, Township 140 North, Range 49 West, Cass County, North Dakota, pursuant to those certain instruments recorded in the records of said county and state and described as follows:

1) Right of Way Agreement as to a pipe line or pipe lines dated February 15, 1946, from W.A.N. Laing and Olive M. Laing, husband and wife, in favor of Great

Lakes Pipe Line Company (Magellan's predecessor in title), its successors and assigns, and filed for record in Book U-1 Misc at Page 410 of the Cass County, ND Register's Office; and

2) Right of Way Agreement as to a pipe line or pipe lines dated February 11, 1946, from Ester C. Hanson, Executrix of the Will of August Hanson, deceased, and as the sole heir at law of said August Hanson, deceased, in favor of Great Lakes Pipe Line Company (Magellan's predecessor in title), its successors and assigns, and filed for record in Book U-1 Misc at Page 409 of the Cass County, ND Register's Office; and

3) Right of Way Agreement as to a pipe line or pipe lines dated February 2, 1946, from Carroll O. Barnes and Clara Barnes, husband and wife, in favor of Great Lakes Pipe Line Company (Magellan's predecessor in title), its successors and assigns, and filed for record in Book U-1 Misc at Page 411 of the Cass County, ND Register's Office; and

4) Right of Way Agreement as to a pipe line or pipe lines dated June 25, 1946, from John C. Cassidy, a single man, in favor of Great Lakes Pipe Line Company (Magellan's predecessor in title), its successors and assigns, and filed for record in Book W-1 Misc at Page 98 of the Cass County, ND Register's Office; and

5) Release of Right of Way dated January 3, 1975 and recorded in Misc M-6, Page 408, Cass County, ND, from Williams Pipe Line Company, LLC releasing (E1/2NW1/4 Section 4-T139N-R49W) a portion of the rights granted in the Right of Way Agreement listed above; and

6) Partial Release of Right of Way dated January 25, 1980 and recorded in Book N-8 Misc, Page 84, Office of Register of Deeds Cass County, ND, from Williams Pipe Line Company, LLC to Glacier Park Company, a Minnesota corporation; Vernon Heiden and LaVerne Heiden, husband and wife; Oris Heiden and Marcella Heiden, husband and wife; Jerome C. Brodsho and Marvel Brodsho, husband and wife; Jon Q. Peterson and Janice Peterson, husband and wife; releasing a portion of the rights granted in the Right of Way Agreement listed above; and

WHEREAS, for the purposes of this **Agreement** an "**Encroachment**" is defined as any use of the land within **Magellan's Easement Tract** by someone other than **Magellan** which could interfere with **Magellan's Easement** rights or could create safety concerns related to **Magellan's Facilities** as more fully described in **Magellan's** *General Encroachment Requirements* as set forth in attached **Exhibit "B"** and incorporated herein by reference. **Magellan does not permit or authorize any Encroachments unless specifically approved in a written agreement identifying all "Approved Encroachments"**; and

WHEREAS, **City** desires to obtain **Magellan's** consent for one or more **Encroachments** on **Magellan's Easement Tract;**

NOW, THEREFORE, in consideration of the covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **Magellan,** subject to the following terms and provisions, hereby consents to the **Encroachments** listed below as "**Approved Encroachments**" described and limited pursuant to the following specified plan drawings, which were furnished by **City** to **Magellan** ("**Plan Drawings**") and attached hereto as **Exhibit "C"**:

1) City of Fargo, City of West Fargo and Cass County North Dakota Project Plans, Project No. SU-8-992(036)037 PCN 20057, 12th Avenue (Cass County Road 19 to 45th Street), by Apex Engineering Group, dated approved 11/13/2014, Exhibit "C", 10 pages;

TERMS AND PROVISIONS

1. **Approved Encroachments.** The **Approved Encroachments,** as further identified, described and limited in the **Plan Drawings** as set forth in **Exhibit "C"** are limited to the following:

   (a) **Road reconstruction, curb/gutter**. The project proposes reconstruction of 12th Avenue NE (Cass County Highway 10), and includes adding new curb and gutter. The top of the **Magellan Facilities** must be a minimum of 4 feet below the finished grade of the roadway.

   (b) **21" RCP Storm Sewer**. The project proposes trenching and installing a 21 inch RCP storm sewer under the **Magellan Facilities**. The project plans show 2 feet of vertical clearance of the **Magellan Facilities**. The maximum span width of 60 feet as explained in provision number 11 below will need to be followed.

   (c) **Temporary Construction Easement**. The project includes use of an existing field driveway for access purposes. Provision number 12 must be followed for equipment crossing purposes. Project plans also show removal of the existing culvert under this driveway.

   (d) **Proposed Shared Use Path**. The project plans propose a pathroad on the north side that will cross the **Magellan Easement**. The pathroad cannot be constructed with reinforced concrete pursuant to the Magellan Encroachment Requirements, **Exhibit "B"** and the top of the **Magellan Facilities** must be a minimum of 3 feet below the finished grade of the pathroad.

(e) **Two 2" PVC or HDPE Conduits.** The project proposes to construct two conduits to cross the **Magellan Facilities** with a minimum 4 feet of vertical clearance. The conduits will contain fiber optic cable at the completion of the project.

2. **No Other Encroachments.** Except for the **Approved Encroachments** as defined in the **Agreement**, **City** shall not create, erect, place or construct any other **Encroachment** on, above or below the surface of the ground on **Magellan's Easement Tract**, or change the grade or elevation of the ground surface within **Magellan's Easement Tract** or at any time plant or allow any trees thereon or cause or permit any of these to be done by others, without the express prior written permission of **Magellan**.

3. **Magellan On-Site Representative.** Exclusive of Saturday, Sunday, and legal holidays, **City** shall notify **Magellan** a minimum of 48 hours in advance of any **Encroachment** activities on **Magellan's Easement Tract** so that **Magellan** may arrange to have a representative present. At **Magellan's** option and at **City's** sole cost and expense, **Magellan's** representative may be on site during all **Encroachment** activities over or within ten feet (10') of the **Magellan Facilities** to confirm that no damage occurs to the **Magellan Facilities**. The presence of **Magellan's** representative or any verbal instructions given by such representative shall not relieve **City** of any liability under the **Easement** or this **Agreement,** and will not change the terms of the **Easement** or this **Agreement,** which may only be changed by written agreement by authorized representatives of **City** and **Magellan.** If pipeline, coating, cathodic protection and/or any other repair of **Magellan Facilities** is required by **Magellan** or if the safety of the **Magellan Facilities** is jeopardized, in **Magellan's** sole judgment, **City** shall stop all construction activities on **Magellan's Easement Tract** until said repairs are completed or until any unsafe construction practices are resolved to the satisfaction of **Magellan's** on-site representative. Written notification of such construction activity shall be made to **MAGELLAN PIPELINE COMPANY, Coordinator of Operations & Maintenance, Paul Klabunde, 902 Main Avenue East, West Fargo, ND Office: (701) 282-7134; Cell: (701) 793-8377** or such other representative of **Magellan,** which **Magellan** may from time to time designate.

4. **Protection of Magellan Facilities.** **City** shall protect the **Magellan Facilities** if excavating and backfilling become necessary within **Magellan's Easement Tract**. If excavating within 2 feet of any Magellan pipeline or when otherwise deemed necessary by **Magellan's** on-site representative, **City** shall perform any necessary digging or excavation operations by hand digging. **City** shall reimburse **Magellan** for all costs of having a representative of **Magellan** on-site during construction activities related to the **Approved Encroachments**.

5. **Breach.** If either **City** or **Magellan** breaches this **Agreement** and the non-breaching party commences litigation to enforce any provisions of this **Agreement**, the reasonable cost of attorneys' fees and expenses will be payable to the non-breaching party by the breaching party upon demand, for all claims upon which the non-breaching party prevails.

6. **Insurance.** **City** shall procure or cause its contractors and subcontractors to procure and maintain in force throughout the entire term of this **Agreement** insurance coverage described below with insurance companies acceptable to **Magellan** for work performed related to the construction of the **Approved Encroachments**. All costs and deductible amounts will be the responsibility and obligation of the **City** or its contractors and subcontractors. Prior to commencing any activities related to the construction of the **Approved Encroachments**, the **City** must deliver to **Magellan** certificate(s) of insurance, naming **Magellan Midstream Partners, L.P. and its Affiliates as an additional insured**. The limits set forth below are minimum limits and will not be construed to limit the **City's** liability:

(a) Workers' Compensation insurance complying with the laws of the State or States having jurisdiction over each employee and Employer's Liability insurance with limits of $1,000,000 per accident for bodily injury or disease.

(b) Commercial or Comprehensive General Liability insurance on a claim made policy with a combined statutory limit of $1,500,000 each claim and for project specific, an annual aggregate of $5,000,000. Coverage must include premises/operations, products/completed operations, and sudden and accidental pollution. **Magellan Midstream Partners, L.P. and its Affiliates** (hereinafter defined), and its and their respective directors, officers, partners, members, shareholders, employees, agents, and contractors shall be included as additional insureds. The term "Affiliate(s)" as used herein means, with respect to Magellan Midstream Partners, L.P., any individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, firm, association, joint stock company, trust, unincorporated organization, governmental body, or other entity (collectively, a "Person") that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with Magellan Midstream Partners, L.P. The term "control" (including the terms "controlled by" and "under common control with"), as used in the previous sentence means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Magellan Midstream Partners, L.P. or such Person, as applicable, whether through ownership of voting stock, ownership interest or securities, by contract, agreement or otherwise.

(c) The Sudden and Accidental Pollution can be a separate, stand alone policy, but must still meet the $5,000,000 minimum limit requirement. If the coverage is written on a claims-made policy form, the coverage must be maintained for two (2) years following completion of the work activities related to the Approved Encroachments.

(d) In each of the above policies, the **City** or its contractors and subcontractors agrees to waive and will require its insurers to waive any rights of subrogation or recovery either may have against **Magellan** and its affiliated companies.

(e) Regardless of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the **City** or its contractors and subcontractors, or the failure of any such insurance company to pay claims that occur, such requirements, insolvency, bankruptcy or failure will not be held to waive any of the provisions hereof.

(f) In the event of a loss or claim arising out of or in connection with the construction of the **Approved Encroachments**, the **City** agrees, upon request of **Magellan**, to submit a certified copy of its insurance policies for inspection by **Magellan**.

(g) The **City** shall require all of its contractors and subcontractors for work related to the construction of the **Approved Encroachments** to provide adequate insurance coverage, all to be endorsed with the Waiver of Subrogation wording referenced in Section (d) above; any deficiency in the coverage, policy limits, or endorsements of said contractors and subcontractors, shall be the sole responsibility of the **City**.

7. **Indemnification.** **City** will indemnify, save, and hold harmless **Magellan**, its affiliated companies, directors, officers, partners, employees, agents and contractors from any and all environmental and non-environmental liabilities, losses, costs, damages, expenses, fees (including reasonable attorneys' fees), fines, penalties, claims, demands, causes of action, proceedings (including administrative proceedings), judgments, decrees and orders resulting from **City's** breach of this **Agreement** or caused by or as a result of the construction, use, maintenance, existence or removal of the **Approved Encroachments** and **Other Encroachments** located on the **Magellan Easement Tract**. The presence of **Magellan's** representative or any instructions given by such representative will not relieve **City** of any liability under this **Agreement,** except to the extent that such liability results from Magellan's or its representative's negligence, gross negligence or willful misconduct.

8. **Damage or Loss.** **City** covenants that:

(a) If at any time, in the sole opinion of **Magellan**, it becomes necessary for **Magellan,** to cross, occupy, utilize, move or remove all or portions of the **Approved Encroachments** placed on **Magellan's Easement Tract** or constructed pursuant to this **Agreement**, for any purpose, including but not limited to surveying, constructing new facilities, maintaining, inspecting, operating, protecting, repairing, replacing, removing or changing the size of a pipeline(s) and appurtenances on **Magellan's Easement Tract** and such activities by **Magellan** result in damage to or destruction of the **Approved Encroachments**, then repair, replacement or restoration of such **Approved Encroachments** shall be at the sole cost and responsibility of **City**.

(b) If at any time, any encroachments belonging to or permitted by **City** which are not authorized by this or another written agreement ("**Other Encroachments**") are found to be on **Magellan's Easement Tract, Magellan** may at any time request **City** to remove

such **Other Encroachments,** and if **City** refuses or fails to do so within a reasonable time, **Magellan's** may remove them from **Magellan's Easement Tract** to a location off of **Magellan's Easement Tract** at **City's** expense, unless they are allowed to remain by a written agreement between **Magellan** and **City**. Should such removal activities by **Magellan** result in damage to or destruction of the **Other Encroachments**, then repair, replacement or restoration of such **Other Encroachments** shall be at the sole cost and responsibility of **City,** and such **Other Encroachments** may not be repaired, replaced or rebuilt on **Magellan's Easement Tract** without a written agreement between **Magellan** and **City**.

(c) If during the exercise of the rights granted by the **Easement** or by this **Agreement,** the **Approved Encroachments** and **Other Encroachments**, if any, are damaged, destroyed or suffer loss of value, **City** agrees to release **Magellan,** its affiliates, and its and their respective directors, officers, members, partners, shareholders, employees, agents and contractors from and against any and all liabilities, and damages or losses which may arise as a result of the damage to or loss of use of the **Approved Encroachments** and **Other Encroachments**, if any, caused by **Magellan**, its employees, agents and contractors.

9. **Magellan Rights.** **Magellan** and **City** agree that the existence of the **Approved Encroachments** or this **Agreement** does not constitute a waiver of **Magellan's** rights under the **Easement.** **Magellan** hereby reserves and **City** hereby grants and confirms all of **Magellan's** rights, title and estate as set forth in the **Easement.**

10. The terms and conditions of this **Agreement** will constitute covenants running with the land and be binding upon and inure to the benefit of the parties hereto, their successors, assigns and grantees. This **Agreement** may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. This **Agreement** shall become effective upon its complete execution by the parties hereto.

11. **Maximum Unsupported Span Length (Excavation Requirements).** Certain precautions will need to be implemented to ensure the safety of the **Magellan Facilities**. **Magellan's** standard practice is to conduct non-destructive evaluations and/or weld on reinforcing sleeves on all girth welds that will be fully exposed when the native supporting soil under the pipeline will be removed for a length greater than or equal to the respective pipeline's safe maximum allowable unsupported span length.

    Based on the pipeline specifications and maximum operating pressure for the **Magellan Facilities, the safe maximum unsupported span length is 60 feet**.

    The **City** will need to pay careful attention to the unsupported pipe length of the **Magellan Facilities**. If more than the safe maximum unsupported span length for the **Magellan Facilities** has been exposed, **Magellan** will require non-destructive evaluations of the girth

welds and will make repairs as necessary. Costs associated with repair work or the need for a pipeline contractor for assistance will be the responsibility of the **City**.

12. **Heavy Equipment Crossings**. Pipeline stress calculations have been performed based on an assumed maximum loaded vehicle weight of 80,000 lbs. The stress calculations further assumed that the gross loaded vehicle weight was evenly distributed between two (2) axles resulting in a maximum wheel load of 20,000 lbs. Based upon these assumptions and the pipeline depths of provided by **Magellan**, equipment meeting the aforesaid criteria may safely cross the **Magellan Facilities**; **however, a Magellan field representative will need to be present to verify the pipeline depth of cover prior to allowing equipment to cross. A minimum cover of three (3) feet shall be maintained for all equipment crossings over Magellan Facilities.**

    Tracked equipment and equipment exceeding the maximum wheel load specified above will not be allowed to cross the Magellan Facilities without further evaluation of the pipeline stresses. If equipment exceeding the maximum wheel load specified above will need to cross the pipelines, detailed information will need to be received in order to perform pipe stress calculations. The following information will need to be received to perform a more thorough analysis of wheeled vehicles: loaded vehicle weight, number of axles on the front and rear, and weight distribution between the front and rear axles. For equipment on tracks, the following information is needed: loaded vehicle weight, length of track in contact with the ground, and track width.

IN WITNESS WHEREOF, the parties have set their hands on the dates expressed below.

MAGELLAN PIPELINE COMPANY, L.P.
By: Magellan Pipeline GP, LLC, its general partner

By: _____
Name: H. Cynthia Pierce
Title: Authorized Signatory for Company

Date: 7/13, 2015

CITY OF FARGO, ND

By: April E. Walker
Name: April Walker
Title: City Engineer

Date: 7/1, 2015

CITY OF WEST FARGO, ND

By: _____
Name: Chris Brungardt
Title: Director of Public Works

Date: 7/6/15, 2015

STATE OF OKLAHOMA)
) SS
COUNTY OF TULSA)

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 13th day of July, 2015 personally appeared H. Cynthia Pierce, to me personally known to be the Authorized Signatory for MAGELLAN PIPELINE GP, LLC, a Delaware limited liability company, who being duly sworn did acknowledge to me that he/she executed the foregoing instrument on behalf of said limited liability company as the free and voluntary act and deed, for the uses, purposes and consideration therein set forth.

Witness my hand and official seal.

Sherrie L. Guthrie
Notary Public
SHERRIE L. GUTHRIE

My commission expires:
4-19-19

NOTARY PUBLIC SEAL
SHERRIE L. GUTHRIE
Notary Public
State of Oklahoma
Commission # 03005115 Expires 04/19/19

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STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

Before me, the undersigned, a Notary Public in and for the County aforesaid, on this 1st day of July, 2015, personally appeared **April Walker** to me known personally to be the City Engineer for the CITY OF FARGO, ND, a North Dakota municipal corporation, who being duly sworn did acknowledge to me that she executed the foregoing instrument on behalf of said City of Fargo, ND as the free and voluntary act and deed of said corporation, for the uses, purposes and consideration therein set forth.

Witness my hand and official seal.

Kristi Olson
Notary Public

My Commission Expires:

KRISTI OLSON
Notary Public
State of North Dakota
My Commission Expires Oct. 17, 2019

STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

Before me, the undersigned, a Notary Public in and for the County aforesaid, on this 6 day of July, 2015, personally appeared **Chris Brungardt** to me known personally to be the Director of Public Works for the CITY OF WEST FARGO, ND, a North Dakota municipal corporation, who being duly sworn did acknowledge to me that he executed the foregoing instrument on behalf of said City of West Fargo, ND as the free and voluntary act and deed of said corporation, for the uses, purposes and consideration therein set forth.

Witness my hand and official seal.

Tina Wagner
Notary Public

My Commission Expires:

TINA WAGNER
Notary Public
State of North Dakota
My Commission Expires Oct. 13, 2015

EXHIBIT "A"

SUBJECT LAND

The Northwest Quarter of the Northwest Quarter (NW¼NW¼) of Section 4, Township 139 North, Range 49 West; and the Southwest Quarter of the Southwest Quarter (SW¼SW¼) of Section 33, Township 140 North, Range 49 West, Cass County, North Dakota.

EXHIBIT "B"

GENERAL ENCROACHMENT REQUIREMENTS

EXHIBIT "B" TO ENCROACHMENT AGREEMENT, 1 of 4

MAGELLAN PIPELINE COMPANY, L.P.

General Encroachment Requirements

A. **GENERAL** - These requirements define the minimum standards of practice for encroachments by a landowner (including any developer, business entity, utility company or individual working for, or on behalf of, or with permission of landowner) (herein referred to collectively as "Owner") to pipeline corridors and rights of way ("Magellan's Easement Tract") owned or operated by Magellan Pipeline Company, L.P. ("Magellan"). Upon written request by Owner to Magellan, a copy of these minimum requirements shall be provided to any developer, business entity, utility company or individual working on behalf of Owner or with the permission of Owner within Magellan's Easement Tract. Specific circumstances may require additional precautions or more stringent methods in order to protect the integrity of Magellan's pipelines and facilities. Magellan's Easement Tract for purposes of these General Encroachment Requirements shall be considered to be any area within fifty (50) feet of any Magellan pipeline or other Magellan-owned or operated facility unless a different right of way width is specified by one or more recorded right of way or easement documents (herein collectively called "Easement", whether one or more), in which case such specified width shall define Magellan's Easement Tract.

1. **Encroachment Definition.** An "encroachment" is any use of the land within Magellan's Easement Tract which could interfere with Magellan's Easement rights or which could create safety concerns for Magellan pipelines and/or facilities located on Magellan's Easement Tract. Encroachments include, but are not limited to: structures, fixtures, personal property, landscaping, foreign utilities, foreign pipelines, roadways, railroads, waterway crossings, water impoundments, walls, heavy equipment and heavy loads on Magellan's Easement Tract, and also any excavation, digging, drilling, tunneling and addition, removal or disturbance of soil or subsoil within Magellan's Easement Tract.

2. **Magellan Representative Required On-Site.** Magellan pipeline systems operate at high pressures, and for safety reasons, Magellan requires its company representatives to be on-site while Owner is excavating or performing other activities which could endanger the Magellan pipelines or other facilities on

Magellan's Easement Tract. For other activities of the Owner on the Magellan Easement Tract, the Magellan field representative shall determine whether Magellan's continuous presence or periodic monitoring of encroachment activities will be required and shall inform the Owner. A Magellan representative will be made available upon 48 hours notice (exclusive of weekends and holidays) to determine the location and approximate depth of any Magellan pipelines. No excavation shall be commenced without prior written approval from Magellan and verification by Magellan of the location and approximate depth of its pipelines.

3. **Magellan's Facilities.** Magellan's facilities include, but are not limited to, Easement, rights of way, pipelines, meter and valve sites, aboveground piping manifolds and cathodic protection systems.

4. **Land Use Change - Notification.** The landowner and tenant, if any, must notify Magellan at any and every time when the land use will be changed for land on or adjacent to Magellan's Easement Tract. Examples of such land use changes are:

- Change from pasture to cultivation
- Change in depth of tilling (e.g. plowing deeper or deep-breaking the land)
- Change in that terraces will be cut or re-cut
- Change from agricultural use to residential, commercial or industrial use.
- Change from residential to commercial or from commercial to industrial.

5. **Governmental Regulations and Industry Guidelines.** Owner must comply with all applicable laws and regulations, as well as Magellan's policies as expressed herein. Owner is also hereby referred to the Common Ground Alliance Best Practices which can be found on the web site: www.commongroundalliance.com (See "Program Information" / "Best Practices") and which is available from Common Ground Alliance in booklet form for easy reference. Best Practices addresses the most common issues for damage prevention for an encroaching party, including, among others: Planning and Design; One-Call Center; Locating and Marking; Excavation; and Mapping.
In the even of a conflict between laws and regulations, Magellan's policies and the Common Ground Alliance Best Practices, the following priority shall govern encroachments on Magellan's Easement Tract: 1st -- laws and regulations; 2nd -- Magellan policies; and 3rd -- Common Ground Alliance Best Practices.

B. MAGELLAN RIGHT OF WAY PRACTICE

1. **Personal Property and Fixtures To Be Kept Off of Magellan's Easement Tract.** In order to keep Magellan rights of way clear for operations, maintenance, inspection and emergency access, personal property and fixtures shall not be placed, stored or maintained on Magellan's Easement Tract. Personal property and fixtures include, but are not limited to, storage sheds, automobiles, trailers, mobile homes, above-ground swimming pools, business equipment, product inventory, scrap metal, boulders, large rocks, debris, junk and piles of materials.

2. **Encroachments Subject to Being Cleared from Magellan's Easement Tract.** Subject to the terms of its Easement (including right of way agreement[s] and other written agreements), Magellan may keep Magellan's Easement Tract clear of items that may hinder the exercise of Magellan's rights to construct, operate, inspect, maintain, repair and access its pipelines and other facilities. Clearing of the Magellan's Easement Tract shall include, but not be limited to the following: removal of trees, brush, crops, other vegetation and non-permitted encroachments located on or overhanging all or part of any Magellan's Easement Tract. Trees or other vegetation overhanging Magellan's Easement Tract may be side-trimmed.

C. ENCROACHMENT PLANNING

1. **Plan Review Required by Magellan.** For any encroachment, Magellan must be provided project plans to review and approve, *prior to the encroachment occurring*, for purposes of damage prevention.

2. **Submission of Complete Plans.** Owner must submit complete plans to Magellan for review. Incomplete plans could delay Magellan's engineering impact study and insufficient information could result in increased costs. Plans must include:

- A plan view of the project with the pipeline(s) location included.
- An illustration in profile of the existing surface elevations, the proposed surface elevations and the elevation of the Magellan pipeline(s).
- A comprehensive utility /structure /grading plan depicting the relationship to the pipeline(s).
- A proper legal description of the project location.
- Complete landscaping plans.
- Complete plans for backfilling and compaction of backfill material.

3. **Plans Must Show Magellan's Easement Tract, Pipelines and Facilities.** All construction plans (prints) showing lands where all or any part of Magellan's Easement Tract, any Magellan pipeline or facility is located must contain the

following:

- Location and depth of all Magellan pipelines and facilities
- The width of Magellan's Easement Tract
- A standard warning statement *conspicuously displayed* containing the following language:

WARNING
HIGH-PRESSURE PIPELINE(S)
Excavation and/or Construction Prohibited Without compliance with State One-Call AND Without Written Permission From MAGELLAN PIPELINE COMPANY, L.P.

4. **Written Encroachment Agreement Required.** A written, fully executed Encroachment Agreement must be in place between Magellan and Owner before Owner commences work on any encroachment.

5. **Costs.** Unless otherwise agreed in writing, all costs to Magellan that result from any encroachment should be paid by Owner. Such costs shall include, but not be limited to: modification, replacement, lowering, and protection of pipelines, including engineering evaluation and design, field labor and real estate research and document preparation and handling.

6. **Pipeline Integrity Inspection.** Prior to the installation of any structure, parking lot, roadway or other facility which might interfere with or hinder Magellan's inspection of any pipeline or facility, Magellan will perform an integrity review of its pipeline and any other assets which may be affected by the proposed structure, parking lot, roadway or other encroaching facility in order to determine that Magellan's assets comply with integrity requirements and to allow Magellan to make any needed changes prior to construction of any encroachments.

7. **Soil On Magellan's Easement Tract -- Removing and Adding.** No soil shall be removed from or added to Magellan's Easement Tract without written authorization from Magellan. Any soil added must be clean (without contaminants, trash or debris) fill dirt and must be *limited in amount* so that the

resulting cover (vertical distance from the surface of the land to the top of Magellan's pipeline) is not greater than eight feet (8').

8. **Erosion Control Materials.** Erosion-control materials may be allowed on Magellan's Easement Tract for temporary periods of construction and restoration.

9. **Proof of Title to Property.** Magellan may require Owner to provide proof of current ownership of the land where the proposed encroachment is to be located. Such proof may be in the form of a Title Commitment, Title Policy, or a copy of a recorded Warranty Deed.

10. **Subdivision Plat.** Magellan requires a copy of the Subdivision Plat, if applicable. If the plat has been recorded, Magellan requires a copy indicating the book and the page of the recording.

11. **Location and Approximate Depth of Pipelines.** A Magellan representative is normally available with 48 hours notice (exclusive of weekends and holidays) to determine the location and approximate depth of the pipeline(s). Determining actual depths of pipelines may require pot-holing or hand-digging by, and at the expense of Owner in the presence of an authorized Magellan representative. No excavation on Magellan's Easement Tract shall take place without approval by Magellan.

12. **Vertical Separation Between Magellan Pipeline or Facility and an Encroaching Object or Structure.** Vertical separation is defined in this document as the vertical distance between the outermost part of a Magellan pipeline, facility or appurtenance (for example, the outside of the pipe [for uncased pipe] or the outside of the pipe casing [for cased pipe]) and the outermost part of the encroaching object (for example, the outside of the encroaching pipeline or the outside of its conduit).

13. **Construction Equipment Information.** Owner shall provide to Magellan information as to the type, size, and weight of construction equipment that will be used over or in the vicinity of the pipeline(s).

D. ENCROACHMENT DESIGN REQUIREMENTS & STANDARDS

1. **Risk of Loss and Damage.** Owner shall bear the risk of loss, damage and/or destruction to any structure, fence, landscaping or improvement placed within the boundaries of Magellan's Easement Tract and shall hold Magellan harmless

EXHIBIT "B" TO ENCROACHMENT AGREEMENT, 2 of 4

for damages, destruction of structures and for any consequential damages which may arise out of Magellan or its designees exercising Magellan's Easement rights or which may arise out of accessing Magellan's Easement Tract, pipelines or facilities.

2. **Buildings, Structures and Fences.**

a. **Buildings and Structures.** No buildings, houses, barns, garages, patios, playhouses, sheds, septic systems or drain fields, swimming pools (above-ground or below-ground), reinforced concrete slabs or other similar structures will be permitted on the Magellan's Easement Tract.

b. **Septic System not permitted.** No septic-system, including any lateral lines will be permitted on Magellan's Easement Tract.

c. **Retaining Walls.** Retaining walls are not permitted on Magellan's Easement Tract.

d. **Fences.** No fence shall be constructed or maintained on Magellan's Easement Tract without a written agreement.

e. **Requirements for Fences.** If fencing on Magellan's Easement Tract is authorized by a written agreement with Magellan, the fencing must comply with the following:

1) **Not Parallel to Pipeline.** No fence shall be allowed to be constructed parallel closer than 10 feet to any Magellan pipeline, within the boundaries of Magellan's Easement Tract.

2) **Fence Posts Location.** No fence posts will be allowed to be within five (5) feet of any Magellan pipeline or facility.

3) **Gates Required.** Magellan may require any fence constructed within the boundaries of Magellan's Easement Tract to have gates of such size and suitability as is necessary or convenient for Magellan to access its pipelines and/or facilities for its operations, including inspections, at each point where the fence crosses a Magellan pipeline or facility boundary. Magellan shall be allowed to put a Magellan lock on such gates, which will allow access to Magellan's Easement Tract and/or facilities through such gates.

4) **Angle of Fence Crossing.** It is preferred that fence crossings be as close to 90 degrees as possible.

3. **Landscaping, Elevation Changes and Water.**

a. **Landscaping Definition.** Landscaping shall include, but not be limited to, trees, shrubs, underground irrigation or sprinkler systems, sidewalks or other paths, retaining walls, terraces or other land grade changes, within

Magellan's Easement Tract.

b. **General Landscaping Requirements.** The following are the general rules for landscaping on Magellan's Easement Tract:

1) **Written Approval.** Landscaping proposed to be done on Magellan's Easement Tract must be approved by Magellan in a **written** ***encroachment agreement.*** Among other terms, the encroachment agreement will release Magellan from any liability for damages to the landscaping from the exercise of Magellan's Easement rights.

2) **Trees Not Permitted.** Trees are not permitted on Magellan's Easement Tract.

3) **Shrubs.** Shrubs exceeding 3 feet in height and/or obstructing the view of any Magellan pipeline marker posts are not permitted on Magellan's Easement Tract.

4) **Irrigation Systems, Field Drain Lines, and Sidewalks.** Irrigation systems, field drain lines and sidewalks that are to cross a Magellan pipeline must cross such pipeline at an angle as close to 90 degrees as possible, but in no event at an angle less than 45 degrees and must comply with other applicable provisions of this document.

c. **No Water Bodies on Magellan's Easement Tract.** Retention of water, including but not limited to, Livestock ponds, lakes, retention ponds, or wetlands may not be constructed or formed on Magellan's Easement Tract.

d. **Surface Grade and Elevation Changes.** Surface grade or elevation changes must be reviewed and approved in writing by Magellan.

4. **Foreign Pipeline & Utility Crossings.** No foreign pipelines or utility lines of any type shall be allowed to be constructed parallel to any Magellan pipeline within the boundaries of Magellan's Easement Tract.

a. **Minimum Angle for Pipeline/Utility Crossing.** Any foreign pipeline or utility that is proposed to cross a Magellan pipeline must cross the Magellan pipeline at an angle as close to 90 degrees as possible, but in no event at an angle less than 45 degrees.

b. **Vertical Separation Requirements for Crossing.** Foreign pipeline(s), utilities (except high-voltage lines – see below) or flow lines should cross Magellan pipeline(s) with at least 24 inches of vertical separation. Special written authorization must be given in the event vertical separation is less than that specified in these General Encroachment Requirements. The preferred method for a foreign pipeline or utility to cross a Magellan pipeline is to cross ***below*** the Magellan pipeline.

c. **Warning Tape Required.** When any foreign pipeline or utility line is proposed to cross a Magellan pipeline, Owner must place 6" wide McMaster-Carr No. 8288T12 or equal within Magellan's Easement Tract

in the following manner:

1) The tape must be placed directly over (parallel to) and at least 15 inches above the foreign line for the entire distance that it occupies Magellan's Easement Tract. Additionally, the tape must be placed directly over (parallel to) and at least 15 inches above each Magellan pipeline that is crossed for a minimum distance which is the greater of:

(a) a minimum distance of 20 feet on each side of the Magellan pipeline, or

(b) across the entire width of Magellan's Easement Tract

2) The placement of warning tape on each side of ***Magellan*** pipeline(s) **will** not be required for utility cables that are installed using the directional drill or jacking method.

d. **Crossings By Metal Pipelines or Conduits.** Metallic pipe crossing Magellan pipeline(s) may require Magellan to perform a cathodic protection interference survey. If interference with Magellan's cathodic protection system is detected and remediation is necessary, Owner agrees to cooperate with Magellan and to make necessary adjustments in Owner's interfering metallic pipe or other remediation to correct such interference problem insure that the Magellan cathodic protection system is operating properly.

e. **Crossing Requirements.** Electrical, fiber optic, local service communication, long distance carrier telephone, and utility cables should cross Magellan pipeline(s) with a ***minimum of 24-inches of vertical separation.*** All such lines must be covered with a *Concrete Slab* for the full width of the Easement Tract, if requested by Magellan. If such lines have an exposed concentric neutral, a test point from the ground wire shall be installed by the power company.

f. **Crossing Requirements For Lines Going Over a Magellan Pipeline.** In the event the electrical, fiber optic, local service communication, long distance carrier telephone, and utility cables cable crosses ***over*** a Magellan pipeline, such line shall be ***encased in red concrete across the full width of Magellan's Easement Tract,*** unless a variance is granted by Magellan, as set forth below.

g. **Written Authorization for Variance.** Owner must have written authorization from Magellan for any variance from the vertical separation requirements listed above and/or for any variance from the requirement for

encasement of high-voltage electrical lines in red concrete.

h. **Utility Poles and Guy Anchors.** Utility poles and guy anchors shall not be placed on Magellan's Easement Tract without a written agreement. With a written agreement, poles and anchors may be placed no closer than 20 feet to any Magellan pipeline Poles shall not be allowed to run parallel to a Magellan pipeline within the Magellan Easement Tract.

i. **Directional Drilling / Boring.**

1) Prior to commencing any horizontal directional drilling, Owner shall submit plans showing procedure and material descriptions for Magellan's approval. The plans and description shall include, but not be limited to the following:

- Profile and plan showing location of entry and exit points
- Work space required to perform the work
- Mud containment and disposal sites

2) Owner shall positively locate and stake the location of Magellan's existing pipelines and other underground facilities, including exposing any facilities located within 10 feet of the designed drilled path. Prior to commencing drilling operations, Owner shall modify drilling practices and down-hole assemblies to prevent damage to Magellan's existing pipelines and other facilities. Owner shall be responsible for losses and repairs occasioned by damage all Magellan pipelines and other facilities resulting from drilling or boring operations.

3) At all times, Owner shall provide and maintain instrumentation to document and accurately locate the pilot hole and the drill bit, to measure drill-string axial and torsional loads, and to measure drilling fluid discharge rate and pressure. At Magellan's request, Owner shall promptly provide Magellan with reasonable access to information and readings provided by these instruments, including copies of any written documentation.

4) Pilot Hole.

- The pilot hole shall be drilled along the path shown in the plan and profile drawings. No pilot hole shall be made that will result in any of the encroaching utility being installed in violation of laws and regulations or of Magellan's requirements described herein. However, safety for any adjacent utilities and/or structures is of utmost importance. Therefore, the listing of separation distances or tolerances herein does not relieve Owner from responsibility for safe operations or for damage to adjacent utilities and structures.
- If tolerances are not specified in the plan and profile drawings, the pilot hole shall have the following tolerances:

- Elevation of +0 feet and -15 feet
- Alignment of +/-20 feet as long as it does not come to within 10 feet of Magellan's pipeline
- Initial penetration of ground surface at exact location shown in the plan and profile drawings
- Final penetration of the ground surface within +/-10 feet of the alignment and within +30 feet and -0 feet of the length shown in the plan and profile drawings
- Curves shall be drilled at a radius equal to or greater than that specified in the plan and profile drawings. The drilled radius will be calculated over any 3 joints (range 2 type drill pipe) segment using the following formula:

  Rdrilled = (Ldrilled/Aavg) x 180/π

  Where: Rdrilled =drilled radius over Ldrilled

  Ldrilled = length drilled: no less than 75 feet and no greater than 100 feet

  Aavg = total change in angle over Ldrilled

- At the completion of the pilot-hole drilling, Owner shall provide to Magellan a tabulation of horizontal and vertical coordinates, referenced to the drilled entry point, which accurately describe the location of the pilot hole.

5) **Drilling Fluids.**

- The composition of drilling fluids proposed for use shall comply with all applicable laws and regulations.
- Owner is responsible for obtaining, transporting and storing any water required for drilling fluids.
- Disposal of drilling fluids and drill cuttings shall be Owner's responsibility and shall be conducted in compliance with applicable laws and regulations. Drilling fluid shall *not* be disposed of by placing fluids on or under the surface of Magellan's Easement Tract.
- Owner shall employ best efforts to maintain full annular circulation of drilling fluids. Drilling fluid returns at locations other than entry and exit points shall be minimized. If annular circulation is lost, Owner shall take steps to restore circulation. If inadvertent surface returns of drilling fluids occur, they shall be immediately contained with hand-placed barriers (e.g., hay bales, sand bags, silt fences, etc.) and collected using pumps as practical. If the amount of surface return is not great enough to allow practical collection, the affected area will be diluted with fresh water and the fluid will be allowed to dry and dissipate naturally. If

the amount of surface return exceeds that which can be contained with hand-placed barriers, small collection sumps (less than 5 cubic yards) may be used unless permits or other regulations prohibit the use of collection sumps. If the amount of surface return exceeds that which can be contained and collected using barriers or small sumps, or if the return of drilling fluids occurs in the body of water proper, drilling operations will be suspended until surface return volumes can be controlled.

6) **As-Built Drawing.** Owner shall provide to Magellan an as-built plan and profile drawing of the drilled crossing showing the location of the new crossing as well as the location of Magellan's pipeline.

5. **Roadway, Driveway, Railroad and Equipment Crossings.** No roadway, driveway, railroad or equipment crossings of any type shall be allowed to be constructed parallel to any Magellan pipeline within the boundaries of Magellan's Easement Tract.

a. **Pipeline Integrity Inspection.** A pipeline integrity review shall be performed by Magellan as described in provision "6" under "*C. Encroachment Planning*" (above).

b. **Load Bearing and Stress Limit Requirements.** Prior to any road, driveway, rail bed or equipment crossing construction, Magellan's engineer must determine whether the proposed compacted cover meets load-bearing requirements and provides adequate protection to limit stress on Magellan's pipeline or other facilities and must advise Owner of any additional requirements necessary to provide adequate protection.

c. **No Crossing Over Pipeline Bend.** Paved surfaces or rail beds shall not be allowed to cross a pipeline bend (point of inflection).

d. **Minimum Angle of Crossing.** Crossings should be as close to 90 degrees to Magellan pipeline(s) as possible, but not less than 30 degrees.

e. **Pipeline Casing Issues.** Magellan prefers that cased roadway and railroad crossings no longer be installed. If the carrier pipe under roadways and railroads requires adjustment or relocation, then instead of using casing, the carrier pipe will consist of extra strength material or heavier wall thickness to accommodate the additional longitudinal stress due to external loads. If a road or railroad crossing currently uses casing and the road or railroad is being widened and no other adjustment or relocation of the carrier pipe is required, then Magellan may elect to extend the casing pipe on the existing crossing(s) to accommodate additional road surface. If casing is used, it must not end under the roadway surface or track structure, but must extend across the entire length of the roadway or railroad right of way.

f. **Railroad Crossing Requirements.** Railroads shall be installed with a minimum compacted cover over the carrier pipe, as measured from the base of the rail to the top of the pipe, as follows (*see Figures 1 and 3*):

Location of Pipeline	Minimum Compacted Cover Over Top of Pipeline
Under track structure proper (Below bottom of rail)	6.0 feet
Under all other surfaces within the right of way or from the bottom of ditches	3.0 feet

g. **Roadway and Driveway Crossings.** Roadways and driveways, shall be installed with a minimum compacted cover over the carrier pipe, as measured from the top of the roadway surface to the top of the pipe, as follows (*see Figures 2 and 4*):

Location of Pipeline	Minimum Compacted Cover Over Top of Pipeline
Under roadway surface proper (Below surface of pavement)	4.0 feet
Under all other surfaces within the right of way or from the bottom of ditches	3.0 feet

h. **Crossing Pipelines Transporting Highly Volatile Liquids.** For Magellan pipelines transporting highly volatile liquids, minimum cover for a crossing at a drainage ditch must be 4.0 feet.

i. **When Additional Depth Required.** Depth greater than the minimum depths stated above may be required for a pipeline due to the combined stress of internal pipeline pressure and external loading pressure. Magellan will analyze each proposed crossing based on information provided by Owner to determine any additional depth that may be required for the pipeline for safe operation.

j. **Temporary Roads and Equipment Crossings.** Any such road or crossing must meet the following requirements:

- Must be located at a site approved by a Magellan field representative.
- Must provide adequate protection for Magellan's pipeline and other facilities, as determined by the appropriate Magellan engineer, so that the compacted cover meets load-bearing requirements and provides adequate protection to limit stress on the pipeline or other facilities.
- Owner shall place Six-inch wide plastic warning tape, McMaster-Carr No. 8288T12 or equal, over each pipeline for the width of the temporary road or equipment crossing, plus an additional 20 feet past each outside edge of such temporary road or equipment crossing

k. **Owner Required to Protect Magellan Pipelines.** Magellan may require Owner to put in place additional cover and/or stabilization (timbers, steel plate, crushed rock, concrete slab, etc.) at any approved equipment crossing in order to protect Magellan pipelines, taking into account possible effects of weather, pipeline depth, and type of vehicles proposed to cross the pipelines. Magellan will analyze each proposed crossing based on information provided by Owner to determine any additional depth or protection that may be required for safe pipeline operation.

l. **Heavy Equipment - Definition and Requirements.** Heavy equipment shall be defined as vehicles having a *gross weight* in excess of 80,000 pounds. Heavy equipment shall be prohibited from working directly on top of the active pipeline. For vehicles having a *gross weight* of 80,000 pounds or less, the pipeline must have a minimum of 4 feet of cover. Magellan must analyze the additional longitudinal stress due to external loads if the vehicles have a *gross weight* in excess of 80,000 pounds in order to determine required pipeline depth for safe operation.

6. **Parking Lots and Other Pavement.**

a. **Parking Lot and Pavement Requirements.** All parking lots and other pavement installed on Magellan's Easement Tract shall consist of a flexible surface such as asphalt. No reinforced concrete will be allowed.

b. **Pipeline Depth Under Parking Lot.** The depth of Magellan's pipelines under a parking lot must meet or exceed compacted cover requirements listed in the previous "Roadway, Driveway, Railroad, and Equipment Crossings" section above

7. **Waterway Crossings.**

a. **Pipeline Depth Requirements.** If Owner proposes to cross a Magellan pipeline with a waterway (river, stream, creek, irrigation canal, or drainage ditch), such crossing must result in Magellan's pipelines meeting or exceeding the minimum depth below the bottom of the waterway for compliance with then current pipeline construction standards and federal, state, and local regulations.

b. **Requirements for Waterway Crossings:**

1) Minimum Angle or Crossing. Crossings should be as close to 90 degrees to Magellan pipeline(s) as possible, but not less than 45 degrees.

2) **Vertical Separation Requirements for Waterway Crossing.** Pipelines to be crossed must have a minimum vertical separation of five (5) feet, as measured from the bottom of the waterway to the outermost part of a Magellan pipeline, facility or appurtenance

3) **Adding Weight to Pipeline for Negative Buoyancy.** Owner shall bear the cost of Magellan adding sufficient weight or mechanical devices to any Magellan pipeline crossed by a waterway in order to create negative buoyancy for such pipeline.

8. **Blasting.**

a. **Magellan Written Approval Required – Plan To Be Submitted.** Magellan must approve any proposed blasting operations that could affect its pipelines or facilities. Should blasting be necessary, a comprehensive plan must be submitted to Magellan for review and written approval.

b. **Safety Considerations – Damage Prevention Plan.** For safety and preservation of Magellan assets, all blasting shall be in accordance with federal, state, and local governing agencies and the Magellan's "Damage Prevention Plan for Blasting Near Company Facilities". A copy of said plan will be made available upon request.

E. **EXCAVATION NEAR MAGELLAN PIPELINES.**

1. **STATE "ONE-CALL" REQUIRED.** No excavation or activity listed in "*A. GENERAL - 1. Encroachment Definition*" above shall be performed by Owner in the vicinity of Magellan's facilities or within Magellan's Easement Tract until proper telephone notification has been made to the appropriate "One Call" system and a Magellan representative is on-site to monitor excavation activities. All of the states in which Magellan conducts pipeline operations have "One Call" laws, which require 48-72-hours notification prior to any excavation related activities. After making a One-Call, the state One-Call agency will notify Magellan to mark accurately, in a reasonable and timely manner, the location of the Magellan's pipeline facilities in the vicinity of the proposed encroachment.

2. **ONE-CALL NOTIFICATION.** *The following list is provided for convenience, but is not warranted by Magellan to be complete or accurate (telephone numbers were copied from each state's web site on 1/5/2004).* **Owner is required to acquire and call the appropriate One-Call number(s) for its location of activity.**

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Current "ONE-CALL" numbers and information can be found on each state's "ONE-CALL" website:

Arkansas - www.arkonecall.com/ - 800 482-8998
Colorado - www.uncc2.org/ - 800 922-1987
Illinois - www.illinoisicall.com/ - 800 892-0123
Iowa - www.iowaonecall.com/ - 800 292-8989
Kansas - www.kansasonecall.com/ - 800 344-7233
Minnesota -www.gopherstateonecall.org/ - - 800 252-1166
Missouri - www.mo1call.com/ - 800 344-7483
Nebraska - www.ne-diggers.com/ - 800 331-5666
North Dakota -www.ndonecall.com/ - 800 795-0555
Oklahoma - www.callokie.com/ - 800 522-6543
South Dakota -www.sdonecall.com/index.asp - 800 781-7474
Texas - www.texasonecall.com/ - 800 245-4545
Wisconsin - www.diggershotline.com/ - 800 242-8511

Alternatively, the National One-Call number – (888) 258-0808 - may be used to register a proposed excavation and to subsequently notify underground utility operators with assets in the vicinity.

3. Excavation Plan Approval. Owner shall submit to Magellan for its approval plans for any proposed excavation on the Magellan Easement Tract. No excavation on Magellan's Easement Tract shall be commenced until Owner has secured Magellan's written approval of the plans. The excavation work shall be in compliance with all applicable laws and regulations. Owner is also referred to the Common Ground Alliance Best Practices (referenced in this document).

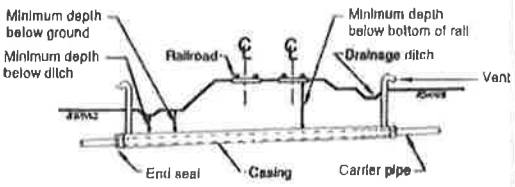
4. Magellan Representative On-Site for Excavation. A Magellan representative must be on-site when an excavation is occurring on Magellan's Easement Tract (*see provision "2" under "A. General" beginning on page 1*).

5. Removal of Side-Cutting Teeth from Equipment. Side-cutting teeth shall be removed from buckets of excavating equipment.

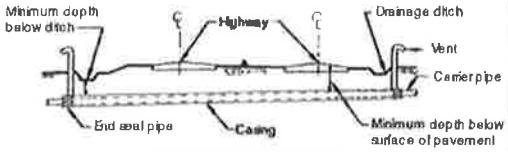
6. Parallel Excavating Required. When, in preparation for crossing any Magellan pipeline with any other pipeline or with electric line, communication line, roadway or any other structure or facility, Owner needs to locate a Magellan pipeline by use of mechanical means, Owner must perform such locating activity by excavating parallel to the Magellan pipeline with such mechanical means, but shall cease using the mechanical means when it reaches a point within two feet of the Magellan pipeline (*see next provision*).

7. Exposing Pipeline by Hand. Excavating within 2 feet of any Magellan pipeline shall be done by *hand-digging* until the pipeline is exposed and its location is accurately known. Then, Owner must position the excavation equipment so that from the point of operations the equipment will not reach within 2 feet of any Magellan pipeline.

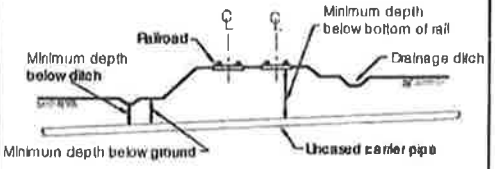
RAILROAD AND HIGHWAY CROSSINGS



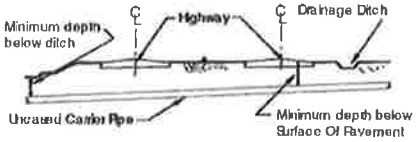
CASED RAILROAD CROSSING
FIGURE 1



CASED HIGHWAY CROSSING
FIGURE 2



UNCASED RAILROAD CROSSING
FIGURE 3



UNCASED HIGHWAY CROSSING
FIGURE 4

EXHIBIT "C"

PLAN DRAWINGS

DESIGN DATA				
Traffic CR 19 to 9th St	Average Daily			Max Hr.
Current 2014	Pass 5,020	Trucks 860	Total 5,880	590
Forecast 2045	Pass: 9,860	Trucks 1,690	Total 11,550	1,155
Traffic 9th St to 45th St	Average Daily			Max Hr.
Current 2014	Pass 6,120	Trucks: 980	Total: 7,100	710
Forecast 2045	Pass: 13,100	Trucks: 2,090	Total: 15,190	1,520
Clear Zone Distance 28 ft	Design Speed 45 mph			
Minimum Sight Dist. for Stopping 360 ft	Bridges N/A			
Sight Dist. for No Passing Zone 700 ft				
Pavement Design Life 30 years	Rigid Design ESALs 4,979,000 (CR 19 to Center) 5,903,000 (Center to 9th St)			

STATE	PROJECT NO.	PCN	SECTION NO	SHEET NO
ND	SU-8-992(036)037	20057	1	1

Job #__

City of West Fargo, City of Fargo, and Cass County North Dakota

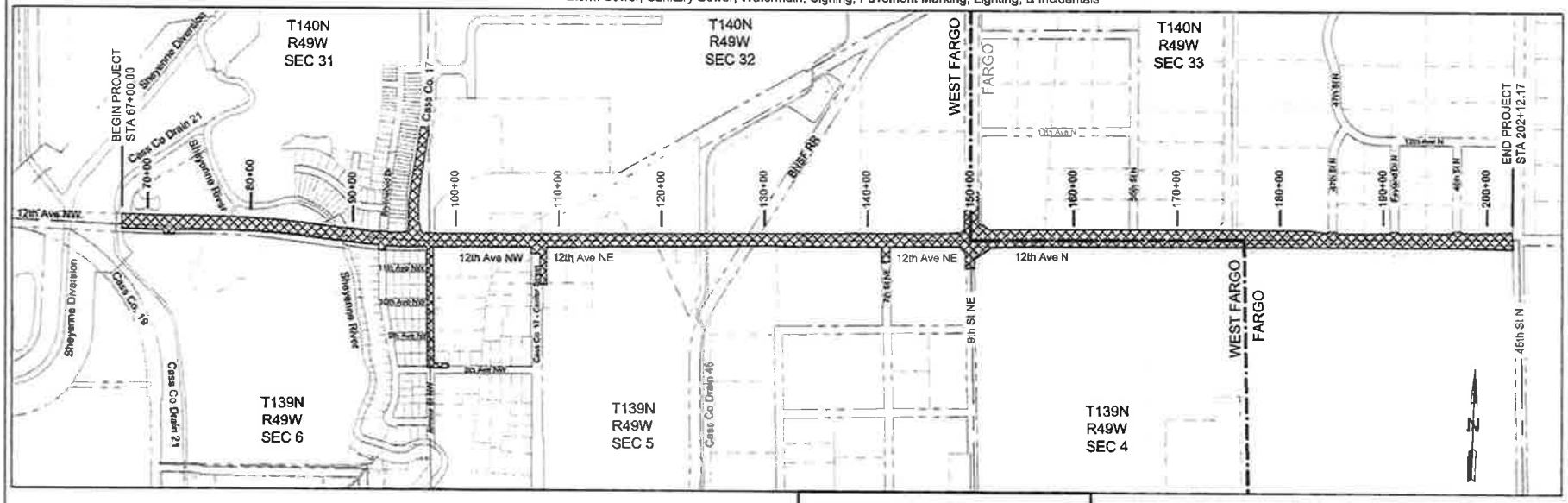
SU-8-992(036)037

West Fargo Improvement District 1279
Fargo Improvement District PN-15-A1
Cass County Project CH-1501
T140N R49 W Sec 31,32,33 & T139N R 49W Sec 4, 5, 6
12th Avenue North
Cass County Road 19 to 45th Street
Grading, Salvaged Base, PCC Pavement, Curb & Gutter, Sidewalk,
Storm Sewer, Sanitary Sewer, Watermain, Signing, Pavement Marking, Lighting, & Incidentals

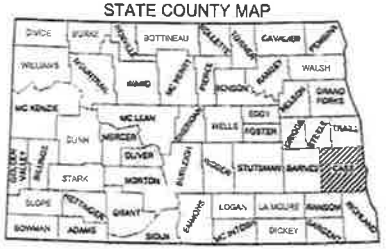
GOVERNING SPECIFICATIONS
2014 Standard Specifications adopted by the North Dakota Department of Transportation and the Supplemental Specifications effective on the date the project is advertised.

PROJECT NUMBER \ DESCRIPTION	NET MILES	GROSS MILES
SU-8-992(036)037	2.559	2.559

ALL ELEVATIONS NGVD 29



STATE COUNTY MAP



DESIGNERS

Mike Johnson	Austin Yates
Tony Lapp	Crystal Topping
Scott Schneider	Tim Golka
Yang Liu	
Dave Monge	

APPROVED DATE 11/13/14
Chris Brungardt /s/
PUBLIC WORKS DIRECTOR
CITY OF WEST FARGO

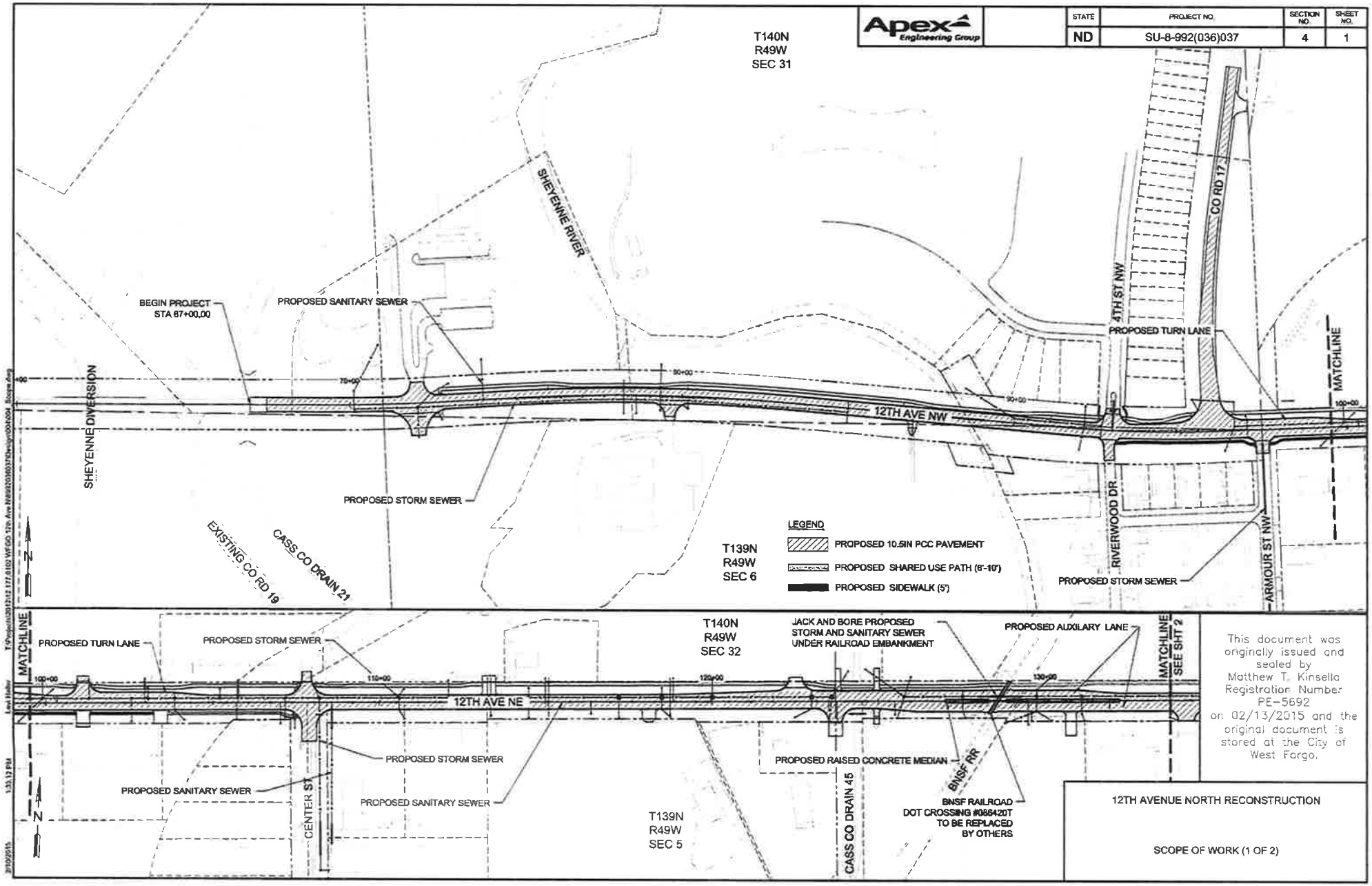
APPROVED DATE 11/13/14
April E. Walker /s/
CITY ENGINEER
CITY OF FARGO

APPROVED DATE 11/13/14
Jason P. Benson /s/
COUNTY ENGINEER
CASS COUNTY HIGHWAY DEPARTMENT

I hereby certify that the attached plans were prepared by me or under my direct supervision and that I am a duly registered professional engineer under the laws of the state of ND.

APPROVED DATE 11/12/14
Matthew T. Kinsella /s/
Apex Engineering Group

This document was originally issued and sealed by Matthew T. Kinsella Registration Number PE-5692, on 11/12/2014 and the original document is stored at the City of West Fargo



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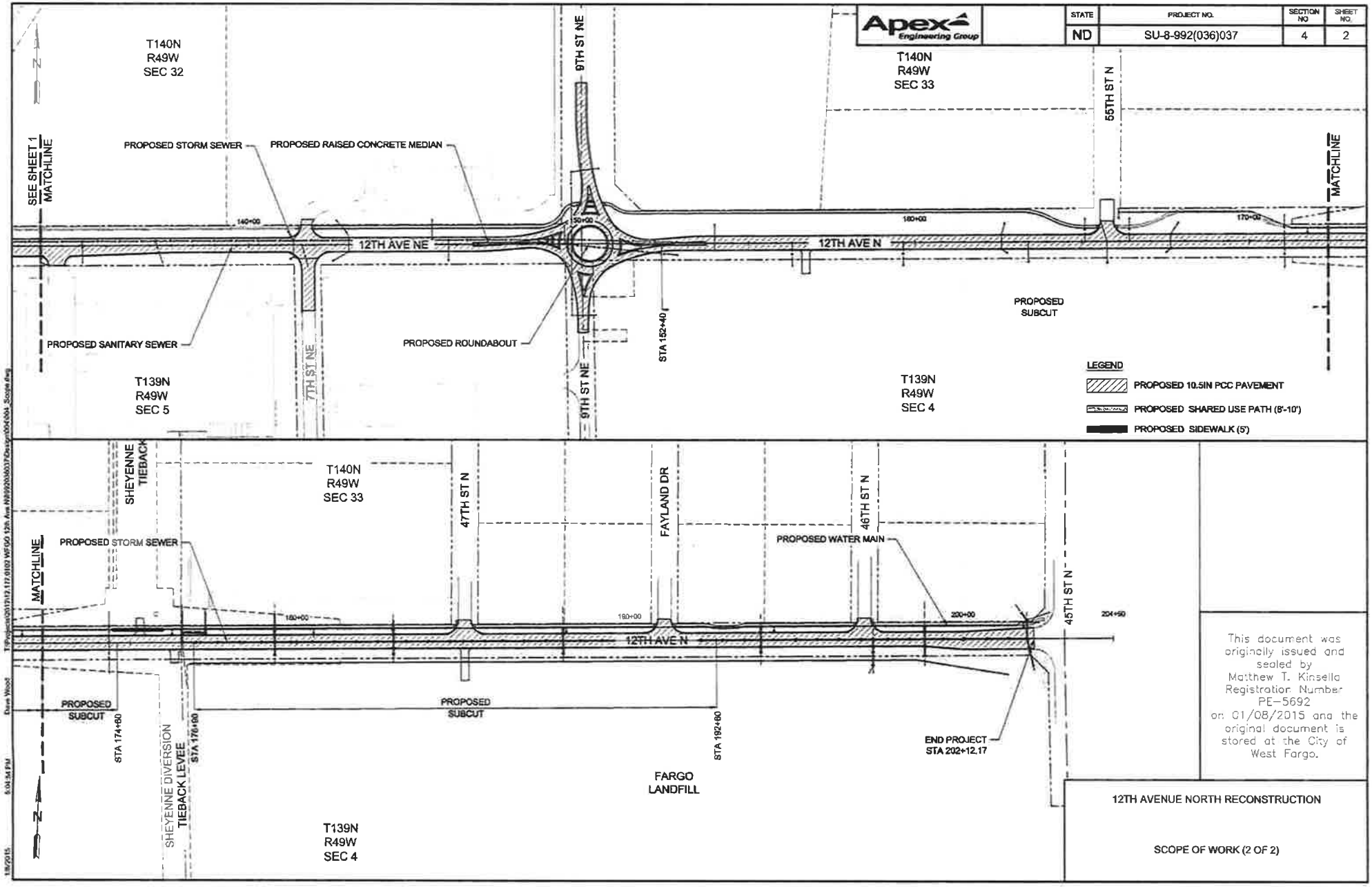
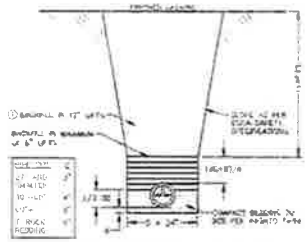
12TH AVENUE NORTH RECONSTRUCTION

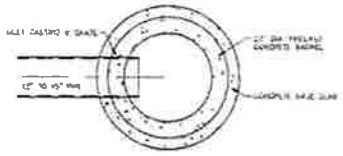
SCOPE OF WORK (1 OF 2)


Apex Engineering Group
STATE
ND
PROJECT NO.
SU-8-992(036)037
SECTION NO
4
SHEET NO.
2
T140N
R49W
SEC 32
T140N
R49W
SEC 33
T139N
R49W
SEC 5
T139N
R49W
SEC 4
SEE SHEET 1
MATCHLINE
PROPOSED STORM SEWER
PROPOSED RAISED CONCRETE MEDIAN
PROPOSED SANITARY SEWER
PROPOSED ROUNDABOUT
12TH AVE NE
12TH AVE N
9TH ST NE
7TH ST NE
55TH ST N
STA 152+40
PROPOSED SUBCUT
LEGEND
PROPOSED 10.5IN PCC PAVEMENT
PROPOSED SHARED USE PATH (8'-10')
PROPOSED SIDEWALK (5')
SHEYENNE TIEBACK
47TH ST N
FAYLAND DR
46TH ST N
45TH ST N
PROPOSED WATER MAIN
PROPOSED SUBCUT
STA 174+80
SHEYENNE DIVERSION TIEBACK LEVEE
STA 176+80
STA 192+80
FARGO LANDFILL
END PROJECT
STA 202+12.17
This document was originally issued and sealed by Matthew T. Kinsella Registration Number PE-5692 on 01/08/2015 and the original document is stored at the City of West Fargo.
12TH AVENUE NORTH RECONSTRUCTION
SCOPE OF WORK (2 OF 2)

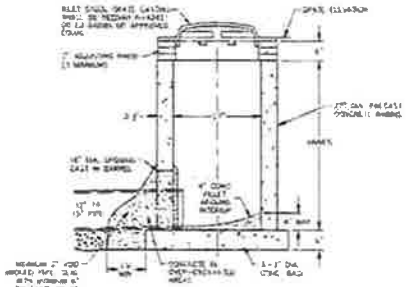
moore engineering, inc.	STATE	PROJECT NO.	PCN	SECTION NO	SHEET NO
	N.D.	SU-8-992(036)037	19892	20	9



RCP STORM SEWER TRENCH
NO SCALE CITY OF WEST FARGO (STA 68+00 TO 175+32)

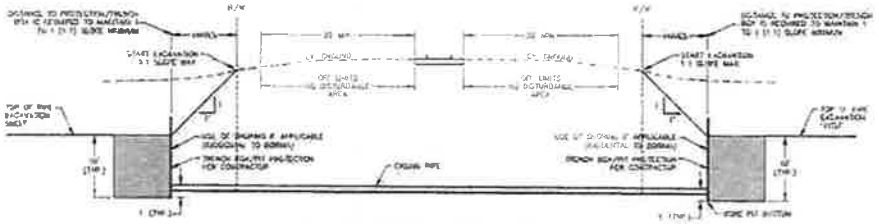


INLET (PLAN VIEW)

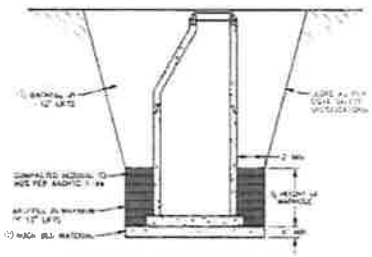


INLET (SIDE VIEW)

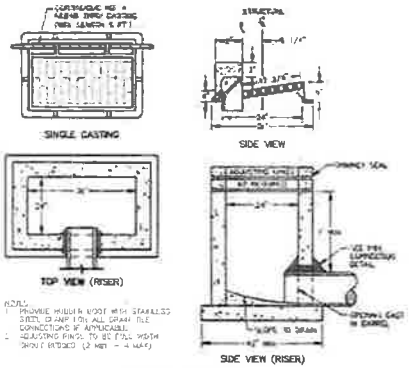
INLET
CITY OF WEST FARGO (STA 68+00 TO 175+32)



RAILROAD BORE & CASING LIMITS
CITY OF WEST FARGO (STA 68+00 TO 175+32)

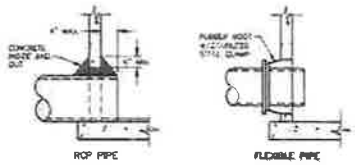


MANHOLE/INLET/CATCH BASIN TRENCH
CITY OF WEST FARGO (STA 68+00 TO 175+32)



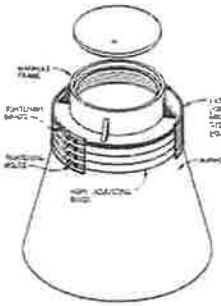
SINGLE CASTING
SIDE VIEW
TOP VIEW (RISER)
SIDE VIEW (RISER)

INLET - TYPE 2
CITY OF WEST FARGO (STA 68+00 TO 175+32)

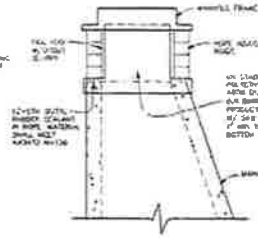


RCP PIPE
FLEXIBLE PIPE

STORM SEWER PIPE CONNECTION
CITY OF WEST FARGO (STA 68+00 TO 175+32)

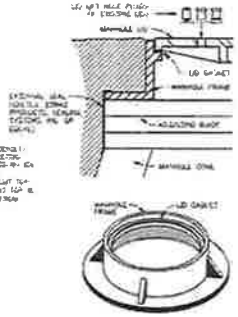


EXTERNAL MANHOLE SEAL (OPTION 1)

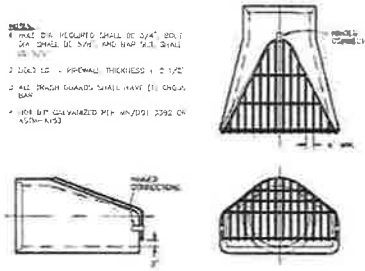


EXTERNAL MANHOLE SEAL (OPTION 2)

MANHOLE SEALS DETAIL
CITY OF WEST FARGO (STA 68+00 TO 175+32)



MANHOLE LID GASKET DETAIL



TRASH RACK
CITY OF WEST FARGO (STA 68+00 TO 175+32)

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12TH AVENUE NORTH RECONSTRUCTION

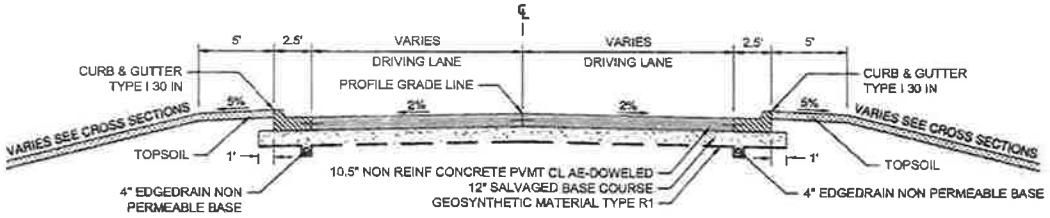
DETAILS

WEST FARGO STORM SEWER & LANDSCAPING

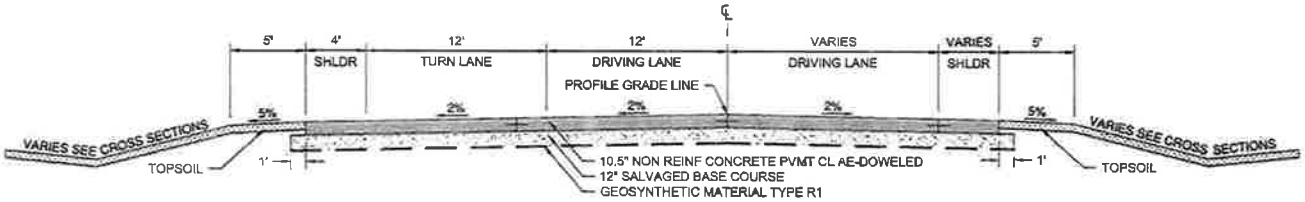
FILE LOCATION: R:\Civil 3D Projects\15843\DRAWINGS\DESIGN\15843-DETAILS.dwg

12/11/2014 10:35:50 AM

Apex Engineering Group	STATE	PROJECT NO.	SECTION NO.	SHEET NO.
	ND	SU-8-992(036)037	30	8



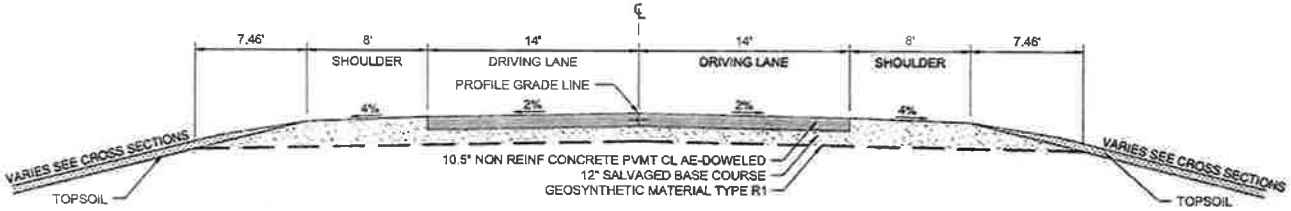
PROPOSED TYPICAL SECTION 14 - 9TH ST NE
STA 447+82.06 to STA 448+41.01
STA 451+75.32 TO STA 452+25.88



PROPOSED TYPICAL SECTION 15 - CASS COUNTY ROAD 17
STA 1+06.44 TO STA 3+05.63

Notes:

1. Southbound right turn lane taper from sta 3+03.63 to Sta 4+44.22



PROPOSED TYPICAL SECTION 16 - CASS COUNTY ROAD 17
STA 4+44.22 TO STA 11+00.00

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12TH AVENUE NORTH RECONSTRUCTION

TYPICAL SECTIONS

PROPOSED

12/31/2014 11:12:59 AM Dave Wood T:\Projects\2012\12.177.0102 WFDO 12th Ave N\6\2013\03\7-Design\03\0003TP_Typical Sections.dwg

FILE LOCATION: R:\Civil 3D Projects\18843\DRAWINGS\UESNG\18843-PP.dwg

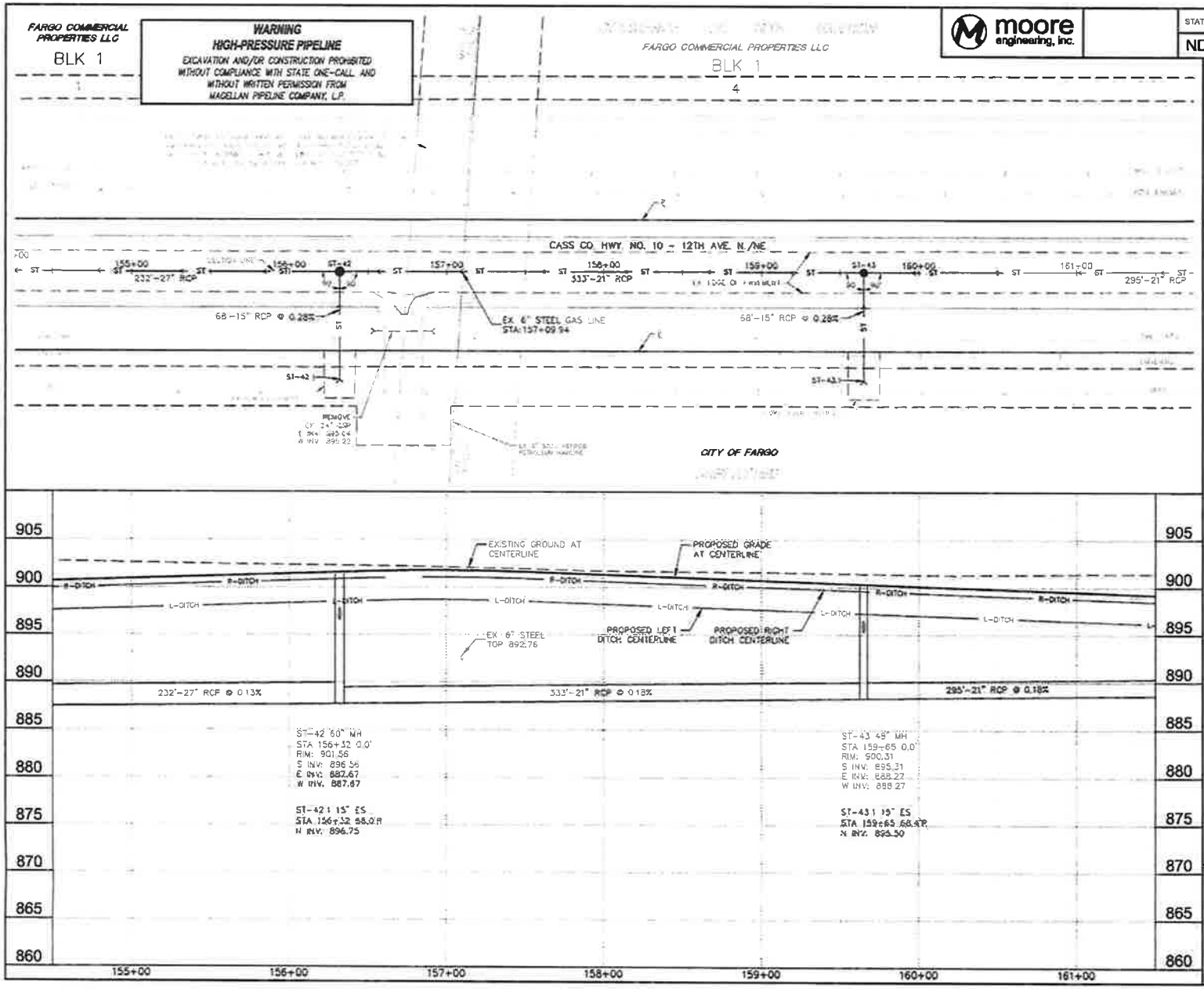
12/11/2014 10:41:36 AM

FARGO COMMERCIAL PROPERTIES LLC
BLK 1

WARNING
HIGH-PRESSURE PIPELINE
EXCAVATION AND/OR CONSTRUCTION PROHIBITED WITHOUT COMPLIANCE WITH STATE ONE-CALL AND WITHOUT WRITTEN PERMISSION FROM MAGELLAN PIPELINE COMPANY, L.P.

moore engineering, inc.

STATE	PROJECT NO	SECTION NO	SHEET NO
ND	SU-8-992(036)037	55	14



714 210 PIPE CONC REINF 15IN CL III-STORM DRAIN
ST-42 - ST-42.1 & ST-43 - ST-43.1 — 68 LF & 68 LF

714 405 PIPE CONC REINF 21IN CL III-STORM DRAIN
ST-42 - Sta 161+50 — 518 LF

714 710 PIPE CONC REINF 27IN CL III-STORM DRAIN
Sta 154+50 - ST-42 — 182 LF

714 3005 END SECT-CONC REINF 15IN
ST-42.1 (Sta 156+32, 68.0' R) & ST-43.1 (Sta 159+65, 68.4' R) — 1 EA & 1 EA

722 100 MANHOLE 48IN
ST-43 (Sta 159+65, 0.0') — 1 EA

722 110 MANHOLE 60IN
ST-42 (Sta 156+32, 0.0') — 1 EA

N
W
E
S
0 60
Scale in Feet

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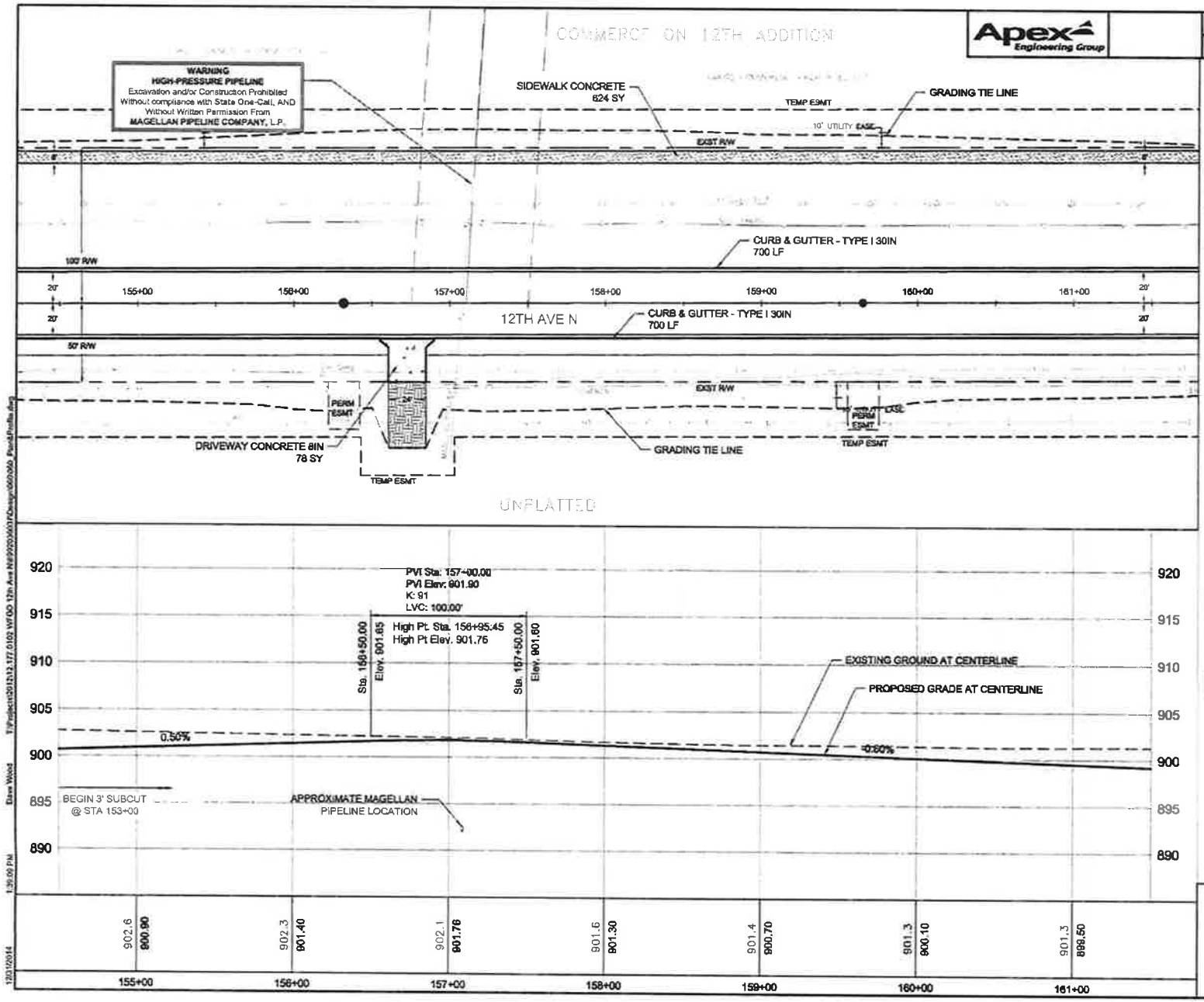
12TH AVENUE NORTH RECONSTRUCTION

DRAINAGE LAYOUTS

STA 154+50 - 161+50



Apex Engineering Group

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SU-8-992(036)037	60	14

302 0100 SALVAGED BASE COURSE

Sta 154+50 to Sta 161+50	2285 TON
Sta 154+50 to Sta 161+50 LT - SIDEWALK	130 TON
Sta 156+70 RT - DRIVEWAY	17 TON

550 0312 10 SIN NON REINF CONCRETE PVMT CL AE - DOWELED

Sta 154+50 to Sta 161+50	3112 SY

746 0190 CURB & GUTTER - TYPE I 30IN

Sta 154+50 to Sta 161+50 LT	700 LF
Sta 154+50 to Sta 161+50 RT	700 LF

750 0115 SIDEWALK CONCRETE 4IN

Sta 154+50 to Sta 161+50 LT	624 SY

750 1020 DRIVEWAY CONCRETE 8IN

Sta 156+70 RT	78 SY

Legend

- Salvaged Base Course
- Commercial Grade Hot Mix Asphalt
- Pigmented Imprinted Concrete
- Sidewalk Concrete
- Concrete Median Nose Paving
- Driveway Concrete 8IN

N

0 30 60

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12TH AVENUE NORTH RECONSTRUCTION

PLAN & PROFILE

STA 154+50 - 161+50

benesch

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SU-8-992(036)037	140	8

STREET LIGHT POLE B-1-5
STA 154+15, 26' LT

CIRCUIT B-1 (TYP)
(3) #6 RHW

STREET LIGHT POLE B-1-4
STA 156+35, 26' LT

STREET LIGHT POLE B-1-3
STA 158+47, 26' LT

154+00 155+00 156+00 157+00 158+00 159+00 160+00

12TH AVE N

WARNING
HIGH-PRESSURE PIPLEINE
Excavation and/or Construction Prohibited
Without compliance with State On-Call, AND
Without Written Permission
MAGELLAN PIPELINE COMPANY, LP.

STREET LIGHT POLE B-1-2
STA 160+74, 26' LT

CIRCUIT B-1 (TYP)
(3) #6 RHW

STREET LIGHT POLE B-1-1
STA 162+94, 26' LT

FEED POINT (B)
STA 165+04, 56' LT
INSTALL PAD MOUNTED, METERED, FEED POINT
(2 CIRCUITS) WITH 2-400A CIRCUITS (SYSTEM B)

2" CONDUIT (STUB)

STREET LIGHT POLE B-2-1
STA 165+03, 26' LT

55TH ST N

CIRCUIT B-2 (TYP)
(3) #6 RHW

STREET LIGHT POLE B-2-2
STA 167+23, 26' LT

161+00 162+00 164+00 166+00 167+00

12TH AVE N

LEGEND

POLE A-1-2
POLE NUMBER
CIRCUIT NUMBER
FEED POINT NUMBER

STREET LIGHT STANDARD 40' MOUNTING HEIGHT AND 215W LED LUMINAIRE

2" INNERDUCT / CONDUCTOR

PROPOSED FEED POINT

NOTE:

1. EXISTING UNDERGROUND AND OVERHEAD UTILITIES HAVE BEEN PLOTTED FROM AVAILABLE INFORMATION. THEREFORE, THEIR LOCATIONS MUST BE CONSIDERED APPROXIMATE ONLY. IT IS THE RESPONSIBILITY OF THE INDIVIDUAL CONTRACTOR TO EXACTLY LOCATE EACH UTILITY BEFORE ACTUAL CONSTRUCTION. CONTRACTOR SHALL COORDINATE WITH THE PROJECT ENGINEER FOR NEWLY CONSTRUCTED UTILITIES LOCATIONS.
2. STREET LIGHT SYSTEM B AND C SHALL BE INSTALLED PER CITY OF FARGO SPECIFICATIONS.
3. CONTRACTOR SHALL INSTALL ONE EXTRA 2" CONDUIT IN FEED POINT B FOUNDATION. CONTRACTOR SHALL CAP CONDUIT FOR FUTURE USE.
4. SEE SECTION 6 FOR CIRCUIT B CONDUCTOR INFORMATION.

N

0 30 60

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12TH AVENUE NORTH RECONSTRUCTION

LIGHTING

STA 168+00 - 183+00

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Topping, Crystal
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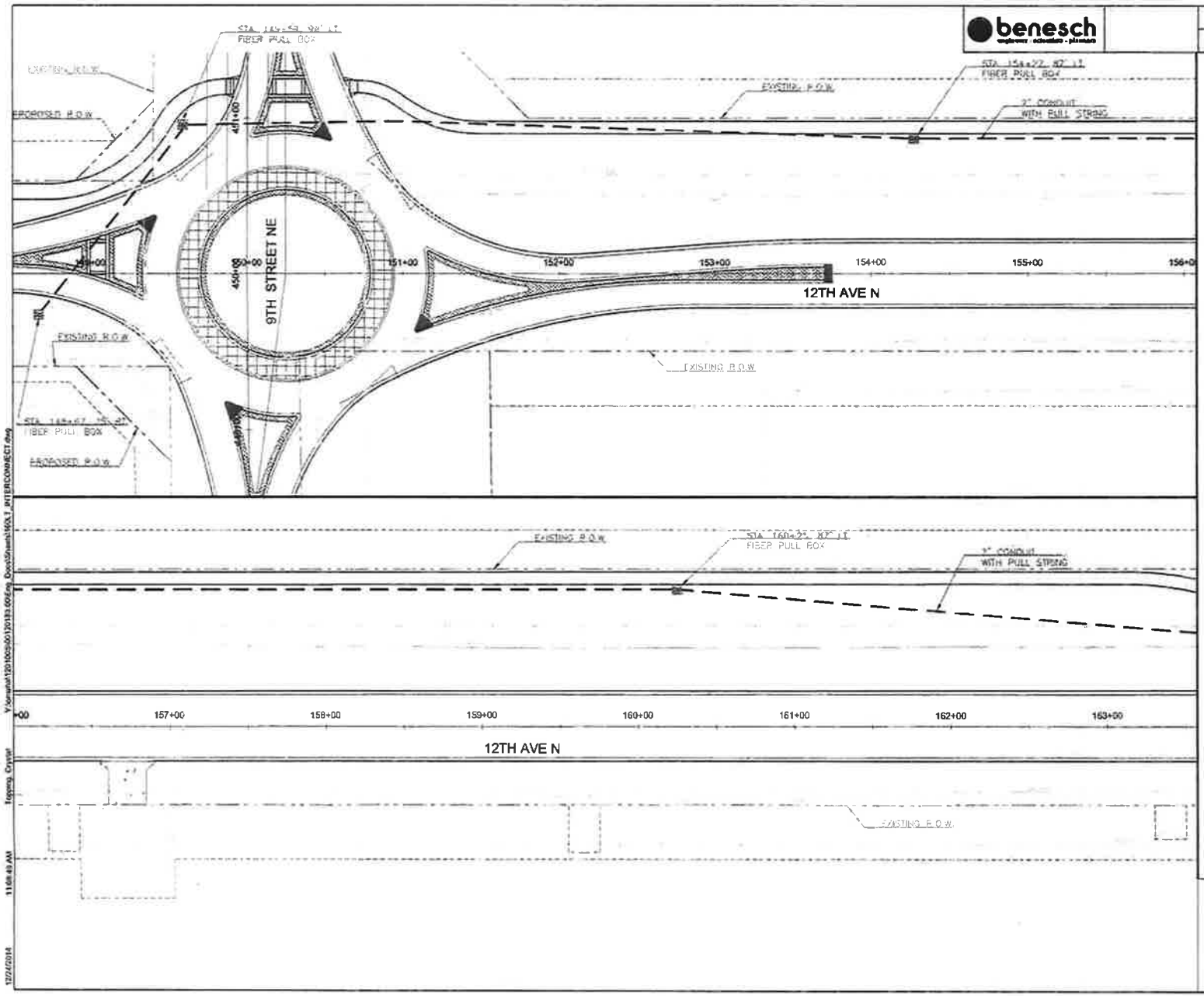
12/24/2014



STATE	PROJECT NO	SECTION NO	SHEET NO
ND	SU-8-992(036)037	160	1

NOTES:

1. Existing underground and overhead utilities have been plotted from available information. Therefore, their locations must be considered approximate only. It is the responsibility of the individual contractor to exactly locate each utility before actual construction. Contractor shall coordinate with the project engineer for newly constructed utilities locations.
2. Conduit and fiber pull boxes shall be in accordance to the City of Fargo Specifications.

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12TH AVENUE NORTH RECONSTRUCTION

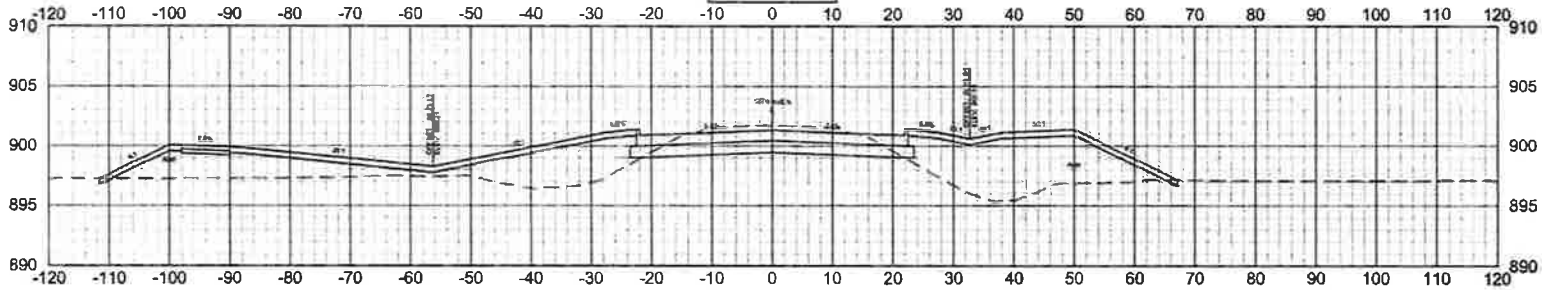
IT CONDUIT PLAN

STA 148+50 - 163+00

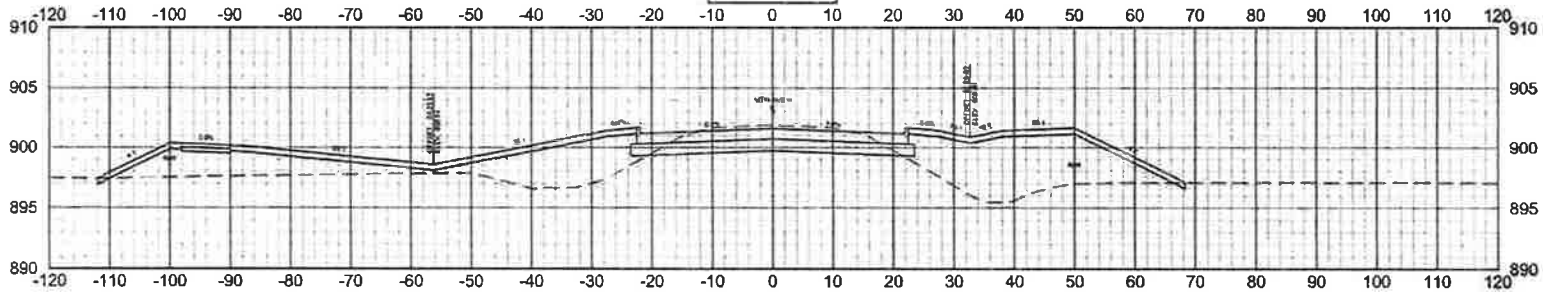
Apex Engineering Group	STATE	PROJECT NO.	SECTION NO.	SHEET NO.
	ND	SU-8-992(036)037	200	82

ALL ELEVATIONS ARE BASED ON THE VERTICAL DATUM OF NGVD 29 (UNLESS NOTED OTHERWISE)

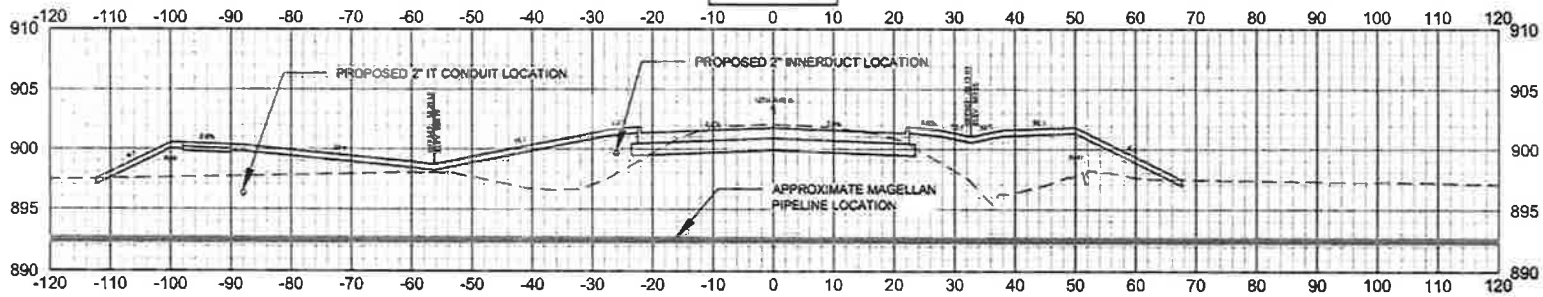
158+00.00



157+50.00



157+00.00



11/21/2014 3:46:33 PM Brent Muscha T:\Projects\2012\12.177.0102 WFGO 12th Ave N\SU-8-992(036)037\Utilities\Magellan Permit\CROSS SECTION.dwg

FORM D-8
(Rev. 12/05)

Crossing/Encroachment Approval

Cenex Pipeline, LLC
Front Range Pipeline, LLC

Pipeline System: Cenex Pipeline LLC Pipeline Segment: Minot to Fargo

Location: MP_____ Stationing: _____ Lat _____ Long _____ Datum_____

Company: Apex Engineering Group Contractor: _____

X Crossing ___ Encroachment One-Call ID # or reference # _____

Type of crossing/ encroachment: ___ HDD ___ Conventional bore ___ Conventional Trench ___ Pipe Pushing Operation
___ Other _____

Section 1: Contact contractor performing work and confirm details of Crossing/Encroachment Plan:		
Confirm that the exact location of the proposed excavation been marked in **WHITE** or that temporary survey marks **PINK** have been set.		
Type of utility:	___ Gas, oil, steam, petroleum or other hazardous liquid or gaseous materials **YELLOW** ___ Electric power lines, cables or conduits, and lighting cables **RED** ___ Water, irrigation, and slurry lines **BLUE** ___ Communications, cable TV, alarm or signal lines, cables, or conduits. **ORANGE** ___ Sewers, storm sewer facilities, or other drain lines **GREEN** ___ Reclaimed water, irrigation and slurry lines **PURPLE** X Other **Street Improvements**	
Is drilling profile available?	__ No __ Yes If Yes, attach a copy **NA**	
For crossing, what type of location technique will be used to positively ID CHS Inc pipeline location	X Potholing __ Conventional Excavation __ Other* (Note: If potholing, document on Form I-8: Potholed, unable to perform detailed external inspection.)	
Will existing grade be lower?	X No __ Yes*	* Requires approval per Section 2
Planned minimum clearance for crossing (below CHS Facility):	__ 24 inches below __ Other* __ 18 inches below* **NA**	* Requires approval per Section 2
Planned minimum separation for encroachment:	__ 25 feet from outside wall to outside wall __ Other* X Not Applicable	* Requires approval per Section 2
Will foreign body be under Cathodic Protection?	__ No __ Yes* **NA**	* Requires approval per Section 2

Review contractor's Crossing/Encroachment Plan with Manager, Pipeline and Terminals or Engineering Manager, keep in mind the following items

- Which CHS Inc. staff should be onsite
- Who will expose the CHS Inc. pipeline
- Minimum clearance/separation
- Casing requirements
- CP requirements, i.e. bond, test lead, shielding, etc
- Verification of location during drilling/boring activities, i.e. potholing, exposing pipeline, electronic tracking
- Tracking techniques to be used during the bore, HDD or pushing operation
- Review drill/bore profile
- Changes in existing grade profile
- Scheduling
- Etc.

Section 2: Convey the following CHS Inc. Right of Way Development Provisions to Contractor/Company:

- CHS Inc. maintains its pipelines in accordance with industry standards for safe operations. Should a Developer/Landowner/Utility Company (hereinafter referred to as "Developer") propose plans to alter the area through which a CHS Inc. pipeline passes, causing the pipeline not to meet these standards, modifications will be made. The cost of such modifications will be borne by the Developer.
- No buildings, engineering works, septic systems or other similar permanent structures will be allowed over any portion of our easement.
- Roads overlying a CHS Inc. pipeline will be allowed only with Developer's execution of a Hold Harmless Agreement which releases CHS Inc. from all damages to the asphalt and concrete associated with any maintenance performed by CHS Inc. All roads passing over a CHS Inc. pipeline where the pipeline depth is less than 48 inches (including barrow ditches) will require the installation of concrete coating around our line for the entire length that lies under the road. In addition, it may be necessary to lower or reroute the line at the point of crossing to insure that it is not subjected to excessive stress from movement of traffic. Any such modification to the line will be made at the Developer's expense.
- At any point in the easement where the existing grade profile will be lowered by the removal of earth, the CHS Inc. pipeline must be lowered to a depth that provides a minimum cover of 36 inches (residential areas may require 48 inches) after final grading. Any lowering which is necessary shall be done at Developer's expense and shall include coating and wrapping the entire exposed portion of the line.
- Construction of concrete parking lots over the pipeline will not be allowed. Asphalt parking lots overlying the line will be allowed only with Developer's execution of a Hold Harmless Agreement that releases CHS Inc. from all damages to the asphalt associated with any maintenance performed on our pipeline.
- All utilities that cross CHS Inc. pipeline must pass underneath the existing line by a minimum of 18 inches, and the crossing shall be as close to 90° as possible and adequately marked on both sides of the pipeline. Telephone cables, electric cables and PVC gas lines must be encased in a conduit of no less than 2" diameter and/or covered with a red concrete casing 10 feet on both sides of the pipeline. All utilities that parallel to a CHS Inc. pipeline will maintain a minimum separation distance of 25 feet from the utility's outside wall to CHS Inc. pipeline's outside wall. A CHS Inc. representative will be onsite during crossing or exposure.
- If any lines crossing a CHS Inc. pipeline that requires cathodic protection, an interference survey shall be made and the necessary steps will be taken to prevent the sacrifice of either line. This will be done at Developer's expense.
- CHS Inc. requires a minimum of five working days notice prior to any excavation or construction across our right of way so that the CHS Inc. pipeline can be marked to minimize to possibility of accidental damage. A CHS Inc. representative will be present when a CHS Inc. pipeline is exposed.
- Changes or modifications to these provisions must be approved by the Manager, Pipelines and Terminals or Engineering Manager

___Acceptable: Company/Contractor: _____

Representative: _____Date: _____

___Not acceptable: Have Company/Contractor Representative resolve issues with Manager, Pipeline and Terminals or Engineering Manager

___Resolved: attach approved changes

CHS Inc. Representative _____Date:_____

Developer Representative _____Date:_____

Make sure the following items are scheduled and assigned to the appropriate qualified employee:

- Location and marking of CHS Inc.'s pipeline assigned to: _____
- CHS Inc. on-site personnel to follow through on crossing/encroachment requirements, and monitor progress assigned to: _____
- Inform affected staff, i.e. Supervisor, Instrument Technicians, Local Instrument Technicians, Control Center Operators, etc.

Make sure applicable forms are completed

- ___ Form I-8 External Inspection of Pipe Exposed
- ___ Form I-2 Pipeline Repair Form
- ___ Other_____
- ___ Other_____

Report Submitted by:	Date:
Reviewed by:	Date:

Supply a duplicate copy to Engineering Manager

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 _____

AGREEMENT BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of «Proj_City» ("Owner") and

_____ ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

«Complete_Proj_Title»
«Proj_Description»
«Proj_City», «Proj_State»

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

«Complete_Proj_Title»
«Proj_Description»
«Proj_City», «Proj_State»

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Moore Engineering, Inc. & Apex Engineering (Engineer).Owner assumes all duties and responsibilities, and has the rights and authority to assign and Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Starting Work*

A. All work under this contract shall not begin prior to_____. A Notice to Proceed will be issued to the Contractor in accordance with Article 2 of the General Conditions, indicating the date of commencement of Contract Times.

ARTICLE 5 – CONTRACT PRICE

5.01 NDDOT shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraph 5.01.A below:

A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item as indicated in the Bid Proposal.

The Bid prices for Unit Price Work set forth in the bid proposal, as of the Effective Date of the Agreement are based on estimated quantities.

5.02 NDDOT payment process is outlined in NDDOT Standard Specifications for Road and Bridge Construction.

ARTICLE 6 – CONTRACTOR'S REPRESENTATIONS

6.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

F. Based on the information and observations referred to in Paragraph 6.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 5, inclusive).
2. Performance bond (pages 1 to 3, inclusive).
3. Payment bond (pages 1 to 3, inclusive).
4. Other bonds (pages _____ to _____, inclusive).
   a. _____ (pages _____ to _____, inclusive).
   b. _____ (pages _____ to _____, inclusive).
   c. _____ (pages _____ to _____, inclusive).
5. General Conditions (pages 1 to 52, inclusive).

6. Supplementary Conditions (pages 1 to fill in when SC complete, inclusive).
7. Specifications as listed in the table of contents of the Project Manual.
8. Drawings consisting of fill in when Plans complete sheets with each sheet bearing the following general title: «Complete_Proj_Title».
9. Addenda (numbers _____ to _____, inclusive).
10. Exhibits to this Agreement (enumerated as follows):
    a. Contractor's Bid (pages 1 to fill in when BP complete, inclusive).
    b. Documentation submitted by Contractor prior to Notice of Award (pages _____ to _____, inclusive).
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    a. Notice to Proceed (pages 1 to 1, inclusive).
    b. Work Change Directives.
    c. Change Orders.

B. The documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 8 – MISCELLANEOUS

8.01 *Terms*

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

8.02 *Assignment of Contract*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.03 *Successors and Assigns*

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

8.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such

stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 *Contractor's Certifications*

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.06 *Other Provisions*

1. None.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:	CONTRACTOR
City of West Fargo	_____
By: _____	By: _____
Title: _____	Title: _____
	(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)
Attest: _____	Attest: _____
Title: _____	Title: _____
Address for giving notices:	Address for giving notices:
City of West Fargo	_____
800 4th Avenue East	_____
West Fargo, ND 58078	_____
	License No.: _____
	(Where applicable)
(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)	Agent for service of process:
	_____

PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (*Name and Address*):

SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

CONTRACT
Effective Date of Agreement:
Amount:
Description (*Name and Location*):

BOND
Bond Number:
Date (*Not earlier than Effective Date of Agreement*):
Amount:
Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

_____ (Seal)
Contractor's Name and Corporate Seal

By: _____
Signature

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

SURETY

_____ (Seal)
Surety's Name and Corporate Seal

By: _____
Signature (Attach Power of Attorney)

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.

2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
   - 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
   - 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
   - 2.3 Owner has agreed to pay the Balance of the Contract Price to:
     1. Surety in accordance with the terms of the Contract; or
     2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.

3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:

   - 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
   - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
   - 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
   - 3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
     1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
     2. Deny liability in whole or in part and notify Owner citing reasons therefor.

4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.

5. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

6. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.

7. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.

8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

9. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

10. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

11. Definitions.

11.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
11.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
11.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
11.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – (*Name, Address and Telephone*) Surety Agency or Broker: Owner's Representative (*Engineer or other party*):

PAYMENT BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (*Name and Address*):

SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

CONTRACT
Effective Date of Agreement:
Amount:
Description *(Name and Location)*:

BOND
Bond Number:
Date (*Not earlier than Effective Date of Agreement*):
Amount:
Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

_____ (Seal)
Contractor's Name and Corporate Seal

By: _____
Signature

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

SURETY

_____ (Seal)
Surety's Name and Corporate Seal

By: _____
Signature (Attach Power of Attorney)

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to Owner, this obligation shall be null and void if Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.

3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.

4. Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with Contractor:

1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.

5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.

6. Reserved.

7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.

8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. Definitions

15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms “labor, materials or equipment” that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract, or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – (*Name, Address, and Telephone*)
Surety Agency or Broker:
Owner’s Representative (*Engineer or other*):