

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSAL
STATE FEDERAL AID PROJECT NO. IM-8-029(203)101 (PCN-23102)

9.570 Miles

GRADING, DITCH CLEANING, PCC PAVEMENT, MILL & HMA OVERLAY, SLOPE PROTECTION, STRUCTURE
REPAIRS, BRIDGE DECK AND APPROACH SLAB REPLACEMENTS, CULVERTS, FENCING, GUARDRAIL,
LIGHTING, PEDESTRIAN BRIDGE

I-29, 3 MI S OF HILLSBORO N TO NEAR JCT ND 200 - NB

TRAILL COUNTY

BID OPENING: The bidder's proposal will be accepted via the Bid Express on-line bidding exchange at www.bidx.com until **09:30AM Central Time on November 14, 2025.**

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

Proposal Form of:

(Firm Name)

(Address, City, State, Zipcode)

(For official use only)

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Project: IM-8-029(203)101 (PCN-23102)

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

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

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

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

NON-COLLUSION AND DEBARMENT CERTIFICATION

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

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

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

Project: IM-8-029(203)101 (PCN-23102)

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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.

Project: IM-8-029(203)101 (PCN-23102)

PERMISSIBLE DISCOUNT (optional)

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

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

Space for Offering Discounts:

Item No: _____

Description: _____

Unit: _____

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

Item No: _____

Description: _____

Unit: _____

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

Item No: _____

Description: _____

Unit: _____

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

TOTAL DISCOUNT _____

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

Project: IM-8-029(203)101 (PCN-23102)

PROPOSAL GUARANTY

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

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

☐ Annual Bid Bond*

☐ Single Project Bid Bond

☐ Certified or Cashier's Check

*Annual Bid Bond is required when submitting proposals electronically

BID ITEMS

Project: IM-8-029(203)101 (PCN-23102)

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
001	103	0100	CONTRACT BOND	L SUM	1.				
002	109	1000	E-TICKETING	L SUM	1.				
003	201	0330	CLEARING & GRUBBING	L SUM	1.				
004	201	0370	REMOVAL OF TREES 10IN	EA	79.				
005	201	0380	REMOVAL OF TREES 18IN	EA	24.				
006	201	0390	REMOVAL OF TREES 30IN	EA	14.				
007	202	0021	REMOVE AGGREGATE BASE & SURFACING	TON	1,365.				
008	202	0101	REMOVAL OF CONCRETE	EA	2.				
009	202	0105	REMOVAL OF STRUCTURE	L SUM	1.				
010	202	0111	REMOVAL OF CONCRETE	L SUM	1.				
011	202	0130	REMOVAL OF CURB & GUTTER	LF	345.				
012	202	0136	REMOVAL OF PAVEMENT	TON	131,569.				
013	202	0169	REMOVAL OF END SECTION-ALL TYPES & SIZES	EA	1.				
014	202	0170	REMOVAL OF CULVERTS-ALL TYPES & SIZES	LF	4,789.				
015	202	0174	REMOVAL OF PIPE ALL TYPES AND SIZES	LF	8.				
016	202	0312	REMOVE EXISTING FENCE	LF	49,890.				

BID ITEMS

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
017	202	0350	REMOVAL OF TEMPORARY BYPASS	EA	6.				
018	203	0101	COMMON EXCAVATION-TYPE A	CY	43,191.				
019	203	0109	TOPSOIL	CY	50,495.				
020	203	0113	COMMON EXCAVATION-WASTE	CY	61,556.				
021	203	0138	COMMON EXCAVATION-SUBCUT	CY	630.				
022	203	0140	BORROW-EXCAVATION	CY	9,523.				
023	210	0050	BOX CULVERT EXCAVATION	EA	1.				
024	210	0099	CLASS 1 EXCAVATION	L SUM	1.				
025	210	0201	FOUNDATION PREPARATION	EA	1.				
026	210	0210	FOUNDATION FILL	CY	2,900.				
027	210	0405	FOUNDATION PREPARATION-BOX CULVERT	EA	1.				
028	216	0100	WATER	M GAL	3,426.				
029	220	0100	PREPARE STOCKPILE SITE	L SUM	1.				
030	220	0200	RESTORE STOCKPILE SITE	L SUM	1.				
031	251	0200	SEEDING CLASS II	ACRE	138.500				
032	251	2000	TEMPORARY COVER CROP	ACRE	138.800				

BID ITEMS

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
033	253	0061	SOIL STABILIZATION	ACRE	277.300				
034	255	0102	ECB TYPE 2	SY	1,969.				
035	255	0201	TRM TYPE 1	SY	299.				
036	260	0100	SILT FENCE UNSUPPORTED	LF	87,295.				
037	260	0101	REMOVE SILT FENCE UNSUPPORTED	LF	87,295.				
038	261	0112	FIBER ROLLS 12IN	LF	100,308.				
039	261	0113	REMOVE FIBER ROLLS 12IN	LF	8,252.				
040	261	0120	FIBER ROLLS 20IN	LF	840.				
041	261	0121	REMOVE FIBER ROLLS 20IN	LF	420.				
042	262	0100	FLOTATION SILT CURTAIN	LF	1,030.				
043	262	0101	REMOVE FLOTATION SILT CURTAIN	LF	1,030.				
044	302	0101	SALVAGED BASE COURSE	CY	72,306.				
045	302	0121	AGGREGATE BASE COURSE CL 5	CY	1,024.				
046	401	0050	TACK COAT	GAL	5,641.				
047	411	0100	MILLING PAVEMENT SURFACE	TON	1,049.				
048	430	0043	SUPERPAVE FAA 43	TON	12,934.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
049	430	1000	CORED SAMPLE	EA	24.				
050	430	2000	PATCHING	TON	500.				
051	430	5803	PG 58S-28 ASPHALT CEMENT	TON	783.				
052	550	0305	9IN NON-REINF CONCRETE PVMT CL AE-DOWELED	SY	171,464.				
053	550	1013	3IN EXPANSION JOINT	LF	81.				
054	550	1031	CONCRETE SLEEPER SLAB	SY	54.				
055	602	0130	CLASS AAE-3 CONCRETE	CY	506.900				
056	602	1130	CLASS AE-3 CONCRETE	CY	83.200				
057	602	1134	PILE SUPPORTED APPROACH SLAB	SY	5.200				
058	602	1135	BRIDGE APPROACH SLAB-REMOVE & REPLACE	SY	295.				
059	602	1250	PENETRATING WATER REPELLENT TREATMENT	SY	3,307.				
060	602	1260	BRIDGE DECK CRACK SEALING	LF	720.				
061	602	2105	CURB REPAIR	SF	15.				
062	602	7000	SPECIAL SURFACE FINISH	SF	338.				
063	604	9920	PRESTRESSED I-BEAM-63IN	LF	564.				
064	612	0115	REINFORCING STEEL-GRADE 60	LBS	11,580.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
065	612	0116	REINFORCING STEEL-GRADE 60-EPOXY COATED	LBS	133,179.				
066	616	5890	STRUCTURAL STEEL	L SUM	1.				
067	622	0020	STEEL PILING HP 10 X 42	LF	430.				
068	622	0060	STEEL PILING HP 14 X 73	LF	410.				
069	622	0070	STEEL PILING HP 14 X 102	LF	315.				
070	624	0124	PEDESTRIAN FENCE	LF	650.				
071	624	3005	CONNECTION PLATE MODIFICATION	EA	2.				
072	650	0805	DECK SPALL REPAIR	SF	72.				
073	702	0100	MOBILIZATION	L SUM	1.				
074	704	0100	FLAGGING	MHR	2,570.				
075	704	1000	TRAFFIC CONTROL SIGNS	UNIT	12,223.				
076	704	1018	LANE CLOSURE-SIGNAL CONTROL/FLAGGING CONTROL	EA	2.				
077	704	1035	ATTENUATION DEVICE-TYPE B-25	EA	2.				
078	704	1039	ATTENUATION DEVICE-TYPE B-45	EA	2.				
079	704	1046	ATTENUATION DEVICE-TYPE B-80	EA	8.				
080	704	1048	PORTABLE RUMBLE STRIPS	EA	2.				

BID ITEMS

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
081	704	1052	TYPE III BARRICADE	EA	44.				
082	704	1054	SIDEWALK BARRICADE	EA	2.				
083	704	1060	DELINEATOR DRUMS	EA	340.				
084	704	1067	TUBULAR MARKERS	EA	820.				
085	704	1070	DELINEATOR	EA	311.				
086	704	1072	FLEXIBLE DELINEATORS	EA	721.				
087	704	1081	VERTICAL PANELS-BACK TO BACK	EA	6.				
088	704	1087	SEQUENCING ARROW PANEL-TYPE C	EA	6.				
089	704	1088	SEQUENCING ARROW PANEL-TYPE C-CROSSOVER	EA	2.				
090	704	1090	FLASHING BEACON	EA	2.				
091	704	1095	TYPE B FLASHERS	EA	11.				
092	704	1500	OBLITERATION OF PAVEMENT MARKING	SF	6,675.				
093	704	3511	STATE FURNISHED MEDIAN BARRIER	LF	3,820.				
094	704	4011	PORTABLE CHANGEABLE MESSAGE SIGN	EA	2.				
095	704	8015	VEHICLE SPEED FEEDBACK SIGN	EA	2.				
096	706	0400	FIELD OFFICE	EA	1.				

BID ITEMS

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
097	706	0500	AGGREGATE LABORATORY	EA	1.				
098	706	0550	BITUMINOUS LABORATORY	EA	1.				
099	706	0600	CONTRACTOR'S LABORATORY	EA	1.				
100	709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	317,006.				
101	710	0100	TEMPORARY BYPASS	EA	3.				
102	714	3023	END SECT-TRAVERSABLE REINF. CONC.24IN	EA	1.				
103	714	4090	PIPE CONDUIT 12IN	LF	319.				
104	714	4099	PIPE CONDUIT 18IN-APPROACH	LF	96.				
105	714	4100	PIPE CONDUIT 18IN	LF	641.				
106	714	4105	PIPE CONDUIT 24IN	LF	1,394.				
107	714	4106	PIPE CONDUIT 24IN-APPROACH	LF	51.				
108	714	4107	PIPE CONDUIT 24IN-STORM DRAIN	LF	170.				
109	714	4110	PIPE CONDUIT 30IN	LF	1,221.				
110	714	4115	PIPE CONDUIT 36IN	LF	309.				
111	714	4120	PIPE CONDUIT 42IN	LF	741.				
112	714	4227	PIPE CONDUIT ARCH 51IN X 31IN	LF	658.				

BID ITEMS

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
113	714	9680	PLUG PIPE-ALL TYPES & SIZES	EA	1.				
114	720	0110	RIGHT OF WAY MARKERS	EA	21.				
115	720	0125	ALIGNMENT MONUMENTS	EA	23.				
116	720	0130	IRON PIN R/W MONUMENTS	EA	10.				
117	720	0135	IRON PIN REFERENCE MONUMENTS	EA	17.				
118	722	0100	MANHOLE 48IN	EA	1.				
119	722	0315	MANHOLE CASTING	EA	1.				
120	722	1100	MANHOLE RISER 48IN	LF	15.600				
121	750	0101	SIDEWALK CONCRETE REINF	SY	750.				
122	750	2115	DETECTABLE WARNING PANELS	SF	104.				
123	752	0126	FENCE SMOOTH WIRE 3 STRAND-STEEL POST	LF	50,104.				
124	752	0993	FENCE TERMINAL	EA	7.				
125	752	2100	VEHICLE GATE	EA	5.				
126	752	2996	CORNER ASSEMBLY-STEEL POST	EA	17.				
127	752	3996	DOUBLE BRACE ASSEMBLY-STEEL POST	EA	27.				
128	754	0110	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	288.				

BID ITEMS

Project: IM-8-029(203)101 (PCN-23102)

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
129	754	0112	FLAT SHEET FOR SIGNS-TYPE IV REFL SHEETING	SF	29.				
130	754	0154	DELINEATORS-TYPE A-SINGLE SIDED	EA	125.				
131	754	0160	DELINEATORS-TYPE B	EA	38.				
132	754	0166	DELINEATORS-TYPE E	EA	10.				
133	754	0168	DELINEATORS-TYPE D	EA	18.				
134	754	0206	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	344.				
135	754	0210	GALV STEEL POST-STANDARD PIPE	LF	211.				
136	754	0214	GALV STEEL POSTS-W-SHAPE POSTS(TWO OR MORE)	LF	607.				
137	754	0534	PANEL FOR SIGNS-TYPE IV REFLECTIVE SHEETING	SF	1,162.				
138	754	0557	INTERSTATE MILE POSTS-TYPE C	EA	9.				
139	754	0592	RESET SIGN PANEL	EA	1.				
140	754	0801	OBJECT MARKERS - TYPE I	EA	4.				
141	754	0803	OBJECT MARKERS - TYPE III	EA	4.				
142	754	0805	OBJECT MARKERS - CULVERTS	EA	94.				
143	754	1100	CLASS AE CONCRETE-SIGN FOUNDATIONS	CY	5.				
144	754	1104	REMOVE SIGN FOUNDATION	EA	30.				

BID ITEMS

Project: IM-8-029(203)101 (PCN-23102)

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
145	760	0021	SINUSOIDAL RUMBLE STRIP - CONCRETE SHOULDER	MILE	18.180				
146	762	0200	RAISED PAVEMENT MARKERS	EA	22,240.				
147	762	0420	SHORT TERM 4IN LINE-TYPE R	LF	6,764.				
148	762	0424	SHORT TERM 8IN LINE-TYPE R	LF	600.				
149	762	0426	SHORT TERM 24IN LINE-TYPE R	LF	471.				
150	762	0432	SHORT TERM 6IN LINE-TYPE NR	LF	6,045.				
151	762	0440	SHORT TERM MESSAGE-TYPE R	SF	112.				
152	762	1106	PVMT MK PAINTED 6IN LINE	LF	301,588.				
153	762	1112	PVMT MK PAINTED 12IN LINE	LF	2,908.				
154	762	1124	PVMT MK PAINTED 24IN LINE	LF	430.				
155	764	0131	W-BEAM GUARDRAIL	LF	1,020.				
156	764	0145	W-BEAM GUARDRAIL END TERMINAL	EA	12.				
157	764	0150	REMOVE & RESET GUARDRAIL	LF	282.				
158	764	0151	REMOVE W-BEAM GUARDRAIL & POSTS	LF	499.				
159	764	1059	RESET W-BEAM GUARDRAIL END TERMINAL	EA	4.				
160	764	2081	REMOVE END TREATMENT & TRANSITION	EA	6.				

North Dakota Department of Transportation

BID OPENING: November 14, 2025

Job 23102

Page 15 of 18

BID ITEMS

Project: IM-8-029(203)101 (PCN-23102)

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.

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BID ITEMS

Project: IM-8-029(203)101 (PCN-23102)

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
			ALTERNATE A						
175	602	1131	CLASS AE-3 CONCRETE-BOX CULVERT	CY	232.900				
176	612	0114	REINFORCING STEEL-GRADE 60-BOX CULVERT	LBS	42,152.				
177	709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	290.				
			SUBTOTAL ALTERNATE A						
			ALTERNATE B						
178	606	1215	12FT X 15FT PRECAST RCB CULVERT	LF	102.				
179	606	5215	12FT X 15FT PRECAST RCB END SECTION	EA	1.				
180	709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	270.				
			SUBTOTAL ALTERNATE B						
			SUBTOTAL + SUBTOTAL ALTERNATE A						
			SUBTOTAL + SUBTOTAL ALTERNATE B						

Project: IM-8-029(203)101 (PCN-23102)

Type of Work: GRADING, DITCH CLEANING, PCC PAVEMENT, MILL & HMA OVERLAY, SLOPE PROTECTION, STRUCTURE REPAIRS, BRIDGE DECK AND APPROACH SLAB REPLACEMENTS, CULVERTS, FENCING, GUARDRAIL, LIGHTING, PEDESTRIAN BRIDGE

County: TRAILL

Length: 9.5700 Miles

TIME FOR COMPLETION:

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

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

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

COMPLETION DATE CONTRACT The project completion date is 10/17/2026 *. 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 HILLSBORO INTERCHANGE BRIDGE MAY BE REDUCED TO ONE LANE OF TRAFFIC FOR UP TO 30 CALENDAR DAYS. COUNTING OF CALENDAR DAYS WILL BEGIN WHEN THE BRIDGE IS REDUCED TO ONE LANE OF TRAFFIC OR JULY 20, 2026, WHICHEVER OCCURS FIRST. FAILURE TO REOPEN THE BRIDGE TO TWO-WAY TRAFFIC WITHIN THE ALLOTTED TIME WILL RESULT IN LIQUIDATED DAMAGES BEING CHARGED AT A RATE OF \$350/DAY UNTIL THE BRIDGE IS REOPENED.**

THE MAYVILLE INTERCHANGE BRIDGE MAY BE REDUCED TO ONE LANE OF TRAFFIC FOR UP TO 25 CALENDAR DAYS. COUNTING OF CALENDAR DAYS WILL BEGIN WHEN THE BRIDGE IS REDUCED TO ONE LANE OF TRAFFIC OR JULY 25, 2026, WHICHEVER OCCURS FIRST. FAILURE TO REOPEN THE BRIDGE TO TWO-WAY TRAFFIC WITHIN THE ALLOTTED TIME WILL RESULT IN LIQUIDATED DAMAGES BEING CHARGED AT A RATE OF \$350/DAY UNTIL THE BRIDGE IS REOPENED.

PROPOSAL FORM

North Dakota Department of Transportation

BID OPENING: November 14, 2025**Job 23102**

Page 18 of 18

Project: IM-8-029(203)101 (PCN-23102)**Type of Work:** GRADING, DITCH CLEANING, PCC PAVEMENT, MILL & HMA OVERLAY, SLOPE PROTECTION, STRUCTURE REPAIRS, BRIDGE DECK AND APPROACH SLAB REPLACEMENTS, CULVERTS, FENCING, GUARDRAIL, LIGHTING, PEDESTRIAN BRIDGE**County:** TRAILL**Length:** 9.5700 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.

_____,
BIDDER MUST SIGN ON THIS LINE

TITLE _____

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 23102, IM-8-029(203)101

Grading, Ditch Cleaning, PCC Pavement, Mill & HMA Overlay, Slope Protection,
Structure Repairs, Bridge Deck & Approach Slab Replacements, Culverts, Fencing,
Guardrail, Lighting, & Pedestrian Bridge

INDEX OF PROVISIONS

Road Restriction Permits

Hot Line Notice

Price Schedule for Miscellaneous Items dated January 3, 2025 (PS-1)

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

Required Contract Provisions Federal Aid Construction Contracts
(Form FHWA 1273 Rev. October 23, 2023)

SP Certified Payrolls, dated 3-7-24

SP Project Payment Reporting

NOTICE – Electrician

Labor Rates from U.S. Department of Labor dated May 30, 2025 (Mod. No. 1)

On-The-Job Training Program 2025

SSP 1 Temporary Erosion & Sediment Best Management Practices

SSP 2 Federal Migratory Bird Treaty Act

SSP 4 Longitudinal Joint Density

SSP 5 Limitations of Operations

SSP 8 Federal Prohibition on Certain Technological Hardware

SSP 11 Buy America

SSP 12 Public Liability and Property Damage Insurance

INDEX OF PROVISIONS

Page 2 of 2

SP 89(24) Concrete Thickness Determination

SP 90(24) Concrete Surface Tolerance

SP 91(24) Soil Stabilization

SP 92(24) Concrete Paving Grade Control

SP 93(24) Painting Over Galvanized Steel

SP 94(24) IT System

SP 95(24) Vehicle Speed Feedback Sign

SP 96(24) Architectural Surface Finish

SP 97(24) Temporary Water Diversion

SP 98(24) Maturity Curve

SP 122(24) Utility Coordination

SP 174(24) E-ticketing (Mandatory)

PSP 9(24) Permits and Environmental Considerations

SP Fuel Cost Adjustment Clause dated September 8, 2006

NOTICE

T0: 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 exceeding 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

**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. Materials and construction methods used in performing maintenance and restoration work for 107. 08 Haul Roads shall meet the requirements of the relevant specifications.

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.

Spec	Code	Specification Section No.	Section Name	Item	Price
100	9950	704.04 C.5	Temporary Traffic Control	Flagging	\$60.00 per MHR
100	9951	216.04	Water	Water	\$30.00 per M Gal
100	9952	430.04 G & I.3	HMA – Bituminous Materials	Patching – Machine Placed	\$250.00 per Ton
100	9952	430.04 G & I.3	HMA – Bituminous Materials	Patching – Hand Placed	\$260.00 Per Ton
100	9954	302.04 B	Aggregate Base and Surface Course	Aggregate Base CL 13	\$40.00 per Ton ¹
100	9955	203.01 C	Rock Excavation	Rock Excavation	\$30.00 per CY
100	9956	203.01 D	Shale Excavation	Shale Excavation	\$8.50 per CY
100	9957	203.01 E	Muck Excavation	Muck Excavation	\$10.50 per CY
100	9958	203.01 G & 203.05 G.3	Excavation and Embankment	Overhaul	\$0.08 per CY-Sta
100	9960	420.04 E	Bituminous Seal Coat	Blotter Sand	\$30.00 per Ton ¹
100	9962	260.06	Silt Fence	Cleaning Silt Fence	\$5.00 per LF
100	9963	261.06	Fiber Rolls	Cleaning of Fiber Rolls	\$5.00 per LF
100	9964	260.06	Silt Fence	Removal of Silt Fence ²	\$5.00 per LF
100	9965	261.06	Fiber Rolls	Removal of Fiber Rolls ²	\$5.00 per LF

¹ 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 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.

² This is only for pre-existing items that were not installed under the Contract.

**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).

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated 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. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

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, United States Code, as required in 23 CFR 633.102(b) (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). 23 CFR 633.102(e).

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. 23 CFR 633.102(e).

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) in accordance with 23 CFR 633.102. 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 solicitation-for-bids or request-for-proposals 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). 23 CFR 633.102(b).

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. 23 CFR 633.102(d).

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. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A 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 Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 230, Subpart A, 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 (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 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 Part 35 and 29 CFR Part 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. 23 CFR 230.409 (g)(4) & (5).

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, sexual orientation, gender identity, 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 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 or other knowledgeable company official.

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, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure 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. 23 CFR 230.409. 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 thereunder. 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, sexual orientation, gender identity, 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, 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. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient 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 recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

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 more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, 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, sexual orientation, gender identity, 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), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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 (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. 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 classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must 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. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

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

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used 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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) 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 will be sent by the contracting officer by email to DBAconformance@dol.gov. 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.

(4) 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 will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The 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.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must 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.

d. *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and 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.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must 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.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHDL/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working 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 [29 CFR part 3](#); and

(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(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

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

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must 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, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. 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. 23 CFR 230.111(e)(2). 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 journeyworkers 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 as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 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 as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, 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 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 [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), 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 watchpersons 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. 29 CFR 5.5.

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 and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* 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.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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" in paragraph 1 of Section VI 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: (based on longstanding interpretation)

- (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. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), 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. Pursuant to 23 CFR 635.116(c), 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. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

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 Part 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. 23 CFR 635.108.

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 Part 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). 29 CFR 1926.10.

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 Part 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 11, 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 (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

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. 2 CFR 180.220 and 1200.220.

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. 2 CFR 180.320.

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. 2 CFR 180.325.

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. 2 CFR 180.345 and 180.350.

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, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 180.330.

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. 2 CFR 180.220 and 180.300.

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. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. 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 System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

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 CFR 180.325.

* * * * *

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 CFR 180.335;.

(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, 2 CFR 180.800;

(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, 2 CFR 180.700 and 180.800; 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. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. 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). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant 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. 2 CFR 180.365.

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, Subpart I, 180.900 – 180.1020, 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 recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "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 recipient or subrecipient 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. 2 CFR 1200.220 and 1200.332.

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. 2 CFR 180.220 and 1200.220.

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 System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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. 2 CFR 180.325.

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

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

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

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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 Part 20, App. A.

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.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

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.

**CONTRACT SPECIAL PROVISION
MANDATORY USE OF
AUTOMATED CERTIFIED
PAYROLL**

All contractors on NDDOT federal-aid projects, including city/county projects, must file weekly Certified Payrolls, as required under Davis-Bacon and Related Acts (DBRA). **The NDDOT requires the use of LCPtracker, a paperless online system for entering and filing these certified payrolls. Certified payrolls in paper form will no longer be accepted, and all contractors must file their payroll electronically.**

After award, the Prime Contractor (Prime) must:

1. Designate an individual as Prime Approver for the project. The Prime Approver will oversee DBRA payroll for all subcontractors of all tiers on the project. A contractor may inform the NDDOT Civil Rights Division (CRD) that the same individual will be Prime Approver on all projects. CRD will set up the Prime Approver Account for the project. Thereafter, the Prime Approver will have the responsibility to use the Account to approve all payroll on the project. Until payroll is approved by the Prime Approver, it cannot be viewed by the NDDOT and it is not deemed submitted to the NDDOT.
2. The prime contractor has the responsibility to assign subcontractors within the LCPtracker system to the project and to ensure that all subcontractors are aware of the necessity to file payrolls electronically and are set up within the system. Any subcontractor not on Approved Subcontractor List or the Qualified Contractor List must register and be placed on one of these lists before entry of the subcontractor into LCPtracker. These lists may be found at: <https://www.dot.nd.gov/construction-and-planning/construction-and-contractor-resources/contractor-information>. Only Prime Approvers or the CRD may enter subcontractors into LCPtracker.
3. The prime contractor has the responsibility to see that all required payrolls are filed by subcontractors of all tiers. If payroll is rejected or project staff otherwise requests a correction of payroll by any subcontractor on the project, the prime contractor has a responsibility to see that corrected payroll is submitted.
4. For further information on certified payroll, go to the NDDOT Labor Compliance Program (Davis-Bacon)/LCPtracker page at: <https://www.dot.nd.gov/about-nddot/civil-rights/labor-compliance-program-davis-bacon>. On this page, contractors will find a Getting Started on LCPtracker Guide and a Prime Approver Guide. Recorded trainings are also available on this page for both contractors and prime approvers. Contractors can obtain an LCPtracker user name and password by calling the NDDOT Civil Rights Division at (701) 328- 2605 or (701) 328-2576.

**CONTRACT SPECIAL PROVISION
MANDATORY USE OF ONLINE
PROJECT PAYMENT REPORTING**

A. DESCRIPTION

This Special Provision (SP) replaces Section 109.04 D, "Prompt Payment"

This SP details the requirements for Contractors to document payment to all tiers of DBE subcontractors and suppliers and all non-DBE subcontractors. For the purposes of this SP, the term "payee" will be used to denote all tiers of DBE subcontractors and suppliers as well as all tiers of non-DBE subcontractors.

The Department utilizes the Certification and Compliance System (CCS) for this purpose. The direct web address to this system is <https://dotnd.diversitycompliance.com/>

B. PROMPT PAYMENT REQUIREMENTS

Within 20 calendar days of receiving payment from the Department, pay all payees their portion of the payment less applicable retainage, not to exceed 2 percent. If the Contractor does not make prompt payment, the payee may notify the Engineer.

The Contractor may withhold payment to a payee for just cause. If withholding payment from a payee, immediately provide written notification to the payee and the Engineer with the reasons for withholding the payment. If the Engineer determines the Contractor is withholding payment with just cause, interest will not accrue.

If the Engineer determines the Contractor is withholding payment without just cause, beginning on the 21st calendar day after the Contractor's receipt of payment from the Department interest will accrue for the payee at the rate provided by NDCC 13-01.1-02. Additionally, the Department may withhold all payments to the Contractor until the Contractor properly pays the payee and agrees to make all future payments to payees as required by the contract.

The Department will apply these prompt payment procedures to all payees, in accordance with 49 CFR 26.29.

C. REPORTING REQUIREMENTS

1. General.

Create a vendor account with CCS if one does not exist. Create a user for each employee who will use the system and identify the main user. The main user will receive communications from the Department.

2. Utilization Plan.

Complete a Utilization Plan (UP) and submit it for approval in CSS within 14 days of being notified the UP is available, or contract execution, whichever is later. The Department may grant an extension upon written request from the Contractor.

List all payees with the UP and at the proper tier. Ensure payees are completing their requirements and provide assistance as necessary.

The Department's Civil Rights Division will review the UP, verify the DBE participation is reported correctly, and approve the UP or return it for updates. If the UP is returned it will contain a note describing the necessary updates. Complete changes and resubmit within 7 days of receiving a returned UP.

a. Non-Account Holders.

If a payee does not already have an account within CSS when creating the UP send the information listed below to the compliance officer via CSS:

- Company name;
- Mailing address;
- Phone number;
- Contact person's name; and
- Contact person's email address.

The NDDOT will then set up a vendor account within CCS for the payee and notify the contractor when they are available to add to the UP.

b. Additional Payees.

If a payee is added after the initial UP is approved, submit a request for the payee to be added via the "Subs" tab inside CCS. Complete this process before the payee is due payment.

3. Payments.

Once the UP is approved, the UP is locked in and contractor progress payments will be reported, and the monthly auditing process begins. An audit is the term used in the system to refer to a monthly period while the project is active.

Contractors must report any payments for all payees for each audit period. A payment may be marked as final and if the payee agrees to the final payment no other reporting will be required on that payee. Payments of \$0 must be reported or the audit will be considered incomplete. Audits are available in subsequent months, meaning the January audit period will open in February. Payments not reported within 30 days will be considered past due. Audits containing past due payments must be unlocked by a system administrator.

4. Payment Discrepancies.

Payees are required to confirm payments or open a Discrepancy (dispute original submission) within 30 days of the payment being recorded. Payments not confirmed nor disputed within 30 days will be auto-confirmed by the system administrators and the ability to dispute that payment will no longer be available. Contractors are to ensure the payees on their project are timely confirming/disputing payments.

Attempts should be made to resolve Discrepancies between the two parties. CCS provides functionality for each party to comment publicly or privately (private comments are visible to system administrators only). If the parties cannot come to a resolution, the Department will make a resolution. The Department may request additional information, if applicable, before making a resolution.

5. Certification and Compliance System Assistance.

A user manual for UP's and recording project payments is available within the system. The user manual and other training is offered by navigating to it once logged in. A UP does not have to be assigned to an entity to view the guide or attend system training.

For further assistance, contact the Civil Rights Division for DBE related inquiries and the Construction Services Division for all other inquiries.

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NOTICE:

All employees of contractors performing electrical work outdoors as part of a highway construction project must be classified and compensated under the applicable Line Construction rates. Electrical work that is performed exclusively within a commercial building structure, such as a rest area facility, must be classified and compensated under the Electrician rates. Contractors are prohibited from classifying employees engaged in any phase of electrical work on highway construction projects as power equipment operators or laborers and should be classified and compensated in either the line construction or electrician rates.

Apprentices in Line Construction

Apprentices in Line Construction must be classified and paid as Apprentice Linemen, with wages based on a percentage of the journeyman rate that corresponds to their current level of training in the apprenticeship program. When performing work as an Apprentice Lineman, the employee must receive the correct apprentice wage and fringe benefits.

If an Apprentice Lineman is assigned duties that fall under a different line construction classification—such as Groundman—they must be reclassified and paid accordingly for the duration of that work.

Contractors are responsible for:

- Monitoring the progress of employees enrolled in the U.S. Department of Labor (DOL) Lineman/Electrical Apprenticeship Program.
- Uploading all approved apprenticeship documents under the eDocuments tab in LCPtracker.
- Updating the employee's profile within LCPtracker to reflect their apprentice status and current training level.
- Notifying the LCPtracker Administrator once the documents and profile updates are complete, so the apprenticeship submission can be reviewed and approved.

As an apprentice advances in their program, it is the contractor's responsibility to update the system and notify the LCPtracker Administrator to ensure accurate wage classification and compliance.

For assistance or questions concerning Davis-Bacon Wages and Requirements, go to:

<https://www.dot.nd.gov/about-nddot/civil-rights/labor-compliance-program-davis-bacon>

Or contact:

Civil Rights Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700
Phone: 701-328-2605 Email: civilrights.nd.gov

<https://www.dot.nd.gov/about-nddot/civil-rights/labor-compliance-program-davis-bacon>

STATE	COUNTY	ND20250006 Page 1
NORTH DAKOTA	STATEWIDE	DATE OF DECISION 01-03-2025 Revised 05/30/2025 (Mod No. 1)

	Basic Hourly Rates	Fringe Benefits Payments
		H & W/Pensions
CARPENTERS	\$35.85	\$ 7.60
CEMENT MASONS/FINISHERS	35.85	7.60
LINE CONSTRUCTION:		
Lineman	53.48	8.80 + 29.5%
Cable Splicer	53.48	8.80 + 29.5%
Line Equipment Operator	45.41	8.80 + 29.5%
Groundman	30.26	8.80 + 19.5%
ELECTRICIANS:		
Electrician	53.48	8.80 + 29.5%
Cable Splicer	53.48	8.80 + 29.5%
(Adams, Billings, Bottineau, Bowman, Burke, Divide, Dunn, Emmons, Golden Valley, Grant, Hettinger, McHenry, McKenzie, Mclean, Mercer, Mountrail, Oliver, Pierce, Renville Rolette, Sheridan, Sioux, Slope, Ward and Williams Counties)		
Electrician	53.48	8.80 + 29.5%
Cable Splicer	53.48	8.80 + 29.5%
(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	53.48	8.80 + 29.5%
Cable Splicer	53.48	8.80+ 29.5%
(Burleigh, Morton and Stark Counties)		
Electrician	35.35	16.32
(Cass County)		
WELDERS:		
Receive rate prescribed for craft performing operation to which welding is incidental		

LABOR RATES

Page 2 of 5

01-03-2025

Revised 05/30/2025 (Mod No. 1)

LABORERS:

Group 1

General Construction Laborers: Sack Shaker (cement and mineral filler); pipe handler; drill runner tender; salamander heater and blower tender; light truck; pickup driver; flaggers; pilot car drivers.

Group 2

Semi Skilled Laborer: bulk cement handler; conduit layer, telephone or electrical, form setter (pavement); gas electric or pneumatic tool operator; chipping hammer; grinders and paving breakers (tamper-dirt); concrete vibrator operator; chain saw operator; Concrete saw operator, concrete curing man (not water); bituminous worker (shoveler, dumper, raker and floated); kettleman (bituminous or lead); concrete bucket signalman; power buggy operator; brick and mason tender; multi-plate pipelayer; culvert pipe layers; carpenters tenders.

Group 3

Caisson Worker: Bottom Man (Sanitary sewer, storm sewer, water and gas liners); Concrete Mixer Operator (one bag capacity); Mortar Mixer.

Group 4

Drill Runner (includes Wagon Chum or Air Track); Pipe Layers (sanitary sewer, storm sewer, water, and gas lines); Powderman; gunite and sandblast; Nozzleman; Rein forcing Steel Sellers/Tiers: Concrete Finisher Tender.

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.

Group 2

All Cranes 59 tons and under; Backhoe Operator 3 CY. and over; Creter Crane; Dredge Operator 12” and over; Equipment Dispatcher; Equipment Foreman; Finish Dozer; Finish Motor Grader; Front End Loader Operator 8 CY. and over; Master Mechanic (when supervising 5 or more Mechanics); Mon-O-Rail Hoist Operator; Power Shovel up to and including 3 CY; Tugboat.

ND20250006

Page 2

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$27.65	\$ 3.15
27.90	3.15
28.05	3.15
28.80	3.15
35.05	21.90
33.65	21.90

LABOR RATES

Page 3 of 5

01-03-2025

Revised 05/30/2025 (Mod No. 1)

ND20250006

Page 3

POWER EQUIP.OPERATORS: (CONT.)

Group 3

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; Lazer-Screed 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; Rota Milling Machine (SurfacePlaner) 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.

Group 4

Articulated/Off Road Hauler; Asphalt Dump Person(Controls the spread of asphalt); Asphalt Paving Screed Operator; Backhoe, up to and including 1/2 CY; Boring Machine Locator; Console Board Operator; Curb Machine Operator; Distributor Operator (Bituminous); Forklift Operator; Front End Loader, 1-1/2 CY up to and including 3 CY; Fuel/ Lube Truck Operator; Grade Person(Responsible for establishing and determining grade through instrumentation); Gravel Screening Plant Operator (not Crushing or Washing); Greaser; Hydro Vac and Hydro Excavator self propelled; Longitudinal Float and Spray Operator; Micro Surfacer Machine; Motor Grader Operator (Haul Roads); Paving Breaker HydroHammer Type; Pugmill Operator; Push Tractor; Roller, Steel and Rubber on Hot Mix Asphalt Paving; Rotomilling 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 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.

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-Non-Truck; Power Actuated Auger and Horizontal Boring MachineOperator up to and including 5"; Roller (on other than hot mix asphalt

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$33.40	\$21.90
33.25	21.90

LABOR RATES

Page 4 of 5

01-03-2025

Revised 05/30/2025 (Mod No. 1)

POWER EQUIP.OPERATORS: (CONT.)

Group 5 (CONT.)

paving); Oilers; Vibrating Packer Operator (Pad Type) (Self Propelled); Water Spraying Equipment-Self Propelled; Skidsteer Operator with attachments.

Group 6

Assistant/Apprentice Operator; Brakeman or Switchman; Dredge or Tugboat Deckhand; Drill Truck Gravel/Testing Operator; Form Trench Digger (Power); Gunite Operator Gunall; Paint Machine Striping Operator; Pickup Sweeper, 1 CY and over Hopper Capacity; Scissor Jack {Self -Propelled) Platform Lift; Straw Mulcher, Blower and straw press; Stump Chipper Operator; Tillage Equipment Operator; Tractor Pulling Compaction or Aerating Equipment and no till drills; Trenching Machine Operator up to and including 45 H.P.

TRUCK DRIVERS:

- Single-Axle Truck
- Tandem- and Tri-Axle Truck
- Tandem- and Tri-Axle Semi, Lowboy
- Off Road Heavy Duty End Dumps 20 Yards and Under
- Euclid, Over 20 Yards

ND20250006 Page 4

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$32.40	\$21.90
31.60	21.90
32.88	17.99
33.00	17.99
33.31	17.99
33.31	17.99
34.83	17.99

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) (iii)].

LABOR RATES

Page 5 of 5

01-03-2025

Revised 05/30/2025 (Mod No. 1)

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022: Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing the contract in 2025.

If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022: Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION (NDDOT)

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 the OJT Program Manual and Special Provision. Contractors that fail to do so will be subject to suspension of progress payments or sanctions up to and including revocation of bidding privileges.

OJT is training conducted in a highway construction work environment designed to enable minority, female, and economically disadvantaged individuals to learn a bona fide skill and qualify for a specific occupation through demonstration and practice.

After a training program and trainee candidate have been approved, the contractor begins training its regular employee according to the approved program. The goal of this training is to retain the trainee as a permanent employee within the ND Highway Construction industry. OJT involves individuals at the entry level. Training is designed to help participants reach their fullest potential and become self-sufficient in the job.

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, from this time 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 journey-level workers in skilled trades.

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 employed in the skilled trades.

Contractors should select a training program(s) based on their company's employment/staffing needs as stated in the OJT Program Manual.

II. INTRODUCTION/PROGRAM BACKGROUND

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

Successful operation of the OJT Program requires contractors to follow uniform and basic training procedures, keep records of trainee progress, and report each trainee's completion or termination.

III. ASSIGNED OJT POSITIONS

- A. Trainee positions are assigned based only on federal highway dollars awarded to contractors from April to March. Trainee assignments are not project specific; that means the contractor may train program participants on any project where training opportunities exist within the state of North Dakota.

The number of trainee positions assigned will be determined by formula based on calculations involving particular project specification numbers on applicable projects. Once the formula calculations are determined the OJT Program Administrator completes a further analysis based on number of trainees per contractor, contractor work type,

location, past assignments, etc.

The types of projects NOT applicable in the calculation to assign trainee positions are:

- County-only or state-only funded projects
- Emergency relief, concrete pavement repair (CPR), electrical, rest area, signing, striping projects
- Projects subject to Tribal Employment Rights Ordinances (TERO)
- Projects not let as part of NDDOT bid openings

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 below, for any applicable federally funded projects awarded to them.

For all federal highway dollars awarded from April to March the following year:

8,000,000 to 16,000,000	1	trainee
16,000,001 to 24,000,000	2	trainees
24,000,001 and above	3	trainees

A maximum of three (3) trainee positions in a federal fiscal year will be assigned to any prime contractor regardless of dollar amount. Carryover positions from a prior construction season are not included in the three trainee maximum, e.g., a contractor with one carryover and three assigned positions may have a total four trainees.

Contractors assigned OJT positions are required to attend one-on-one meetings with the OJT Program Administrator and the OJT Supportive Services Consultant in early spring. The meeting is conducted virtually via Microsoft TEAMS. At this meeting any changes to the program and other important information will be shared and the contractor will have an opportunity to ask any questions they may have.

Failure to follow the OJT Special Provision and OJT Program Manual may result in suspension of progress payments or sanctions up to and including revocation of bidding privileges.

IV. FUNDING

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

V. ONLINE RESOURCES

SFN 60226 Request for On-the-Job Training Program and 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>

SFN 62136 On-The-Job Training (OJT) Program Dependent Child Care Reimbursement:
<https://www.dot.nd.gov/forms/sfn62136.pdf>

VI. 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 60226 *Request for On-the-Job Training Program and Trainee Approval* with each trainee's employment application. <http://www.dot.nd.gov/forms/sfn60226.pdf> and the pre-approved training curriculum for each trainee position assigned by April 1 or within fifteen (15) calendar days of notification.
 2. Submit *SFN 7857 Application for Eligibility* directly to Job Service North Dakota (JSND) for approval of 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 Civil Rights Division.

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 journey-level worker 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."

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

The additional positions may be filled by individuals outside of the targeted groups. The contractor may pay the reduced training rates to additional trainees outside of the targeted groups but will not receive hourly reimbursement for any individuals not directly assigned by NDDOT.

VII. NDDOT'S RESPONSIBILITIES

- A. The NDDOT OJT supportive services (OJTSS) consultant will monitor excerpts from the weekly certified payrolls or LCP Tracker for NDDOT projects submitted with the monthly vouchers for reimbursement. On contracts where certified payrolls are not required and not available for supporting documentation, contractors may enter trainee wages, hours in training, and the project control number(s) (PCN) in a spreadsheet to support their reimbursement vouchers. In this case, contractors should work with OJTSS to assure that all information required for payment is provided.
- B. The OJTSS will review Daycare Reimbursement Forms and make recommendations to CRD on approvals. CRD approves any reimbursements and the OJTSS will process any payments. OJTSS tracks funds available/expended in order to stay within the limit of available funds that season/year. OJTSS Daycare reimbursements are made using OJTSS funding, which may be limited or unavailable year to year.
- C. 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.
- D. 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.

VIII. CONTRACTOR'S RESPONSIBILITIES

- A. Consistently demonstrate efforts to recruit, hire, and train candidates for the OJT Program.
- B. 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.
- C. Appoint a company employee who will be available and responsive 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. This person must reply to communications from the Department and the OJTSS consultant in a timely manner.
- D. Must have trainees available to the OJTSS consultant for at least two on-site visits during the construction season. The OJTSS consultant will be provided a private location to meet with the trainee and the trainee will be allowed as much time away from the project as necessary to complete the on-site visit.
- E. Make the trainer and project superintendent available to the OJTSS consultant for at least two on-site visits each construction season.
- F. Make trainees aware they are formally enrolled in the OJT program.
- G. Inform trainees on availability of Daycare Reimbursement Program while in an approved training curriculum and assist them with completing the required paperwork, if applicable.
- H. 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.
- I. Notify the Department when a trainee completes the number of hours required to graduate from the OJT Program. The Department will issue the trainee a confirmation letter as proof of the graduate's successful training program completion.
- J. 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 journey-worker status.
- K. Elect to 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.

Minimum number of hours required:

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 to make this determination.

- K. May hire commercial driver's license (CDL) holders as truck driver trainees. Those 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 of CRD.

- L. May transfer trainees from one project to another to complete the OJT Program. If transfers are made, CRD must be notified and provided with the name of the trainer.
- M. May train trainees on municipal, private, or other non-highway work. These training hours must be paid at the OJT minimum wage scale to count toward their OJT Program completion; however, no program reimbursement will be made for those hours. Payrolls of employees trained on non-NDDOT projects must be provided to prove appropriate wages are paid.
- N. Must train trainees on projects within North Dakota. Cannot train trainees on projects located outside of the state lines. The OJTSS consultant must be able to visit the trainee twice during their program. It is unreasonable for the OJTSS consultant to make these visits outside of the state.
- O. 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.
- P. May use trainees on projects subject to TERO requirements as part of the core crew. The training hours will count toward overall OJT Program completion; however, no program reimbursement will be made for those hours unless it is a NDDOT let project.
- Q. Must not use one trainee to simultaneously fill multiple trainee positions
- R. May use a trainee on a piece of equipment in groups 1-3 or groups 4-6 for one assigned trainee position, then once that trainee has completed the program, the trainee may be trained on a different piece of equipment in groups 1-3 or groups 4-6 to fulfill a second assigned trainee position. When a trainee is used for a second time within a group, the contractor must pay that trainee at the higher wage rate as described in paragraph B under Wage Rates (page 8).

IX. CLASSROOM TRAINING

- A. Classroom training may be used to train employees. Each classroom training curriculum must be 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.

Contractors will be reimbursed for classroom training hours after the trainee has completed 40 hours of work on highway construction projects.

Reimbursement for classroom training will be limited to 40 hours per trainee per construction season.

- B. 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.

X. WAGE RATES

- A. When the contractor is submitting the trainee's hours toward training program, wages paid shall in no case be less than that of those stated in the approved curriculum. A trainee working on a non-federal aid project, must be paid the DBRA wage rate in effect at the time of award for the type of work the trainee is performing as a trainee. Current and prior labor rates can be found on the NDDOT website at: <https://www.dot.nd.gov/divisions/civilrights/laborcompliance.htm>
- B. The minimum wage rates shall not be less than 80% of the journey-worker rate for the first two quarters of training, 85% of the journey-worker rate for the third quarter, and 90% of the journey-worker 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 journey-worker rate for the first two quarters of training, 90% of the journey-worker rate for the third quarter, and 95% of the journey-worker 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. At any time hours are being attributed toward the completion of the approved training program, trainees shall be paid full fringe benefit amounts, where applicable, in accordance to DBRA requirements. DBRA requirements can be found on the NDDOT website at <https://www.dot.nd.gov/divisions/civilrights/laborcompliance.htm>
- D. At the completion of the OJT Program, the trainee shall receive the wages of a skilled journey-worker.

XI. RECRUITMENT AND SELECTION

- A. 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. Trainees must be a North Dakota resident during their training program.
- 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 journey-workers in the selected curriculum, and/or
 - have not been previously trained in the selected curriculum.

E. Daycare Reimbursement Program:

Approved trainees may apply for the OJT Daycare Reimbursement Program and be eligible for up to \$3,500 in reimbursement of daycare costs. The trainee must be the legal primary custodial guardian of the dependent(s) they are requesting reimbursement for. Dependent(s) must reside at the same address as the trainee for more than 50% of the calendar year. Proof of cost and other documentation will be required to be submitted with the OJT Dependent Child Care Reimbursement Form.

- Availability of program and eligible funds dependent on FHWA funding annually
- Once funding for the program has been expended for the year no further reimbursements are available
- W-9 will be required prior to any reimbursement
- Only daycare services provided during the dates/times the trainee is being trained in their approved OJT program will be reimbursed.

F. Completion Bonus Program:

Trainees that successfully complete their approved program may be eligible for a \$500 completion bonus. These funds are provided directly from NDDOT to the trainee once

completion is determined.

- Availability of program and eligible funds dependent on FHWA funding annually
- Once funding for the program has been expended for the year no further funds are available
- W-9 will be required prior to any payment
- Any voluntary positions and/or carryover positions are not eligible

G. Commercial Drivers License (CDL) Program Reimbursement:

Individuals that qualify may request reimbursement for tuition costs in an approved CDL Program upon completion up to \$6,000.

- Availability of program and eligible funds dependent on FHWA funding annually
- Once funding for the program has been expended for the year no further funds are available
- Pre-approval form and completion form required
- Periodic check-ins with instructors conducted to ensure compliance
- W-9 will be required prior to any reimbursement
- Only CDL Programs within ND on NDDOTs approved program list are available for reimbursement

XII. 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. LCPtracker must be utilized on NDDOT projects for reporting certified payrolls. The OJTSS consultant will be verifying hours submitted on NDDOT projects through this online reporting system. For non-NDDOT projects the firm must attach excerpts from the weekly certified payrolls showing the trainee's hours, rate of pay, and how applicable fringe benefits were paid. 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.
- C. On contracts where certified payrolls are not required and not available for supporting documentation, contractors may enter trainee wages, hours in training, and the project control number(s) (PCN) in a spreadsheet to support their reimbursement vouchers. In this case, contractors should work with OJTSS to assure that all information required for payment is provided.
- D. 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.

XIII. FAILURE TO PROVIDE THE TRAINING OR HIRE THE TRAINEE AS A JOURNEY-WORKER

- A. The contractor is required to consistently demonstrate efforts to recruit, hire, and train candidates for the OJT Program.
- B. If the contractor does not show in a timely manner good faith efforts to recruit, hire, and train candidates in the targeted group, the Department may withhold progress payments
- C. If payments have been made, the Department will deduct the amount paid from the contractor's progress payment.
- D. No payment shall be made to a contractor for failure to provide the required training or failure to hire the trainee as a journey-worker 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.
- E. Hiring a trainee to begin training as soon as feasible after start of work is evidence of a contractor's good faith efforts to comply with the OJT Program requirements. Additional evidence supporting a contractor's good faith efforts would be to keep the trainee employed as long as training opportunities exist in the approved work classification or until the trainee has completed his or her training program.
- F. 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.

XIV. UNFILLED OR INCOMPLETE TRAINEE POSITIONS

- A. By October 1, provide written explanation of the firm's good faith efforts for unfilled or incomplete trainee assignments to CRD. 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.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION
TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES

GENERAL

Install, maintain, and remove appropriate Temporary Erosion and Sediment Control Measures (ESCMs).

Definitions:

A. Temporary Erosion and Sediment Control Measures 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 ESCMs are installed.

B. Permanent Erosion and Sediment Control Measures 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 ESCMs for a site may consist of identical ESCMs. In these cases, the temporary erosion and sediment ESCMs may be used as the permanent erosion and sediment ESCMs if they meet the following criteria:

1. The ESCM 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 project 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 an ESCM in working condition. These actions may consist of repairing failures of the ESCM 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 an ESCM does not necessarily constitute noncompliance as long as the ESCM 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.

CONSTRUCTION REQUIREMENTS

A. General.

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.

B. Permits.

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. Provide copies of the completed and signed Notice of Intent submitted for permit coverage to the Engineer before activities in these areas commence. Do not commence activities in these areas until after permit coverage has begun. Provide copies of Permit Coverage Letters for these areas to the Engineer within 7 days of receiving them from the regulating agency.

C. Submittals.

1. Preconstruction

Provide, at the preconstruction conference, documentation of any Subcontractor hired for erosion control showing that the Subcontractor's on-site supervisor is certified through the NDDOT Erosion & Sediment Control Construction (ESCC) Certification Training. This certification must be maintained by the Subcontractor's onsite supervisor through the term of the contract. The Engineer will provide a verification of their certification through the NDDOT ESCC Certification Training at the preconstruction conference and will maintain that certification through the term of the contract.

For projects covered by an Environmental Protection Agency (EPA) Construction General Permit, provide at the preconstruction conference, the documentation of EPA construction inspection certification for all individuals conducting inspections under this permit.

2. Changes to the Erosion Control Plan.

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.

3. Inspection Reports

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.

D. Construction.

Install a rain gauge to monitor rainfall amounts as required by the appropriate permit.

Install perimeter erosion and sediment ESCMs according to the plans/SWPPP before site disturbance.

Do not rely on perimeter ESCMs as the sole method of controlling erosion. As the project progresses, install temporary erosion and sediment ESCMs within the perimeter ESCMs to control erosion resulting from the construction of the project.

Change the location of temporary erosion and sediment ESCMs to fit the field conditions.

Use temporary erosion and sediment ESCMs to prevent contamination of adjacent streams or other watercourses, lakes, ponds or other areas of water impoundment.

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 ESCMs that have been installed, changed, or removed.

Install stabilization ESCMs (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 or perform winter stabilization techniques.

Coordinate temporary erosion and sediment ESCMs with the construction of permanent erosion and sediment ESCMs to provide continuous erosion control. Do not install temporary erosion and sediment ESCMs when permanent erosion and sediment ESCMs are able to be installed. Once the permit is terminated or transferred to the Department, the maintenance of the permanent erosion and sediment ESCMs becomes the responsibility of the NDDOT.

E Maintenance.

Maintain the effectiveness of the temporary erosion and sediment ESCMs as long as required to contain sediment runoff. Inspect the temporary erosion and sediment ESCMs 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.

Correct any deficiencies in the ESCMs within the timelines established in the applicable permits. If conditions do not permit access to the ESCM, corrective actions can be taken by installing additional ESCMs. 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.

F. Removal.

Remove the temporary devices when directed by the Engineer or when permanent erosion and sediment controls are installed.

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.

Provide a supervisor that is an employee of the Prime Contractor and has the following qualifications:

1. Familiar with installation, maintenance, and removal of ESCMs and the requirements of the erosion and sediment control plans, applicable permit requirements, specifications, plans and this provision;
2. Competent to supervise personnel in erosion and sediment control operations; and
3. Certified through the NDDOT ESCC Certification Training and maintain that training throughout the term of the contract. The EPA construction inspection course cannot take the place of the NDDOT ESCCC. No other certifications may take the place of this requirement.

C. Duties.

The supervisor's duties shall include the following:

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 ESCMs.
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 ESCMs 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.

EROSION AND SEDIMENT CONTROL INSPECTOR FOR EPA CONSTRUCTION GENERAL PERMIT

For projects covered by EPA Construction General Permit, provide individuals conducting the Erosion and Sediment Control Inspections that have taken the EPA Construction inspection

course developed for this permit. These individuals must have passed the exam or hold a valid construction inspection certification or license from an equivalent program.

The NDDOT ESCC certification cannot take the place of EPA construction inspection certification. Only third-party training that is listed as EPA approved on the EPA website will be considered equivalent.

Provide the names of any individuals who will be conducting the Erosion and Sediment Control inspections on EPA projects. Notify the Engineer if this person changes and provide the new contact information.

The EPA Construction Inspection Certification or License must be active for the duration of the project.

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.

METHOD OF MEASUREMENT

ESCM items will be measured as specified in the "Method of Measurement" portion of the appropriate section of the specifications.

BASIS OF PAYMENT

A. General.

ESCM 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 ESCMs for temporary and permanent installations. The same bid items may be used for temporary and permanent ESCMs.

ESCM 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.

B. Replacement of ESCMs.

When the Engineer directs the replacement of temporary erosion and sediment ESCMs 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 ESCMs

No payment will be made for replacing temporary erosion and sediment ESCMs 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 ESCMs as required in the Contract.

No payment will be made for replacing temporary erosion and sediment ESCMs due to contractor operations. Include the cost to move Flotation Silt Curtain as work progresses in the price bid for "Flotation Silt Curtain".

C. Removal of Sediment.

Removal of sediment from silt fence and fiber rolls will be paid for at the price listed in the "Price Schedule PS-1."

D. Contractor Controlled Areas.

Erosion and sediment controls for Contractor Controlled Areas are the responsibility of the Contractor and will not be paid for by the Department.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION
FEDERAL MIGRATORY BIRD TREATY ACT

GENERAL

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

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

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

PREVENTATIVE MEASURES

General

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

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

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

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

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

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

SURVEY REQUIREMENTS

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

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

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

BASIS OF PAYMENT

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

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**SPECIAL PROVISION****LONGITUDINAL JOINT DENSITY FOR HOT MIX ASPHALT PAVEMENTS****DESCRIPTION**

This provision describes the procedure for determining core locations, coring frequency and acceptance criteria for longitudinal joint construction. This Special Provision is in addition to the requirements of Section 430, "Hot Mix Asphalt (HMA)".

ATTACHMENTS

Appendix A – Notched Wedge

CONSTRUCTION REQUIREMENTS**A. General**

Applicable longitudinal joints are defined as those between any two paved areas that require calculated density; excluding joints for mats constructed on aggregate base, reclaimed material, or cold in place recycled material.

Hot seams or seams created via echelon paving are not considered applicable joints.

B. Longitudinal Joint Placement.

When placing the top lift of pavement, locate longitudinal joints at lane lines or the proposed edge of pavement.

When placing asphalt pavement over existing concrete pavement, place longitudinal joints at the same location as the existing concrete pavement longitudinal joints.

C. Notched Wedge Construction Option.

If a notched wedge joint is used, construct the notched wedge according to Appendix A.

D. Coring.

Obtain joint cores at locations determined by the Engineer. The locations for joint cores will be independent of mat density cores.

Obtain density cores for butt joints centered over the longitudinal joint.

If a notched wedge style joint is constructed, center the core over the tapered portion of the joint.

E. Longitudinal Joint Field Density.

A lot for joint density is defined as the length of the joint completed in one day. Sublots are 1,000 feet in length, contained within the lot. If a day contains less than 3 sublots, that day will not be considered a lot and the sublots will be included in the next complete lot.

Sublots less than 500 feet in length will not be counted separately. Sublots 500 feet or greater in length will be considered separate sublots.

The Engineer will determine the density of each longitudinal joint core. The Engineer will then divide the joint core density by the daily Maximum Theoretical Density (MTD) calculated from the day the lot is completed.

The subplot percent MTD will then be averaged to obtain a lot percent MTD for the joint. The Engineer will use the lot percent MTD and Table 1 to determine a contract price adjustment. The Contract Price Adjustment per Linear Foot will be applied to the entire length of the lot.

F. Low Density Requirements.

If the percentage of compaction of a subplot is below 87.0%, a corrective action must be performed for that subplot. Collaborate with the Engineer on what corrective action to take.

If the percent compaction of a subplot is less than 90.0% and the joint is in a location where rumble strips will not be installed, seal the joint represented by that subplot with an undiluted emulsion that meets the requirements of Section 401.03 C, "Fog Coat" at no additional cost to the Department. Seal butt joints at a width of 8 inches centered on the joint and seal notched wedges at a width of 16 inches centered on the middle of the notched wedge. Use an application rate ranging from 0.10 to 0.15 Gal/SY.

METHOD OF MEASUREMENT

The Engineer will measure each lot in linear feet along the longitudinal joint.

BASIS OF PAYMENT

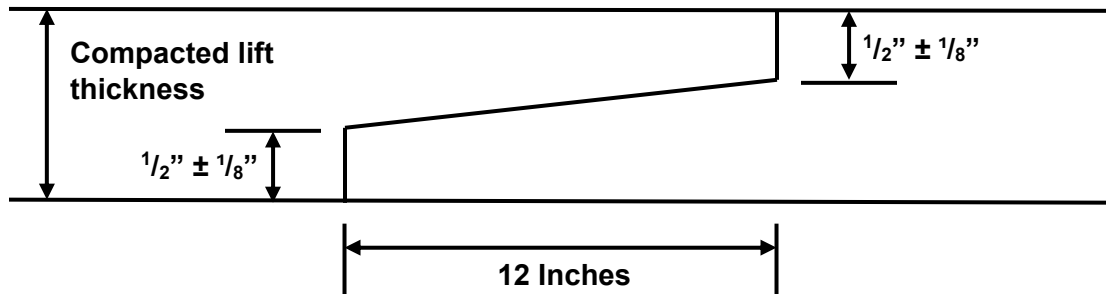
The pay adjustment for longitudinal joint density will not be used for areas constructed according to Section 430.04 I.3, "Ordinary Compaction".

The Engineer will apply the appropriate pay adjustment specified in Table 1 for each lot.

Table 1

Contract Price Adjustment Per Linear Foot	Joint Lot % MTD
\$0.40	≥ 91.1%
\$0.20	90.6% – 91.0%
\$0.00	90.0% - 90.5%
\$(0.20)	89.0% - 89.9%
\$(0.60)	88.5% - 88.9%
\$(1.10)	88.0% - 88.4%
\$(1.80)	87.5% - 87.9%
\$(3.60)	87.0% - 87.4%

Appendix A Notched Wedge



NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**SPECIAL PROVISION****LIMITATIONS OF OPERATIONS****DESCRIPTION**

Section 108.05, "Limitations of Operations" is no longer valid. Use this Special Provision in its place.

108.05 LIMITATION OF OPERATIONS**A. General.**

Perform the work in a manner and sequence that minimizes interference to traffic, and with due regard to the location of detours and provisions for handling traffic. Do not begin work to the prejudice or detriment of work already started; the contract may require a section of roadway to be finished before starting additional sections if the opening of the section is essential to public convenience.

If the prosecution of the work is discontinued, provide the Engineer at least 24-hours notice before resuming operations.

B. Holidays.

Unless the contract allows work on holidays, perform work on holidays only with the Engineer's prior written approval. Submit a written request to the Engineer by noon 2 business days before the requested holiday.

C. Nighttime Operations and Extended Hours.**1. General.**

When performing work in low light conditions, implement proper safety precautions and provide adequate lighting for the performance and inspection of the work.

The following operations are exempt from the definitions of extended hours and nighttime operations:

- Pavement coring;
- Concrete joint cutting; and
- Temporary traffic control.

Work conducted less than 1 hour after sunset and less than 1 hour before sunrise is considered extended hours. All other operations conducted under darkness fall under nighttime operations.

2. Nighttime Operations.

Unless the contract allows for nighttime operations, perform work at night only with the Engineer's prior written approval.

Submit a written request to the Engineer before anticipated nighttime operations. Allow up to 7 calendar days for the Engineer to review the request. The Engineer may deny the request or delay approval if it would require additional staffing considerations. If nighttime

operations require the Engineer to hire additional forces, nighttime operations may not be allowed for up to 30 days from the receipt of the request.

When requesting to perform nighttime operations, include a plan to ensure the safety of all individuals on the project site, including the Contractor's and subcontractor's workers, Department representatives, and the traveling public.

The Department bears no liability for costs or delays resulting from the Engineer's approval, rejection, or delay for staffing purposes of a request to perform nighttime operations.

3. Extended Hours.

Extended hours are allowed before sunrise with verbal notice given to the Engineer the previous day. Extended hours are allowed after sunset with verbal notice given to the Engineer that same day.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

STANDARD SPECIAL PROVISION

FEDERAL PROHIBITION ON CERTAIN TECHNOLOGICAL HARDWARE

DESCRIPTION

This Special Provision details technological items that are prohibited from use on Department contracts. The contents of this SP take precedent over requirements regarding affected equipment in all other contract documents.

CONTRACT REQUIREMENTS

Equipment, services, and systems using telecommunications equipment or services are prohibited from containing equipment produced by:

- Huawei Technologies Company;
- ZTE Corporation; and
- Any subsidiary or affiliate of the named entities.

Video surveillance and telecommunications equipment are prohibited from containing equipment produced by:

- Hytera Communications Corporation;
- Hangzhou Hikvision Digital Technology Company;
- Dahua Technology Company; and
- Any subsidiary or affiliate of the named entities.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**STANDARD SPECIAL PROVISION****BUY AMERICA/BUILD AMERICA BUY AMERICA****DESCRIPTION**

Replace Section 106.08, "Buy America", with the following:

BUY AMERICA FOR INFRASTRUCTURE PROJECTS**A. General.**

Provide materials from domestic sources when products are permanently incorporated into the work.

The requirements of this SP are not applicable to equipment, tools, and temporary items.

This definitions and requirements in this SP have been assembled based on the following Federal requirements:

- Iron and steel requirements are based on 23 CFR part 635, "Buy America"; and
- Construction materials and manufactured products are based on 2 CFR part 184, "Buy America Preferences for Infrastructure Projects" (BABA).

B. Certifications.

All certifications are submitted by the prime Contractor. When submitting certifications for materials that are subject to the requirements of this provision, the prime Contractor shall include a signed letter stating that the submitted documentation is the documentation that was received by the prime Contractor for material incorporated into the work. The prime Contractor's signature on the Department's Certificate of Compliance form meets this requirement.

C. Determination of Material Category.**1. General.**

Only single category of requirements will apply to an item.

Some contract items are composed of multiple components that may fall into different categories. Individual components will be categorized based on their nature when they arrive at the work site. In cases where the classification of an item is in question or dispute, the Engineer's determination of the classification will be binding.

EXCEPTION:

Iron and steel components included in items classified as manufactured products must meet the requirements of Section D, "Steel and Iron Certification" of this SP.

2. Iron and Steel.

All iron and steel permanently incorporated into the work must meet the requirements of Section D, "Steel and Iron Certification" of this Special Provision. Buy America requirements do not apply to iron and steel items used by the Contractor to facilitate

construction that are left in place upon completion of the work and are not required to be permanently installed as part of the contract requirements.

3. Manufactured Products.

An FHWA general applicability waiver exists for Manufactured Products and this category is therefore currently not subject to BABA requirements; however, they are included in this Special Provision to maintain the category definition and consistency with Federal language.

Manufactured product is defined as articles, materials, or supplies that have been:

- Processed into specific form or shape; or
- Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

4. Construction Materials.

The category of construction materials excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

Construction materials are materials that consist primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Fiber optic cables (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; or
- Drywall.

Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization.

5. Exempt Materials [Section 70917(c) Materials].

The following materials are exempt from the requirements of this provision per Section 70917(c) of the Build America, Buy America Act:

- Cement and cementitious materials;
- Aggregates such as stone, sand, or gravel; or
- Aggregate binding agents or additives.

D. Steel and Iron Certification.

1. General.

Ensure all manufacturing processes, including applications of coatings, occur in the United States. A coating includes all processes required to apply the coating to a product to protect or enhance the value of the product.

2. Bulk Manufactured Steel and Iron Materials.

In addition to the requirements of Section 106.01 C, "Certificate of Compliance", submit a contractor's Certificate of Compliance stating that the iron and steel products listed in Table 1 are of domestic origin.

Table 1

Mailbox supports	Cable Fence Materials
Chain Link Fence Materials	Barbed Wire Fence Materials
Guardrail Components	Woven Wire Fence Materials
Culvert Markers	Delineators
Perforated Tube Sign Supports and Related Materials	

3. Other Steel and Iron Products.

For steel and iron products that are not listed in Table 1, submit a manufacturer's Certificate of Compliance as specified in Section 106.01 C, "Certificate of Compliance" and the following information:

- a. A signed mill test report.
- b. A signed certification from each fabricator and manufacturer that has handled the steel and iron products affirming that all processes performed on the steel and iron products were conducted in the United States.
- c. Material descriptions, quantities, and a means of material identification (lot number, bin number, heat number, or factory identification) for each process performed on the steel and iron products.

Each certification shall contain the material identification from all previous fabricators and manufacturers in the process.

4. Foreign or Uncertified Products.

These requirements allow the use of steel and iron products produced and manufactured outside the United States, or products that cannot be certified as originating in the United States, of a total value less than 0.1 percent of the original contract amount, or \$2,500, whichever is greater.

The total value is that shown to be the cost of the steel and iron products as delivered to the project site.

Document the cost of:

- Foreign steel and iron products, plus
- Steel and iron products which cannot be certified as originating in the United States.

Submit the documentation of foreign and uncertified products with the required certifications.

E. Manufactured Products

An FHWA general applicability waiver exists for Manufactured Products and this category is therefore currently not subject to BABA requirements; however, they are included in this Special Provision to maintain the category definition and consistency with Federal language.

A manufactured product is acceptable under this provision if:

- The product was manufactured in the United States; and
- The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product.

Compute the cost of components of manufactured products as follows:

- For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product and any applicable duty; or
- For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs described in the prior bullet, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

F. Construction Materials.

1. General.

Each material classified as a construction material has a specific standard for the material to be considered in compliance with this provision.

Except as specifically provided, only a single standard under this section should be applied to a single construction material.

2. Non-Ferrous Metals.

For non-ferrous metals, all manufacturing processes from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

3. Plastic and Polymer-Based Products.

For plastic and polymer-based products; including polyvinylchloride, composite building materials, and polymers used in fiber optic cables; all manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

4. Glass.

For glass; including optic glass; all manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

5. Fiber Optic Cable.

For fiber optic cable; including drop cable; all manufacturing processes, from the initial ribboning if applicable, through buffering, fiber stranding and jacketing, occurred in the United States.

All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

6. Optical Fiber.

For optical fiber, all manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

7. Lumber.

For lumber, all manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

8. Drywall.

For drywall, all manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

9. Engineered Wood.

For engineered wood, all manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION
PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

DESCRIPTION

This SP replaces Section 107.14 Public Liability and Property Damage Insurance.

107.14 Public Liability and Property Damage Insurance.

A. General Requirements.

Submit to the Department the certificates of insurance effecting the requirements in this section for the Commercial General Liability and Commercial Automobile Liability Insurances with the contract and the contract bond in accordance with Section 103.06, "Execution and Approval of Contract."

Provide insurance policies executed by a corporation qualified and authorized to write the policies in the State of North Dakota. The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Secure and maintain insurance in full force and effect before starting the work and until completion of all work required and accepted by the Department or owner. The policies shall provide 30 calendar days notice to the Department or the owner of any intent to cancel or materially alter such insurance.

Failure to maintain the insurance as required constitutes a material breach of contract. The Department or the owner may, after giving 5 business days notice to the Contractor to correct the breach, immediately terminate the Contractor in accordance with Section 108.08, "Termination of the Contract for Default," and procure or renew such insurance and pay all premiums. The Department or the owner may demand repayment of premium costs by the Contractor, or may offset the premium costs against funds due the Contractor from the Department or the owner.

B. Insurance Requirements.

Secure and maintain in full force and effect during the term of the contract the following insurance coverages:

1. Commercial General Liability for limits not less than \$2,000,000 combined single limit per occurrence and aggregate for bodily injury, property damage, personal injury and completed operations/product liability. Provide products and completed operations coverage for a period of one year following final acceptance of the work. Provide coverage with the aggregate limit applied separately to occurrences at the location or project described in this contract. Provide a policy including a "stop-gap" Employers Liability endorsement to cover the employer's liability for injury to employees falling outside the State Worker's Compensation Law.
2. Commercial Automobile Liability for limits not less than \$2,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers Compensation coverage as required by the State of North Dakota.

The General Liability and Automobile policies shall provide an additional insured endorsement in favor of the State of North Dakota and the Owner and shall contain a "Waiver of Subrogation" to waive any right of recovery that the Insurance company may have against the State and the Owner. The coverage required under this agreement shall be primary for the State and the Owner, and shall not be affected by any other insurance or coverage obtained by the State or the Owner on their own behalf.

Any right of the State to receive indemnification and insurance shall not give rise to a duty on the part of the State to exercise its rights or status for the benefit of the owner, or any other person or entity.

C. Subcontractor.

If subletting a portion of the contract, the Contractor shall obtain insurance protection in accordance with Section 107.14.B, "Insurance Requirements," to provide liability coverage to protect the Contractor, State, and owner for work undertaken by the subcontractor. Ensure public liability and property damage insurance coverage in accordance with Section 107.14.B, "Insurance Requirements," for all parties performing work under the contract.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

CONCRETE THICKNESS DETERMINATION

PROJECT 8-029(203)101 – PCN 23102

DESCRIPTION

This provision details the thickness measurement of Portland Cement Concrete (PCC) pavement. It replaces the contents of Section 550.04 I, "Acceptance", in its entirety.

The Engineer will utilize a MIT-SCAN-T3 and the appropriate reflector plates to determine concrete thickness to the nearest 0.10 inch. The procedure for the Engineer's nondestructive test method is described in Appendix A.

The Contractor will provide the reflector plates.

I. Pavement Thickness Determination.

1. General.

Provide the Engineer with galvanized steel MIT SCAN Plates that measure 30 cm $\pm$ 0.1 mm that are supplied by Kessler Soils Engineering Products, Inc. or approved equal.

The Engineer will determine the location of the reflector plates at the intervals designated in Appendix A. The Contractor will secure the plates to the aggregate or milled surface.

The Engineer will place reflector plates at the intervals designated in Appendix A. The Contractor will secure the plates to the aggregate or milled surface.

A lot is defined as:

- 4,000 square yards of main line concrete pavement of constant thickness and placement width;
- Fractional areas of main line between 1,000 and 4,000 square yards; and
- Individual ramps, leave outs, cross-overs, intersection, shoulders, or other irregular areas of pavement not included in the main line.

Fractional areas of main line with less than 1,000 square yards are part of the adjacent lot.

2. Contractor Thickness Determination.

Probe the concrete depth behind the paver at every station with a reflector plate. Probe either left or right of centerline. Record the station number and the lane in which the plate is located. Submit the probe results to the Engineer at the completion of the days paving. The Engineer will not use these results to determine which locations to utilize the MIT-SCAN.

When probing, use a stiff metal probe that will not flex under normal use. Measure depth to the nearest 0.10 inch.

3. Department Thickness Determination.

a. General.

The Engineer will randomly select one reflector plate from each lot of mainline pavement for measurement using the MIT-SCAN. For shoulders, the Engineer will measure both plates using the MIT-SCAN and average the values.

The Engineer will record the pavement thickness to the nearest 0.10 inch.

The requirements of Section I.3, "Department Thickness Determination" of this provision apply to all measurements obtained under this provision.

The following applies if cores are obtained for any reason:

Fill the core hole with fresh concrete mix and use a vibrator to consolidate the concrete in the holes. Screed the new concrete off and apply curing compound to the new concrete. If fresh concrete mix is not available, submit a proposed patching mix to the Engineer.

b. Thickness Deficient by less than 0.2 inch.

If the results of the Engineer's thickness determination for a lot show a deficiency of less than 0.2 inches below the designed pavement thickness, no additional measurement, the Engineer will not obtain additional measurements.

c. Thickness Deficient by 0.2 inch and less than 1.0 inch.

If the results of the Engineer's thickness determination for a lot show a deficiency of 0.2 inches or greater and less than 1.0 inch, the Engineer will require the Contractor to core the pavement above the reflector plate and will measure the core as specified in AASHTO T 148.

If the core length is shown a deficiency of 0.2 inches or more and less than 1.0 inch, the Engineer will request two additional cores from the lot at intervals separated from each other and from the first core by at least 1/4 the length of the lot.

If neither of the two additional cores is deficient in length 1.0 inch or more, the Engineer will compute the average thickness of that lot of pavements as the average length of the three cores and will process a contract price adjustment as specified in Section 550.06 B, "Thickness Tolerance Contract Price Adjustments".

If either of the additional cores is deficient in length by 1.0 inch or more, Section I.3.d of this Special Provision will apply.

d. Thickness Deficient by 1.0 inch or Greater.

If the results of the Engineer's thickness determination for a lot show a deficiency of 1.0 inch or more, the Engineer will require the Contractor to core the pavement above the reflector plate and will measure the core as specified in AASHTO T 148.

If the core length is shown to be deficient by less than 1.0 inch, the requirements of Section I.3.c of this Special Provision will apply.

If the core length is shown to be deficient by 1.0 inch or more, the following will apply:

- The Engineer will measure the thickness of the pavement represented by that lot at the remaining reflector plates within the lot to determine the extent of the deficient pavement;
- The Engineer will require the Contractor to core the pavement above the remaining reflector plates that show a deficiency of 1.0 inch or greater and will measure the cores as specified in AASHTO T 148. The requirements of Section I.3.d of this special provision will apply;
- The Engineer will require the Contractor to core each panels in both longitudinal directions from reflector plate locations until the core length is less than 1.0 inch deficient, when measured as specified in AASHTO T 148;
- Remove and replace all concrete panels with a core hole created under Section I.3.d of this special provision. Use the same mix design approved for the project.
- The Department will pay for replacement material, provided it meets the specifications.
- The Engineer will calculate the average thickness of the remainder of the lot from at least two additional cores obtained outside the area that is deficient by more than one inch at intervals separated from each other and from the core deficient by more than 1.0 inch by at least 1/4 the length of the lot.
- The Engineer will not use exploratory cores in computing average thickness for determining adjusted unit price.

BASIS OF PAYMENT

Include the price of the plates and securing the plates in the contract unit price of the Concrete Pavement bid item.

Appendix A

NDDOT
Concrete Pavement Non-Destructive Thickness Determination

SCOPE

The following testing procedure is for non-destructive thickness determination of concrete pavement.

REFERENCED PROCEDURES

AASHTO T 359-18 Standard Method of Test for Concrete Pavement Thickness by Magnetic Pulse Induction.

APPARATUS

1. Mit Scan T3 gauge will be used to perform thickness measures.
2. (ST RO 30) Steel Targets will be 11.81 inches in diameter, 24 gauge, meeting ASTM A 653, commercial steel with a G90 coating (about 275 g/m² total both sides).

DEFINITIONS

A lot is defined as:

- 4,000 square yards of main line concrete pavement of constant thickness and placement width; and
- Fractional areas of main line between 1,000 and 4,000 square yards; and
- Individual ramps, leave outs, cross-overs, intersection, shoulders, or other irregular areas of pavement not included in the main line.

Fractional areas of main line with less than 1,000 square yards are part of the adjacent lot.

PROCEDURE

The Engineer will determine the location of each lot, the starting location of the metal target pattern, and the random thickness measuring plan for each lot.

- A. Target Location for Regular Areas
 - a. Target locations shall have two reflectors placed 6 feet left and right of the centerline centered longitudinally between dowel baskets.
 - b. Place the first set of targets 200' from start of the days paving area.
 - c. Place subsequent target sets at 400' intervals until the end of the days paving.
- B. Target Location for Irregular Areas
 - a. Target Location shall be a minimum of 5' from any steel reinforcing.
 - b. Place two plates per day of production.
 - c. Take readings on both plates placed during the day's production.

TESTING

Install and measure targets in accordance with AASHTO T-359-18

REPORTING

Average the 3 reading and express the results to the nearest 0.1 inch. If the difference between any results is larger than 0.05 inch, then discard the set of results and select a different target within the lot. If the second set of results is within the above limit, then average the 3 results and express the results to the nearest 0.1 inch.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

CONCRETE SURFACE TOLERANCE

PROJECT 8-029(203)101 – PCN 23102

DESCRIPTION

This provision details the surface tolerance requirements, corrective actions, performance incentives, and contract price adjustments for concrete pavement.

CONSTRUCTION REQUIREMENTS

A. General.

Any areas that were ground before the Engineer takes an initial profile will not be included in an incentive payment.

The Engineer will use the straight edge method described in Section 550.04 G, "Tolerance in Surface and Ride Quality" or the Rolling Straightedge Module of Proval to determine the surface tolerance in leave outs.

The Engineer will profile the finished surface to determine the pavement ride quality. The Engineer will not profile the following leave outs:

- 1) Bridge decks;
- 2) Side roads and approaches;
- 3) Shoulders, ramps and gore areas;
- 4) At grade railroad crossings;
- 5) The beginning and end of the project;
- 6) Where utility appurtenances are placed in the wheel paths of the lanes;
- 7) Finished surfaces 20 feet before and after the excluded areas shown in 1, 4, 5, and 6;
- 8) Speed limit under 45 MPH; and
- 9) Where safety and the roadway geometrics do not allow the proper operating speed for the profiler to collect data. The Engineer will determine the location of these areas. These locations may include, but are not limited to the following:
 - Signal controlled intersections;
 - Stop controlled intersections.
 - T intersections; and
 - Other situations that would be detrimental to safety of the traveling public or the profiler.

B. Profiler Limitations.

The Engineer will not test the roadway in the following conditions:

- Between November 30 to May 15;
- When the air or surface temperature is below 32 °F; or
- When the roadways surface is wet or under inclement weather conditions.

C. Profiler Inputs.

1. General.

The Engineer will:

- Measure the smoothness of the roadway using the International Roughness Index (IRI) to the nearest 0.1 inch;
- Use ProVal, <http://www.roadprofile.com>, to calculate the IRI for the Pavement Profile (PPF);
- Apply a 250 mm filter to generate the IRI in ProVal;
- Average the IRI of the two wheel paths to calculate the Mean Ride Index (MRI); and
- Use the MRI option in ProVal for evaluation

2. Smoothness Assurance Module (SAM).

The Engineer will identify areas of localized roughness and lot smoothness using the Smoothness Assurance Module (SAM) within the current version of ProVal. The Engineer will use following inputs in the SAM:

- 1) Short Continuous (Localized Roughness)
 - Set the Ride Quality Index to “MRI”
 - Segment Length – 25 feet
 - Threshold – default setting
- 2) Fixed Interval (Lot Smoothness)
 - Set the Ride Quality Index to “MRI”
 - Segment Length – 528 feet
 - Threshold – 68.0 in/mile
- 3) Long Continuous - default settings.

3. Rolling Straightedge Module.

Identify areas of surface deviation using the Rolling Straightedge Module within the current version of ProVal. Use the following settings in the SAM Module:

- Straightedge Length – 10 feet
- Deviation Threshold – 1/8 inch

D. Lot Definition.

A lot is defined as a 528 foot road segment, one lane wide. The Engineer will include a partial lot less than or equal to 370.0 feet in the previous lot. The Engineer will treat a lot greater than 370.0 feet as an independent lot.

E. Profiling.

1. General.

a. Naming Convention and Collection Points.

Discuss with the Engineer the naming convention of the lanes before profiling as well as the beginning and end points for areas of collection.

b. Timing.

Notify the Engineer that the road is ready for profiling. The Engineer will coordinate a time within 5 working days of receiving that notification.

c. Physical Surface Conditions.

Remove all debris that will inhibit collection of the road profile before the profiler arrives on site for collection. Keep the lanes clear of construction activity during the time of profiling

The Engineer will collect the profile when the pavement is dry and at a time agreed upon between the Engineer and the Contractor.

d. Profiler Data Collection.

The Engineer will use an inertial profiler to collect the profile in each wheel path of each lane.

The Engineer will trace the profile at approximately 31 and 97 inches, measured from the left edge of the lane, as determined by the direction of traffic.

Provide traffic control for 500 feet beyond the ends of the project to facilitate the collection of profile data and for run in and run out.

2. Initial Profile.

The Engineer will complete an initial profile to determine the MRI and to identify localized roughness.

The Engineer will collect a complete or partial initial profile after the mainline paving is complete. To perform a partial profile, the Engineer will require a minimum of 50 percent continuous pavement from either the beginning or end of project.

3. Additional Profiles.

The Engineer will collect any additional profiles after corrective action has taken place.

The Engineer will apply a liquidated damage of \$1,500 per trip for each profile collected after the second profile.

4. Final Acceptance Profile.

The Engineer will collect the final acceptance profile after the necessary corrective actions on the roadway are completed.

5. Reports.

The Engineer will provide the following information to the Contractor within 5 days of completing the profile:

- PPF files;
- The Viewer;
- The SAM Report; and
- The Rolling Straightedge Report.

F. Lots With MRI Less Than 68.1.

For lots with an MRI less than 68.1, the Engineer will process performance incentives and contract price adjustments for each lot as specified in Section B "Ride Quality - Lot Smoothness" of the Basis of Payment Section.

G. Lots with MRI Greater or Equal to 68.1.

Lots with an MRI greater than or equal to 68.1 will require corrective action, as specified in Section H, "Corrective Action" of the Construction Requirements.

Areas that would result in a contract price adjustment may be ground to a lower MRI. If grinding occurs and results in an MRI of 50.0 or less, the Engineer will not apply a performance incentive to that lot. Only lots with an initial MRI of 50.0 or less will receive a performance incentive based on the initial readings, before grinding.

H. Localized Roughness

The Engineer will allow localized roughness according to Table 1.

Table 1	
Percent of Localized Roughness Allowed	MRI greater than
10 %	80 in/mile
5 %	90 in/mile

G. Corrective Action.

1. General.

Any grinding performed is considered corrective action.

Complete corrective action within 21 calendar days of profile data collection.

2. Corrective Action Plan.

Confirm date and time, locations, equipment, and timeframes with Engineer.

Contractor may develop a detailed corrective action plan using the ProVal data. Generate grinding simulations in ProVal with multiple grinding depths, varying equipment, and multiple pass patterns. Include the grinding simulations with the corrective action plan.

Submit the plan three working days in advance of grinding.

The Engineer will review the corrective action plan.

3. Corrective Grinding.

a. General.

Grind lots to maximum IRI of 68.0 in/mile.

Grind localized roughness areas so that a maximum of 10% of the project is above 80.0 in/mile and 5% of the project is above 90.0 in/mile.

Grind high shoulders to provide drainage and safety.

Grind the full width of the lane and a feather pass onto the shoulder to daylight the grinding.

Grind a minimum length of 30 feet. Join grind sections if the distance between grind sections is less than 60 feet.

b. Grinding Equipment.

Use equipment that does not cause strain or damage to the underlying surface of the pavement. Do not cause excessive ravels, aggregate fractures, spalling, or disturbance of the joints.

c. Grinding.

Perform grinding in the longitudinal direction so grinding begins and ends at lines normal to the pavement centerline. Do not overlap more than 2 inches between passes and ensure the depth variance between adjacent passes is less than 1/8 inch. Feather the grinding at the beginning and end of each pass.

Ensure the surface of the ground pavement has a texture consisting of grooves between 0.090 and 0.130 inches wide. Keep the peaks of the ridges approximately 1/32 inch higher than the bottom of the grooves.

d. Slurry Removal.

When grinding in areas with curb and gutter, and areas adjacent to waterways continuously collect all slurry or residue resulting from the grinding operation. Dispose of the slurry or residue as specified in Section 107.17, "Removed Material".

4. Profiling.

The Engineer will perform additional profiling according to Section E.3 "Additional Profiles" of the Construction Requirements. The Engineer will determine if additional Corrective Action is required based on the new profile. If additional Corrective Action is required, the Engineer will provide additional profile PPF and a new Corrective Action plan is required.

BASIS OF PAYMENT

A. Liquidated Damages.

If the project would be considered substantially complete, as specified in Section 108.07 B, "Failure to Complete within the Contract Time" and corrective action is required, the Engineer may suspend time charges and the assessment of liquidated damages for up to 21 calendar days after the contract time has expired. If the corrective action is not complete within 21 calendar days after the contract time has expired, the Engineer will restart time charges and will assess liquidated damages.

B. Ride Quality – Lot Smoothness.

Any lot that contains more than 60 feet of grinding based on the localized roughness determination is not eligible for a performance incentive.

The Engineer will pay a performance incentive for ride quality based on Table 2.

Table 2
Ride Quality Performance Incentives

MRI Range	Performance Incentive per Lot
≤ 36.0	\$1,600
36.1 to 41.0	\$1,200
41.1 to 46.0	\$800
46.1 to 50.0	\$400
50.1 to 54.0	\$0

The Engineer will process contract price adjustments for ride quality based on Table 3.

Table 3
Ride Quality Contract Price Adjustments

MRI Range	Contract Price Adjustment per Lot
50.1 to 54.0	\$0
54.1 to 59.0	(\$800)
59.1 to 64.0	(\$1,200)
64.1 to 68.0	(\$1,600)
68.1 $\geq$	Corrective Action

C. MISCELLANEOUS

Include costs necessary to prepare the roadway for testing in the contract unit price for concrete pavement items.

Traffic control items, including flagging and pilot cars will be paid for according to Section 109.03, "Compensation for Contract Revisions".

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

SOIL STABILIZATION

PROJECT: 8-029(203)101 – PCN 23102

DESCRIPTION

A. General.

This SP overrides Section 253 “Mulching”

B. Straw or Hydraulic Mulch.

This work consists of grass hay or straw mulching, and hydraulic mulching for temporary or permanent stabilization.

C. Soil Stabilizer.

This work consists of hydraulic application of soil stabilizers for temporary stabilization.

EQUIPMENT

Use straw mulch equipment that uniformly distributes the mulch over the seedbed.

Use a puncher that consists of a series of dull, flat disks:

- With notched or cutout edges;
- Approximately 20 inches in diameter;
- 0.25 inches thick;
- Spaced approximately 8 inches apart; and
- Fitted with scrapers.

MATERIALS

A. Seed.

Use the seed classification shown in the bid item that meets the requirements of Section 251.03 D, “Seed Class”.

B. Hydraulic Mulch.

Use hydraulic mulch free of germination or growth inhibiting factors. Provide hydraulic mulch free of toxins.

Provide hydraulic mulch with fibers capable of absorbing water and allowing infiltration to the underlying soil without restricting emergence of seedlings.

C. Straw Mulch.

Use mulch material consisting of straw from cereal grain or native hay. The mulch shall be free of seed bearing stalks of noxious weeds as defined by the North Dakota Department of Agriculture.

The Engineer will not accept mulch that:

- Is wet, musty, moldy, or rotted;
- Is chopped or ground; or
- Contains deleterious material.

D. Tackifier.

Use a tackifier consisting of one of the following:

1. Water soluble natural proteins, vegetable gums, or guar gums blended with gelling and hardening agents. Guar gum based tackifier shall consist of a minimum of 95 percent guar gum by weight with the remainder consisting of dispersing and cross-link additives.
2. Water soluble blend of hydrophilic polymers, viscosifiers, sticking aids and other gums.

E. Soil Stabilizer.

Use soil stabilizer from the list below or an approved equal:

Product	Manufacturer
StarTak 600 Applied at a rate of 150 Lb/Acre	Chemstar Products Company Minneapolis, MN Phone: 1-800-328-5037 www.chemstar.com
EarthGuard SFM Applied at a rate of 60 LB/Acre (approx. 6 Gallons/Acre)	Terra Novo Inc. Bakersfield, CA Phone: 1-661-747-5956 www.terranovo.com
M-Binder Applied at a rate of 150 Lb/Acre	Ecology Controls Carpinteria, CA Phone: 1-805-684-0436 www.ssseeds.com
FiberRX Applied at a rate of: Slope None to 4:1 50 Lb/Acre 3:1 60 Lb/Acre 2:1 70 Lb/Acre 1:1 or steeper 80 Lb/Acre	Hydrostraw, LLC Manteno, IL Phone: 1-800-545-1755 hydrostraw.com
Enviropam Applied at a rate of 9 Lb/Acre	Innovative Turf Solutions, LLC Cincinnati, OH Phone: 1-513-317-8311 www.innovativeturfsolutions.com
HydraTack, Tack Plus, Tack-P, or Tack-P Plus Applied at a rate of 30 Lb/Acre	Innovative Turf Solutions, LLC Cincinnati, OH Phone: 1-513-317-8311 www.innovativeturfsolutions.com
FI-1045 Hydrobond or FI-1046 Hydrobond Applied at a rate of 15 Lb/Acre	JRM Chemical, Inc. Cleveland, OH Phone: 1-216-475-8488 www.soilmoist.com

Product	Manufacturer
HF5000 Tack Applied at a rate of 60 Lb/Acre	Rantec Corporation Ranchester, WY Phone: 1-307-655-9565 www.ranteccorp.com
R-Tack Applied at a rate of 150 Lb/Acre	
SpecTack Applied at a rate of: Slope None 30 to 80 Lb/Acre 4:1 50 to 100 Lb/Acre 3:1 80 to 120 Lb/Acre 2:1 100 to 170 Lb/Acre	
Super Tack Applied at a rate of 60 Lb/Acre	

F. Tracer Material.

Provide tracer material that consists of a hydraulic mulch that contains a green dye.
Provide tracer material that is free of the following:

- Toxins; and
- Germination or growth inhibitors.

CONSTRUCTION REQUIREMENTS

A. General.

Uniformly cover areas of disturbed ground where construction activities have temporarily or permanently ceased.

Uniformly cover seeded areas with mulch within 24 hours of initiating seeding.

Protect traffic, signs, structures, and other objects from being marked or splattered by the material.

B. Hydraulic Mulch.

1. General.

Use mulch that is evenly dispersed and suspended in agitated water. Apply at a rate of one ton per acre with a minimum of 95 percent coverage of the seedbed.

2. Anchoring.

Use tackifier on areas where temporary stabilization is required for slopes that are steeper than 3:1. Mix tackifier with the mulch and apply at the rate recommended by the manufacturer.

C. Straw Mulch.

1. Application.

Place mulch at a rate of 2 tons per acre.

Do not perform mulching operations when the sustained wind velocity is greater than 25 miles per hour.

Avoid placing excessive cover that smothers seedlings.

2. Anchoring.

a. General.

Anchor mulch using one of the following methods to:

b. Punching.

Immediately following application, punch mulch into the soil using a puncher.

Operate the puncher parallel to the contours of the ground.

Push the mulch into the soil 3 inches, with the ends of the mulch exposed above the soil surface.

c. Tackifier.

Use tackifier on areas where slopes are steeper than 3:1. Apply the tackifier at the rate recommended by the manufacturer. If no manufacturer recommendations are available, apply at a rate between 175 and 275 pound per acre by spraying with the mulch or immediately following the mulching application.

3. Maintenance.

Repair or re-mulch damaged areas.

D. Soil Stabilizer.

1. General.

Only use soil stabilizer in temporary stabilization applications.

Uniformly cover areas of disturbed ground where construction activities have temporarily ceased with a minimum of 95 percent coverage of the disturbed area.

Hydraulically apply soil stabilizer with tracer material in accordance with the manufacturer's application instructions and at the rate specified in the list of approved soil stabilizers.

Protect traffic, signs, structures, and other objects from being marked or splattered by the material.

2. Tracer Material.

Include enough trace material for it to be easily visible for the inspector and installer. Use tracer material that is evenly dispersed and suspended in agitated water and Soil Stabilizer mix.

METHOD OF MEASUREMENT

The Engineer will measure, completed and in place, as specified in Section 109.01, "Measurement of Quantities".

Soil stabilization is the use of any mulching material to cover the disturbed ground.

BASIS OF PAYMENT

Pay Item	Pay Unit
Soil Stabilization	Acre

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

CONCRETE PAVING GRADE CONTROL

PROJECT 8-029(203)101 – PCN 23102

DESCRIPTION

Replace Section 550.04 C.2.a “String Line” with the following.

CONSTRUCTION REQUIREMENTS

Use one of the following methods for grade control when slip form paving.

A. String Line.

Use and maintain a taut string line for operating the automatic equipment controls.

B. Stringless Grade Control.

1. General.

Use electronic survey equipment for operating the automatic equipment controls.

The Supplemental Information will include the electronic data. The data may need to be converted into the required format for the survey equipment.

Submit a plan to the Engineer 14 days before beginning paving with the number of survey points to be used and the coordinates with elevation of any addition survey points.

2. Engineer Responsibilities.

The Engineer will set the primary control points.

3. Contractor Responsibilities.

Set additional Survey points necessary for the operation.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

PAINTING OVER GALVANIZED STEEL

Project # IM-8-029(203)101 – PCN 23102

GENERAL

This work consists of the surface preparation and painting of galvanized steel.

MATERIALS

Use a shop applied two coat paint system consisting of a polyamide epoxy primer and an aliphatic polyurethane finish coat. Provide the system from a single manufacturer. Provide components that are recommended for use as part of a two-coat system.

Use a paint system formulated by the manufacturer for use over galvanized steel.

A. Epoxy Primer.

Use a chemically-curing polyamide epoxy primer that is a two component and chemically-curing.

Use primer capable of being spray applied to the manufacturer's recommended Dry Film Thickness (DFT) in one coat without sagging or mud cracking. After mixing the primer shall be smooth, uniform, and free of lumps or coarse particles.

Formulate the color of the primer to produce a distinct contrast with the galvanized surface and the finish coat.

Provide an epoxy primer that meets the material properties shown in Table 1.

Table 1
Paint Properties

Total Solids, percent by volume	54% min
Pot life at 77°F	4 hours min
VOC content	3.5 lbs/gal max
Curing Time for Recoating ¹	24 hours max
¹ When applied at the manufactures' recommended thickness at 77°F and 50% relative humidity.	

B. Finish Coat.

Use a compatible two-component, aliphatic polyurethane finish coat with a weather resistant finish and the gloss and color as specified in the plans.

Use paint with a finish coat that meets the material properties shown in Table 1.

C. Certification and Acceptance.

Before the use of the paint system, provide a Certificate of Compliance as specified in Section 106.01 C, "Certificate of Compliance" and the following:

1. Manufacturer Contact Information;
2. Product Data Sheets;
3. Manufacturer's Application Instructions;
4. Material Safety Data Sheets;
5. A 3" x 5" Color Chip card for the colors specified; and
6. Compatibility statement.

D. Packaging and Labeling.

Provide a label on each container that contains:

- The name of manufacturer;
- The brand name;
- The lot number of the paint;
- Complete instructions for the use of the paint;
- The shelf life of the components; and
- The post life of the mixture.

CONSTRUCTION REQUIREMENTS

A. Surface Preparation.

Prepare the surface according to ASTM D 6386. Do not quench the surface if the galvanized coating will be applied within 48 hours.

Do not use chromate conversion coatings.

B. Coating Application.

Apply paint when environmental conditions, such as temperature, humidity, and dew point, are within the manufacturer's recommended range.

Apply coating in a uniform, even coat and worked into all corners and crevices. Use a brush on surfaces inaccessible to spray applications. On surfaces inaccessible to spray, the coating may be applied with a brush.

The DFT of the coating system will be in accordance with the manufacturer's recommendations. Remove surface coating from areas outside the manufacturer's specified range in a manner that protects the underlying galvanized coating and also prepares the surface for recoating.

C. Field Repair of Damaged Painted Coating.

1. Surface Preparation.

Remove areas of damaged coating down to the galvanized surface. Take care not to damage the underlying galvanized coating. Feather edges of cleaned repair areas to ensure a smooth finish.

2. Paint System Application.

Do not allow paint materials to come in contact with surfaces not intended to be painted. Provide a means to protect traffic from spattering paint materials if necessary. Prevent deleterious material from adhering to freshly painted surfaces.

Paint may be applied using spray, brush, or roller. Apply paint only when environmental conditions, such as temperature, humidity, and dew point, are within the manufacturer's recommended range.

D. Field Repair of Damaged Galvanized Coating.

Repair damaged galvanized coatings according to Section 854.02, "Damaged Galvanized Coatings".

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Include the cost of work described in this Special Provision in the contract unit price for "Pedestrian Fence."

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

IT SYSTEM

Project # IM-8-029(203)101 – PCN 23102

DESCRIPTION

Furnish and install conduits, tracer wire, and pull boxes to facilitate the future installation of communication cables.

EQUIPMENT

Reserved.

MATERIALS

A. General

Provide materials that meet the National Electric Code, the North Dakota State Electrical Board, and NDDOT standards.

B. Conduit

Furnish nonmetallic conduit meeting the following requirements:

- 1) High-density polyethylene (HDPE)
- 2) UL 651 and either ASTM 2447 or ASTM 3035 suitable for direct burial applications
- 3) Minimum wall thickness equivalent to Schedule 40 as defined by ASTM 2447 or DR 15.5 as defined by ASTM 3035
- 4) Orange in color
- 5) Include tracer wire in all conduit runs meeting the following requirements:
 - a) Orange in color
 - b) 600V rated
 - c) No. 12 copper clad wire with HDPE insulation
 - d) Rated at a minimum of 250 pounds of breaking load

C. Pull Boxes

Furnish PVC/PE pull boxes with metal frames and covers conforming to the NDDOT standard drawing 770-3. Ensure all eyebolts are galvanized. Use Class 3 gravel for backfill.

CONSTRUCTION

A. General

Construct IT System in accordance with the National Electric Code, the North Dakota State Electrical Board, and NDDOT standards.

B. Conduit

Construct conduit in accordance with the following requirements:

- 1) Place conduit 24 inches below final grade.
- 2) Construct conduit into pull boxes and splice vaults maximum of three inches with bell ends.
- 3) Seal empty conduits with mechanical duct plugs.

- 4) Install tracer wire and ground all ends.

C. Pull Boxes

Construct pull boxes in accordance with the following requirements:

- 1) Construct two feet of pea rock below pull boxes for drainage.
- 2) Construct conduit into pull boxes a maximum of three inches.
- 3) In landscaped areas, place the top of the pull box level with the final grade and sloped to match the slope of the final grade.
- 4) Backfill to a 90 percent compaction with Class 3 gravel.

D. Testing and Acceptance

Complete testing and acceptance per the following requirements:

- 1) Coordinate with the Engineer an initial inspection of the IT System components after the IT System and all associated components have been installed. The initial inspection will not be performed until the IT System has been fully constructed. During the inspection, be available to open and close pull boxes and vaults and assist the Engineer as requested. The Engineer will provide findings from the initial inspection.
- 2) After performing corrections noted in the initial inspection, coordinate a final inspection with the Engineer. If the final inspection discloses any unsatisfactory items, correct the items and coordinate a supplementation final inspection.
- 3) Upon approved final inspection, the Engineer will accept the IT System.

E. As-Builts

Provide GPS-located as-builts per the following requirements:

- 1) Ensure GPS data is accurate within 24 inches.
- 2) Collect the location of all items installed as part of IT System, including but not limited to, conduit, pull boxes and tracer wire
- 3) Collect data points for conduit/cable runs at every fifty feet and change in direction.
- 4) Submit GPS as-builts as an ArcGIS Shape File and KML/KMZ file.

F. Warranty

Warranty all material and work for a period of at least one year from the date of final acceptance.

METHOD OF MEASUREMENT

The Engineer will measure each IT System installed. An IT System is comprised of the entire system throughout the project.

BASIS OF PAYMENT

Pay Item
IT System

Pay Unit
Each

Payment will be made as follows:

- 50% of the bid price will be paid upon completion of installation.
- 35% of the bid price will be paid upon completion of the initial inspection.
- 5% of the bid price will be paid upon completion of the as-builts.
- 10%, less any liquidated damages, will be paid upon completion of the final inspection.

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

VEHICLE SPEED FEEDBACK SIGN

PROJECT 8-029(203)101 – PCN 23102

DESCRIPTION

This work consists of installing temporary Vehicle Speed Feedback Signs (VSFS).

EQUIPMENT

A. General.

Provide VSFS that meets the following requirements:

- Complies with the MUTCD;
- Operates 24 hours a day, 7 days a week;
- Weatherproof;
- Capable of operating between -20° F to 130° F within a humidity range of 0% to 100%; and
- Is not equipped with strobes or flashing lights. If strobes or flashing lights are equipped, disable the strobes and flashing lights.

The Contractor will retain ownership of the VSFS at the end of the project.

B. Power.

Provide a solar powered VSFS with 10 days of battery reserve.

C. Static Sign Sheeting.

Provide 6-inch-tall letters on the static sign sheeting that are black on fluorescent orange meeting the requirements to Section 894.02 E, "Type XI Retroreflective Sheeting".

D. Radar and Programming

Use radar to monitor the advancing vehicle speed. Provide radar that is accurate to ± 1 mph. Supply radar that is K band, single direction Doppler radar, and FCC part 15 compliant, requiring no license.

Program the sign with the posted speed limit. When programed, operate the device in the following conditions:

1. No speed detected, the dynamic display is blank or black
2. When the speed is equal or less than the speed limit, the dynamic display shows the speed.
3. When a speed greater than the speed limit, the dynamic display shows the speed.

E. Dynamic Components

House the dynamic components in a NEMA 3R rated housing. Display an 18 inch or larger 2-digit LED Legend. Disable any other messages or graphics.

Equip the display background with an opaque black. Allow the display to adjust automatically for ambient light conditions.

Use yellow or amber LEDs that have a wavelength between 580-596 nanometers. Do not use secondary LED displays.

F. Post mounted

Provide a breakaway support that meets NDDOT requirements.

G. Trailer mounted.

Provide a trailer that can be leveled.

CONSTRUCTION REQUIREMENTS

A. General.

Program the signs before operations begin and perform any required maintenance for the duration of the installation.

Mount VSFS a minimum of 5 feet from the bottom of the sign to the driving lane surface.

Follow the manufacturer's recommendations for angling the sign to detect oncoming traffic.

Maintain VSFS in place for the duration of time that the crossovers are active.

B. Post Mounted.

Do not install post mounted VSFS in pavement. Install post mounted VSFS before crossovers begin carrying traffic.

C. Trailer Mounted.

Level the trailer and secure the trailer without damaging the pavement. Install trailer mounted VSFS immediately after crossovers begin carrying traffic.

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Pay Item	Pay Unit
Vehicle Speed Feedback Sign	EA

The Engineer will pay 50% of the Vehicle Speed Feedback Sign after they are installed and active and 50% after they are no longer needed.

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

ARCHITECTURAL SURFACE FINISH

PROJECT # IM-8-029(203)101 – PCN 23102

DESCRIPTION

This work consists of applying concrete stain to all exposed concrete surfaces that receives the architectural surface.

MATERIALS

A. General.

Obtain all concrete stain and anti-graffiti products from a single source.

B. Stain.

Provide a 100 percent acrylic; water-repellant, semi-opaque, tinted emulsion sealer designed for concrete and masonry surfaces.

Use products intended for outdoor use and that allow for moisture vapor transmission.

Provide products that are resistant to the following:

- Freeze thaw;
- Moisture;
- Alkali;
- Acid;
- Mold and fungus; and
- Discoloration and degradation.

Meets the requirements of ASTM G155 for a minimum of 1,000 hours.

Use color pigments, for tinted products, derived from synthetic mineral oxides.

C. Anti-graffiti Coating.

Provide an anti-graffiti coating that is:

- Clear;
- Non-yellowing; and
- UV-resistant.

CONSTRUCTION REQUIREMENTS

A. General

Use a multi-colored stain to simulate the full color range of natural stone on to concrete surfaces. Apply an anti-graffiti coating after the stain.

Construct grout pattern joints with the appearance of a mortared joint.

Furnish, store, prepare, apply, and cure all materials according to the product manufacturer's directions.

B. Submittals.

Within 30 calendar days of execution of the Contract, submit the following to the Engineer for approval:

1. Product data including manufacturer's technical information and application instructions for each material proposed for use.
2. A list of cleaning products compatible with the anti-graffiti coating.
3. Laboratory test reports showing that materials proposed for use meet physical or performance property requirements.
4. Certificates of Compliance of the stain and anti-graffiti coatings.
5. Supply 1 foot X 1 foot color sample of the concrete stain to be used on the architectural surface.

C. Test Panel.

Once the 1 foot by 1 foot color sample has been approved by the Engineer, Produce a test panel that measures 48 x 24 x 3 inches. Construct the panel on the project site at a location acceptable to the Engineer and demonstrate the final colors simulating the appearance of real stone including:

- Multiple colors (5);
 - Dark Tan base color (AMS STD 595 #30372);
 - Medium Brown accent color (AMS STD 595 #30140);
 - Dark Brown accent color (AMS STD 595 #37056);
 - Rust accent color (AMS STD 595 #20100);
 - Light Gray mortar joint color (AMS STD 595 #26440);
- Shading;
- Flecking; and
- Veining.

Construct a new panel if the initial panel does not match the color samples of the concrete stain. The Engineer will use the test panel to evaluate the final colors. Do not remove the test panel from the jobsite until the Engineer releases it.

D. Surface Preparation

Following removal of forms, give all exposed textured concrete surfaces an ordinary surface finish as specified in Section 602.04 I.1 "Surface Finish A" before the surface preparation. Finish defects greater than 1/2" in diameter to blend with the balance of the textured surface.

Prepare surface according to stain manufacturers specifications.

Thoroughly flush all surfaces that are to receive an architectural surface finish with clean water not more than 24 hours before applying the finish.

E. Application.

Allow concrete to cure a minimum of 28 days before applying the surface finish.

Apply the base color according the manufacturer's recommendations for thickness and coverage.

Use undiluted staining products.

BASIS OF PAYMENT

Include the cost of work described in this Special Provision in the contract unit price for "Class AAE-3 Concrete".

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION (SP)

TEMPORARY WATER DIVERSION

Project # IM-8-029(203)101 - PCN 23102

DESCRIPTION

Diversions are used to temporarily reroute surface water or restrict flows to allow for the construction activities to take place.

This work consists of constructing and maintaining a temporary diversion to allow for the installation of:

- Single 42" Pipe Conduit at 5367+78
- Dual 42" Pipe Conduit at 5410+35, 5410+57
- Dual 42" Pipe Conduit at 5631+29, 5631+44
- Dual 42" Pipe Conduit at 5644+94, 5645+14
- Triple 36" Pipe Conduit at 5702+83, 5703+05, 5703+27
- Dual 51x31" Arch Pipe Conduit at 5739+10, 5739+29
- Dual 51x31" Arch Pipe Conduit at 5778+94, 5779+17
- Dual 51x31" Arch Pipe Conduit at 5793+20, 5793+46

This work is in conjunction with the requirements of Standard Special Provision (SSP) 1 "Temporary Erosion and Sediment Best Management Practices," and the Construction General Permits.

ATTACHMENTS

Appendix A: 2-Year 24-hour Flow.

MATERIALS

Item	Section
Geosynthetic Type R1	858

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

CONSTRUCTION REQUIREMENTS

A. General.

Obtain and modify all appropriate permits before work commences on the diversions.

Design, construct, operate, and remove temporary diversions to prevent soil/water interaction.

Strip and stockpile topsoil from areas where the temporary diversion will be constructed and installed. Do not place stockpiles between the diversion and the work area. Stabilize

stockpiles placed within 200 feet of the diversion and work area within 24 hours of construction of the stockpile

Isolate work area using dikes or other methods even when no water is present. Construct the diversion before beginning work on the structure.

1. Plan Submittal.

Submit a design for the diversion that includes work drawings and include the submittals with the Storm Water Pollution Prevention Plan (SWPPP).

2. Design.

Design the temporary diversion to withstand the 2-year event shown in Appendix A and meet the following:

- If flow occurs while the diversion is in place, a portion of the flow must be passed as water accumulates in order to maintain flows downstream;
- Maintain downstream water quality equal to the upstream water quality; and
- Include provisions that will prevent the accumulation of job site sediment in the diversion.

B. Diversion Components.

Construction of the diversion may entail using the components listed below or other methods approved by the Engineer.

Install diversion measures before beginning work on the structure.

1. Dike.

Construct upstream and downstream dikes to isolate the work area. Construct dikes using one or more of the following materials:

- Sandbags;
- Sheet piles;
- Soil wrapped with Geosynthetic Type R1;
- Water filled bladder;
- Impermeable containers; or
- Prefabricated dams.

2. Work Area Dewatering.

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

Inlet control systems may include:

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

Stabilized discharges may include:

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

Design and operate the discharge so that there is no visible sediment plume present in the water body and the discharge causes no additional erosion or sediment.

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

3. Culvert Installation.

Provide positive drainage from the upstream to downstream ends of the culvert and install energy dissipation measures at culvert outlets.

a. Culvert Through Existing Structure.

Install pipes through the existing structure.

Construction may include using the following steps:

- (1) Install a temporary culvert through the structure.
- (2) Anchor and seal the installed pipes at the upstream impervious dike.
- (3) Extend the installed pipes through the downstream impervious dike.

b. Culvert Diversion.

Install a temporary pipe crossing under the roadway near the existing structure.

4. Channels.

Construct channels with side slopes that are 2:1 or flatter with a channel bottom of sufficient width. Cover disturbed slopes and channel bottom with Geosynthetic Material, Type R1.

Overlap splices and joints placed at least 36 inches.

Secure the liner using methods that will ensure that the liner will not be disturbed by the design flows shown in Appendix A. Potential methods of securing the liner may include:

- Staples;
- Pins;
- Sandbags; or
- Riprap.

Patch damaged areas of channel liner. Place a patch that overlaps the damaged area by 36 inches on all sides. Secure the patch with pins or staples.

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

Connect the downstream end of the channel before connecting the upstream end of the channel to the existing water body.

5. Diversion Pumping.

Place an inlet control system at pump inlets. An inlet control systems may include:

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

Route the discharge hose through the structure or work area.

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

C. Diversion Removal.

Do not begin removal of the temporary diversion until the construction activities relating to the structure are complete and all permanent erosion and sediment control devices are in place. Remove the diversion in a manner that prevents soil/water interaction.

Remove all materials used to construct the diversion.

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

1. Downstream Dike.

Remove the downstream dike first. Stabilize the areas above the waterline where the downstream dike was located.

2. Upstream Dike.

Remove the upstream dike to restore normal flow through the structure before removal of any devices used to create the diversion.

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

a. Suspended Pipe.

Remove the suspended pipe at the same time as removing the upstream dike.

b. Channel and Pipe Diversion.

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

3. Pipe.

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

4. Channel.

Backfill temporary channels outside of the roadway embankment as specified in Section 203.04 G.3, "Compaction Control, Type B". When backfilling roadway embankment areas, benching of slopes will be required as specified in Section 203.04 G.1, "General".

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Pay Item	Pay Unit
Temporary Stream Diversion	Each

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

Table 1	
Work Completed	Percent of Contract Unit Price
Stream Diversion Installed	75
Restoration of the Diversion	25

Include the cost for installation, maintenance, and removal of erosion control devices used in conjunction with the stream diversion in the contract unit price for "Temporary Stream Diversion". Section 4, "Basis of Payment" in SSP 1 does not apply to erosion control devices used in conjunction with stream diversions.

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

Appendix A

2-Year 24-Hour Flow		
Station	Existing Structure Type	Min Discharge (cfs)
5367+78	42" RCP	52.1
5410+35, 5410+57	Dual 42" RCP	34.6
5631+29, 5631+44	Dual 42" RCP	62.4
5644+94, 5645+14	Dual 42" RCP	69.0
5702+83, 5703+05, 5703+27	Triple 36" RCP	55.2
5739+10, 5739+29	Dual 51x31" Arch RCP	43.5
5778+94, 5779+17	Dual 51x31" Arch RCP	28.3
5793+20, 5793+46	Dual 51x31" Arch RCP	40.6

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

MATURITY CURVE

PROJECT 8-029(203)101 – PCN 23102

DESCRIPTION

This work consists of creating a maturity curve for concrete pavement.

CONSTRUCTION REQUIREMENTS

A. General.

The Department requires a maximum of 14 calendar days to verify concrete mix designs before the Engineer will allow paving operations to begin.

B. Contractor's Mix Design

During the development of the concrete mix design, develop a maturity curve as specified in ASTM C 1074. The water/cement (w/c) ratio used to develop the maturity curve is the target w/c ratio for the mix. Provide mix with a w/c ratio with a tolerance of 0.01 from the target w/c ratio.

C. First Day of Paving.

The Engineer will verify the maturity curve on the first day of concrete placement according to ASTM C 1074.

Allow the Engineer to place the thermocouple into plastic concrete. Protect the thermocouple wire until the strength shown by the maturity curve exceeds the mix design strength.

D. Opening to Traffic.

Pavement placed during development of the maturity curve may be opened to traffic when one of the following criteria has been met:

- the maturity factor of the placed concrete meets or exceeds the initial maturity factor as determined by the strength-maturity curve being developed; or
- the average strength of the three beams used for development of the strength-maturity curve meets 450 psi, at a particular test age.

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Include the cost of developing the maturity curve in the contract unit price of the Concrete Pavement bid items.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

UTILITY COORDINATION

IM-8-029(203)101 – PCN 23102

DESCRIPTION

This work consists of coordinating the construction schedule with third party utility companies owning facilities within the project limits, verifying the location of those facilities during construction, and resolving issues with those utilities.

The requirements in this Special Provision replace the requirements of Section 105.03, "Cooperation With Utility Owners".

ATTACHMENTS

Appendix A – Utility Coordination Table

Appendix B – Utility Exhibits

DEFINITIONS

Abandon Utility (AU): Utility Encounter that was originally a Conflict, but relocated before bidding. The line is still represented in the Exhibits to make the Contractor aware of its location. See the Utility Coordination Table for final details.

Conflict: A utility in need of relocation or adjustment for the construction to proceed in that area.

Protect in Place (PIP): A utility that does not need relocation, but needs precautions to protect the utility during construction activities.

Proposed Resolution (PR): A proposed location of a future Utility Encounter. The Utility Owner is in the process of moving the Utility to this Proposed location. PIP activities may still be required in the proposed location.

Utility Encounter (UE): A Conflict or Protect in Place situation involving an existing third party owned utility.

UTILITY COMPANY CONTACTS

UTILITY COMPANY	CONTACT NAME	PHONE NUMBER	EMAIL
City of Hillsboro	Jim Anderson	O: 701-636-4860 C: 701-430-1030	jim.anderson@hillsboro-nd.us
Dakota Natural Gas	Pat Johnson	O: 507-209-2109 C: 651-269-5996	pjohnson@greatermngas.com

Halstad Telephone Company	Chad Tice	O: 218-456-2125	ctice@rrv.net
Lumen / Centurylink	Trevor Christensen	O: 701-415-7058 C: 701-770-5574	trevor.a.christensen@lumen.com
Midco	Jason Venem	O: 701-739-0299	jason.venem@midco.com
Nodak Rural Electric Cooperative	Casey Hansen	O: 701-795-6722	chansen@nodakelectric.com
Polar Communications	Jim Praska	O: 701-284-7221	jpraska@polartel.com
Traill County Rural Water Users	Chad Gratton	O: 701-599-2963 C: 218-791-7469	chadgratton@yahoo.com

CONTRACTOR RESPONSIBILITIES

A. Responsibilities.

The responsibilities for utility coordination include the following:

- Conduct the preconstruction utility coordination meeting;
- Main point of contact for all utility companies;
- Maintain a schedule for utility activities;
- Hold weekly utility meetings in addition to the weekly planning and reporting meeting and report on the utility meetings at the weekly planning and reporting meeting;
- Follow up with any utility companies that do not show up to construction meetings;
- Coordinate work efforts of the utility companies, revise work schedules and traffic control as necessary to ensure adequate cooperation between UE and construction work;
- Develop and update the utility coordination plan;
- Provide a weekly written summary for contacts and meetings to the Engineer; and
- Coordinate with all of the other parties to update the project schedule specified in Section 108.03, "Progress Schedule".

B. Utility Coordination Plan.

Develop a utility coordination plan with each utility company that includes the phasing and scheduling requirements for UE.

C. Record of Utility Outage Notifications.

Request a copy of notifications that utility companies provide to customers for service outages. Maintain copies of all notifications until the Contractor signs the final estimate.

D. Utility Coordination Schedule.

Create and maintain a construction schedule that includes timelines for the phasing of utility coordination work. Include information contained in the contract documents and information obtained during coordination discussions with utility owners. Written agreements between the Contractor and a utility company will govern over information contained in contract documents; however, the agreements must be signed by the NDDOT, Contractor and Utility Company to be effective. Written agreements are considered contract revisions, however they

are not eligible for additional compensation or additional time unless agreed to separately by the Engineer.

The Utility Coordination Table contains information related to the utility coordination requirements at each area designated as a UE. The timelines included on the Table may be longer than shown if the Contractor requests multiple resolutions simultaneously. Adjust work schedules as required to accommodate utility resolutions.

Revisions to the construction schedule due to a utility company or companies non-conformance with agreed upon schedules or failure to reasonably coordinate work efforts with the Contractor will be considered excusable, non-compensable delays as specified in Section 108.06, "Determination of and Extensions to the Contract Time".

Failure by the Contractor to reasonably coordinate schedules with a utility company or companies for UE identified in the contract, or failure to document coordination efforts will be considered non-excusable delays as specified in Section 108.06, "Determination of and Extensions to the Contract Time".

CONSTRUCTION REQUIREMENTS

A. General.

The vertical and horizontal utility locations shown in the plans are approximate. Plan locations should not be interpreted as exact for bidding or construction purposes.

Utility facilities shown on the plans, if any, are for reference purposes only and may not constitute an exhaustive representation of all utility facilities within the project. Notify the North Dakota One Call System (811) before starting the work, so they may locate and mark all utility facilities within the project. Receive utility locates for Department-owned, publicly-owned, and privately-owned utility facilities, whether on or off the One Call System.

Comply with Chapter 49-23 of the NDCC in determining the location of underground utilities.

B. Utilities Identified in Plans.

Coordinate UE work with the affected utility owners. Maintain continuous communication with the Engineer, affected subcontractors, and affected utility owners until UE will no longer affect or be affected by the Contractor.

Cooperate with utility owners in relocating and adjusting utility facilities to minimize interruption to service and duplication of work by utility owners.

The Contract documents show all known UE for the project.

If a UE identified as a Protect in Place is determined to be a Conflict during construction, the Engineer will make necessary revisions to the Contract as specified in Section 104.02, "Contract Revisions". These types of changes will be considered excusable, compensable delays as specified in Section 108.06, "Determination of and Extensions to the Contract Time".

C. Utilities Encountered During Work.

1. General.

Neither of the cases discussed in this subsection relieve the Contractor of liability that may arise under provisions of the NDCC.

2. Unidentified Utility Encounters.

The Department will bear costs associated with revisions to the work as specified in Section 104.02 B, "Differing Site Conditions" only if the Engineer determines that all of the following conditions exist:

- a UE exists that was not designated in the plans; and
- the UE is in a location that affects the prosecution of the work to construct the project as designed.

3. Utility Encounters Created Due to Actions Performed by the Contractor.

If a new UE is created due to actions performed by the Contractor for the Contractor's convenience; the Contractor shall account for and protect the affected facilities. Before performing these actions, the Contractor shall coordinate with the utility owner. The Department will not make additional payments to the Contractor nor the utility owner for UE created in this manner and will not provide additional time to the Contractor for completing the work.

If utility companies incur costs, the Department will not participate in those costs and will not make payment to the Contractor for those costs.

D. Utility Coordination Meetings.

1. Preconstruction Utility Meeting.

Arrange the meeting with the utility owners, the Contractor and affected subcontractors, local agency representatives, and the Engineer to occur no later than two weeks after the preconstruction meeting. At the meeting, provide an agenda and a tentative construction schedule for planning UE work; after the meeting, publish minutes and distribute a copy to all meeting attendees within 48 hours of the conclusion of the meeting.

2. Weekly Utility Coordination Meeting.

Organize a weekly meeting to discuss utility coordination efforts with utility companies and affected subcontractors, local authorities, the Engineer and others who may have an interest in utility coordination efforts. Hold the weekly utility coordination meeting immediately before the weekly planning and reporting meeting. Publish minutes and distribute copies to all meeting attendees within 48 hours of the conclusion of the meeting.

The intent of this meeting is to disseminate information regarding ongoing and upcoming UE work and to ensure that all affected parties are collaborating and sharing information related to that work.

Provide a summary of the discussion at the weekly planning and reporting meeting.

E. Fire Hydrants.

Before starting work that affects a fire hydrant, coordinate with the local fire authority to determine if provisions need to be in place before starting the work. If provisions are necessary, obtain the approval of the local fire authority before beginning the work affecting the fire hydrant.

F. Damage and Interruptions.

If the Contractor causes damage to utility facilities, the Contractor is responsible for the costs of restoring or repairing the damaged utility facility to a condition equal to or better than the condition existing before the damage occurred. Immediately notify the utility owner of the damage or, if the owner is unknown, the One Call System. Do not conceal, attempt to conceal, or make repairs to the utility facilities until approved by the utility owner. If this damage causes interruption to utility service, continuously coordinate with the utility owner until the service is fully restored.

The Department will not pay the Contractor for the cost to restore utility facilities or repair damage to utility facilities and will consider any delays resulting from this damage to be non-excusable in accordance with Section 108.06, "Determination of and Extensions to the Contract Time."

G. Utility Criteria.

The Utility Coordination Table and Utility Exhibits contain specific information related to each UE location.

The following are specialized notes that could not fit in the comments column of Appendix A – Utility Coordination Table.

Dakota Natural Gas

I. DANAGA

Gas line crossings at approximately Sta 5498+38 to 5498+84 and Sta 5848+60 R2 to Sta 5848+87 R2 are deemed critical facilities by Dakota Natural Gas. Verify depth before construction activities to ensure facility is not damaged.

City of Hillsboro

II. CITHIL

See construction plans for locations of proposed lighting removals, abandonment, and installations. CITHIL-7, 24, and 32 electric cable are to be abandoned with the NDDOT's Contractor installing new electric cable. CITHIL-28, 29, 30, and 31 light poles and foundations are to be removed or relocated by the NDDOT's Contractor along with new light poles and foundations. Include costs to dispose of any lines to be abandoned that are impacted in the bid item "Remove Lighting System".



Utility Coordination Table Appendix A of SP 122(24)

IM-8-029(203)101-PCN 23102

Sorted By Station

UE ID# UR ID# PR ID#	Utility Coordination Exhibits	Beginning Point			to	Ending Point			LT/RT or Crossing or Point Location	Roadway (Alignment/ Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Comments	Utility Company	Type of Facility	After Notification - Time For Utility to Mobilize (D = Working Day, W = Week)	Estimated Time to Complete Relocation (D = Working Day, W = Week, H = Hours)	UTILITY ENCOUNTER TYPE (UE)	
		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT												Protect in Place	Conflict
CITHIL-1	1	5470+62	96	RT	to	5470+80	6	RT	RT	SCL_I29	92.4	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, & fencing replacement over existing sanitary forcemain. NDDOT/Contractor's Responsibilities: Protect sanitary forcemain in place.	City of Hillsboro	Underground Sanitary Forcemain	-	-	X	
CITHIL-2	1	5485+27	88	RT	to	5491+90	143	RT	RT	SCL_I29	647.9	FT	-1.5/+1	Level 2	Construction activities include: Roadway pavement and base replacement & minor inslope grading over existing electric line and near lightpole foundations. NDDOT/Contractor's Responsibilities: Protect electric line, lightpoles, and foundations in place.	City of Hillsboro	Underground Electric Line and Lighting	-	-	X	
CITHIL-3	1	5489+33	35	LT	to	5489+42	111	RT	Crossing	SCL_I29	147.8	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, & fencing replacement over existing water line. NDDOT/Contractor's Responsibilities: Protect water line in place.	City of Hillsboro	Underground Water Line	-	-	X	
CITHIL-4	1	5489+90	35	LT	to	5489+91	117	RT	Crossing	SCL_I29	152.5	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, & fencing replacement over existing sanitary sewer. NDDOT/Contractor's Responsibilities: Protect sanitary sewer in place.	City of Hillsboro	Underground Sanitary Sewer	-	-	X	
CITHIL-5	1	5492+06	139	RT	to	5492+25	35	LT	Crossing	SCL_I29	172.6	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement & minor inslope grading over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	City of Hillsboro	Underground Electric Line	-	-	X	
CITHIL-6	2	5497+68	789	RT	to	5498+18	690	RT	RT	SCL_I29	118.4	FT	-	Level 2	Construction activities include: Placing shared use path base and concrete and minor inslope grading over existing electric line and near lightpole foundations. NDDOT/Contractor's Responsibilities: Protect electric line, lightpoles, and foundations in place.	City of Hillsboro	Underground Electric Line and Lighting	-	-	X	
CITHIL-7	2	5498+54	525	RT	to	5510+98	99	RT	RT	SCL_I29	1803.7	FT	-	Abandoned	See plans and CITHIL Note II in Section G of the Construction Requirements of SP 122(24).	City of Hillsboro	Underground Electric Line and Lighting	-	-		X
CITHIL-8	2	5498+63	12	RT	to	5498+68	107	RT	RT	SCL_I29	95.7	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement & minor inslope grading over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	City of Hillsboro	Underground Electric Line	-	-	X	
CITHIL-9	2	5498+88	465	RT	to	5499+35	389	RT	RT	SCL_I29	80.2	FT	-1.5/+0.5	Level 2	Construction activities include: Mill & overlay over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	City of Hillsboro	Underground Electric Line	-	-	X	
CITHIL-10	2	5499+10	420	LT	to	5499+35	388	LT	LT	SCL_I29	41.0	FT	-1.5/+0.5	Level 2	Construction activities include: Mill & overlay over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	City of Hillsboro	Underground Electric Line	-	-	X	
CITHIL-11	2	5499+57	518	LT	to	5500+02	519	LT	LT	SCL_I29	49.6	FT	-1.5/+0.5	Level 2	Construction activities include: Mill & overlay over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	City of Hillsboro	Underground Electric Line	-	-	X	
CITHIL-12	2	5501+01	384	LT	to	5501+05	350	LT	LT	SCL_I29	33.9	FT	-1	Abandoned	Construction activities include: Mill & overlay over existing water line. NDDOT/Contractor's Responsibilities: Protect water line in place.	City of Hillsboro	Underground Water Line	-	-	X	
CITHIL-13	2	5501+79	17	RT	to	5501+87	86	RT	RT	SCL_I29	69.4	FT	-1	Abandoned	Construction activities include: Roadway pavement and base replacement, minor inslope grading, and fencing replacement over existing water line. NDDOT/Contractor's Responsibilities: Protect water line in place.	City of Hillsboro	Underground Water Line	-	-	X	
CITHIL-14	2	5502+22	354	RT	to	5502+31	380	RT	RT	SCL_I29	27.3	FT	-1	Abandoned	Construction activities include: Mill & overlay over existing water line. NDDOT/Contractor's Responsibilities: Protect water line in place.	City of Hillsboro	Underground Water Line	-	-	X	
CITHIL-15	2	5501+25	368	LT	to	5501+29	334	LT	LT	SCL_I29	34.6	FT	-1	Abandoned	Construction activities include: Mill & overlay over existing water line. NDDOT/Contractor's Responsibilities: Protect water line in place.	City of Hillsboro	Underground Water Line	-	-	X	
CITHIL-16	2	5502+08	18	RT	to	5502+17	88	RT	RT	SCL_I29	70.5	FT	-1	Abandoned	Construction activities include: Roadway pavement and base replacement, minor inslope grading, and fencing replacement over existing water line. NDDOT/Contractor's Responsibilities: Protect water line in place.	City of Hillsboro	Underground Water Line	-	-	X	
CITHIL-17	2	5502+49	342	RT	to	5502+58	368	RT	RT	SCL_I29	27.0	FT	-1	Abandoned	Construction activities include: Mill & overlay over existing water line. NDDOT/Contractor's Responsibilities: Protect water line in place.	City of Hillsboro	Underground Water Line	-	-	X	
CITHIL-18	2	5502+75	274	LT	to	5502+76	243	LT	LT	SCL_I29	30.7	FT	-1.5	Level 2	Construction activities include: Mill & overlay over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	City of Hillsboro	Underground Electric Line	-	-	X	
CITHIL-19	2	5502+83	19	RT	to	5502+85	92	RT	RT	SCL_I29	73.0	FT	-1.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, & fencing replacement over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	City of Hillsboro	Underground Electric Line	-	-	X	
CITHIL-20	2	5502+92	324	RT	to	5502+93	353	RT	RT	SCL_I29	28.9	FT	-1.5	Level 2	Construction activities include: Mill & overlay over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	City of Hillsboro	Underground Electric Line	-	-	X	
CITHIL-21	2	5503+12	345	RT	to	5503+13	315	RT	RT	SCL_I29	30.3	FT	-1.5	Level 2	Construction activities include: Mill & overlay over existing water line. NDDOT/Contractor's Responsibilities: Protect water line in place.	City of Hillsboro	Underground Water Line	-	-	X	



Utility Coordination Table Appendix A of SP 122(24)

IM-8-029(203)101-PCN 23102
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		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT												Protect in Place	Conflict
CITHIL-22	2	5503+22	91	RT	to	5503+25	23	RT	RT	SCL_I29	68.1	FT	-1.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, & fencing replacement over existing water line. NDDOT/Contractor's Responsibilities: Protect water line in place.	City of Hillsboro	Underground Water Line	-	-	X	
CITHIL-23	2	5503+33	210	LT	to	5503+34	239	LT	LT	SCL_I29	29.1	FT	-1.5	Level 2	Construction activities include: Mill & overlay over existing water line. NDDOT/Contractor's Responsibilities: Protect water line in place.	City of Hillsboro	Underground Water Line	-	-	X	
CITHIL-24	2	5505+35	80	LT	to	5507+16	107	LT	LT	SCL_I29	284.6	FT	-1.5	Abandoned	See plans and CITHIL Note II in Section G of the Construction Requirements of SP 122(24).	City of Hillsboro	Underground Electric Line	-	-		X
CITHIL-25	2	5509+55	36	LT	to	5509+64	118	RT	Crossing	SCL_I29	155.7	FT	-1.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, fencing replacement, construction and removal of temporary ramp connection pavement, base, and embankment (above pre-temporary ramp connection construction ditch grade) over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	City of Hillsboro	Underground Electric Line	-	-	X	
CITHIL-26	2	5510+99	99	RT	to	5511+55	36	LT	Crossing	SCL_I29	145.9	FT	-1.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, construction and removal of temporary ramp connection and culvert (above pre-temporary ramp connection construction ditch grade) over existing electric line and near lightpole foundations. NDDOT/Contractor's Responsibilities: Protect electric line, lightpoles, and foundations in place.	City of Hillsboro	Underground Electric Line and Lighting	-	-	X	
CITHIL-27	2	5511+02	99	RT	to	5515+53	90	RT	RT	SCL_I29	442.5	FT	-1.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading. NDDOT/Contractor's Responsibilities: Protect electric line, lightpoles, and foundations in place.	City of Hillsboro	Underground Electric Line and Lighting	-	-	X	
CITHIL-28	2	5498+20	696	-	to	-	-	-	RT	SCL_I29	1.0	EA	-1.5/+0.5	Level 4	See plans and CITHIL Note II in Section G of the Construction Requirements of SP 122(24).	City of Hillsboro	Lightpole and Foundation	-	-		X
CITHIL-29	2	5499+72	551	-	to	-	-	-	RT	SCL_I29	1.0	EA	-1.5/+0.5	Level 4	See plans and CITHIL Note II in Section G of the Construction Requirements of SP 122(24).	City of Hillsboro	Lightpole and Foundation	-	-		X
CITHIL-30	2	5501+15	444	-	to	-	-	-	RT	SCL_I29	1.0	EA	-1.5/+0.5	Level 4	See plans and CITHIL Note II in Section G of the Construction Requirements of SP 122(24).	City of Hillsboro	Lightpole and Foundation	-	-		X
CITHIL-31	2	5505+35	80	-	to	-	-	-	LT	SCL_I29	1.0	EA	-1.5/+0.5	Level 4	See plans and CITHIL Note II in Section G of the Construction Requirements of SP 122(24).	City of Hillsboro	Lightpole and Foundation	-	-		X
CITHIL-32	2	5499+43	742	RT	to	551098.36 R2	99	RT	RT	SCL_I29	1485.4	FT	-1.5/+0.5	Abandoned	See plans and CITHIL Note II in Section G of the Construction Requirements of SP 122(24).	City of Hillsboro	Underground Electric Line and Lighting	-	-		X
NORUEC-1	1	5470+67	96	RT	to	5471+14	8	RT	RT	SCL_I29	99.3	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, & fencing replacement over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	Nodak Rural Electric Cooperative	Underground Electric Line	-	-	X	
NORUEC-2	1	5470+84	96	RT	to	5471+31	10	RT	RT	SCL_I29	98.4	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, & fencing replacement over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	Nodak Rural Electric Cooperative	Underground Electric Line	-	-	X	
NORUEC-3	3	5552+82	11	RT	to	5552+85	118	-	RT	SCL_I29	106.6	FT	-1.5	Level 2	Approximate locaiton of existing electric line. Construction activities include: Roadway pavement and base replacement, minor inslope grading, fencing replacement, and culvert replacement over existing electric line. NDDOT/Contractor's Responsibilities: Verify location via one call and protect electric line in place.	Nodak Rural Electric Cooperative	Underground Electric Line	-	-	X	
NORUEC-4	3	5630+83	100	RT	to	5630+84	12	RT	RT	SCL_I29	88.4	FT	-1.5	Level 2	Approximate location of existing electric line. Construction activities include: Roadway pavement and base replacement, minor inslope grading, fencing replacement, and culvert replacement over existing electric line. NDDOT/Contractor's Responsibilities: Verify location via one call and protect electric line in place.	Nodak Rural Electric Cooperative	Underground Electric Line	-	-	X	
NORUEC-5	4	5683+77	111	RT	to	5683+96	19	RT	RT	SCL_I29	94.1	FT	-1.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, & fencing replacement underneath the overhead line. NDDOT/Contractor's Responsibilities: Protect overhead line during construction activities.	Nodak Rural Electric Cooperative	Overhead Line	-	-	X	
NORUEC-6	4	5739+17	90	RT	to	5739+32	0	-	RT	SCL_I29	91.8	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, fencing replacement, and ditch cleaning underneath the overhead line. NDDOT/Contractor's Responsibilities: Protect overhead line during construction activities.	Nodak Rural Electric Cooperative	Overhead Line	-	-	X	
NORUEC-7	5	5792+64	97	RT	to	5792+99	0	-	RT	SCL_I29	103.4	FT	-8	Level 2	Approximate location of existing electric line. Construction activities include: Roadway pavement and base replacement, minor inslope grading, fencing replacement, and culvert replacement over existing electric line. NDDOT/Contractor's Responsibilities: Verify location via one call and excavate around, suspend, and/or support to protect electric line in place.	Nodak Rural Electric Cooperative	Underground Electric Line	-	-	X	
TRCRWU-1	1	5470+85	96	RT	to	5471+47	10	RT	RT	SCL_I29	106.6	FT	-1.5/+1	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, & fencing replacement over existing water line. NDDOT/Contractor's Responsibilities: Protect water line in place.	Trail County Rural Water Users	Underground Water Line	-	-	X	



Utility Coordination Table Appendix A of SP 122(24)

IM-8-029(203)101-PCN 23102
Sorted By Station

UE ID# UR ID# PR ID#	Utility Coordination Exhibits	Beginning Point			to	Ending Point			LT/RT or Crossing or Point Location	Roadway (Alignment/ Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Comments	Utility Company	Type of Facility	After Notification - Time For Utility to Mobilize (D = Working Day, W = Week)	Estimated Time to Complete Relocation (D = Working Day, W = Week, H = Hours)	UTILITY ENCOUNTER TYPE (UE)	
		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT												Protect in Place	Conflict
TRCRWU-2	3	5631+36	0	-	to	5631+65	102	RT	RT	SCL_I29	105.4	FT	-8.5/0.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, culvert replacement, fencing replacement, & ditch cleaning over existing water line. 8' max excavation is from CL of SB I-29. NDDOT/Contractor's Responsibilities: Protect water line in place.	Trail County Rural Water Users	Underground Water Line	-	-	X	
TRCRWU-3	4	5687+06	96	RT	to	5687+42	19	RT	RT	SCL_I29	85.0	FT	-1.5/+1.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, & fencing replacement over existing water line. NDDOT/Contractor's Responsibilities: Protect water line in place.	Trail County Rural Water Users	Underground Water Line	-	-	X	
HALTEL-1	1	5472+25	99	RT	to	5472+53	7	RT	RT	SCL_I29	95.7	FT	-1.5/+1	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading & fencing replacement over existing fiber optic line. NDDOT/Contractor's Responsibilities: Protect fiber optic line in place.	Halstad Telephone Company	Underground Fiber Optic Line	-	-	X	
HALTEL-2	4	5683+49	106	RT	to	5683+64	16	RT	RT	SCL_I29	94.4	FT	-1.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading & fencing replacement over existing fiber optic line. NDDOT/Contractor's Responsibilities: Protect fiber optic line in place.	Halstad Telephone Company	Underground Fiber Optic Line	-	-	X	
LUMEN-1	1	5472+45	98	RT	to	5472+92	8	RT	RT	SCL_I29	102.4	FT	-1.5/+1	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, fencing replacement, and guardrail post installation over existing fiber optic line. NDDOT/Contractor's Responsibilities: Protect fiber optic line in place.	Lumen	Underground Fiber Optic Line	-	-	X	
LUMEN-2	1	5473+79	99	RT	to	5473+89	5	RT	RT	SCL_I29	95.1	FT	-1.5/+1	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, fencing replacement, and guardrail post installation over existing fiber optic line. NDDOT/Contractor's Responsibilities: Protect fiber optic line in place.	Lumen	Underground Fiber Optic Line	-	-	X	
LUMEN-3	2	5497+39	696	RT	to	5498+06	738	RT	RT	SCL_I29	71.3	FT	-1	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, & fencing replacement over existing fiber optic line. NDDOT/Contractor's Responsibilities: Protect fiber optic line in place.	Lumen	Underground Fiber Optic Line	-	-	X	
LUMEN-4	2	5497+50	804	RT	to	5498+06	738	RT	RT	SCL_I29	81.7	FT	-1	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, & fencing replacement over existing fiber optic line. NDDOT/Contractor's Responsibilities: Protect fiber optic line in place.	Lumen	Underground Fiber Optic Line	-	-	X	
LUMEN-5	3	5552+58	11	RT	to	5552+70	119	RT	RT	SCL_I29	109.5	FT	-1.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, fencing replacement, and guardrail post installation over existing fiber optic line. NDDOT/Contractor's Responsibilities: Protect fiber optic line in place.	Lumen	Underground Fiber Optic Line	-	-	X	
LUMEN-6	3	5632+24	113	RT	to	5632+28	8	RT	RT	SCL_I29	105.9	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, fencing replacement, and guardrail post installation over existing fiber optic line. NDDOT/Contractor's Responsibilities: Protect fiber optic line in place.	Lumen	Underground Fiber Optic Line	-	-	X	
LUMEN-7	4	5686+52	92	RT	to	5686+58	20	RT	RT	SCL_I29	73.6	FT	-1.5	Level 2	Construction activities include: Roadway pavement and base replacement, minor inslope grading, fencing replacement, and guardrail post installation over existing fiber optic line. NDDOT/Contractor's Responsibilities: Protect fiber optic line in place.	Lumen	Underground Fiber Optic Line	-	-	X	
LUMEN-8	5	5793+25	92	RT	to	5793+60	0	-	RT	SCL_I29	98.8	FT	-8	Level 2	Approximate location of existing fiber optic line. Construction activities include: Roadway pavement and base replacement, minor inslope grading, fencing replacement, and culvert replacement over existing fiber optic line. NDDOT/Contractor's Responsibilities: Protect fiber optic line in place.	Lumen	Underground Fiber Optic Line	-	-	X	
MIDCO-1	1	5491+00	35	LT	to	5491+18	136	RT	Crossing	SCL_I29	173.0	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement & minor inslope grading over existing fiber optic line. NDDOT/Contractor's Responsibilities: Protect fiber optic line in place.	Mid-Continent Cable	Underground Fiber Optic Line	-	-	X	
NDDOT-1	2	5498+38	396	RT	to	5498+46	370	RT	RT	SCL_I29	27.5	FT	-1.5/+0.5	Level 2	Construction activities include: Mill & overlay over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	North Dakota Department of Transportation	Underground Electric Line	-	-	X	
NDDOT-2	2	5498+48	12	RT	to	5498+55	107	RT	RT	SCL_I29	96.1	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement & minor inslope grading over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	North Dakota Department of Transportation	Underground Electric Line	-	-	X	
NDDOT-3	2	5499+39	589	RT	to	5500+44	502	RT	RT	SCL_I29	129.0	FT	-1.5/+0.5	Level 2	Construction activities include: Mill & overlay over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line in place.	North Dakota Department of Transportation	Underground Electric Line	-	-	X	
NDDOT-4	2	5501+58	379	RT	to	5501+77	414	RT	RT	SCL_I29	39.9	FT	-1.5/+0.5	Level 2	Construction activities include: Mill & overlay over existing electric line. NDDOT/Contractor's Responsibilities: Protect electric line and snow closure gate in place.	North Dakota Department of Transportation	Underground Electric Line and Snow Closure Gate	-	-	X	



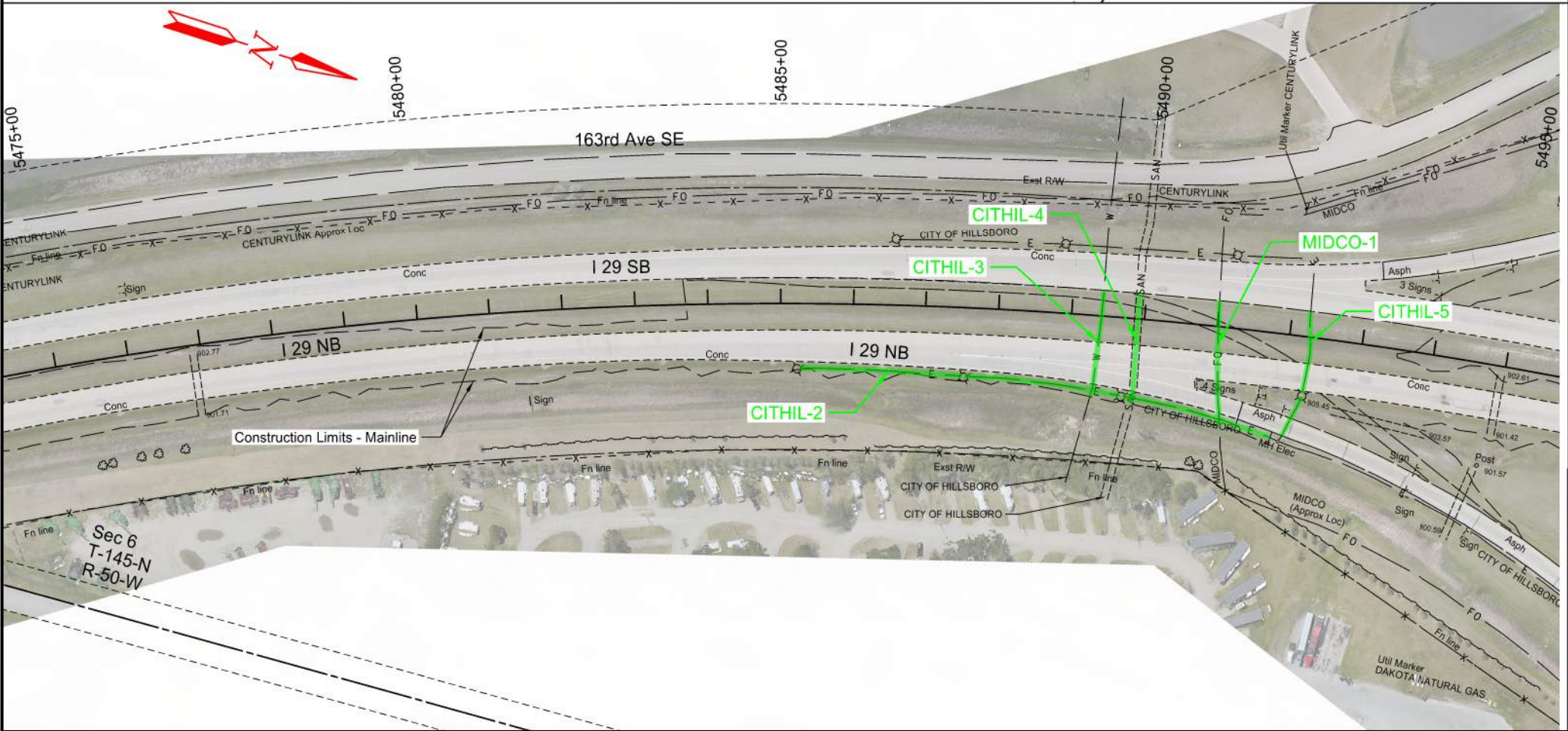
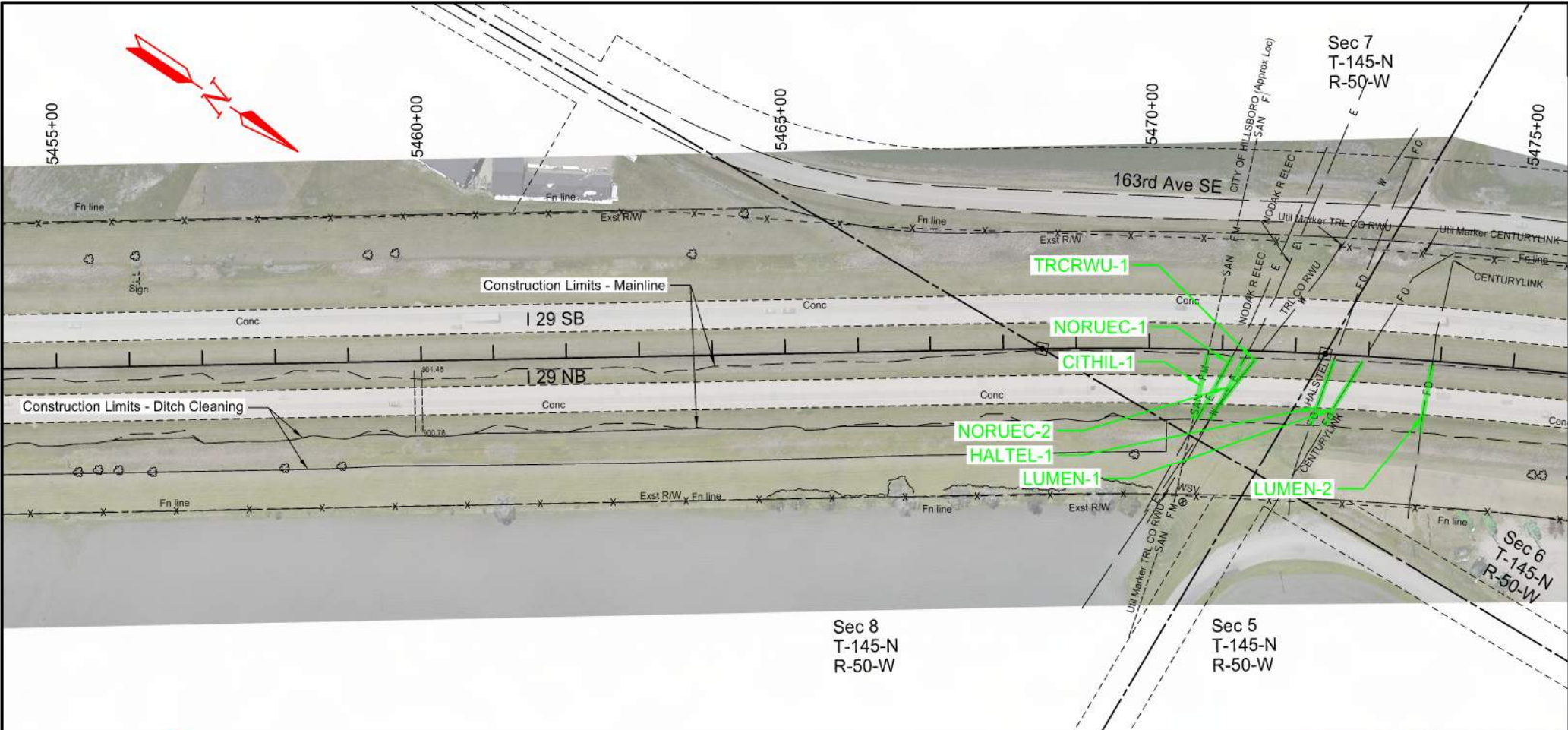
Utility Coordination Table Appendix A of SP 122(24)

IM-8-029(203)101-PCN 23102
Sorted By Station

UE ID# UR ID# PR ID#	Utility Coordination Exhibits	Beginning Point			to	Ending Point			LT/RT or Crossing or Point Location	Roadway (Alignment/ Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Comments	Utility Company	Type of Facility	After Notification - Time For Utility to Mobilize (D = Working Day, W = Week)	Estimated Time to Complete Relocation (D = Working Day, W = Week, H = Hours)	UTILITY ENCOUNTER TYPE (UE)	
		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT												Protect in Place	Conflict
DANAGA-1	2	5498+38	396	RT	to	5498+47	370	RT	RT	SCL_I29	27.1	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement & minor inslope grading over existing gas line. NDDOT/Contractor's Responsibilities: Protect gas line in place. See DANAGA Note I in Section G of the Construction Requirements of SP 122(24).	Dakota Natural Gas	Underground Gas Line	-	-	X	
DANAGA-2	2	5498+83	107	RT	to	5498+84	12	RT	RT	SCL_I29	94.8	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement & minor inslope grading over existing gas line. NDDOT/Contractor's Responsibilities: Protect gas line in place. See DANAGA Note I in Section G of the Construction Requirements of SP 122(24).	Dakota Natural Gas	Underground Gas Line	-	-	X	
DANAGA-3	2	5498+91	408	LT	to	5498+91	375	LT	LT	SCL_I29	33.0	FT	-1.5/+0.5	Level 2	Construction activities include: Roadway pavement and base replacement & minor inslope grading over existing gas line. NDDOT/Contractor's Responsibilities: Protect gas line in place. See DANAGA Note I in Section G of the Construction Requirements of SP 122(24).	Dakota Natural Gas	Underground Gas Line	-	-	X	
DANAGA-4	5	5848+60	101	RT	to	5848+87	25	RT	RT	SCL_I29	80.8	FT	-1.5	Level 2	Construction activities include: Roadway pavement and base replacement & minor inslope grading over existing gas line. NDDOT/Contractor's Responsibilities: Protect gas line in place. See DANAGA Note I in Section G of the Construction Requirements of SP 122(24).	Dakota Natural Gas	Underground Gas Line	-	-	X	
POLCOM-1	5	5848+77	98	RT	to	5849+12	22	RT	RT	SCL_I29	84.0	FT	-2	Level 2	Construction activities include: Roadway pavement base replacement, minor inslope grading, & fencing replacement over existing fiber optic line. NDDOT/Contractor's Reponsibilities: Protect fiber optic line in place.	Polar Communications	Underground Fiber Optic Line	-	-	X	

UTILITY COMPANY INFORMATION			
UTILITY COMPANY	CONTACT NAME	PHONE NUMBER	EMAIL
CITY OF HILLSBORO	Jim Anderson	O: 701-636-4860 C: 701-430-1030	jim.anderson@hillsboro-nd.us
DAKOTA NATURAL GAS	Pat Johnson	O: 507-209-2109 C: 651-269-5996	pjohnson@greatermngas.com
HALSTAD TELEPHONE COMPANY	Chad Tice	O: 218-456-2125	ctice@rrv.net
LUMEN/CENTURY LINK	Trevor Christensen	O: 701-415-7058 C: 701-770-5574	trevor.a.christensen@lumen.com
MIDCO	Jason Venem	O: 701-739-0299	jason.venem@midco.com
NODAK RURAL ELECTRIC COOPERATIVE	Casey Hansen	O: 701-795-6722	chansen@nodakelectric.com
POLAR	Jim Praska	O: 701-284-7221	jpraska@polartel.com
TRAILL COUNTY RURAL WATER USERS	Chad Gratton	O: 701-599-2963 C: 218-791-7469	chadgratton@yahoo.com

UTILITY ENCOUNTER LEVEL DESIGNATIONS	
UE LEVEL	DESCRIPTION
Level 1	Utility not affected by proposed improvements, no impacts.
Level 2	Construction activities will occur above and/or below the utility line. No relocation needed for the utility but may need precautions to protect the utility in place during construction activities.
Level 3	Utility permanently impacted by proposed improvements and requires vertical adjustment only. Horizontal location of utility will not change.
Level 4	Utility permanently impacted by proposed improvements and requires complete relocation. Vertical and horizontal location of utility will change.
Proposed Level 1	Utility that is to be relocated by the Utility Company, and after Utility is relocated to the new location, the final Encounter Level would be that of Level 1.
Proposed Level 2	Utility that is to be relocated by the Utility Company, and after Utility is relocated to the new location, the final Encounter Level would be that of Level 2.
Abandoned	Utility line that was an encounter and is now abandoned in place. See comments for construction disposition, removal, and/or remain in place.



STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-8-029(203)101	-	1

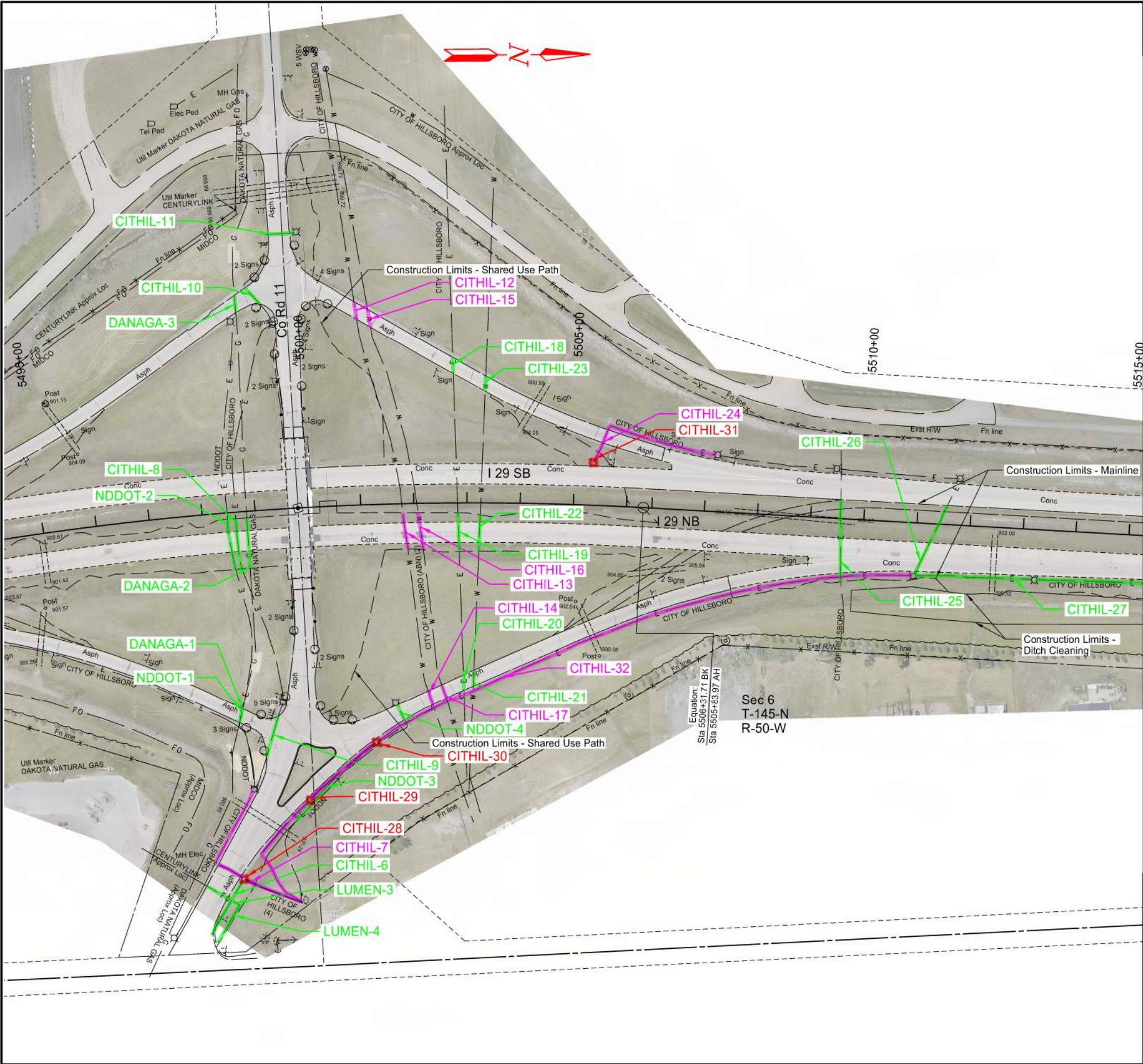
CITY OF HILLSBORO.....	CITHIL
DAKOTA NATURAL GAS.....	DANAGA
HALSTAD TELEPHONE.....	HALTEL
LUMEN (CENTURYLINK).....	LUMEN
MIDCO.....	MIDCO
NDDOT.....	NDDOT
NODAK RURAL ELECTRIC COOPERATIVE.....	NORUEC
POLAR COMMUNICATIONS.....	POLCOM
TRAILL COUNTRY RURAL WATER USERS.....	TRCRWU

LEGEND

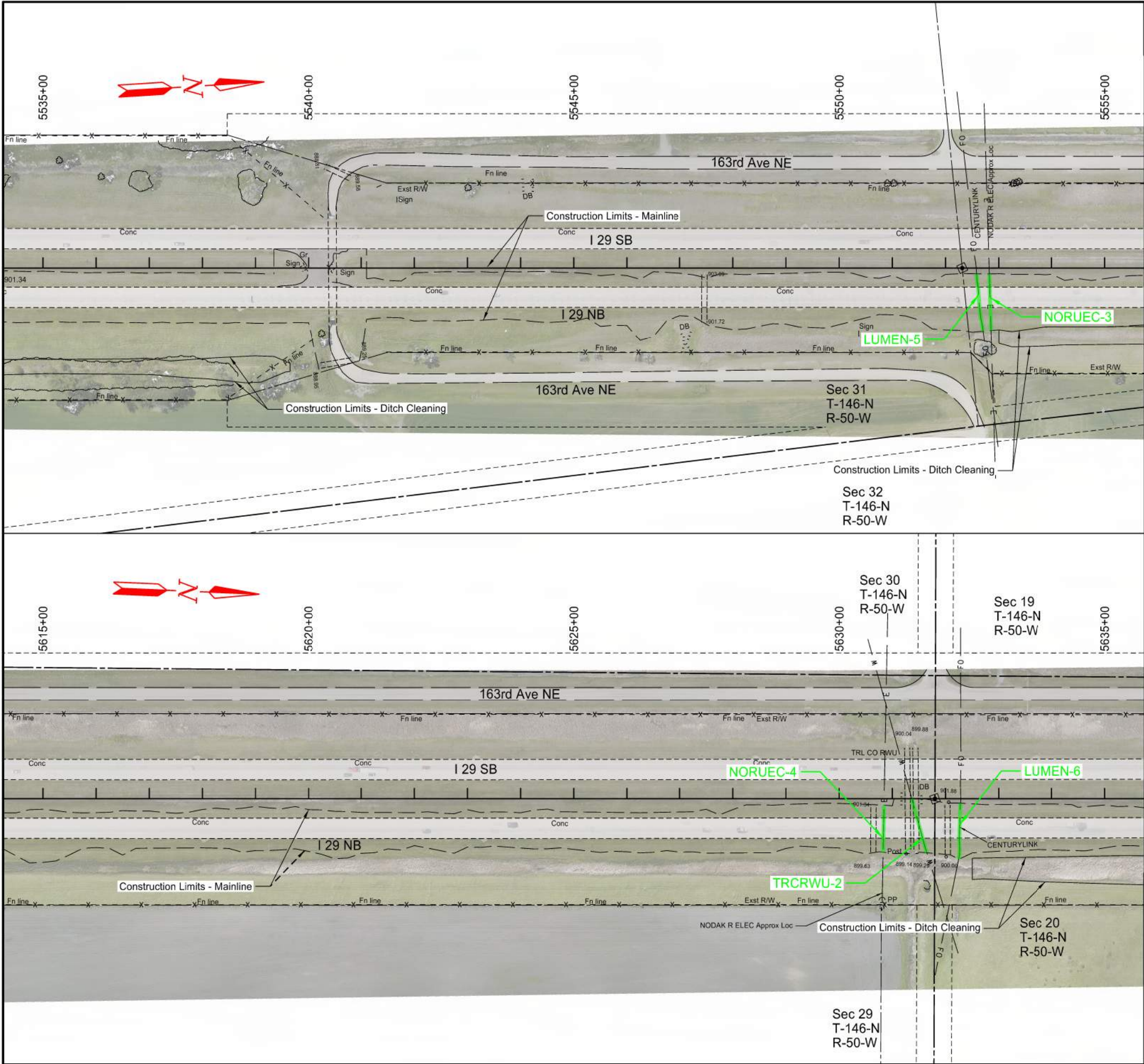
- Level 1 Utility Encounter: Utility not affected by proposed improvements, no impacts.
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Utility Encounter Exhibits
Sta 5455+00 to Sta 5475+00
Sta 5475+00 to Sta 5495+00

PCC Pavement Reconstruction
Interstate 29 - Southbound
N of Kelso N to N of N Jct 200



	STATE	PROJECT NO.	SECTION NO.	SHEET NO.	
	ND	IM-8-029(203)101	-	2	
CITY OF HILLSBORO.....CITHIL DAKOTA NATURAL GAS.....DANAGA HALSTAD TELEPHONE.....HALTEL LUMEN (CENTURYLINK).....LUMEN MIDCO.....MIDCO NDDOT.....NDDOT NODAK RURAL ELECTRIC COOPERATIVE.....NORUEC POLAR COMMUNICATIONS.....POLCOM TRAILL COUNTRY RURAL WATER USERS.....TRCRWU					
LEGEND Level 1 Utility Encounter: Utility not affected by proposed improvements, no impacts. Level 2 Utility Encounter: Construction activities will occur above and/or below the utility line. No relocation needed for the utility but may need precautions to protect the utility in place during construction activities. Level 3 Utility Encounter: Utility permanently impacted by proposed improvements and requires vertical adjustment only. Horizontal location of utility will not change. Level 4 Utility Encounter: Utility permanently impacted by proposed improvements and requires complete relocation. Vertical and horizontal location of utility will change. Proposed Level 1: Utility that is to be relocated by the Utility Company, and after Utility is relocated to the new location, the final Encounter Level would be that of Level 1. Proposed Level 2: Utility that is to be relocated by the Utility Company, and after Utility is relocated to the new location, the final Encounter Level would that of Level 2. Abandoned: Utility line that was an encounter and is now abandoned in place. See comments for construction disposition, removal, and/or remain in place.					
Utility Encounter Exhibits Sta 5495+00 to Sta 5515+00 PCC Pavement Reconstruction Interstate 29 - Southbound N of Kelso N to N of N Jct 200					



STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-8-029(203)101	-	3

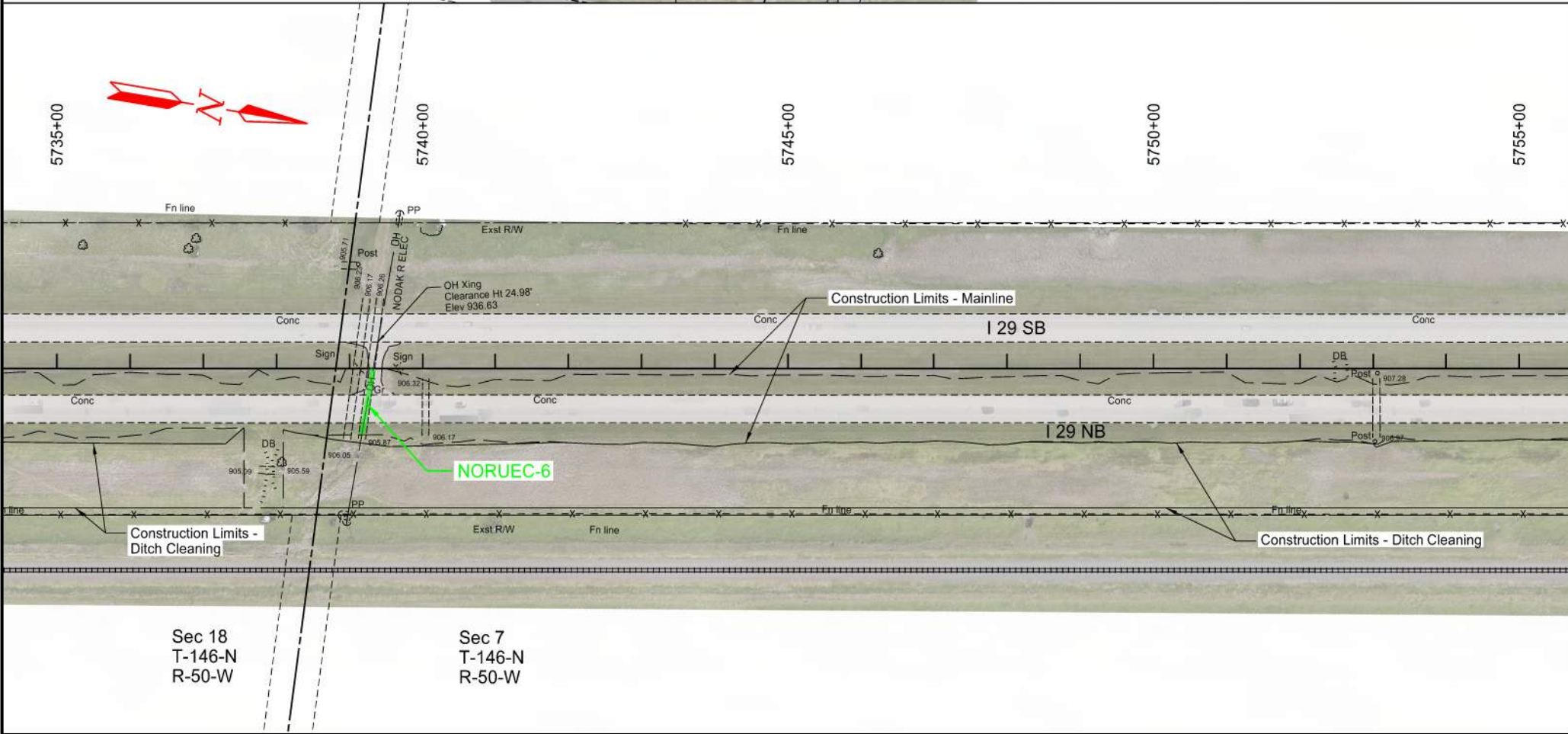
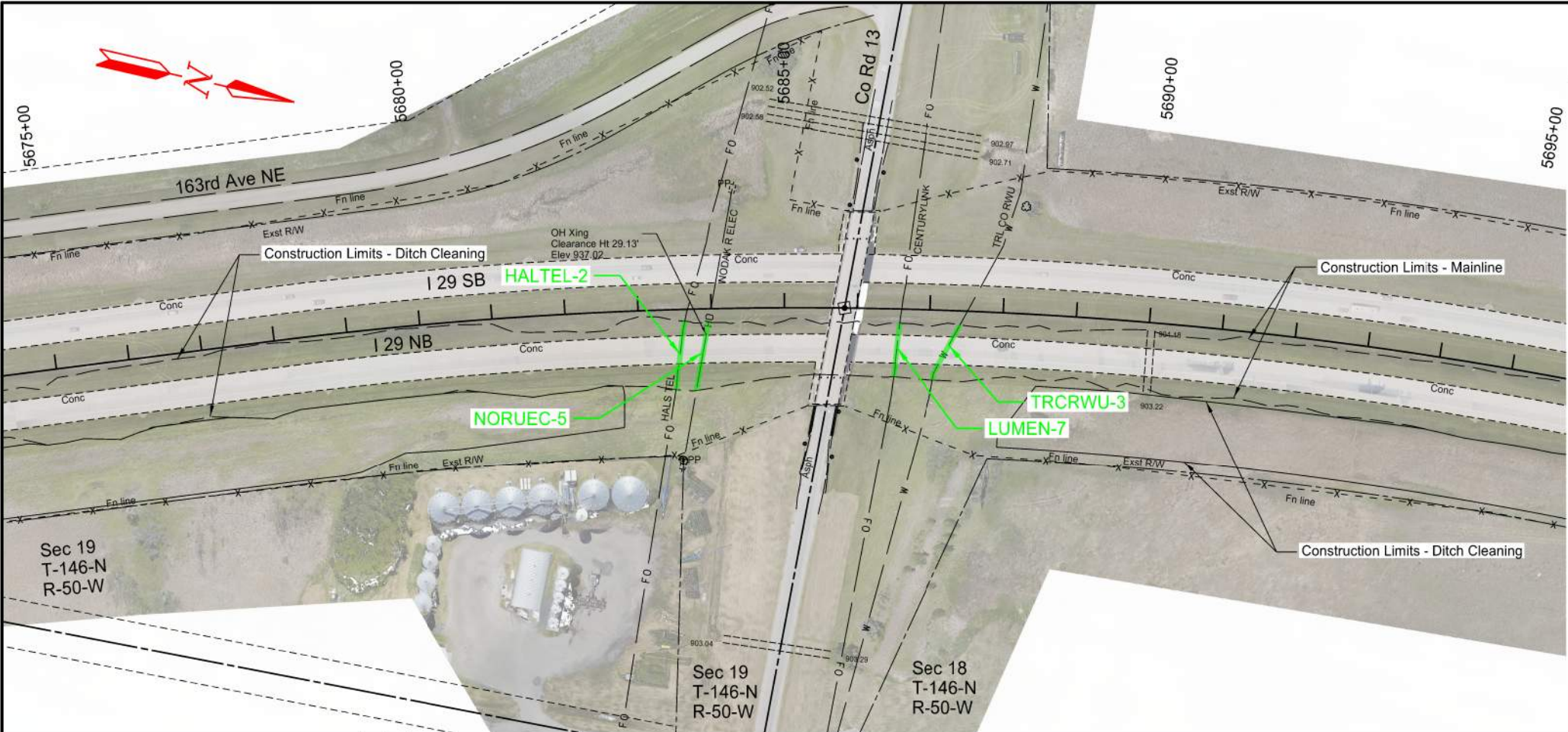
CITY OF HILLSBORO.....	CITHIL
DAKOTA NATURAL GAS.....	DANAGA
HALSTAD TELEPHONE.....	HALTEL
LUMEN (CENTURYLINK).....	LUMEN
MIDCO.....	MIDCO
NDDOT.....	NDDOT
NODAK RURAL ELECTRIC COOPERATIVE.....	NORUEC
POLAR COMMUNICATIONS.....	POLCOM
TRAILL COUNTRY RURAL WATER USERS.....	TRCRWU

LEGEND

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Utility Encounter Exhibits
Sta 5535+00 to Sta 5555+00
Sta 5615+00 to Sta 5635+00

PCC Pavement Reconstruction
Interstate 29 - Southbound
N of Kelso N to N of N Jct 200



STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-8-029(203)101	-	4

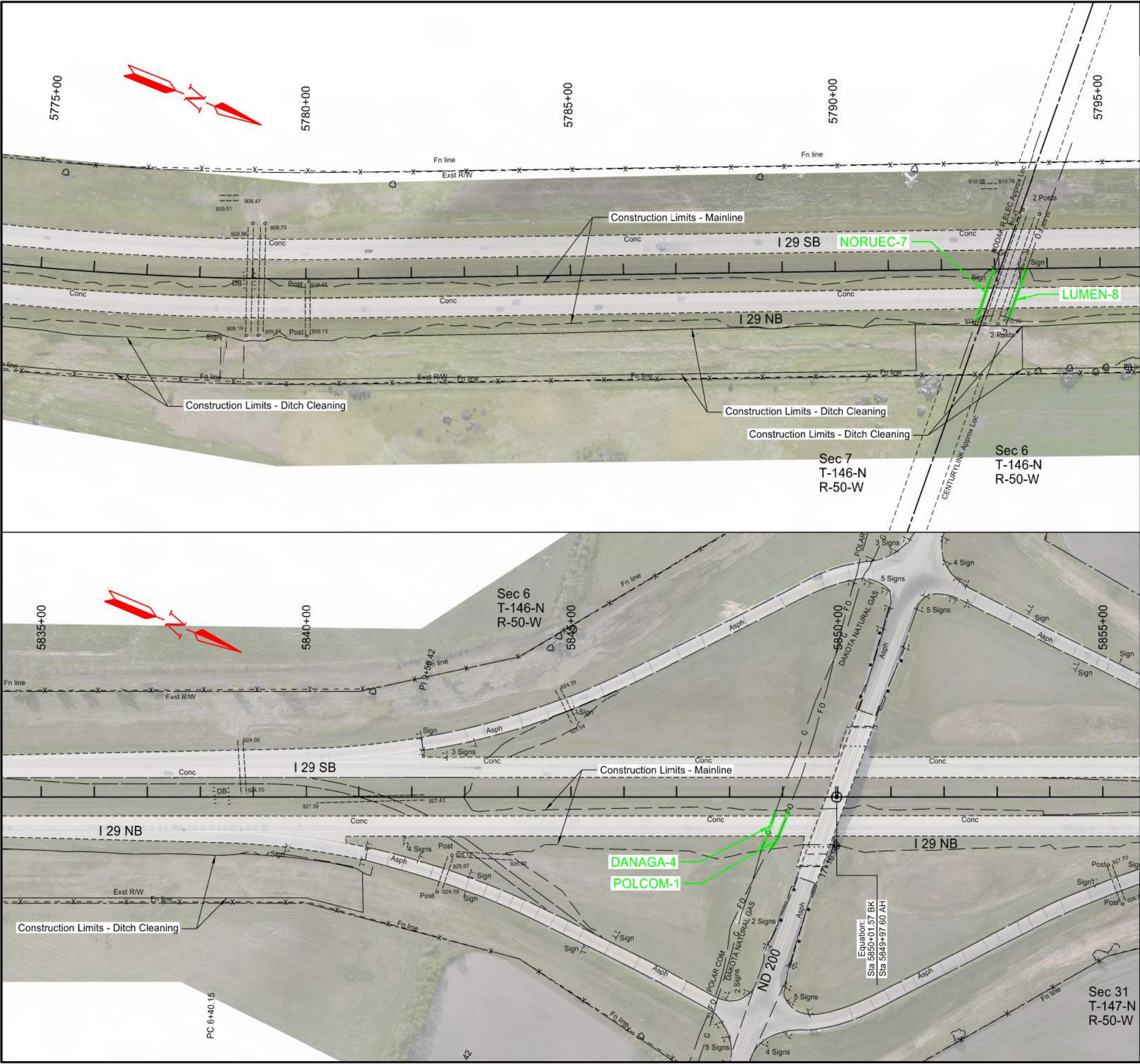
CITY OF HILLSBORO.....	CITHIL
DAKOTA NATURAL GAS.....	DANAGA
HALSTAD TELEPHONE.....	HALTEL
LUMEN (CENTURYLINK).....	LUMEN
MIDCO.....	MIDCO
NDDOT.....	NDDOT
NODAK RURAL ELECTRIC COOPERATIVE.....	NORUEC
POLAR COMMUNICATIONS.....	POLCOM
TRAILL COUNTRY RURAL WATER USERS.....	TRCRWU

LEGEND

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Utility Encounter Exhibits
Sta 5675+00 to Sta 5695+00
Sta 5735+00 to Sta 5755+00

PCC Pavement Reconstruction
Interstate 29 - Southbound
N of Kelso N to N of N Jct 200



STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-8-029(203)101	-	5

CITY OF HILLSBORO.....	CITHIL
DAKOTA NATURAL GAS.....	DANAGA
HALSTAD TELEPHONE.....	HALTEL
LUMEN (CENTURYLINK).....	LUMEN
MIDCO.....	MIDCO
NDDOT.....	NDDOT
NODAK RURAL ELECTRIC COOPERATIVE.....	NORUEC
POLAR COMMUNICATIONS.....	POLCOM
TRAILL COUNTRY RURAL WATER USERS.....	TRCRWU

LEGEND

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Utility Encounter Exhibits
Sta 5775+00 to Sta 5795+00
Sta 5835+00 to Sta 5855+00

PCC Pavement Reconstruction
Interstate 29 - Southbound
N of Kelso N to N of N Jct 200

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

E-Ticketing (Mandatory)

PROJECT 8-029(203)101 - PCN 23102

DESCRIPTION

This work consists of providing electronic material tickets (E-Ticket) for all loads of aggregate, asphalt, and concrete delivered to the project. For materials under 2,000 tons, a paper ticket will be accepted according to Section 109.01 J, "Weighted Materials".

CONSTRUCTION REQUIREMENTS

A. General.

30 days before project start confirm that the material suppliers E-Tickets are compatible with the Department's Electronic Ticketing portal (Haulhub).

If necessary, create a programming interface to integrate with the Department's E-Ticketing Portal. Utilize the interface to provide electronic data from the load read-out weighing system at the material source in a manner that is readable by the Department's E-ticketing Portal. Haulhub will be available to coordinate the interface with the Contractor and Subcontractors.

As E-Tickets are generated, submit them to the Department using the Department's Electronic Ticketing Portal.

Payment for material weight delivered to the project will be based upon the eTickets marked "Delivered."

Do not reissue or reprint tickets that have been marked "Delivered," "Pending," or "Rejected" without first notifying the Engineer. The Engineer may reject a reissued or reprinted ticket at their discretion. When a reissued or reprinted ticket is rejected, payment will be based upon the original ticket. When a load is rejected, the Engineer will notify the Contractor that all or a portion of the load was rejected.

The Department will reject any load that does not have a corresponding E-Ticket unless the cause is beyond the Contractor's control. In such circumstances paper tickets may be permitted at the discretion of the Engineer.

B. Calibration and Testing.

Before beginning the project conduct a test of each supplier's integration with the Department's Electronic Ticketing Portal before shipping material. Complete the test at least 15 days before shipping material.

Provide at least 5 calibration E-Tickets from each supplier to be used for the project. The calibration E-Tickets must accurately record the ticket information found in the ticket information below. Mark all categories "TEST". After the Engineer confirms the calibration E-

Tickets are entered correctly into the Department's E-Ticketing Portal, void the E-Ticket with the reason being "Department Calibration Test".

C. Ticket Information.

1. General Information.

Provide the following information on each E-Ticket:

1. Ticket Number
2. DOT Project Number or DOT Project Control Number (PCN);
3. Date;
4. Name of Contractor or Sub Contractor;
5. Time of loading;
6. Unique Truck ID;
7. Maximum Gross Vehicle Weight;
8. Material type identified by pay item name;
9. Unit of Measurement
10. Time of Delivery
11. A place for comment
12. A running total of the material placed that day.

2. Weighted Materials.

Provide the following information for each E-Ticket for weighted materials:

1. Gross weight (if not automatic weighed).
2. Tare weight (if not automatic weighed).
3. Net weight.
4. Mix design number.

Measurements of weighted material is to the 0.1 ton of the material.

3. Portland Cement Concrete.

Provide the following information for Portland Cement Concrete for E-Ticket

1. Loaded time (water/cement time).
2. Wet and dry batch weights (if computer generated) or SSD.
3. Water:
 - a) In aggregate.
 - b) Total water.
 - c) Water/cement ratio.
 - d) Max water/cement ratio.
 - e) Allowable water to add.
4. Admixtures (including brand names if available):
 - a) Retarder and weights.
 - b) Water reducer and weights.
 - c) Air entrainment and weights.
 - d) Special performance admixtures and weights.
 - e) Concrete fibers.
5. Cementitious material(s) and weights.
6. CPI Name and certificate number.
7. Quantity of each material in the mix.

Measure the delivered concrete mixture to the nearest 0.25 CY.

D. Summary Sheet.

For material paid for by weigh, provided an electronic daily haul summary.

- (1) NDDOT project number or NDDOT PCN (whichever is used on the weigh tickets)
- (2) Delivery date
- (3) Contractor and Subcontractor if applicable
- (4) Pit location and owner
- (5) Identification number of truck
- (6) Each load's net weight and ticket number, with justification for out of sequence numbers
- (7) Material type identified by pay item name
- (8) Total weight of material delivered to the project
- (9) Weight of material voided or "rejected" for the day
- (10) Weight of the day's production
- (11) A signed statement from the Contractor attesting to the accuracy and completeness of the facts represented. A signed statement from a subcontractor or supplier attesting to the accuracy and completeness of the facts represented is required if they operate the scales. The statement shall consist of the following language: "I certify the Daily Haul Summary is true, accurate, and complete."
- (12) Blank for the Engineer's signature. Include the following language: "I certify the Daily Haul Summary has been reviewed, corrected as necessary, and approved."
- (13) Place for comments

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Pay Item	Pay Unit
E-Ticketing	LSUM

Payment for E-Ticketing will be based on the following table:

Activity	Amount Earned
Completion of the Calibration and Testing	50%
Final Material Delivery	50%

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

PERMITS AND ENVIRONMENTAL CONSIDERATIONS

PROJECT NUMBER: IM-8-029(203)101 – PCN 23102

This Special Provision incorporates the US Army Corps of Engineers (USACE) Section 404 Permit and the Floodplain Permit obtained by the North Dakota Department of Transportation (NDDOT) into the bidder's proposal.

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

- **Section 404 Permit**

The 404 Permit, NWO-2017-1711-BIS, authorizes permanent and temporary impacts to jurisdictional waters as shown in Section 75 of the plans. The Section 404 Permit is attached.

- **Floodplain Permit**

The Non-Building Floodplain Permit issued by the El Dorado Township and the City of Hillsboro allows work within the FEMA mapped 100-yr floodplain. The Floodplain Permits and the Flood Insurance Rate Maps are attached.

The Contractor is responsible for preparing and submitting Permit(s) for any additional impacts not authorized by the attached Permit(s) obtained by the NDDOT. The Contractor is responsible for any delays associated with obtaining any additional Permit(s).



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
3319 UNIVERSITY DRIVE
BISMARCK, NORTH DAKOTA 58504-7565

April 25, 2023

NWO-2017-1711-BIS

NDDOT
Attn: Mr. Matt Gangness
608 East Boulevard Ave
Bismarck, North Dakota 58505

Dear Mr. Gangness:

We are responding to your March 2, 2023, request for a Department of the Army permit for the I-29 Northbound PCC Reconstruction & Pedestrian Bridge; IM-8-029(203)101; PCN 23102. The project site is located at Latitude 47.43972° North, Longitude -97.06972° West, Sections 5-8, Township 145 North, Range 50 West, Sections 6, 7, 18-20, & 29-32, Township 146 North, Range 50 West, and Sections 30 & 31, Township 147 North, Range 50 West, Traill County, North Dakota.

Based on the information you provided to this office, work includes structure improvements along northbound I-29 in Traill County adjacent to the City of Hillsboro and between the interchanges of RP 100 and 111. At the Hillsboro interchange, a new shared use path and pedestrian bridge will be constructed, crossing the interstate roadways. Other work includes ditch cleaning in the east ditch, replacement of a junior separation underpass structure, culvert replacements, guardrail, fencing, and conduit installation at the east R/W. The proposed typical section will have two 12-foot driving lanes, 4-foot median shoulder, and a 10-foot outside shoulder with 6:1 or flatter inslopes. As a result of the proposed project temporary impacts to approximately 8.006 acres of wetlands will occur. Additionally, the project will permanently impact approximately 0.016 acres of wetlands.

We have determined activities in waters of the U.S. associated with the project are authorized by Nationwide Permit Number (NWP) NWP 23 Approved Categorical Exclusions, found in the December 27, 2021, Federal Register (86 FR 73522) and January 13, 2021, Federal Register (86 FR 2744), Reissuance and Modification of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General and Regional 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**. Information about the NWP and regional conditions are available at <http://www.nwo.usace.army.mil/Missions/Regulatory-Program/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.

Within 30 days after completion of the authorized work, you must sign the enclosed Compliance Certification and return it to this office.

This verification will be valid until **March 14, 2026**. If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. If the nationwide permit is modified, suspended, or revoked, and construction has commenced or is under contract to commence before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

The Omaha District, North Dakota Regulatory Office 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 <https://regulatory.ops.usace.army.mil/customer-service-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.

Please refer to identification number NWO-2017-1711-BIS in any correspondence concerning this project. If you have any questions, please contact Benjamin Reile at the North Dakota Regulatory Office, 3319 University Drive, Bismarck, North Dakota 58504, by email at Benjamin.D.Reile@usace.army.mil, or telephone at (701) 255-0015, Ext. 2013.

Sincerely,

Benjamin D. Reile

Benjamin D. Reile
Senior Project Manager
North Dakota

Cf:
Jennie Krause, KLJ

COMPLIANCE CERTIFICATION

Permit File Name: NDDOT; I-29 Northbound PCC Reconstruction & Pedestrian Bridge; IM-8-029(203)101; PCN 23102

Action ID: NWO-2017-1711-BIS

Nationwide Permit Number: NWP 23 Approved Categorical Exclusions

Permittee: NDDOT
Attn: Mr. Matt Gangness
608 East Boulevard Ave
Bismarck, North Dakota 58505

County: Traill County

Date of Verification: April 25, 2023

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers, Omaha District
North Dakota Regulatory Office
3319 University Drive
Bismarck, North Dakota 58504
CENWO-OD-RND@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the U.S. Army Corps of Engineers.

* * * * *

I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.

Permittee Signature

Date



Nationwide Permit 23: Approved Categorical Exclusions

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

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

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

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

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letter(s).

(Authorities: Sections 10 and 404).

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same website.

General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of [33 CFR 330.1](#) through 330.6 apply to every NWP authorization. Note especially [33 CFR 330.5](#) relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation.

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

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

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

2. Aquatic Life Movements.

No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably

culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas.

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

4. Migratory Bird Breeding Areas.

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

5. Shellfish Beds.

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

6. Suitable Material.

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

7. Water Supply Intakes.

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

8. Adverse Effects From Impoundments.

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

9. Management of Water Flows.

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

10. Fills Within 100-Year Floodplains.

The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment.

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

12. Soil Erosion and Sediment Controls.

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

13. Removal of Temporary Structures and Fills.

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance.



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

15. Single and Complete Project.

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

16. Wild and Scenic Rivers.

(a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights.

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

18. Endangered Species.

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See [50 CFR 402.02](#) for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as [50 CFR 402.17](#), which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see [33 CFR 330.4\(f\)\(1\)](#)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine



whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

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

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination

results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles.

The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties.

(a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see [33 CFR 330.4\(g\)\(1\)](#)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section

106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see [33 CFR 330.4\(g\)](#)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see [36 CFR 800.3\(a\)](#)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under [36 CFR 800.2\(c\)](#) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or

that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA ([54 U.S.C. 306113](#)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts.

Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters.

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation.

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

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

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation

would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see [33 CFR 332.3\(e\)\(3\)](#)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the

project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of [33 CFR part 332](#).

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see [33 CFR 332.3\(b\)\(2\)](#) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see [33 CFR 330.1\(e\)\(3\)](#)). (See also [33 CFR 332.3\(f\)](#).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

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

option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at [33 CFR 332.3\(b\)](#). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged

or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures.

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

25. Water Quality.

(a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see [33 CFR 330.4\(c\)](#)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management.



In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see [33 CFR 330.4\(d\)](#)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions.

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

28. Use of Multiple Nationwide Permits.

The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications.

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

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

(Transferee)

(Date)

30. Compliance Certification.

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

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

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



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

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States.

If an NWP activity also requires review by, or permission from, the Corps pursuant to [33 U.S.C. 408](#) because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification.

(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see [33 CFR 330.4\(f\)](#)) and/or section 106 of the National Historic Preservation Act (see [33 CFR 330.4\(g\)](#)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in [33 CFR 330.5\(d\)\(2\)](#).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant

crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why



compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to [33 U.S.C. 408](#) because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.



(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were



considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at [33 CFR 330.5](#).

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).



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**2021 Nationwide Permits
Regional Conditions for North Dakota
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The following Nationwide Permit (NWP) regional conditions will be used in the State of North Dakota. The issuance of the NWPs was announced in the January 13, 2021, issue of the Federal Register (86 FR 2744) and December 27, 2021, issue of the Federal Register (86 FR 73522). Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

A. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO ALL NWPs OR LIMITED REVOCATION OF NWPs

For all NWPs, permittees must notify the Corps in accordance with General Condition 32 Preconstruction Notification (PCN) requirements for regulated activities located within or comprised of the following:

1. Wetlands Classified as Peatlands:

For purposes of this condition, peatlands are permanently or seasonally waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12 inches) or more thick. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Any peat-covered areas, including fens, bogs, and muskegs, are all peatlands.

- a. PCN required for NWP 3, 5, 20, 32, 38 and 45.
- b. All NWPs not listed above are revoked for use in peatlands.

2. Waters Adjacent to Natural Springs:

PCN required for any regulated activity located within 100 feet of the water source in natural spring areas. For purposes of this condition, a spring source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

Springs do not include drain tile outlets.

3. Bank Stabilization Activities:

PCN required for any regulated activity that involves bank stabilization impacting an area greater than 1/10 of an acre below the Ordinary High Water Mark or includes features that extend out from the existing bank line greater than 25% of the bankfull channel width.

4. Specific Waterways:

PCN required for any regulated activity occurring in or under the Missouri River, including Lake Sakakawea and Lake Oahe. In addition, a PCN is required for any activity occurring in an off channel area (e.g. marinas and bays) of any of these waterways.



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B. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO SPECIFIC NWP

1. NWP 23 – Approved Categorical Exclusions:

In addition to PCN requirements identified in Regulatory Guidance Letter (RGL) 05-07 or the applicable Corps RGL, PCN is required prior to initiating any regulated activity under NWP 23 that would permanently impact an area greater than 1/2 an acre of waters of the United States. In addition to information required for PCN, the applicant must identify the approved categorical exclusion that applies in RGL 05-07 or the applicable Corps RGL and provide documentation that the project fits the categorical exclusion.

C. BEST MANAGEMENT PRACTICES

Required Best Management Practices:

In addition to the Regional Conditions above, additional required best management practices apply to NWPs within the Omaha District follow. These are also available at:

<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nation-Wide-Permit-Information/>

The following Nationwide Permit regional condition best management practices are required for Montana, Nebraska, North Dakota, South Dakota, and Wyoming in the Omaha District. The issuance of the NWPs was announced in the January 13, 2021, issue of the Federal Register (86 FR 2744) and December 27, 2021, issue of the Federal Register (86 FR 73522). Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

A. REQUIRED BEST MANAGEMENT PRACTICES APPLICABLE TO MONTANA, NEBRASKA, NORTH DAKOTA, SOUTH DAKOTA, AND WYOMING

1. Suitable Material:

Permittees are reminded of General Condition No. 6 which prohibits use of unsuitable material. A list of materials prohibited or restricted as fill material in waters of the United States can be found at:

<http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/12320/prohibited-restricted-materials.aspx>

PARAGRAPHS PERTAINING TO ALL STATES EXCEPT NORTH DAKOTA HAVE BEEN REMOVED FROM THIS VERSION FOR CLARITY.

B. NORTH DAKOTA REQUIRED BEST MANAGEMENT PRACTICES

2. Minimum Culvert Width:

For all NWPs in jurisdictional streams, the culvert opening width of a stream crossing shall not be less than the mean bank to bank width as measured from the Ordinary High Water Mark in the affected stream reach. In stable stream channels, the Ordinary High Water Mark is often found at the point where over-bank flow begins during a flood event. In incised stream channels that do not frequently access a floodplain or upper terrace, the Ordinary High Water Mark is generally located within the entrenched channel. The Ordinary High Water Mark may be identified by observing indicators such as a distinct change in slope, a change in vegetation characteristics, or a change in sediment characteristics, see 33 CFR 328.3(e).



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Regional Conditions for North Dakota
and
Omaha District - Required Best Management Practices**

3. Culvert Countersink Depth:

For all NWP in jurisdictional streams and a stable stream bed, culvert stream crossings shall be installed with the culvert invert set below the natural stream channel flow line according to the table below. This regional condition does not apply in instances where the lowering of the culvert invert would allow a headcut to migrate upstream of the project into an unaffected stream reach or result in lowering the elevation of the stream reach.

Culvert Type	Drainage Area	Minimum Distance Culvert Invert Shall Be Lowered Below Stream Flow Line
All culvert types	< 100 acres	Not required
Pipe diameter <8.0 ft	100 to 640 acres	1/2 ft
Pipe diameter <8.0 ft	>640 acres	1.0 ft
Pipe diameter > 8.0 ft	All drainage sizes	20% of pipe diameter
Box culvert	All drainage sizes	1.0 ft

- a. The stream flow line shall be defined as the longitudinal average of the low flow stream channel.
- b. The slope of the culvert should be parallel to the slope of the stream flow line.
- c. The culvert invert depression depth shall be measured at the culvert inlet for culverts installed at a slope less than the slope of the stream flow line.
- d. Riprap inlet and outlet protection shall be placed to match the height of the culvert invert.

4. Spawning Areas:

Spawning areas and seasons can be accessed on the North Dakota Game & Fish Department's website at: <http://gf.nd.gov/gnf/conservation/docs/spawning-restriction-exclusions.pdf>

5. Intake Structures:

- a. Intake screens with a maximum mesh opening of 1/4-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed 1/2-foot per second.
- b. Pumping plant sound levels will not exceed 75 dB at 50 feet.
- c. Intakes located in Lake Sakakawea, above river mile 1519, and on the Yellowstone River, are subject to the following conditions:
 - i. The intakes shall be floating.
 - ii. At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
 - iii. If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.
 - iv. If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to 1/4-foot per second.
- d. Intakes located in Lake Sakakawea, below river mile 1519, and the Missouri River below



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Regional Conditions for North Dakota
and
Omaha District - Required Best Management Practices**

Garrison Dam are subject to the following conditions:

- i. The intakes shall be submerged.
- ii. At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
- iii. The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
- iv. If the 20-foot depth is not attainable, then the intake velocity shall be limited to ¼-foot per second with intake placed at the maximum practicable attainable depth.
- e. Intakes and associated utility lines that are proposed to cross sandbars in areas designated as piping plover critical habitat are prohibited.
- f. Any temporary open trench associated with utility lines are to be closed within 30 days of excavation. This time limit may be extended by notifying the North Dakota Regulatory Office and receiving a written response that the extension is acceptable

6. Boat Docks:

To ensure that the work or structure shall not cause unreasonable obstruction to the free navigation of the navigable waters, the following conditions are required:

- a. No boat dock shall be located on a sandbar or barren sand feature. The farthest point riverward of a dock shall not exceed a total length of 30 feet from the Ordinary High Water Mark. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.
- b. Any boat dock shall be anchored to the top of the high bank.
- c. Any boat dock located within an excavated bay or marina that is off the main river channel may be anchored to the bay or marina bottom with spuds.
- d. Section 10 Waters located in the State of North Dakota are:
 - i. Bois de Sioux River
 - ii. James River Missouri River
 - iii. Red River of the North
 - iv. Upper Des Lacs Lake
 - v. Yellowstone River



**2022 Nationwide Permits
Regional Conditions
State of North Dakota
Section 401 Water Quality Certification**

The following Nationwide permit (NWP) regional conditions pertaining to Section 401 Water Quality Certification (WQC) will be used in the State of North Dakota for NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 and 59.

The Environmental Protection Agency is responsible for providing WQC for activities that occur on Indian Lands in the State of North Dakota.

The North Dakota Department of Environmental Quality is responsible for providing WQC for Section 404 activities that occur in the State of North Dakota, excluding Indian Lands.

WQC by NWP follows:

- **NWP 1 – Aids to Navigation**
-Certification not required (Section 10 Only)
- **NWP 2 – Structures in Artificial Canals**
-Certification not required (Section 10 Only)
- **NWP 3 – Maintenance**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities**
-EPA waived certification for all activities.
-NDDEQ certified for all activities.
- **NWP 5 – Scientific Measurement Devices**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 6 – Survey Activities**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 7 – Outfall Structures and Associated Intake Structures**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified with a condition requiring a copy of the preconstruction notification (PCN) be provided for any projects affecting classified rivers, streams or lakes.
Classified waters are listed in Appendixes I and II of the State Water Quality Standards.
- **NWP 8 – Oil and Gas Structures on the Outer Continental Shelf**
-Not applicable in North Dakota

- **NWP 9 – Structures in Fleeting and Anchorage Areas**
-Certification not required (Section 10 Only)
- **NWP 10 – Mooring Buoys**
-Certification not required (Section 10 Only)
- **NWP 11 – Temporary Recreational Structures**
-Certification not required (Section 10 Only)
- **NWP 13 – Bank Stabilization**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified with a condition requiring that a copy of the PCN be provided for any projects affecting classified waters.
- **NWP 14 – Linear Transportation Projects**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 15 – U.S. Coast Guard Approved Bridges**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities, except those affecting classified waters. Individual certification is required for projects affecting classified waters.
- **NWP 16 – Return Water From Upland Contained Disposal Areas**
-EPA denied certification and individual certification is required for all activities.
-NDDEQ certified with a condition requiring that a copy of the PCN be provided for any projects affecting classified waters.
- **NWP 17 – Hydropower Projects**
-EPA denied certification and individual certification is required for all activities.
-NDDEQ certified for all activities, except those affecting classified waters. Individual certification is required for projects affecting classified waters.
- **NWP 18 – Minor Discharges**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 19 – Minor Dredging**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities, provided spoils are disposed of at an upland site and are not allowed to drain back to waters of the state.
- **NWP 20 – Response Operations for Oil or Hazardous Substances**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 22 – Removal of Vessels**
-EPA waived certification for all activities.
-NDDEQ certified for all activities.

- **NWP 23 – Approved Categorical Exclusions**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities, except those impacting classified waters and bank loss exceeds 300 linear feet. Individual certification is required for the excepted projects.
- **NWP 24 – Indian Tribe or State Administered Section 404 Programs**
 - Not applicable in North Dakota.
- **NWP 25 – Structural Discharges**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified with conditions: 1) PCN must be provided for projects affecting classified waters; 2) Projects must not result in a net loss of wetland or wetland type; and 3) no in-stream berms, dams, or similar structures in classified waters, unless constructed in such a way that the stream assimilative capacity and aquatic life passage are maintained or the structures are part of a restoration project.
- **NWP 28 – Modifications of Existing Marinas**
 - Certification not required (Section 10 Only)
- **NWP 30 – Moist Soil Management for Wildlife**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 31 – Maintenance of Existing Flood Control Facilities**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 32– Completed Enforcement Actions**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified with a condition requiring that a copy of the PCN be provided for any projects affecting classified waters.
- **NWP 33 – Temporary Construction, Access, and Dewatering**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 34 – Cranberry Production Activities**
 - EPA denied certification and individual certification is required for all activities.
 - NDDEQ N/A
- **NWP 35 – Maintenance Dredging of Existing Basins**
 - Certification not required (Section 10 Only)

- **NWP 36 – Boat Ramps**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 37 – Emergency Watershed Protection and Rehabilitation**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 38 – Cleanup of Hazardous and Toxic Waste**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 41 – Reshaping Existing Drainage Ditches**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 45 – Repair of Uplands Damaged by Discrete Events**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 46 – Discharges in Ditches**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 49 – Coal Remining Areas**
 - EPA denied certification and individual certification is required for all activities.
 - NDDEQ certified for all activities.
- **NWP 53 – Removal of Low-Head Dams**
 - EPA denied certification and individual certification is required for all activities.
 - NDDEQ certified for all activities.
- **NWP 54 – Living Shorelines**
 - EPA waived certification for all activities.
 - NDDEQ N/A
- **NWP 59 – Water Reclamation and Reuse Facilities**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ N/A

EPA certification follows.

**U.S. Environmental Protection Agency Region 8 Clean Water Act Section 401
Water Quality Certification for the U.S. Corps of Engineers CWA Section 404
2021 Nationwide Permits Reissuance**

This Certification applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers CWA 404 Nationwide Permit (NWP) into waters of the United States that occur within Indian country¹ lands within the state of North Dakota: NWP 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 34, 36, 37, 38, 41, 45, 46, 49, 53, 54, and 59/E.²

Section 401(a)(1) of the Clean Water Act requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has authority to give such certification, the U.S. Environmental Protection Agency (EPA) is the certifying authority. In this case, the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians currently are not authorized to provide CWA Section 401 certifications for discharges occurring on reservations, or any other Indian country lands, within the State of North Dakota, therefore, the EPA is making the certification decisions for discharges that may result from potential projects authorized under the proposed Corps CWA 404 NWPs listed above. Although the above Tribes currently are not authorized to provide CWA Section 401 certifications, EPA will condition certifications using Tribal water quality requirements where applicable and appropriate.

General Information

The general information provided in this section is intended to provide context for EPA's certification decision and does not itself constitute a certification condition(s). The information in this section is being provided to help project proponents comply with the terms and conditions of the CWA Section 401 certification on the NWPs on applicable Indian country lands.

- Prior to work commencing, project proponents should notify the appropriate Tribal Environmental Office.
- The project proponents for projects authorized under the NWPs should obtain all other permits, licenses, and certifications that may be required by federal, state, or tribal authority.

¹ Indian country is defined in 18 U.S.C. Section 1151. Indian country in North Dakota generally includes (1) lands within the exterior boundaries of the following Indian reservations located within North Dakota: the Fort Berthold Indian Reservation, the Spirit Lake Reservation, the Lake Traverse Reservation, the Standing Rock Sioux Reservation, and the Turtle Mountain Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151.

² This Certification does not apply to the following NWPs: 1, 2, 8, 9, 10, 11, 24, 28, and 35. The Corps has not requested certification for these NWPs. If any activity authorized by these listed NWPs may result in a discharge into a water of the United States, the project proponent should contact the Corps or EPA to determine if a CWA Section 401 certification is required. Furthermore, NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, A/55, B/56, C/57, and D/58 were reissued in January 2021. 86 FR 2744. EPA denied certification for all these NWPs, except NWP 48. Project proponents must apply for an individual CWA Section 401 certification from EPA for all NWPs reissued in January 2021, except NWP 48, for which EPA expressly waived certification authority.

- If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the project proponent should request an individual CWA Section 401 certification from EPA. An individual certification request is subject to the requirements outlined in 40 CFR 121.
- Copies of this certification should be kept on the job site and readily available for reference.
- Pursuant to CWA section 308(a), EPA representatives may inspect the authorized activity and any mitigation areas to determine compliance with the terms and conditions of the NWP.
- If you have questions regarding this certification, or need assistance contacting the appropriate tribe, please contact EPA Region 8 at: R8CWA401@epa.gov and Aaron Blair at (303) 312-6883 or via email at blair.aaron@epa.gov or Toney Ott at (303) 312-6906 or via email at ott.toney@epa.gov. Additional information on tribes in EPA Region 8 also can be found at: <https://www.epa.gov/tribal/region-8-tribal-program>.

NWPs Granted with Conditions (121.7(d)(2))

On behalf of the tribes listed above, CWA Section 401 certification is granted with the following conditions for NWPs 3, 5, 6, 7, 13, 14, 15, 18, 19, 20, 23, 25, 27, 30, 31, 32, 33, 36, 37, 38, 41, 45, 46, and 59/E. EPA Region 8 has determined that any discharge authorized under these proposed NWPs will comply with water quality requirements, as defined in 40 C.F.R. 121.1(n), subject to the following conditions pursuant to Section 401(d). Note that all correlating justification statements and citations as required by 40 CFR 121.7(d)(2) are included in Appendix A.

General Condition 1: Point source discharges shall not occur in jurisdictional waters of these special aquatic resources: (1) fens, bogs, or other peatlands; (2) within 100 feet of the point of discharge of a known natural spring source; (3) riffle-pool complexes of streams; or (4) water sources above hanging gardens. Projects or activities expected to have potential discharges into these areas are not covered by this certification and require a project-specific CWA Section 401 certification from EPA Region 8.

A peatland is defined by the U.S. Forest Service as any type of peat covered terrain with an accumulation of at least 20 to 40 centimeters of peat within the upper 80 centimeters of the soil profile. More resources on peatlands and hanging gardens can be found here:

<https://www.fws.gov/mountain-prairie/es/fen/FWSRegion6FenPolicy1999.pdf>

https://www.fs.fed.us/wildflowers/beauty/California_Fens/what.shtml

<https://cnhp.colostate.edu/cnhpblog/2009/08/11/hanging-gardens/>

<https://springstewardshipinstitute.org/hanging-garden>

General Condition 2: Except as specified in the project plan, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter or be stored within 100 feet of waters of the U.S. If materials are stored within 100 feet of waters of the U.S., the project plan shall identify the measures and controls that will be used to ensure the materials will not enter waters of the U.S. No activities shall result in an unconfined discharge of liquid cement into waters of the U.S.

Any materials not specified in the project plan that do enter waters of the U.S. shall be reported to EPA (R8CWA401@epa.gov) with a remediation plan within 15 days.

For emergency spills, including any spills of petroleum products, contact EPA's National Response Center at 1-800-424-8802, the appropriate Tribal Environmental Office, and local spill response hotlines within 24 hours.

General Condition 3: Activities that may result in a point source discharge shall occur during seasonal low flow or no flow periods. Activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

General Condition 4: When operating equipment or otherwise undertaking construction activities (including grouting riprap) in aquatic resources:

- Work shall be completed in the dry, unless justification for working in the wet can be documented by the project proponent prior to construction.³
- Concrete grouting shall be allowed to dry thoroughly before exposure to waters of the U.S.
- All equipment shall be cleaned prior to arriving on the project site. All equipment shall be inspected daily and prior to entering any streams or wetlands for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks.
- All contaminated areas shall be cleaned immediately, and contaminated soil removed from the site or contained in enclosed containers. Containers shall not be stored within 100 feet of waters of the U.S. If site conditions do not allow for storage at least 100 feet away from waters of the U.S., or if the topography is such that storage can occur within 100 feet without risk to waters of the U.S., the project proponent shall document this along with the measures and controls that will be used to ensure contaminants will not enter waters of the U.S. All equipment detected with leaks shall be repaired promptly or moved offsite within 24 hours.
- Containment booms and/or absorbent material shall be available onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the U.S.

General Condition 5: For projects that require coverage under EPA's Construction General Permit, the project proponent shall submit the Stormwater Pollution Prevention Plan (SWPPP) to EPA Region 8 (R8CWA401@epa.gov).

For projects that do not require the development of a SWPPP, the project proponent shall document how the project will utilize construction techniques, including soil erosion and sediment controls, to prevent or minimize water quality degradation because of the project. Projects shall not permanently impact the overall health of the aquatic resource; beneficial uses shall not be lost or impaired.

General Condition 6: Vegetation in jurisdictional wetlands and waterbodies shall be protected except where its removal is necessary for completion of the work. Locations disturbed by construction activities shall be revegetated with appropriate native vegetation in a manner that optimizes plant establishment for the specific site (e.g., stockpiling of existing topsoil that is weed-seed free). Revegetation may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching. All revegetation materials, including plants and plant seed shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Exceptions to native revegetation include agricultural lands that are being returned to crop or pasture vegetation, with Corps permission.

Where removal of vegetation occurs, the project proponent shall develop a restoration plan prior to initiating construction on the project. The restoration plan shall include measures, including but not limited to:

- The project proponent shall describe and photo document where the disturbance or removal of riparian/wetland vegetation will occur during the completion of the work.

³ See "Working in the dry: Cofferdams, in-river construction, and the United States Army Corps of Engineers" <https://usace.contentdm.oclc.org/digital/collection/p16021coll4/id/156/>

- The project proponent shall revegetate disturbed jurisdictional areas within three months of completion of construction, based on pre-disturbance or reference site conditions, including percent cover and native species diversity.
- The project proponent shall revegetate any disturbed wetland soil with native plant species. Non-native and invasive species shall not be used for restoration activities.

General Condition 7: The placement of material (discharge) for the construction of new dams is not certified, except for stream restoration projects. Activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

General Condition 8 – Applicable only to the following NWP: 3, 7, 13, 14, 15, 19, 23, 27, 37, and 59/E.

Project proponents shall provide notice to EPA Region 8 at least 30 days prior to commencing work in water of the U.S. to provide EPA Region 8 with the opportunity to review and inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. In cases where the Corps requires a PCN for the applicable NWP, in accordance with Corps' National General Condition 32(b), Pre-Construction Notification (86 FR 2873), the applicant shall also provide the PCN to Region 8.

Additionally, the applicant shall include a summary of communications with the affected Tribe's water quality staff regarding the project, including any concerns or issues, in its submission to EPA.

NWP-Specific Conditions:

NWP 3, Specific Condition 1: No more than 25 cubic yards of new or additional riprap shall be placed to protect the structure or fill. If a project proponent seeking NWP authorization plans to use more than 25 cubic yards of new or additional riprap to protect the structure or fill, the project proponent shall request a project-specific CWA Section 401 certification from EPA Region 8.

NWP 3, Specific Condition 2: Bridge replacements shall span the bankfull width and/or the ordinary highwater mark of the affected waters of the U.S. Projects or activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

NWP 3, Specific Condition 3: Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions for the repair of low water crossings, or loss of stream cross section dimensions. Original land contour dimensions shall be documented prior to construction to confirm contours are returned to these dimensions post-maintenance activities.

NWP 3, Specific Condition 4: Silt and sediment removal shall not exceed:

- 1) 50 linear feet for low water crossings; and
- 2) 100 linear feet for bridge crossings.

Projects or activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

NWP 7, Specific Condition 1: Construction of the outfall structure shall be placed at the streambed elevation and, at a minimum, the pipe should be sized to prevent high pressure discharge of stormwater. Pipe sizing selection methods and justification that high pressure discharge will be minimized shall be documented by the

project proponent.

NWP 7, Specific Condition 2: Outfall structures shall not be constructed in jurisdictional wetlands. If a project proponent plans to construct an outfall structure in a jurisdictional wetland, the project proponent shall request a project-specific CWA Section 401 certification from EPA Region 8.

NWP 7, Specific Condition 3: For activities that do not require a SWPPP, the project proponent shall submit to EPA, an erosion and sediment control plan prior to construction that includes outfall stabilization controls. (Projects or activities requiring a SWPPP must submit the SWPPP to EPA per General Condition 5.)

The plan shall describe type, location, and maintenance schedules for all controls to be put in place prior to, during, and after construction to stabilize all areas of the bed and bank around and adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively. The plan shall provide for maintenance of measures, and adaptive management processes if any measures are determined to be ineffective. During monitoring and maintenance, if water quality requirements are exceeded or if measures are identified as ineffective, then descriptions of additional measures taken to ensure compliance shall be sent to EPA within 48 hours of the exceedance or measure failure.

Rip rap aprons and/or energy dissipation structures shall be constructed to provide protection from the erosive potential of high-velocity flows, as documented in the erosion and sediment control plan, with adaptive management in place for potential structure failures.

NWP 7, Specific Condition 4: The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.
- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 (R8CWA401@epa.gov). The report shall be labeled with the project name and Corps District number.

NWP 13, Specific Condition 1: The project proponent shall submit a project plan with design techniques and stabilization methods to EPA Region 8 prior to construction. Activities shall use native vegetation or other bioengineered design techniques (e.g., willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g., rock) and predominately native vegetation or bioengineered design techniques. Artificial soil stabilizing material (e.g., mulch, matting, netting, etc.) shall be used to reduce soil erosion. These materials, to include all plants and plant seed, shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Sediment control measures shall be maintained in good working order at all times.

Any project proposing bank stabilization solely using hard armoring methods, or where the scope of the entire project is greater than 500 linear feet, is not authorized under this certification and the project proponent shall seek a project-specific CWA Section 401 certification from EPA Region 8.

NWP 13, Specific Condition 2: The slopes of disturbed banks shall be configured to mimic a stable reference reach and not reduce the bottom width of the stream. Pre-construction cross sections shall be included in the project plan submitted to EPA Region 8.

NWP 13, Specific Condition 3: The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.
- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 (R8CWA401@epa.gov). The report shall be labeled with the project name and Corps District number (if available).

NWP 14, Specific Condition 1: NWP 14 is conditionally certified, except that a project-specific CWA section 401 certification is required for projects authorized under one or more NWP by the Corps that result(s) in:

1. Greater than 1/10 acre of impacts to waters of the U.S.; or
2. Greater than 300 linear feet of impacts to waters of the U.S.

NWP 14, Specific Condition 2: The project proponent shall submit a project design plan to EPA Region prior to construction. Affected streambanks shall be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations. Stream bank slopes should not be steeper than 3:1. Justification for banks steeper than 3:1 shall be included in the project design plan. The project design plan also shall document how all temporary fills and structures will be removed, and the area restored to pre-project conditions.

NWP 14, Specific Condition 3: Permanent culverts shall be installed using an established culvert analysis and design tool (ex. HY-8, HEC-RAS, USGS CAP, etc.). Culverts shall span the bankfull width and/or ordinary high-water mark of the affected waterbody. The culvert bottom shall be installed below the existing streambed elevation to allow aquatic organism passage and the natural substrate to reestablish.

NWP 14, Specific Condition 4: The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- Impacts to aquatic resource buffers shall be avoided. If avoidance is not possible, methods for buffer restoration and monitoring shall be in the monitoring plan.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.

- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 (R8CWA401@epa.gov). The report shall be labeled with the project name and Corps District number (if available).

NWP 15, Specific Condition 1: Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions of the waterbody. Original land contour dimensions shall be documented prior to construction to confirm contours are restored to pre-disturbance conditions. Affected streambanks shall be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations. Stream bank slopes should not be steeper than 3:1. Justification for banks steeper than 3:1 shall be included in the project design plan. The project design plan also shall document how all temporary fills and structures will be removed, and the area restored to pre-project conditions.

NWP 15, Specific Condition 2: Crossings shall be placed perpendicular to the water course, unless the project proponent can document that this would result in increased impacts to aquatic resources or compromise the safety of the structure.

NWP 15, Specific Condition 3: Bridge decks shall be designed such that they do not drain directly into the waterbody.

NWP 15, Specific Condition 4: Bridges shall span the bankfull width, adjacent wetlands, and/or ordinary high-water mark of the affected waterbody. Projects that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

NWP 19, Specific Condition 1: Dredged or fill materials shall be placed in non-jurisdictional areas and controlled such that it cannot return to waters of the U.S. Dredged or fill material shall not be placed on islet, islands, sandbars, landmass or other area of sediment accumulation within the banks of a stream, shore of lake, edge of wetland or other type of waterbody, unless the project proponent can document that the vegetation and geomorphology signify a long-term stable configuration (e.g., areas of sediment accumulation are not formed from temporary situations such as drought conditions or upstream reservoir release conditions).

NWP 27, Specific Condition 1: NWP 27 is conditionally certified, subject to the general conditions listed above, except for the following activities, where an individual project-specific CWA Section 401 certification is required: (1) the project involves dam removal; and/or (2) the project or activities involve greater than 1-acre of impacts to waters of the U.S.; and/or (3) the project impacts greater than 500 linear feet of waters of the U.S.

NWP 37, Specific Condition 1: Original and planned stream contours shall be documented by the project proponent. Construction activities shall not result in the channelization of streams or sloughs. Channelization is defined, for this purpose, as the placement of excess material in a manner that modifies the bank alignment, and subsequently the channel alignment, from its present condition.

NWP 37, Specific Condition 2: Construction activities shall not remove silt beyond what was deposited by the emergency event. Based on the original site conditions and planned project design, the project proponent shall justify the amount of silt identified for removal, such that the construction activities do not result in the removal of silt beyond what was deposited by the emergency event (e.g., excavating a wetland area to the point it's a stormwater retention pond, or deepening/widening a stream channel to accommodate higher flow capacity).

NWP 37, Specific Condition 3: Construction of temporary structures or drains for the purpose of reducing or preventing flood damage shall be removed within 60 days following the emergency event, unless justification for retaining the structures for a longer period is documented by the project proponent.

NWPs Denied (121.7(e)(2))

On behalf of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 cannot certify that the range of discharges from potential projects authorized under the following proposed NWPs will comply with water quality requirements, as defined in 40 CFR 121.1(n). Therefore, CWA Section 401 water quality certification is denied for NWPs 16, 17, 34, 49, and 53 and applicants must request an individual water quality certification, consistent with 40 CFR 121.5.

Certification denial is due to insufficient information. 40 CFR 121.7(e)(2)(iii). In EPA's unique role certifying on behalf of a tribe, EPA lacks important information about tribal water resources. In the case of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 lacks sufficient information on sensitive resources that may exist on these tribal lands, potential impaired waters on these tribal lands, and potential cultural importance of the water resources on these tribal lands. Additional information on these specific subjects would be needed for EPA Region 8 to assure that the range of discharges from potential projects authorized under NWPs 16, 17, 34, 49, and 53 will comply with water quality requirements, as defined in 40 CFR 121.1(n).

This information would also be necessary for EPA Region 8 to identify specific water quality requirements and evaluate whether the range of discharges from potential projects will comply with such requirements, in accordance with CWA section 401(a)(1) and 40 CFR 121.7(b). Lacking this information, EPA Region 8 is therefore denying certification.

NWPs Waived (121.9(a)(1))

On behalf of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 is expressly waiving its authority to act on the CWA § 401 certification request for the following proposed NWPs: 4, 22, and 54.

December 8, 2020

Patricia L. McQueary
Regulatory Program Manager, North Dakota
US Army Corps of Engineers
1513 South 12th Street
Bismarck, ND 58504-6640

Dear Ms. McQueary:

The department has completed reviewing the proposed 2020 Nationwide Permits (NWP) for compliance with Standards of Quality for Water of the State (WQ-standards) and for Certification under Section 401 of the Clean Water Act.

The department has Clean Water Act Section 401 authority for North Dakota. Under that authority the department certifies, certifies with conditions, or denies select 2020 NWP. Certification, certification with condition, and denials are issued to ensure that the water quality requirements as defined in the Standards of Quality of Water Quality of the State, North Dakota Administrative Code Chapter 33.1-16-02.1 (WQ-Standards) are supported as intended by the Clean Water Act (CWA) Sections 301, 301, 303, 306, and 307, the 40 Code of Federal Registry Part 121 and the ND Century Code 28-61-04.

If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the applicant may request an individual certification from the department. An individual certification request must follow the requirements outlined in §121.5 of EPA's CWA § 401 Certification Rule, effective September 11, 2020.

The department may inspect any authorized activity to determine compliance with the terms and conditions (Section 121.11).

Under Section 401 of the Clean Water Act this department grants certification to the following Nationwide Permits as the discharge(s) will comply with water quality requirements:

- 1) **Nationwide Permits Not Applicable:** No. 8, 24, 34, 54, A, B, and E.
- 2) **Nationwide Permits Clean Water Certified:** No. 1, 2, 3, 4, 5, 6, 9, 10, 11, 14, 18, 20, 21, 22, 25, 28, 30, 31, 33, 36, 37, 38, 41, 43, 44, 45, 46, 48, 49, 50, 51, 53, and C.

Under Section 401 of the Clean Water Act the department grants certification with conditions (Section 121.7(d)(2)) to the following Nationwide Permits, as with the conditions discharge(s) will comply with water quality requirements:

- 3) **Nationwide Permits 7, 13, 16, 32, 35, and 52:** Nationwide Permits 7, 13, 16, 35 and 52 are granted Section 401 Clean Water Certification with the condition that all projects, (Including Federal and Non-Federal Permittees), provide preconstruction notification (PCN) for projects in, over or under Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-Standards

Section 121.7(d)(2)

(i) A preconstruction notification (PCN) requirements for Federal and Federal Permittees provides the department the means to ascertain if the Water Quality Standards are being supported and to confirm if the action was implemented as permitted. Both of these are required under 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.11(b) [The certifying authority, prior to the initial operation of a certified project, shall be afforded the opportunity to inspect the facility or activity of the purpose of determining whether the discharge from the certified project will violate the certification].

(ii) Without a PCN the department and USACE regulator will be blind to any violations, preventing the requirements of 40 CFR 121.11(c) [The Federal agency shall be responsible for enforcing certification condition that are incorporated into a license or permit]. Without a PCN Sections 301,302,303,306 and 307 of the Clean water act (CWA) cannot be supported.

- 4) **Nationwide Permits 15, and 17:** Nationwide Permits 15 and 17 are granted Section 401 Clean Water Certification except those in, on or over Class I, IA, II Rivers and Streams.

Section 121.7(d)(2)

(i) Bridges and hydropower dams sequester sediments and other pollutants from runoff, as well as reduce or increase flow velocities in waters of the state. Maintaining natural stream morphology reduces the destabilization of the stream/river.

Drainage directly from hydropower surfaces and bridge decks may cause erosion, and introduce additional pollutants, such as oil, gas, sediment, and toxics. Directing bridge deck drainage into constructed runoff water quality control systems will help prevent erosion and keep pollutants from directly entering the waterway.

The placement of a structure within the ordinary highwater alters the hydrologic characteristics of the waterbody leading to increased erosional forces, scour around the structures, increased sediment loads to the waterbody, abandonment of the primary channel, and undermining of the structure itself.

(ii) All streams are waters of the state under North Dakota Century Code 28-61-04 and protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the

beneficial uses, municipal, domestic, aquatic life, recreation, agriculture, and industry. In order to ensure that state law is supported bridges and hydropower projects need project and specific conditions and allow inspections during and after construction (Section 121.11).

Authority for NWP 15 and 17 are 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.11(b) [The certifying authority, prior to the initial operation of a certified project, shall be afforded the opportunity to inspect the facility or activity of the purpose of determining whether the discharge from the certified project will violate the certification]. Conditioning of NWP 17 and 19 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 5) **Nationwide Permit 19:** Nationwide Permit 19 is granted Section 401 Clean Water Certification with the condition spoils are disposed at an upland site where they will not drain back to waters of the state.

Section 121.7(d)(2)

(i) Discharge of dredge material has the capacity to bury the biological community, impact stream function, and release trace elements in concentration exceeding the numeric criteria in the WQ-standards.

(ii) All streams, rivers, lakes, ponds and wetlands are waters of the state under North Dakota Century Code 28-61-04 are protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the beneficial uses, municipal, domestic, aquatic life, recreation, agriculture, and industry. Conditioning of NWP 19 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 6) **Nationwide Permits 23, and 29:** Nationwide Permits 23 and 29 are granted Section 401 Clean Water Certification with the condition that the project will not result in a stream bank loss exceeding 300 Linear feet in Class I, IA, II and III streams. Projects that cannot meet the condition under nationwide Permits 23 and 29 will require an individual certification.

Section 121.7(d)(2)

(i) Projects exceeding 300 linear feet of stream bank have the capacity to remove the biological, hydraulic and geomorphic stream function, disconnect and fragment the watershed and potentially result in the total loss of a stream.

(iii) All streams are waters of the state under North Dakota Century Code 28-61-04 and protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the beneficial uses of municipal, domestic, aquatic life, recreation, agriculture, and industry. Conditioning of NWP 19 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 7) **Nationwide Permit 27:** Nationwide Permit 27 is granted Section 401 Clean Water Certification with the following conditions: (1) Projects in Class I, IA, II, III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-Standards must provide a preconstruction notification, (2) projects will not result in a net loss of wetland or wetland type, and (3) no in-stream berms, dams, or similar structures on Class I, IA, and II, III river or stream listed in the Appendix I of the standards unless constructed in such a way that the stream assimilative capacity and aquatic life passage are maintained or the structures are part of a stream, river, wetland, or lake restoration project.

Section 121.7(d)(2)

(i) NWP 27 is sometimes used for damming, ephemeral and intermittent drainages. A PCN is required to ensure appropriate conditions are applied during and after construction to protect aquatic life passage, existing beneficial uses and prevent construction in ecological settings likely to become contaminant sinks (WQ-Standards). Projects need to demonstrate that at maturity there will be no net loss of wetland and wetland types. Wetland/wetland type and associated vegetation ensure no loss of assimilative capacity of contaminants, nutrients, and sediment to protect aquatic life (WQ-Standards).

(iv) Under 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge], 40 CFR 121.11(b) [The certifying authority, prior to the initial operation of a certified project, shall be afforded the opportunity to inspect the facility or activity of the purpose of determining whether the discharge from the certified project will violate the certification], and 40 CFR 121.11(c) [The Federal agency shall be responsible for enforcing certification condition that are incorporated into a license or permit]. Without a PCN, 40 CFR § 121.2, 40 CFR 121.11(b), or 40 CFR 121.11(c) cannot be satisfied. Conditioning of NWP 27 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 8) **Nationwide Permits 39, 40, and 42:** Nationwide Permits 39, 40 and 42 are granted Section 401 Clean Water Certification with the condition that the resulting will not cause a loss or relocation of 150 feet or more of any river or stream. Projects that cannot meet the condition under nationwide Permits 39, 40 and 42 will require an individual certification.

Section 121.7(d)(2)

(i) North Dakota has many intermittent and perennial streams with bed widths of less than four (4) feet. Projects with large footprints (i. g., Commercial, Industrial, Agricultural, and Recreational) that remove ≥ 150 linear feet of stream bank have the capacity to remove the capability, singularly or cumulatively, of the biological, assimilative, hydraulic and geomorphic stream function, disconnect and fragment the watershed and potentially result in the total loss of a stream.

(v) All streams are waters of the state under North Dakota Century Code 28-61-04 and protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the beneficial uses, municipal, domestic, aquatic life, recreation, agriculture, and industry.

Conditioning of NWP 39, 40, and 42 insure support of Sections 301,302,303,306 and 307 of the CWA.

9) **Nationwide Permit D (Utility Line Activities for Water and Other Substances):**

Utility line activities under Nationwide Permit D for water and other substances are granted Section 401 Clean Water Certification with the condition they do not carry oil and gas production water, produce water, or brine water. Pipelines that carry oil or gas production water, produced water, or brine water, collectively called saltwater pipelines, in, over or under Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-standards will require an individual certification with conditions based on the specific waterbody, location on the water, type of construction, and safety controls applied prior, during, and after construction.

Section 121.7(d)(2)

(i) Documentation of the “may discharge” by saltwater pipelines in violation of North Dakota’s Administrative Code Chapter 33.1-16-02.1, the Clean Water Act 301, 302 (40 CFR part 121) are the 284 reported pipeline releases/failures reported in North Dakota between January 1, 2016 and October 1, 2020.

Saltwater pipelines in, over or under Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-standards need to be conditioned based on the waterbody, location on the water, type of construction, and safety controls applied prior during and after construction.

Pipelines carrying oil or gas production water, produced water, or brine water can be constructed to minimize discharge and failure potential through appropriate permit conditions. Under the proposed 2020 NWP D information is required to develop project specific conditions. General information needed to certify or certify with conditions is, but not limited to is: 1) construction type, 2) design, 3) crossing type, 4) monitoring, 5) safety systems installed, and 6) what toxin or pollutant is being transported by the pipeline.

Specific information required: (1) The geologic and geomorphic conditions at the constructions site to determine the likelihood of point source releases from construction activities such as the common frac-out of directional drilling fluids and the toxicity of the fluids, and (2) the location of the project in order to inspect during and after construction to ensure compliance with conditions (§121.11). Finally, there is a physical requirement to know that that all saltwater pipelines are installed at depths below any potential scour to protect them from the hydraulic energies of water.

(ii) Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-61-04 have federally and state defined beneficial uses. These include the Clean Water Act (CWA) 101(a)(2) beneficial uses of “*wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983*”. Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-

61-04 also have state defined beneficial uses. These include municipal, domestic, agriculture, and industrial uses. Pollutant releases into state waters may occur during and after construction of production, produced and brine water (saltwater) pipelines. Releases will violate sections 301, 302, 303, and 306 of the Clean Water Act, and WQ-Standards.

The department has the legal obligation to ensure the protection of the beneficial uses: municipal and industrial, fish and aquatic biota, recreation, agriculture, and industrial by insuring the ND Century Code 28-61-04 is supported by the WQ-Standards as determined by the Clean Water Act 301, 302, 303, and 306 and information to do so (§121.11).

Under Section 401 of the Clean Water Act the department denies (CFR 40 Section 121.7(e)(2)) certification of the following Nationwide Permits as the discharge(s) will not comply with water quality requirements:

- 10) **Nationwide Permit 12:** Oil and gas natural related projects in Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the standards are denied Section 401 Water Quality Certification.

Denied Section 121.7(e)(2)

(i) Documented "May discharge" by oil and natural gas pipelines in violation of North Dakota's Administrative Code Chapter 33.1-16-02.1, the Clean Water Act 301, 302 and 40 CFR Part 121 is documented by the 183 crude oil pipeline releases/failures reported in North Dakota between January 1, 2016 and October 1, 2020.

Pipeline permitted under NWP 12 can be built/constructed to minimize discharge and failure potential through appropriate conditioning. Under the proposed 2020 NWP there is not enough information to do so. General information needed to certify or certify with conditions is, but not limited to is: 1) construction type, 2) design, 3) crossing type, 4) monitoring, 5) safety systems installed, and 6) what toxin or pollutant is being transported by the pipeline.

Specific information required: (1) The geologic and geomorphic conditions at the constructions site to determine the likelihood of point source releases from construction activities such as the common frac-out of directional drilling fluids and the toxicity of the fluids, and (2) the location of the project in order to inspect during and after construction to ensure compliance with conditions (§121.11). Finally, there is a requirement to know that all oil and natural gas pipelines are installed at depths below any potential scour to protect them from the hydraulic energies of water.

(ii) Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-61-04 have federally and state defined beneficial uses. These include the Clean Water Act (CWA) 101(a)(2) beneficial uses of "*wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983*".

Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-61-04 also have state defined beneficial uses. These include municipal, domestic, agriculture, and industrial uses. Pollutant releases into state waters may occur during and after construction of crude oil, natural gas and oil related pipelines. Releases will violate sections 301, 302, 303, 306 and 307 of the Clean Water Act, and WQ-Standards.

The department has the legal obligation to ensure the protection of the beneficial uses: municipal and industrial, fish and aquatic biota, recreation, agriculture, and industrial by ensuring the ND Century Code 28-61-04 is supported by the WQ-Standards as determined by the Clean Water Act 301, 302, 303, 306, and 307 and information to do so (§121.11).

The WQ-Standards may be found at <https://www.legis.nd.gov/information/acdata/pdf/33.1-16-02.1.pdf>. Within the WQ-Standards are the Authority 33.1-16-02.1-01, Beneficial uses 33.1-16-02.1-04, Narrative standards 33.1-16-02.1-08, Numeric standards 33.1-16-02.1-09, Stream and stream class (Appendix I), Lake and lake classifications (Appendix II), Antidegradation policy (Appendix IV).

Sincerely,

A handwritten signature in dark ink, appearing to read 'Karl H. Rockeman', followed by a long horizontal flourish.

Karl H. Rockeman, P.E.
Director, Division of Water Quality

PNW:saj

FLOODPLAIN DEVELOPMENT PERMIT APPLICATION NON-BUILDING SITUATION

GENERAL INFORMATION

PERMIT APPLICATION # 2022-1 DATE: 11-17-22

Applicant/Contact: *NDDOT/Matt Sperry* Telephone # *701-328-3486*

Address: *North Dakota Department of Transportation*
Attn: Engineering and Environmental Services
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Brief project description - location of proposed development - legal description:

T146N, R50W Section 31

Complete reconstruction of the existing roadway concrete and base with nine inches non-reinforced Portland Cement Concrete (PCC) pavement, a four inch Hot Mix Asphalt (HMA) shoulder, and eight inch salvaged base. No significant grade change is expected. 6:1 foreslopes on both sides of the roadway will be constructed. Deck and approach slabs at the Goose River bridge will be replaced. Junior separation underpass structure will be replaced. Ditch cleaning will be performed in the east ditch. A new pedestrian bridge and shared use path will cross the interstate at the Hillsboro interchange (Exit 104). Culvert replacement, fencing, and conduit installation at the east right of way will also be performed.

Contractor: *Unknown*

Address: *Unknown*

Telephone # *Unknown*

Estimated Cost of project: *\$25,683,739*

FLOODPLAIN DETERMINATION :

(Complete the appropriate information)

Project is located: *100-year floodplain? (Flood Fringe): Yes*
Regulatory Floodway: No

Map information: FIRM Date: April 16, 2009, Panel No. 38097 C 0390 C
FIRM Zone: Zones A & AE
BFE at Development Site:
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 – *Removal of silt from east I-29 ditch*
- ☐ Watercourse alterations (river, stream, lake – channel modifications, rip-rap)
- ☒ Road, street or bridge construction (new, repair or replacement, realignment)
- ☒ Drainage improvements (including culvert work)
- ☐ Mining (removal of gravel, rock, fill or other natural materials)
- ☐ 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: *Minimal impacts to the floodplain due to bridge deck and approach slab replacements, guardrail installation, replacement of junior separation underpass, east ditch cleaning, three culvert replacements, and re-grading of inslopes. Trees will also be removed in the ditch bottom from approximate Sta 5523+48 to Sta 5538+65 the floodplain, FIRM Zone A is located along the west side of I-29 from approximately Sta 5521+00 to Sta 5540+79 and crosses I-29 at approximately Sta 5521+55. FIRM Zone AE is located along the east side of I-29 from approximately Sta 5512+90 to Sta 5547+00. (See attached construction plan sheets and cross sections).*

-Copies of project description, plans, blueprints, etc. See attached

-Wetlands - will the activity impact identified wetlands? Yes

-Will the development aggravate flooding elsewhere? Unknown

OTHER NOTIFICATION OR PERMITS NECESSARY:

U.S. Army Corps of Engineers – Yes, 404 Permit

ND State Water Commission? – NA

ELEVATION INFORMATION:

Attach information about the completed project elevations(s) with registered professional engineer or registered land surveyor certifications if part of the project:

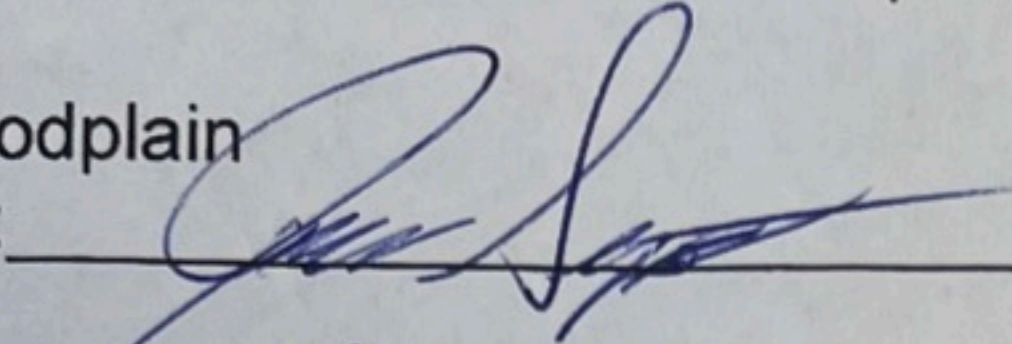
ACTION / APPROVAL:

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 NDDOT District Office upon completion of construction.)

Signature (Floodplain
Administrator):

 Eldorado Township

Date:

11-17-22

FLOODPLAIN DEVELOPMENT PERMIT APPLICATION NON-BUILDING SITUATION

GENERAL INFORMATION

PERMIT APPLICATION # _____ DATE:

Applicant/Contact: *NDDOT/Matt Sperry* Telephone # *701-328-3486*

Address: *North Dakota Department of Transportation
Attn: Engineering and Environmental Services
608 East Boulevard Avenue
Bismarck, ND 58505-0700*

Brief project description - location of proposed development - legal description:

T145N, R50W Section 6

Complete reconstruction of the existing roadway concrete and base with nine inches non-reinforced Portland Cement Concrete (PCC) pavement, a four inch Hot Mix Asphalt (HMA) shoulder, and eight inch salvaged base. No significant grade change is expected. 6:1 foreslopes on both sides of the roadway will be constructed. Deck and approach slabs at the Goose River bridge will be replaced. Junior separation underpass structure will be replaced. Ditch cleaning will be performed in the east ditch. A new pedestrian bridge and shared use path will cross the interstate at the Hillsboro interchange (Exit 104). Culvert replacement, fencing, and conduit installation at the east right of way will also be performed.

Contractor: *Unknown*
Address: *Unknown*

Telephone # *Unknown*

Estimated Cost of project: *\$25,683,739*

FLOODPLAIN DETERMINATION :

(Complete the appropriate information)

Project is located: 100-year floodplain? (Flood Fringe): *Yes*
Regulatory Floodway: *No*

Map information: FIRM Date: *April 16, 2009, Panel No. 38097 C 0390 C*
FIRM Zone: *Zones A & AE*
BFE at Development Site:
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 – *Removal of silt from east I-29 ditch*
- ☐ Watercourse alterations (river, stream, lake – channel modifications, rip-rap)
- ☒ Road, street or bridge construction (new, repair or replacement, realignment)
- ☒ Drainage improvements (including culvert work)
- ☐ Mining (removal of gravel, rock, fill or other natural materials)
- ☐ 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: *Minimal impacts to the floodplain due to bridge deck and approach slab replacements, guardrail installation, replacement of junior separation underpass, east ditch cleaning, three culvert replacements, and re-grading of inslopes. Trees will also be removed in the ditch bottom from approximate Sta 5523+48 to Sta 5538+65 the floodplain, FIRM Zone A is located along the west side of I-29 from approximately Sta 5521+00 to Sta 5540+79 and crosses I-29 at approximately Sta 5521+55. FIRM Zone AE is located along the east side of I-29 from approximately Sta 5512+90 to Sta 5547+00. (See attached construction plan sheets and cross sections).*

-Copies of project description, plans, blueprints, etc. *See attached*

-Wetlands - will the activity impact identified wetlands? *Yes*

-Will the development aggravate flooding elsewhere? *Unknown*

OTHER NOTIFICATION OR PERMITS NECESSARY:

U.S. Army Corps of Engineers – *Yes, 404 Permit*

ND State Water Commission? – *NA*

ELEVATION INFORMATION:

Attach information about the completed project elevations(s) with registered professional engineer or registered land surveyor certifications if part of the project:

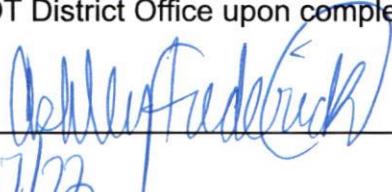
ACTION / APPROVAL:

The proposed development is in conformance with applicable community floodplain standards subject to the following conditions with this approval.

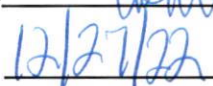
PERMIT APPLICATION IS APPROVED

(Conditioned on the description provided. As-built information/certification will be available at the NDDOT District Office upon completion of construction.)

Signature (Floodplain
Administrator):



Date:



NOTES TO USERS

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. The community map repository should be consulted for possible updated or additional flood hazard information.

To obtain more detailed information in areas where **Base Flood Elevations (BFEs)** and/or **footways** have been determined, users are encouraged to consult the Flood Profiles and Floodway Data and/or Summary of Stillwater Elevations tables contained within the Flood Insurance Study (FIS) Report that accompanies the FIRM. Users should be aware that BFEs shown on the FIRM represent rounded whole-foot elevations. These BFEs are intended for flood insurance rating purposes only and should not be used as the sole source of flood elevation information. Accordingly, flood elevation data presented in the FIS Report should be utilized in conjunction with the FIRM for purposes of construction and/or floodplain management.

Certain areas not in Special Flood Hazard Areas may be protected by **flood control structures**. Refer to Section 2.4 "Flood Protection Measures" of the Flood Insurance Study Report for information on flood control structures for this jurisdiction.

Coastal Base Flood Elevations shown on this map apply only to landward of 0.0' North American Vertical Datum of 1988 (NAVD 88). Users of this FIRM should be aware that coastal flood elevations are also provided in the Summary of Stillwater Elevations table in the Flood Insurance Study Report for this jurisdiction. Elevations shown in the Summary of Stillwater Elevations table should be used for construction and/or floodplain management purposes when they are higher than the elevations shown on this FIRM.

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 National Flood Insurance Program. Floodway widths and other pertinent floodway data are provided in the Flood Insurance Study Report for this jurisdiction.

The **projection** used in the preparation of this map was Universal Transverse Mercator (UTM) zone 14. The **horizontal datum** was NAD 83, GRS 1980 spheroid. Differences in datum, spheroid, projection or UTM zones used in the production of FIRMs for adjacent jurisdictions may result in slight positional differences in map features across jurisdiction boundaries. These differences do not affect the accuracy of this FIRM.

Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same vertical datum. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1988, visit the National Geodetic Survey website at <http://www.ngs.noaa.gov>, or contact the National Geodetic Survey at the following address:

NGS Information Services
NOAA, NNGS12
National Geodetic Survey
SSMC-3, #5202
1315 East-West Highway
Silver Spring, Maryland 20910-3282
(301) 713-3242

To obtain current elevation, description, and/or location information for **bench marks** shown on this map, please contact the Information Services Branch of the National Geodetic Survey at (301) 713-3242, or visit its website at <http://www.ngs.noaa.gov>.

Base map information shown on this FIRM was derived from NAIP Orthophotography produced with a one meter ground resolution from photography dated 2005.

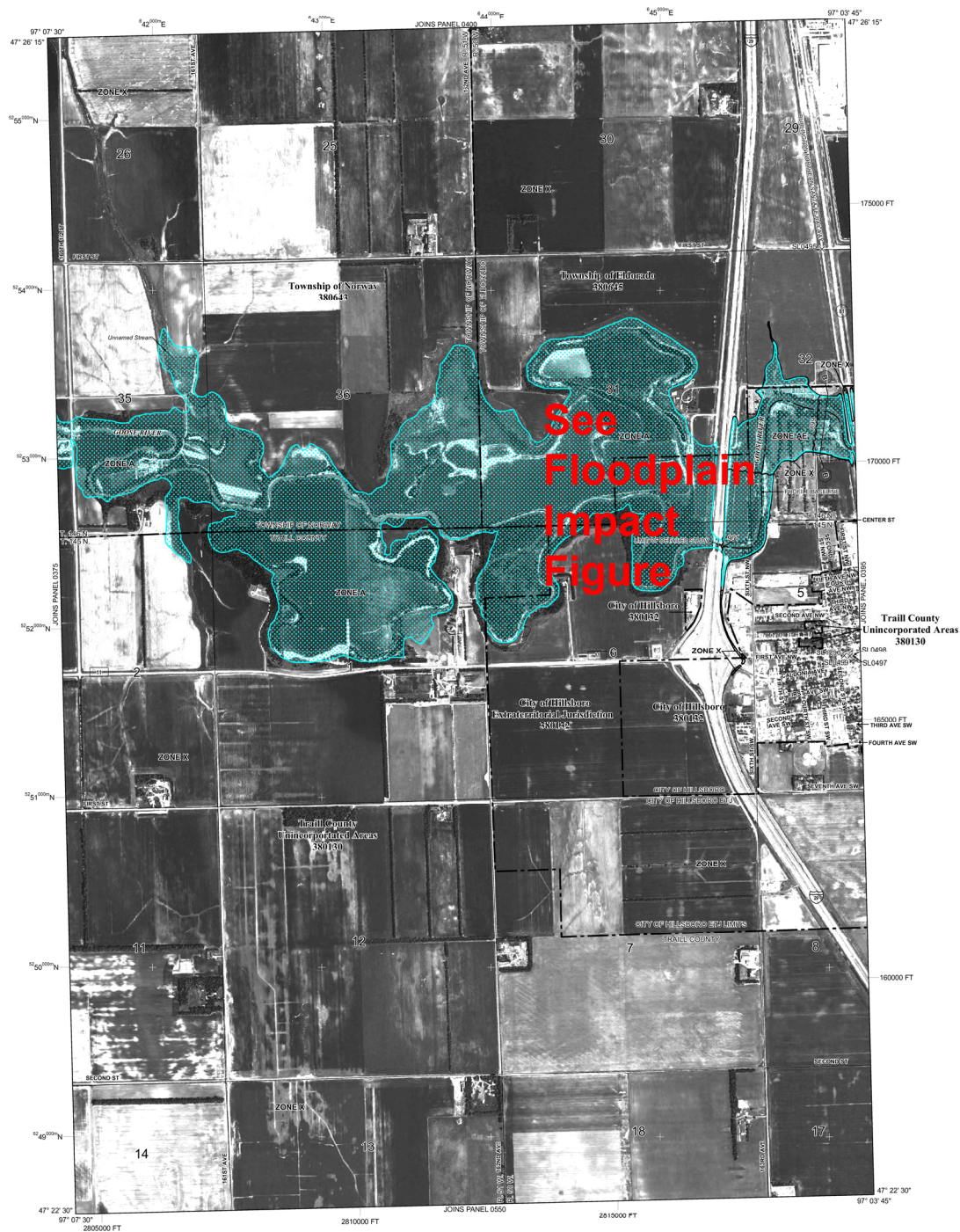
This map reflects more detailed and up-to-date **stream channel configurations** than those shown on the previous FIRM for this jurisdiction. The floodplains and floodways that were transferred from the previous FIRM may have been adjusted to conform to these new stream channel configurations. As a result, the Flood Profiles and Floodway Data tables for multiple streams in the Flood Insurance Study Report (which contains authoritative hydraulic data) may reflect stream channel distances that differ from what is shown on this map.

Corporate limits shown on this map are based on the best data available at the time of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate community officials to verify current corporate limit locations.

Please refer to the separately printed **Map Index** for an overview map of the county showing the layout of map panels; community map repository addresses; and a Listing of Communities table containing National Flood Insurance Program dates for each community as well as a listing of the panels on which each community is located.

Contact the **FEMA Map Service Center** at 1-800-353-9616 for information on available products associated with this FIRM. Available products may include previously issued Letters of Map Change, a Flood Insurance Study Report, and/or digital versions of this map. The FEMA Map Service Center may also be reached by Fax at 1-800-353-9602 and its website at <http://www.fema.gov>.

If you have **questions about this map** or questions concerning the National Flood Insurance Program in general, please call 1-877-FEMA MAP (1-877-336-2627) or visit the FEMA website at <http://www.fema.gov/business/firm>.



LEGEND

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO FLOODING BY THE 1% ANNUAL CHANCE FLOOD
The 1% annual chance flood (500-year flood), also known as the **base flood**, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zone A, AE, AH, AO, AR, AV, and VE. The **Base Flood Elevation** is the water surface elevation of the 1% annual chance 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 sheet flow flooding, velocities also determined.
- ZONE AR** Special Flood Hazard Areas formerly protected from the 1% annual chance flood by a flood control system that was subsequently derelict. Zone AR indicates that the former flood control system is being retained to provide protection from the 1% annual chance or greater flood.
- ZONE ARB** Areas to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.
- ZONE AV** Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.
- ZONE VE** Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

FLOODWAY AREAS IN ZONE AE

The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

OTHER FLOOD AREAS

- ZONE X** Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.
- OTHER AREAS**
- ZONE X** Areas determined to be outside the 0.2% annual chance floodplain.
- ZONE D** Areas in which flood hazards are undetermined, but possible.
- COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS**
- OTHERWISE PROTECTED AREAS (OPAs)**

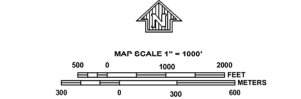
- CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.
- 1% Annual Chance Floodplain Boundary
- 0.2% Annual Chance Floodplain Boundary
- Floodway boundary
- Zone D boundary
- CBRS and OPA boundary
- Boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths or flood velocities
- Base Flood Elevation line and value, elevation in feet
- Base Flood Elevation value where uniform within zone; elevation in feet

*Referenced to the North American Vertical Datum of 1988

- Cross section line
- Transect line
- Canal
- Bridge
- Geographic coordinates referenced to the North American Datum of 1983 (NAD 83) Western Hemisphere
- 3000-foot scale: North Dakota State Plane coordinate system, North zone, Lambert Conformal Conic projection
- 1000-meter Universal Transverse Mercator grid values, zone 14N
- Bench mark (see explanation in Notes to Users section of this FIRM panel)
- MAP REPOSITORIES
- Refer to Map Repositories list on Map Index
- EFFECTIVE DATE OF COUNTYWIDE FLOOD INSURANCE RATE MAP
- April 16, 2009
- EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL

For community map revision history prior to countywide mapping, refer to the Community Map History table located in the Flood Insurance Study report for this jurisdiction.

To determine if flood insurance is available in this community, contact your insurance agent or call the National Flood Insurance Program at 1-800-638-6622.



NFIP

PANEL 0390C

FIRM

FLOOD INSURANCE RATE MAP

TRAIL COUNTY, NORTH DAKOTA AND INCORPORATED AREAS

PANEL 390 OF 750
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

COMMUNITY	NUMBER	PANEL	SUFFIX
ELKHORNO TOWNSHIP OF	38045	0390	C
HILLBRO CITY OF	38046	0390	C
HILLBRO TOWNSHIP OF	38047	0390	C
TRAIL COUNTY	38048	0390	C

Notice to User: The **Map Number** shown below should be used when placing map orders; the **Community Number** shown above should be used on insurance applications for the subject community.

MAP NUMBER
38097C0390C

EFFECTIVE DATE
APRIL 16, 2009

Federal Emergency Management Agency



I-29
Portland Cement Concrete
Reconstruction

TRAILL COUNTY

FLOODPLAIN IMPACTS

-  FEMA Floodplain Boundary
-  Structure Improvement
-  Pedestrian Bridge
-  Pavement Rehabilitation
-  Junior Separator
-  Local Roads



0 0.15 0.3 Miles

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:

Fuel Ratio_(x, y, z) = Affidavit Cost_(x, y, z) / 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:

Cost Change_(x, y, z) = (CFI_(x, y, z) - BFI_(x, y, z)) / 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:

$FCA_{(x, y, z)} = \text{Fuel Ratio}_{(x, y, z)} \times \text{Estimate}_{(x, y, z)} \times (\text{Cost Change}_{(x, y, z)} - 0.10)$		
(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel
$FCA_{(x, y, z)}$	=	Fuel Cost Adjustment for each of the fuel types
$\text{Fuel Ratio}_{(x, y, z)}$	=	Fuel Ratio for each of the fuel types
$\text{Estimate}_{(x, y)}$	=	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.
$\text{Estimate}_{(z)}$	=	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.
$\text{Cost Change}_{(x, y, z)}$	=	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:

$FCA_{(x, y, z)} = \text{Fuel Ratio}_{(x, y, z)} \times \text{Estimate}_{(x, y, z)} \times (\text{Cost Change}_{(x, y, z)} + 0.10)$		
(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel
$FCA_{(x, y, z)}$	=	Fuel Cost Adjustment for each of the fuel types
$\text{Fuel Ratio}_{(x, y, z)}$	=	Fuel Ratio for each of the fuel types
$\text{Estimate}_{(x, y)}$	=	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.
$\text{Estimate}_{(z)}$	=	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.
$\text{Cost Change}_{(x, y, z)}$	=	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 (8-2017)

SP Fuel Cost Adjustment Clause
6 of 6

Attachment A

PCN	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	
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 (D)	
Unleaded (U)	
Burner Fuel (B)	
Sum (D+U+B)	% of Original Contract Amount *
*The sum of the D, U, and B may not exceed 15% of the original contract amount.	
Under the penalty of law for perjury of falsification, the undersigned,	
Name (print or type)	Title (print or type)
Contractor (print or type)	
hereby certifies that the documentation is submitted in good 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.	
Signature	Date

Acknowledgement

State of	
County of	
Signed and sworn to (or affirmed) before me on this day _____ (month, day, year)	
Name of Notary Public or other Authorized Officer (Type or Print)	Affix Notary Stamp
Signature of Notary Public or other Authorized Officer	
Commission Expiration Date (if not listed on stamp)	