

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSAL

URBAN FEDERAL AID PROJECT NO. AC-NHU-CVD-1-981(123) (PCN-22929)

1.636 Miles

GRADING, AGGREGATE BASE COURSE, PCC PAVEMENT, HOT MIX ASPHALT, CURB & GUTTER, SHARED USE PATH, SIDEWALK, RETAINING WALLS, BOX CULVERTS, WATERMAIN, SANITARY SEWER, STORM SEWER, LIGHTING, SIGNAL MOD

43RD AVE, JCT LOCKPORT ST E TO HAY CREEK DR; N 19TH ST, JCT N VALLEY LOOP TO N 43RD AVE NE - BISMARCK

BURLEIGH COUNTY

DBE Race Conscious Goal - 10.00%

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 February 11, 2022.**

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)

PAGE INTENTIONALLY LEFT BLANK

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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: AC-NHU-CVD-1-981(123) (PCN-22929)

-
- 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: AC-NHU-CVD-1-981(123) (PCN-22929)

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: AC-NHU-CVD-1-981(123) (PCN-22929)

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: AC-NHU-CVD-1-981(123) (PCN-22929)

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	107	0100	RAILWAY PROTECTION INSURANCE	L SUM	1.				
003	108	0001	CRITICAL PATH METHOD SCHEDULE	L SUM	1.				
004	201	0330	CLEARING & GRUBBING	L SUM	1.				
005	202	0105	REMOVAL OF STRUCTURE	L SUM	1.				
006	202	0114	REMOVAL OF CONCRETE PAVEMENT	SY	646.				
007	202	0130	REMOVAL OF CURB & GUTTER	LF	2,043.				
008	202	0135	REMOVAL OF BITUMINOUS SURFACING	TON	14,824.				
009	202	0170	REMOVAL OF CULVERTS-ALL TYPES & SIZES	LF	545.				
010	202	0174	REMOVAL OF PIPE ALL TYPES AND SIZES	LF	325.				
011	202	0230	REMOVAL OF INLETS	EA	7.				
012	202	0312	REMOVE EXISTING FENCE	LF	1,727.				
013	202	0400	REMOVAL OF RIPRAP - LOOSE ROCK	CY	102.				
014	203	0101	COMMON EXCAVATION-TYPE A	CY	54,445.				
015	203	0109	TOPSOIL	CY	14,612.				
016	210	0050	BOX CULVERT EXCAVATION	EA	2.				

BID ITEMS

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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
017	210	0210	FOUNDATION FILL	CY	6,007.				
018	210	0405	FOUNDATION PREPARATION-BOX CULVERT	EA	2.				
019	216	0100	WATER	M GAL	1,689.				
020	230	0165	SUBGRADE PREPARATION-TYPE A-12IN	STA	77.				
021	251	0300	SEEDING CLASS III	ACRE	9.802				
022	251	1000	WETLAND SEED	ACRE	1.056				
023	251	2000	TEMPORARY COVER CROP	ACRE	11.785				
024	252	0100	SOD	SY	5,329.				
025	253	0101	STRAW MULCH	ACRE	11.785				
026	253	0201	HYDRAULIC MULCH	ACRE	9.541				
027	255	0103	ECB TYPE 3	SY	1,345.				
028	256	0100	RIPRAP GRADE I	CY	62.				
029	256	0200	RIPRAP GRADE II	CY	201.				
030	256	0701	REMOVE AND REPLACE RIPRAP	CY	9.				
031	260	0200	SILT FENCE SUPPORTED	LF	567.				
032	260	0201	REMOVE SILT FENCE SUPPORTED	LF	567.				

BID ITEMS

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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
033	261	0112	FIBER ROLLS 12IN	LF	16,441.				
034	261	0113	REMOVE FIBER ROLLS 12IN	LF	8,561.				
035	302	0050	TRAFFIC SERVICE AGGREGATE	TON	2,835.				
036	302	0120	AGGREGATE BASE COURSE CL 5	TON	40,646.				
037	401	0070	FOG SEAL	GAL	866.				
038	420	0111	CRS2P EMULSIFIED ASPHALT	GAL	3,470.				
039	420	0130	COVER COAT MATERIAL CL 43	SY	8,679.				
040	430	0143	RAP - SUPERPAVE FAA 43	TON	3,149.				
041	430	1000	CORED SAMPLE	EA	18.				
042	430	5803	PG 58S-28 ASPHALT CEMENT	TON	190.				
043	550	0111	8IN NON-REINF CONCRETE PVMT CL AE-COLORED & TEXT	SY	662.				
044	550	0300	8IN NON-REINF CONCRETE PVMT CL AE-DOWELED	SY	33,295.				
045	550	0302	8.5IN NON-REINF CONCRETE PVMT CL AE-DOWELED	SY	463.				
046	606	0804	8FT X 4FT PRECAST RCB CULVERT	LF	115.				
047	606	3208	DBL 12FT X 8FT PRECAST RCB CULVERT	LF	270.				
048	606	4804	8FT X 4FT PRECAST RCB END SECTION	EA	2.				

BID ITEMS

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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
049	606	7208	DBL 12FT X 8FT PRECAST RCB END SECTION	EA	2.				
050	702	0100	MOBILIZATION	L SUM	1.				
051	704	0100	FLAGGING	MHR	1,500.				
052	704	1000	TRAFFIC CONTROL SIGNS	UNIT	7,144.				
053	704	1051	TYPE II BARRICADE	EA	3.				
054	704	1052	TYPE III BARRICADE	EA	37.				
055	704	1054	SIDEWALK BARRICADE	EA	9.				
056	704	1060	DELINEATOR DRUMS	EA	110.				
057	704	1067	TUBULAR MARKERS	EA	100.				
058	704	1080	STACKABLE VERTICAL PANELS	EA	182.				
059	704	1087	SEQUENCING ARROW PANEL-TYPE C	EA	3.				
060	704	1500	OBLITERATION OF PAVEMENT MARKING	SF	2,140.				
061	704	4011	PORTABLE CHANGEABLE MESSAGE SIGN	EA	4.				
062	708	1540	INLET PROTECTION-SPECIAL	EA	60.				
063	708	1541	REMOVE INLET PROTECTION-SPECIAL	EA	60.				
064	709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	1,682.				

BID ITEMS

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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
065	709	0151	GEOSYNTHETIC MATERIAL TYPE R1	SY	55,403.				
066	709	0155	GEOSYNTHETIC MATERIAL TYPE RR	SY	1,246.				
067	710	0200	TEMPORARY BYPASS	L SUM	1.				
068	714	0210	PIPE CONC REINF 15IN CL III-STORM DRAIN	LF	1,494.				
069	714	0315	PIPE CONC REINF 18IN CL III-STORM DRAIN	LF	2,964.				
070	714	0620	PIPE CONC REINF 24IN CL III-STORM DRAIN	LF	325.				
071	714	0825	PIPE CONC REINF 30IN CL III-STORM DRAIN	LF	982.				
072	714	0902	PIPE CONC REINF 36IN CL II-STORM DRAIN	LF	588.				
073	714	1010	PIPE CONC REINF 42IN CL III-STORM DRAIN	LF	327.				
074	714	3005	END SECT-CONC REINF 15IN	EA	1.				
075	714	3010	END SECT-CONC REINF 18IN	EA	5.				
076	714	3030	END SECT-CONC REINF 30IN	EA	1.				
077	714	3035	END SECT-CONC REINF 36IN	EA	2.				
078	714	3040	END SECT-CONC REINF 42IN	EA	1.				
079	714	3150	HEADWALL-PRECAST CONCRETE 4IN	EA	1.				
080	714	6581	PIPE POLYETHYLENE CORR PERF 6IN DRAIN	LF	2,979.				

BID ITEMS

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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
081	714	6589	PIPE PVC 4IN DRAIN	LF	193.				
082	714	7048	PIPE PVC 6IN SEWER	LF	62.				
083	714	7050	PIPE PVC 8IN SEWER	LF	280.				
084	714	8510	CASING PIPE 30IN	LF	145.				
085	714	8516	CASING PIPE 36IN	LF	371.				
086	714	9660	REMOVE & RELAY END SECTION-ALL TYPE & SIZES	EA	1.				
087	714	9705	UNDERDRAIN CLEANOUT RISER	EA	20.				
088	722	0100	MANHOLE 48IN	EA	13.				
089	722	0110	MANHOLE 60IN	EA	5.				
090	722	0120	MANHOLE 72IN	EA	7.				
091	722	0140	MANHOLE 96IN	EA	3.				
092	722	0300	MANHOLE SANITARY	EA	1.				
093	722	1100	MANHOLE RISER 48IN	LF	52.900				
094	722	1110	MANHOLE RISER 60IN	LF	25.200				
095	722	1120	MANHOLE RISER 72IN	LF	46.200				
096	722	1140	MANHOLE RISER 96IN	LF	19.800				

BID ITEMS

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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
097	722	3200	MANHOLE DROP	EA	1.				
098	722	3410	MANHOLE REPAIR	EA	7.				
099	722	3510	INLET-TYPE 2	EA	40.				
100	722	3520	INLET-TYPE 2 DOUBLE	EA	19.				
101	722	3766	INLET SPECIAL-TYPE 2 72IN	EA	1.				
102	722	3800	INLET SPECIAL CATCH BASIN-TYPE A 60IN	EA	1.				
103	722	3802	INLET SPECIAL CATCH BASIN-TYPE A 72IN	EA	1.				
104	722	3900	INLET SLOTTED DRAIN 12IN	LF	80.				
105	722	4000	INLET CATCH BASIN-TYPE A	EA	4.				
106	722	6140	ADJUST GATE VALVE BOX	EA	21.				
107	722	6200	ADJUST MANHOLE	EA	6.				
108	722	7000	WATER QUALITY UNIT	EA	4.				
109	724	0210	FITTINGS-DUCTILE IRON	LBS	16,805.				
110	724	0270	REMOVE GATE VALVE & BOX	EA	9.				
111	724	0305	PRESSURE REDUCING VALVE ASSEMBLY	EA	1.				
112	724	0310	GATE VALVE & BOX 8IN	EA	12.				

BID ITEMS

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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
113	724	0314	GATE VALVE & BOX 12IN	EA	6.				
114	724	0317	GATE VALVE & BOX 16IN	EA	9.				
115	724	0323	GATE VALVE & BOX 20IN	EA	1.				
116	724	0324	GATE VALVE & BOX 24IN	EA	5.				
117	724	0412	8IN HYDRANT	EA	14.				
118	724	0427	ADJUST HYDRANT	EA	1.				
119	724	0430	REMOVE HYDRANT	EA	13.				
120	724	0552	TAPPING SLEEVE & VALVE 16IN X 8IN	EA	2.				
121	724	0616	WATER SERVICE LINE 1 1/2IN	LF	172.				
122	724	0800	WATERMAIN 6IN	LF	12.				
123	724	0820	WATERMAIN 8IN	LF	157.				
124	724	0854	WATERMAIN 20IN	LF	13.				
125	724	0855	12IN WATERMAIN	LF	1,127.				
126	724	0858	WATERMAIN 16IN	LF	397.				
127	724	0870	24IN WATERMAIN	LF	4,800.				
128	724	0907	CURB STOP & BOX 1 1/2IN	EA	6.				

BID ITEMS

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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
129	724	0944	CONNECTION TO EXISTING MAIN	EA	20.				
130	724	0958	WATER SERVICE CONNECTION 1 1/2IN	EA	6.				
131	724	1020	MEDIAN SPRINKLER SYSTEM	L SUM	1.				
132	724	1035	SPRINKLER RELOCATION	L SUM	1.				
133	724	1100	SANITARY SEWER 4IN	LF	55.				
134	724	1129	8IN X 4IN SEWER WYE BRANCH	EA	1.				
135	724	1137	15IN X 6IN SEWER WYE BRANCH	EA	1.				
136	724	1150	PIPE DUCTILE IRON 16IN	LF	145.				
137	724	1157	PIPE DUCTILE IRON 24IN	LF	371.				
138	744	0100	POLYSTYRENE INSULATION BOARD	BD FT	15,616.				
139	748	0120	CURB & GUTTER MOUNTABLE-TYPE I	LF	753.				
140	748	0140	CURB & GUTTER-TYPE I	LF	27,673.				
141	748	0520	CURB-TYPE I	LF	94.				
142	748	1020	VALLEY GUTTER 36IN	SY	19.				
143	750	0030	PIGMENTED IMPRINTED CONCRETE	SY	1,092.				
144	750	0111	DECORATIVE PAVED BOULEVARD	SY	366.				

BID ITEMS

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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
145	750	0115	SIDEWALK CONCRETE 4IN	SY	10,513.				
146	750	0140	SIDEWALK CONCRETE 6IN	SY	735.				
147	750	0200	CONCRETE MEDIAN PAVING	SY	2,219.				
148	750	0210	CONCRETE MEDIAN NOSE PAVING	SY	178.				
149	750	1020	DRIVEWAY CONCRETE 8IN	SY	904.				
150	750	2115	DETECTABLE WARNING PANELS	SF	864.				
151	752	0600	FENCE CHAIN LINK	LF	582.				
152	754	0110	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	838.				
153	754	0112	FLAT SHEET FOR SIGNS-TYPE IV REFL SHEETING	SF	215.				
154	754	0193	FLEXIBLE DELINEATORS-TYPE D	EA	92.				
155	754	0206	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	1,793.				
156	754	0592	RESET SIGN PANEL	EA	3.				
157	754	0801	OBJECT MARKERS - TYPE I	EA	4.				
158	754	0805	OBJECT MARKERS - CULVERTS	EA	11.				
159	754	9095	SIGNING	L SUM	1.				
160	762	0122	PREFORMED PATTERNED PVMT MK-MESSAGE(GROOVED)	SF	673.				

BID ITEMS

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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
161	762	1108	PVMT MK PAINTED 8IN LINE	LF	1,541.				
162	762	1255	PREFORMED THERMO PLASTIC PVMT MK 6IN LINE	LF	833.				
163	762	1270	PREFORMED THERMO PLASTIC PVMT MK 24IN LINE	LF	780.				
164	762	1280	PREFORMED THERMO PLASTIC PVMT MK MESSAGE	SF	150.				
165	762	1305	PREFORMED PATTERNED PVMT MK 4IN LINE-GROOVED	LF	4,502.				
166	762	1309	PREFORMED PATTERNED PVMT MK 8IN LINE-GROOVED	LF	5,192.				
167	762	1344	PREF PATT PVMT MK 7IN LINE CONTRAST-GROOVED	LF	1,190.				
168	764	9011	ATTENUATING CRASH CUSHION TL-3	EA	2.				
169	764	9030	REMOVE ATTENUATING CRASH CUSHION TL-2	EA	2.				
170	766	0120	RESET MAILBOX	EA	2.				
171	770	0020	CONCRETE FOUNDATION-HIGHWAY LIGHTING	EA	36.				
172	770	0060	CONCRETE FOUNDATION-FEED POINT-TYPE B	EA	2.				
173	770	0100	PULL BOX	EA	31.				
174	770	0300	1IN DIAMETER RIGID CONDUIT	LF	2,420.				
175	770	0330	2IN DIAMETER RIGID CONDUIT	LF	9,514.				
176	770	0504	UNDERGROUND CONDUCTOR NO4-TYPE RHW	LF	20,837.				

BID ITEMS

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
177	770	0505	UNDERGROUND CONDUCTOR NO6-TYPE RHW	LF	6,092.				
178	770	0605	UNDERGROUND CONDUCTOR NO6-TYPE THW	LF	13,352.				
179	770	0745	FEED POINT-TYPE IV-PAD MOUNTED	EA	2.				
180	770	1076	LT STD 6FT MA 40FT MT HT	EA	12.				
181	770	2255	LT STD TWIN 6FT MA 25FT MT HT	EA	2.				
182	770	2276	LT STD TWIN 6FT MA 40FT MT HT	EA	17.				
183	770	3800	CONCRETE LT STD	EA	8.				
184	770	4211	LED LUMINAIRE - TYPE A	EA	15.				
185	770	4212	LED LUMINAIRE - TYPE B	EA	46.				
186	770	4521	REVISE LIGHT STANDARD	EA	6.				
187	770	4540	RELOCATE LIGHT STANDARD	EA	6.				
188	770	4541	RELOCATE CONCRETE LIGHT STANDARD	EA	3.				
189	770	4542	RELOCATE LUMINAIRE	EA	4.				
190	770	4560	REMOVE LIGHT STANDARD	EA	1.				
191	770	4582	REMOVE CONCRETE FOUNDATION	EA	6.				
192	770	9270	MODIFY EXISTING FEED POINT	EA	1.				

BID ITEMS

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

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
193	772	2904	REVISE TRAFFIC SIGNAL SYSTEM	EA	1.				
194	772	3125	REMOVE TRAFFIC SIGNAL SYSTEM	EA	1.				
195	900	1000	TEMPORARY STREAM DIVERSION	EA	2.				
196	930	9551	CONCRETE MODULAR BLOCK RETAINING WALL	SF	3,968.				
197	970	0001	LANDSCAPING APPURTENANCES	L SUM	1.				
198	970	0070	STONE MULCH	SF	4,926.				
199	970	0080	LANDSCAPE BOULDERS	TON	44.				
200	970	0150	PLANT CARE MAINTENANCE	L SUM	1.				
201	970	1000	TREES	EA	202.				
202	970	3560	MEDORA JUNIPER	EA	12.				
203	970	3625	PONDEROSA PINE	EA	2.				
204	970	5355	BLUE CHIP JUNIPER	EA	24.				
205	970	7000	LITTLE BLUE STEM	EA	12.				
206	970	7050	KARL FOERSTER	EA	14.				
			TOTAL SUM BID						

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

Type of Work: GRADING, AGGREGATE BASE COURSE, PCC PAVEMENT, HOT MIX ASPHALT, CURB & GUTTER, SHARED USE PATH, SIDEWALK, RETAINING WALLS, BOX CULVERTS, WATERMAIN, SANITARY SEWER, STORM SEWER, LIGHTING, SIGNAL MOD

County: BURLEIGH

Length: 1.6360 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 07/29/2023 *. 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.

***REFER TO NOTE 100-P01 COMPLETION DATES FOR ADDITIONAL TIME AND LIQUIDATED DAMAGE REQUIREMENTS.**

Project: AC-NHU-CVD-1-981(123) (PCN-22929)

Type of Work: GRADING, AGGREGATE BASE COURSE, PCC PAVEMENT, HOT MIX ASPHALT, CURB & GUTTER, SHARED USE PATH, SIDEWALK, RETAINING WALLS, BOX CULVERTS, WATERMAIN, SANITARY SEWER, STORM SEWER, LIGHTING, SIGNAL MOD

County: BURLEIGH

Length: 1.6360 Miles

UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISE (DBE):

The undersigned Bidder certifies that the information given on behalf of the Bidder in Special Provision, "Utilization of Disadvantaged Business Enterprise" (DBE), is true and correct and that the bidder has met the assigned goals or has met the good faith effort requirements of the Special Provision.

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 _____

of _____, a
CONTRACTOR NAME
MAILING ADDRESS

- Individual Partnership Joint Venture Corporation

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

_____, TITLE _____
BIDDER MUST SIGN ON THIS LINE

TYPE OR PRINT SIGNATURE ON THIS LINE

Subscribed and sworn to before me this day.

COUNTY

(Seal)

STATE DATE

NOTARY PUBLIC

My commission expires _____

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Job 22929, AC-NHU-CVD-1-981(123)

Grading, Aggregate Base Course, PCC Pavement, Hot Mix Asphalt,
Curb & Gutter, Shared-Use Path, Sidewalk, Retaining Walls, Box Culverts,
Watermain, Sanitary Sewer, Storm Sewer, Lighting, Signal Modification, Signing &
Pavement Markings

INDEX OF PROVISIONS

Road Restriction Permits

Hot Line Notice

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

SP DBE Program - Race Conscious dated October 1, 2021

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

Appendix A of the Title VI Assurances dated September 7, 2021

Appendix E of the Title VI Assurances dated September 7, 2021

SP Cargo Preference Act

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

SP Certified Payrolls, dated 9-6-17

SP DBE Project Payment Reporting, dated 10-3-17

NOTICE - Electrician

Labor Rates from U.S. Department of Labor dated January 14, 2022 (Mod. No. 1)

On-The-Job Training Program 2021

SSP 1 Temporary Erosion & Sediment Best Management Practices

SSP 2 Federal Migratory Bird Treaty Act

SSP 3 Local Agency Contracts

INDEX OF PROVISIONS

Page 2 of 2

SSP 5 Limitations of Operations

SSP 7 Bitumen Testing Price Adjustments

SSP 8 Federal Prohibition on Certain Technological Hardware

SSP 9 HMA Acceptance

SP 349(20) Utility Coordination

SP 350(20) Railroad Requirements

SP 378(20) Temporary Water Diversion

SP 413(20) Water Quality Unit

SP 414(20) Modular Block Retaining Wall

SP 462(20) Non-QC/QA Hot Mix Asphalt

PSP 103(20) Permits and Environmental Considerations

SP Fuel Cost Adjustment Clause dated September 8, 2006

Contract

Contract Bond

NOTICE

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

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

- A. The contractor may purchase up to 10 single trip permits for each NDDOT highway construction project at a cost ranging from \$20 to \$70 each. These permits must be purchased from the Motor Carrier Division of the Highway Patrol at the central office of the NDDOT in Bismarck, North Dakota.
- B. The \$1 per mile fee will not be charged for Gross Vehicle Weights (GVW) exceeding 105,500 pounds, 105,500 pounds, and 105,000 pounds for highways Restricted by Legal Weights, 8 Ton, and 7 Ton highways respectively.
- C. The \$5 per ton per mile fee will be charged only for loads exceeding a GVW of 130,000 pounds, 120,000 pounds, 110,000 pounds and 80,000 pounds for highways Restricted by Legal Weights, 8 Ton, 7 Ton, and 6 Ton highways respectively.
- D. The maximum weights per axle for each of the class restrictions still apply. If it is shown that more axles cannot be added, movement may be authorized; however, a \$1 per ton per mile fee will be charged for all weight in excess of the restricted axle limits.
- E. These construction equipment single trip permits apply to State and US Highways only.
- F. The District Engineers and Highway Patrol will select the route of travel.
- G. Contractors moving equipment to other than NDDOT highway construction projects are subject to all fees as shown in the Road Restriction Permit Policy.
- H. Contractors must call the Highway Patrol prior to movement of all overweight loads on all State and US Highways.

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.

RESTRICTION CLASSIFICATIONS WITH ALLOWABLE AXLE WEIGHTS AND GROSS VEHICLE WEIGHTS	PERMIT AND TON/MILE FEES
<p>Highways Restricted by Legal Weight</p> <p>Single Axle -- 20,000 lbs. Tandem Axle -- 34,000 lbs. Triple Axle -- 48,000 lbs. 4 Axles or more -- 15,000 lbs. per axle</p> <p>Gross Vehicle Weight -- 105,500 lbs.</p> <p>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.</p>	<p>Permit Fee: \$20-\$70 per trip</p> <p>Ton Mile Fee:</p> <p>105,501 lbs. to 130,000 lbs. GVW -- \$1 per mile</p> <p>Over 130,000 lbs. GVW -- \$1 per mile plus \$5 per ton per mile for that weight exceeding 130,000 lbs. GVW</p> <p>Exceeding axle limits -- \$1 per ton per mile</p>
<p>8-Ton:</p> <p>Single Axle -- 16,000 lbs. Tandem Axle -- 32,000 lbs. 3 Axles or more -- 14,000 lbs. per axle</p> <p>Gross Vehicle Weight -- 105,500 lbs.</p>	<p>Permit Fee: \$20-\$70 per trip</p> <p>Ton Mile Fee:</p> <p>105,501 lbs. to 120,000 lbs. GVW -- \$1 per mile</p> <p>Over 120,000 lbs. GVW -- \$1 per mile plus \$5 per ton per mile for that weight exceeding 120,000 lbs. GVW</p> <p>Exceeding restricted axle limits -- \$1 per ton per mile</p>
<p>7-Ton:</p> <p>Single Axle -- 14,000 lbs. Tandem Axle -- 28,000 lbs. 3 Axles or more -- 12,000 lbs. per axle</p> <p>Gross Vehicle Weight -- 105,500 lbs.</p>	<p>Permit Fee: \$20-\$70 per trip</p> <p>Ton Mile Fee:</p> <p>105,500 lbs. to 110,000 lbs. GVW -- \$1 per mile</p> <p>Over 110,000 lbs. GVW -- \$1 per mile plus \$5 per ton per mile for that weight exceeding 110,000 lbs. GVW</p> <p>Exceeding restricted axle limits -- \$1 per ton per mile</p>
<p>6-Ton:</p> <p>Single Axle -- 12,000 lbs. Tandem Axle -- 24,000 lbs. 3 Axles or more -- 10,000 lbs. per axle</p> <p>Gross Vehicle Weight -- 80,000 lbs.</p>	<p>Permit Fee: \$20-\$70 per trip</p> <p>Ton Mile Fee:</p> <p>\$5 per ton per mile for all weight exceeding 80,000 lbs. GVW</p> <p>Exceeding restricted axle limits -- \$1 per ton per mile</p>
<p>5-Ton:</p> <p>Single Axle -- 10,000 lbs. Tandem Axle -- 20,000 lbs. 3 Axles or more -- 10,000 lbs. per axle</p> <p>Gross Vehicle Weight -- 80,000 lbs.</p>	<p>No overweight movement allowed</p>

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

10/1/2014

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

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

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

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

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

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

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

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION SPECIAL PROVISION:
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

PROJECT AC-NHU-CVD-1-981(123) (PCN-22929)

RACE/GENDER CONSCIOUS GOAL The DBE goal for this project is: **10.00%**

NDDOT Contact Information	
Contractor Sign In & Submit Advertisements at: https://apps.nd.gov/dot/cr/csi/login.htm	Amy Conklin, DBE Program Administrator 701-328-3116 - or - aconklin@nd.gov
Submit quotes and post bid documentation to: subquotes@nd.gov or Fax: 701-328-0343	Ramona Bernard, Civil Rights Division Director 701-328-2576 - or - rbernard@nd.gov
Search DBE Directory https://dotnd.diversitycompliance.com/	All times are stated in Central Time. The day of the bid opening is not counted as one of the business days.

PURPOSE

These provisions:

1. Provide an explanation of the federal law and outline the obligations to comply with the Federal DBE requirements applicable to this contract,
2. Explain the process NDDOT will follow to evaluate bidders' efforts to obtain DBE participation
3. Provide the standards NDDOT will use to measure compliance with the requirements
4. Identify sanctions for failing to comply with DBE program requirements.

This Special Provision is written per 49 CFR Part 26 and Appendix A – Guidance Concerning Good Faith Efforts.

Contract award will be made to the lowest responsive bidder whose proposal substantially complies with the requirements prescribed herein, has submitted all required documentation and who has met the goal for DBE participation, or has demonstrated, to the satisfaction of the Department, adequate good faith efforts to do so.

QUOTES:

All bidders and all subcontractors over \$500,000 (regardless of whether they are apparent low bidder or their quote was used on a project in this bid opening) should submit a completed [SFN 52013-List of Businesses Submitting Quotes](#) (Form B), or a spreadsheet containing all the information on Form B by 4:00 pm CST within 5 business days after the bid opening. **(Copies of quotes are no longer accepted)** This process is necessary in identifying “ready, willing, and able” contractors upon which to base the NDDOT Triennial DBE Goal. The number of contractors and the types of work they have bid/quoted will be used in the calculation of the DBE goal for each goal setting period.

All subcontractors, suppliers, manufacturers, regular dealers, vendors, and brokers should fax or email quotes to the Department no later than 9 PM the day before each bid opening.

All DBEs quoting on this project MUST submit all quotes and a list of contractors they quoted to NDDOT no later than 9 PM the day before each bid opening.

Prime contractors preparing to bid on NDDOT highway projects have requested that quotes be sent to them the day before the bid opening by:

- 2 PM Central - Suppliers (brokers/regular dealers), vendors, & manufacturers
- 5 PM Central - Subcontractors under \$500,000
- 8 PM Central - Subcontractors over \$500,000

REQUIREMENTS FOR ALL BIDDERS:

- ALL BIDDERS are strongly encouraged to submit all documentation at the time of bid opening.
- Must submit Form A with bid package at the time of bid opening.
 - The DBE participation (amount committed to DBEs) will be based on the information identified on Form A at the time your bid is submitted, **NOT** what is submitted on [SFN 52160 Notification of Intent to Use](#) (Form C) if the amounts do not match. Additional DBE participation attained after the bid opening is acceptable and will count toward the Department's overall goal but will not be counted towards the individual project goal submitted at the time of bid.
 - For example: The project goal is 5.00%, the DBE participation listed on Form A submitted with the bid shows 4.89% and the Form C(s) identify 5.15% DBE participation at time of submission. The Department's view is the project goal has not been met, therefore GFE will be scrutinized on participation at the time of bid listed on Form A.
- Completed Form B, or a spreadsheet containing all the information on Form B, should be submitted by 4:00 pm CST within 5 business days after the bid opening.
- Prime contractors are strongly encouraged to submit their bid documentation in one electronic file. Forms incorrectly submitted could result in a technicality, forcing the Department to award to the next responsive bidder.

REQUIREMENTS FOR ALB WHEN THE PROJECT DBE GOAL IS MET AT THE TIME OF BID OPENING:

- Follow REQUIREMENTS FOR ALL BIDDERS above, and in addition, include:
- Must submit Form C for DBE's used in all tiers of subcontracting by 4:00 pm CST 2 business days after the bid opening.
- When the goal is met, if required documents are not submitted by the deadline, the Department may consider the bid non-responsive and could be rejected per 102.12 Irregular Bid, NDDOT Standard Specification for Road and Bridge Construction.

REQUIREMENTS FOR ALB WHEN THE PROJECT DBE GOAL IS NOT MET AT THE TIME OF BID OPENING:

- Follow REQUIREMENTS FOR ALL BIDDERS above, and in addition, include:
- A cover letter, submitted with SFN 60829 explaining actions taken attempting to meet the project goal. See Page 3, questions # 1-8 to help explain your actions in the cover letter. Cover letter must be submitted by 4:00 pm CST 2 business days of the bid opening.
- SFN 60829, [Contractor Good Faith Efforts Documentation](#), (GFE) **and** supporting documentation must be submitted by 4:00 pm CST 2 business days of the bid opening. Failure to demonstrate GFE may cause the Department to "Not Award".
- If a non-DBE is used over a DBE, or a prime wants to self-perform, a bid differential table in SFN 60829 should be completed, showing a comparison of like items, (apples to apples) along with the reason for not using the DBE. (Primes may need to supplement the DBE or Non-DBE quote to get an apples to apples comparison). Any Bid Differential (BD) that does not clearly address all items quoted by the DBE, the non-DBE, prime or combination of quotes, will not be considered.
- Must submit Form C for DBE's used in all tiers of subcontracting & non-DBE's used in a bid differential by 4:00 pm CST 2 business days after the bid opening.
- When the goal is not met, if required documents are not submitted by the deadline, the Department may consider the bid non-responsive and could be rejected per 102.12 Irregular Bid, NDDOT Standard Specification for Road and Bridge Construction.

GOOD FAITH EFFORTS

The bidder is responsible for taking actions toward achieving the project goal as required by 49 CFR Appendix A to Part 26 – Guidance Concerning Good Faith Efforts. Therefore, it is a bidder's responsibility to either achieve the project goal at the time of bid opening, or to follow a course of actions that would, by their scope, intensity, and appropriateness, reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

NDDOT will measure the bidder's efforts by actions demonstrated/taken prior to submitting their bid. The description and documentation of these efforts must adequately show NDDOT that the bidder took all necessary and reasonable steps to achieve the DBE goal.

The efforts employed by the bidder should be those that one could reasonably expect if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal.

The following questions are not intended to be a checklist or an exhaustive list of what is considered in evaluating GFE, but will help organize your explanation of your efforts to obtain DBE participation in your cover letter.

- 1) Did you use the DBE Directory to solicit DBEs who are certified to perform the work on the project?
 - 2) Did you send timely written (fax, e-mail, etc.) solicitation notices to certified DBE's?
 - 3) Did you maintain a follow-up log to track responses to your initial solicitations?
 - 4) Did you provide DBEs with information about the plans, specifications, and requirements of the contract so they are able to respond to your solicitation in a timely manner?
 - 5) Did you solicit DBE participation for work you could have self-performed?
 - a. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable.
 - 6) Did you ask your firm's subcontractors to solicit DBE work for the subcontractors' portion of the project?
 - 7) Did you receive and evaluate all quotes given? If not, what are your reasons?
 - a. The quotes **must be** converted to an acceptable format, whether the quotes are calculated by ton-mile, hour, acre or square mile.
 - 8) Did you advertise using one or both of the following options? Submit a copy with your Good Faith Efforts documentation.
 - OPTION 1:** Place an advertisement soliciting DBE participation using the electronic DBE Advertisement System.
 - o Submit the required information online at <https://apps.nd.gov/dot/cr/csi/login.htm> no later than noon, 15 calendar days before the bid opening.
 - OPTION 2:** Directly contact by email or fax, all DBEs certified in the specific work type (NAICS) required for the job.
 - o Make contact with DBEs no later than 5 pm 7 calendar days before the bid opening.
 - o Use the DBE Directory to determine the DBE firms certified in the work to be subcontracted.
- Either method of advertisement must:
- o Provide the name, email address, telephone, and fax number of the company contact who will be available to discuss and/or receive quotes.
 - o Offer assistance to DBEs in interpreting plans; quantities; expected overtime; project scheduling; pit and batch plan locations, length of haul, type of road; method of measurement (seeding by the mile or acre, hauling by hour or by ton-mile) or other issues that may affect a price quote.
- 9) Did you sign-in?

Indicate your intention to bid and/or receive quotes on specific jobs by using the Department's Bid Opening Sign in System

 - o The **Bid Opening Sign-In** web application located at

<https://apps.nd.gov/dot/cr/csi/login.htm>.

Sign-In opens at 8 am 7 calendar days prior to the bid opening and closes at 11 AM the day before the bid opening.

- Fill in the online form fields as required.
- Log in to download the “Bid Opening Contact Report” at <https://apps.nd.gov/dot/cr/csi/public/listBidOpenings.htm>

EVALUATION OF GOOD FAITH EFFORTS

Proposals may be considered irregular and may be rejected by the Department if there is non-compliance with the DBE requirements, or submitted documentation is incorrect or received after 4:00 pm CST 2 business days after the bid opening. The Department reserves the right to waive minor irregularities and/or certain elements of this special provision.

Federal regulations require the Department to scrutinize a bidder’s documented good faith efforts (see appropriate actions on pages 3-4).

If the Committee determines the ALB has adequately demonstrated GFE, the committee will recommend “Award”.

If the Committee determines the ALB has not adequately demonstrated GFE, the committee may recommend “Not Award”. Some of the factors considered are:

1. Whether the ALB fails to meet the contract goal, but others meet it
2. If the ALB fails to meet or exceed the average DBE participation of other bidders
3. If the ALB fails to submit adequate GFE documentation by 4:00 pm CST 2 business days after the bid opening
4. If the ALB submits no documentation of its good faith efforts (GFE)
5. If the ALB submits incorrect forms

Upon notification of a recommendation for a Not Award determination, the Director’s designee(s) will consider the Committee’s recommendation. If the Designee(s) agrees with the Committee’s recommendation, the Designee(s) will contact the ALB to inform them of the determination, the reasons for it, and that administrative reconsideration is available.

Administrative Reconsideration 49 CFR § 26.53 (d)

- An in-person reconsideration meeting is available at the ALB’s request.
- The Director’s designee(s) will consider any information submitted prior to or presented at the hearing as to whether the ALB met the goal or made adequate efforts to do so.
- The NDDOT reconsideration decision will be made by the Director’s designee(s), who will not have taken part in the original determination.
 - If the Director’s designee(s) determines the ALB made adequate good faith efforts to meet the goal, the job will be recommended for award.
 - If the Director’s designee(s) determines that the ALB has failed to sway the decision from “Not Award”, the ALB will receive written notice of the decision.
- Director will make the final decision and may exercise such discretion as deemed appropriate.
- The decision is not subject to administrative appeal to the U.S. Department of Transportation (49 CFR § 26.53(d)(5)).

POST-AWARD REQUIREMENTS

FEDERAL AUTHORITY

The following paragraph must be included in all subcontracts of all tiers in accordance with 49 CFR § 26.13(b):

The contactor or all tiers of subcontractors 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 § 26.13 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 NDDOT 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

It is the prime contractors' responsibility to ensure all tiers of subcontractors, brokers, manufacturers, suppliers, vendors, and regular dealers comply with the requirements of this special provision. In addition, the prime contractor has the responsibility to monitor DBE performance on the project, and to ensure that the DBE performs a commercially useful function (CUF).

PRIME CONTRACTOR'S MONITORING, RESPONSIBILITIES, REPORTING

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

The prime is responsible to:

- Report payments to DBEs used to meet the project goal. **Payments on the contract must be entered and stored in the CCS. Use of CCS on the project eliminates the requirement to submit SFN 60638 and SFN 14268.**
- Invite and encourage all subcontractors and all DBEs listed on Form C to the pre-construction conference.
- Provide minutes to any DBE not in attendance at the pre-construction conference.
- Ensure their firm as well as any subcontractors, manufacturers, and regular dealers/suppliers comply with the requirements of this special provision.
- Provide all subcontractors with Proposed Project Schedules and any necessary updates.
- Monitor DBE performance on the project.
 - [Submit SFN 60597, DBE Performance – Commercially Useful Function](#) (CUF) Certification to the project engineer with [SFN 5682- Prime Contractor's Request to Sublet](#). Project engineers will not approve Requests to Sublet without the CUF Certification.
- Maintain project records and documentation of payments to DBEs for three years following acceptance of the final payment from NDDOT (per FHWA-1273, Section II Nondiscrimination #11).
 - This reporting requirement also applies to any certified DBE.
 - NDDOT may perform interim audits of contract payments to DBEs to ensure that the actual amount paid to DBEs equals or exceeds the dollar amount stated on Form C.
 - Make these records available for inspection, upon request, by an authorized representative of the NDDOT or USDOT.

If SFN 60597, and reports of payment are not received in a timely manner, progress payments will be withheld from the prime until submitted.

If award of the contract is made based on the contractor's good faith efforts, the goal will not be waived; the contractor must make good faith efforts throughout the duration of the project.

The prime contractor shall not terminate or replace a DBE subcontractor without the Department's prior written consent. 49 CFR 26.53(f) (1) i.

The Department's contract includes a provision stating:

- (A) That the contractor shall utilize the specific DBEs listed to perform the work and/or supply the materials unless the contractor obtains written consent; and
- (B) That, unless the Department's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

[SFN 60595 - Replacement Approval Request](#) must be submitted and approved prior to replacement of each DBE firm(s), or Non-DBE/BD(s), or any work the prime originally intended to self-perform prior to the commencement of any replacement work. No payment will be made if work commences without written approval. The form may be

accessed at the Department's website: <http://www.dot.nd.gov/forms/sfn60595.pdf>

If the prime has not achieved the goal and additional work becomes available, the prime must follow the replacement approval request process using SFN 60595.

EXCEPTION FOR REPLACEMENTS DUE TO PUBLIC NECESSITY

When replacement work is required as a matter of public necessity, (e.g., safety, storm water issues), the contractor must immediately notify the project engineer and the DBE or Non-DBE/BD intended at the time of award. If the DBE or Non-DBE/BD is unable to perform the work within the time specified by permit or administrative rule, the DBE or Non-DBE/BD must notify the prime immediately; and, within one business day, a written explanation must be submitted to the prime with a copy to the project engineer. The project engineer refers all replacement approval requests to the Assistant District Engineer (ADE). In a case of public necessity, the ADE has the authority to allow the contractor to self-perform the replacement work or to find another contractor to complete it.

TERMINATION FOR CAUSE

A DBE or Non-DBE/BD may not be terminated without the Department's prior written consent. (49 CFR 26.53(f)(1)(I))

The Department will provide such written consent if the Department agrees that the contractor or subcontractor has good cause to terminate the DBE firm or Non-DBE/BD.

Circumstances which may be considered good cause for termination include when the listed DBE or Non-DBE/BD:

- Fails or refuses to execute a written contract
- Fails or refuses to perform the work of its subcontract in a way consistent with the contract and/or with normal industry standards, provided, that good cause does not exist if the failure or refusal of the listed DBE or Non-DBE/BD to perform its work on the subcontract results from the bad faith or discriminatory action of the prime or subcontractor
- Fails or refuses to meet the prime contractor's reasonable nondiscriminatory bond requirements
- Becomes bankrupt, insolvent, or exhibits credit unworthiness
- Is ineligible to work on public works projects because of Federal Highway Administration suspension and debarment proceedings.
- Is ineligible to receive DBE credit for the type of work required
- Dies or becomes disabled with the result that the listed DBE or Non-DBE/BD is unable to complete its work on the contract
- Other documented good cause that the Department determines compels the termination of the listed DBE or Non-DBE/BD

Good cause does not exist if the prime contractor or subcontractor seeks to terminate a DBE or Non-DBE/BD which was relied upon to obtain the contract so that the contractor can self-perform the work for which the DBE or Non-DBE/BD was engaged or so that the contractor can substitute another DBE or Non-DBE contractor after contract award.

The contractor must immediately give written termination notice to DBE or the Non-DBE/BD. At the same time, SFN 60595 and its supporting documentation must be provided to the project engineer for review and analysis of the reasons for the intended termination.

The contractor must give the DBE or Non-DBE/BD 5 business days to respond to the termination notice. Within that time, the DBE or Non-DBE/BD should respond with a written explanation of their reasons and/or objections to the proposed termination and specifically address why the Department should deny the contractor's request. This explanation should be submitted in reply to the contractor with a copy to the project engineer.

The project engineer will send the contractor's SFN 60595, the DBE or Non-DBE/BD's written response(s) and any other accompanying documentation to the Civil Rights Division (CRD). If the CRD concurs that a termination is warranted, the contractor must seek a DBE to perform the work.

All DBEs currently certified in the specific area of work to be performed, must be contacted in writing or by phone, and quotes solicited. If available, a DBE will be selected to perform a dollar value of work, equal to the value of the commitment not achieved, unless the contractor can demonstrate the DBE quote is unreasonable, using the same comparison in section “Good Faith Efforts Documentation.”

Upon receipt of appropriate written GFE documentation, and prior to commencement of any replacement work, CRD will consider the contractor’s efforts and provide a final written decision to the project engineer.

In instances where trucking replacements are sought, DBEs and/or Non-DBEs as allowed by regulation must be selected to cover all the trucking required until sufficient participation is met.

UNFULFILLED OBLIGATIONS

The Department requires SFN 60595 and its supporting documentation when a contractor, DBE, or Non-DBE/BD does not fulfill her or his obligations in any of the following situations:

- The prime contractor is unable to perform the full amount of work committed to be completed, by the prime’s workforce and equipment, at the time of award, or
- The DBE or Non-DBE/BD to which the prime contractor committed using at the time of award, is unable to perform the full amount of work, or
- The DBE or Non-DBE/BD withdraws voluntarily from the project and provides to the prime written notice of its withdrawal.

SFN 60595 and its supporting documentation must be provided to the project engineer for review and analysis. If the DBE or Non-DBE/BD is not able to perform, the prime contractor must provide written documentation from the DBE or Non-DBE/BD as to the reasons. The project engineer refers all replacement approval requests to the ADE. The Civil Rights Division will provide a written final determination to the project engineer.

If the Department concurs that a substitution is warranted, the prime contractor will seek a DBE to perform the work. All DBEs currently certified in the specific area of work to be performed, must be contacted in writing or by phone, and quotes solicited. If available, a DBE will be selected to perform a dollar value of work, equal to the value of the commitment not achieved, unless the contractor can demonstrate the DBE quote is unreasonable, using the same bid differential comparison in section “Good Faith Efforts Documentation.”

In instances where trucking replacements are sought, DBEs and/or Non-DBEs as allowed by regulation must be selected to cover all the trucking required until sufficient participation is met.

The prime contractor is responsible for any additional costs incurred as a result of the prime contractor’s failure or the subcontractor quoting over \$500,000 to fulfill the original commitment or the DBE or Non-DBE/BD’s failure to perform.

NON-COMPLIANCE, FAILURE TO PERFORM, AND SANCTIONS

If the Department determines that a contractor should be sanctioned, the Department will provide written notice to the contractor informing them of the sanction for the following:

- Not submitting required documentation in a timely manner
- Not paying a DBE or non-DBE subcontractor in a timely manner
- Not having a DBE perform the specified dollar amount of work (subject to plan quantity changes) tasks or bid items
- For otherwise not fulfilling the requirements of this DBE special provision
- Repeated instances of failure to perform the contract requirements
- Repeated instances of late contract-related payments
- documented fraudulent practices

If the Department determines that a DBE should be sanctioned, the Department will provide written notice to the DBE informing them of the sanction for the following:

- Failure to perform work as specified in the contract
- Failure to pay contract-related bills in a timely manner
- Failure to perform a commercially useful function
- Failure to notify the prime contractor orally and in writing if they are unable to perform a commercially useful function
- Otherwise not fulfilling the requirements of this DBE special provision

If sanctions are applied, the contractor or the DBE may make a written request to the Department for reconsideration. The contractor or the DBE must provide a written statement defending their actions within 3 business days.

If the Department does not receive a written request for reconsideration, or if the contractor or DBE does not provide sufficient evidence that the provisions have been met, the Department may suspend the contractor or the DBE bidding or quoting privileges and not allow the contractor or the DBE to participate in one or more scheduled bid openings after the date the sanction is imposed.

Further sanctions which may be imposed by the Department for failure on the part of the contractor may include, but are not limited to:

- Withhold the contractor's progress payment until the contractor complies with all DBE contract provisions
- Deduct, from the contractor's progress payments, the dollar amount of DBE participation committed to but not achieved by the contractor
- Find the contractor in default
- Liquidated damages
- Disqualifying the contractor from future bidding
- Take other corrective action determined by the Department to be appropriate
- Any combination of the above.

NDDOT MONITORING AND ENFORCEMENT MECHANISMS

The Department will bring any false, fraudulent, or dishonest conduct in connection with the DBE program to the attention of USDOT. USDOT may pursue action as provided in 49 CFR § 26.107. Actions include referral to the Department of Justice for criminal prosecution or referral to the USDOT Office of Inspector General for action under suspension and debarment, or Program Fraud and Civil Remedies rules. The Department will also consider similar action under its own legal authority, including responsibility determination in future contracts.

COMMERCIALLY USEFUL FUNCTION

DBEs are required to perform a commercially useful function (CUF). CUF refers to those services the DBE is certified to perform. Certified services for each DBE are listed in the online DBE Directory. It is a DBE's responsibility to immediately notify the prime contractor in writing if the DBE is unable to perform a CUF or the services indicated on Form C.

The contractor must certify that DBEs working on the prime's contract are performing a commercially useful function. Submit [SFN 60597, DBE Performance – Commercially Useful Function](#) Certification to the project engineer with [SFN 5682 - Contractor's Request to Sublet](#). Project engineers will not approve the Requests to Sublet without the CUF Certification. A review of the certification must be performed by the project engineer to determine whether the contract dollar value of the DBE's work may be counted toward the project goal.

The Department counts participation to a DBE contractor toward DBE goals only if the DBE is performing a CUF on that contract.

- A. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installation and paying for the material itself. 49 CFR § 26.55(c)(1)
- B. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. 49 CFR § 26.55(c)(2)

- C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, the Department must presume that it is not performing a CUF. 49 CFR § 26.55(c)(3)
- D. When a DBE is presumed not to be performing a CUF as provided in paragraph C (above), the DBE may present evidence to rebut this presumption. 49 CFR § 26.55(c)(4)
- E. The Department's decisions on CUF matters are subject to review by Federal Highway Administration, but are not administratively appealable to USDOT. 49 CFR § 26.55(c)(5)

COUNTING RACE/GENDER CONSCIOUS DBE PARTICIPATION - 49 CFR § 26.55

The Department does not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE. 49 CFR § 26.55 (h)

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

1. The Department will use the following factors in counting DBE trucking participation.
 - A. For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE. 49 § 26.55(d)(7)
 - B. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. 49 CFR § 26.55(d)(1)
 - C. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract and receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. 49 CFR § 26.55(d)(2-3)
 - D. The DBE may lease trucks and drivers from another DBE firm and receives credit for the total value of the transportation services the lessee DBE provides. 49 CFR § 26.55(d)(4)
 - E. The DBE may also lease trucks with drivers and is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the services under items 1C and 1D. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. 49 CFR § 26.55(d)(5)

Example to 1D: DBE Firm X uses two of its own trucks on a contract. It leases two trucks with drivers from DBE Firm Y and six trucks **with drivers** from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

- F. The DBE may lease trucks without drivers from a non-DBE truck leasing company and if the DBE uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example to paragraph 1F: DBE Firm X uses two of its own trucks and drivers on a contract. It leases two additional trucks and drivers from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks. 49 § 26.55(d)(6)

2. Only the value of the work actually performed by the DBE counts toward the project goal when a DBE participates in a contract provided the DBE is certified in this work.
 - A. The Department counts the entire amount of that portion of a construction contract, or other contract not covered by item 2. B, that is performed by the DBE's own forces. Included are the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate). 49 CFR § 26.55 (a)(1)
 - B. The Department counts the entire amount of fees or commissions charged by a DBE firm for providing a

bona fide service for which they are certified, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, if the Department determines the fee to be reasonable and not excessive. 49 CFR § 26.55 (a)(2)

- C. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is also a DBE. 49 CFR § 26.55 (a)(3)
3. The Department counts expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- A. If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. 49 CFR § 26.55 (e)(1)(i)
 - B. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. 49 CFR § 26.55 (e)(2)(i)
 - C. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of 3B (above) 49 CFR § 26.55 (e) (2) (ii) (C)
 - D. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, if the Department determines the fees to be reasonable and not excessive. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals. 49 CFR § 26.55 (e) (3)
 - E. The Department determines the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis. 49 CFR § 26.55 (e)(4)
4. If a firm is not currently certified in ND at the time of the execution of the contract, the Department does not count the firm's participation toward any DBE goal. 49 CFR § 26.55 (f)
5. The Department does not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward the Department's overall annual goal. 49 CFR § 26.55 (g)

DEFINITIONS

The definitions specified below apply only to this Special Provision and may contain differences from NDDOT Standard Specifications.

Achievement means any DBE certified service dollar amount committed to at the time of award. Any achievement must be supported by a request to sublet and Monthly DBE Payment Records for each DBE.

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

Apparent low bidder (ALB) means the bidder whose bid is read as low bid at the bid opening.

Bid differential (BD) means written documentation provided by the low bidder comparing a Non-DBE quote to a DBE quote.

Bid Opening Sign-In System means the Department's online system to which all prime contractors and subcontractors must register to indicate their interest in quoting or bidding prior to each bid opening.

Bidder/prime contractor means bidders who are submitting proposals on this project, regardless of the size of the highway construction projects; a contractor intending to serve as the prime contractor.

Blanket quote means when a business provides the same quote, for all projects, at a bid opening, using the same price, at one rate, not project specific. Blanket quotes for the construction season are not allowed, i.e. trucking, striping, signing, construction supplies, etc.

Commercially Useful Function describes a DBE's responsibilities and involvement in a project, see section Commercially Useful Function of this SP.

Commitment means the dollar amount of work the DBE will complete according to the bidder's submitted proposal.

Contractor means all DBE and Non-DBE firms, including prime contractors, subcontractors (under/over \$500,000), brokers, vendors, regular dealers/suppliers, and manufacturers at any tier.

DBE Goal means a percentage of the total contract targeted for the hiring of DBE subcontractors to do specific bid items for which the DBE has been certified to perform. Project goals are set by assessing the project's bid items, location, whether DBEs are available to do the work.

DBE Participation means the percentage achieved when the dollar amount committed to the DBE is divided by the dollar amount of all contract items.

DBE Participation Review summarizes the prime's participation at the time of award. A replacement approval request must be submitted to substitute a firm for any DBEs reported as being used at the time of award.

Department means the project owner regardless of whether the owner is NDDOT, a city or a county project.

Disadvantaged business enterprise or DBE means a for-profit small business concern that is certified by the Department and listed in the DBE Directory available on the Department's web site. DBEs must first be certified in the work intended before any DBE achievement may be counted toward the project goal.

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

Good Faith Efforts (GFE) means efforts made by the prime contractor to achieve a DBE goal. This includes but is not limited to providing assistance to DBEs in preparing their quotes, advertise, sign in, etc.

Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. 49 CFR § 26.55 (e) (1) (ii)

Materials means aggregate, steel, petroleum products, concrete, asphalt, and other construction supplies.

NAICS Codes means industry codes assigned by North American Industry Classification System. When certified, DBE businesses are assigned NAICS codes which are identified in the DBE Directory.

NDDOT Certification & Compliance System (CCS) refers to the online compliance reporting system whereby contractors report/submit job related payments, commitments, and Utilization Plan documentation.

Non-DBE means a contractor, subcontractor, supplier (broker or regular dealer), vendor, or manufacturer that has not been certified as a DBE by the NDDOT Uniform Certification Program.

Non-DBE used in bid differential (Non-DBE/BD) means a Non-DBE which, at the time of award, was approved for use due to a price comparison with a DBE. A Form C with the Non-DBE/BD must be included in the DBE Good Faith Efforts Review documentation. A replacement approval request must be submitted when the Non-DBE/BD is unable to complete the work.

Positive Contact means active and documented solicitation of DBE and other subcontractors. Advertising the prime's intention to bid or contacting individual DBEs is deemed a positive contact.

Project owner means any political subdivision such as a city or county which provides match to federal highway funds and uses NDDOT's electronic bidding system to let their projects to bid. The Department "owns" state projects.

Quoter means a DBE or a Non-DBE subcontractor (under/over \$500,000), brokers, vendors, regular dealers/suppliers, and manufacturers at any tier who submits quotes to another contractor.

Race/Gender Conscious (RGC) goals are those focused specifically on assisting DBEs.

Responsible Bid Proposal means a bidder's proposal in which the project goal has been achieved, or the bidder demonstrates Good Faith Efforts (GFE) as outlined in this Special Provision.

Subcontractor means any firm intending to perform work, or intending to perform work and supply the materials, which were intended for their work on the project. All subcontractors must attach a list of DBE subcontractors intended for use to their quote when submitting it to the prime contractor.

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

Supplier means a party providing goods, services, and supplies on the project.

Broker means an agent who, without having custody of the property, a) negotiates contracts of purchase, work, lease, or sale; b) buys and sells goods; or c) negotiates between buyers and sellers. See Counting DBE Participation section.

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

Tier means various levels of contractors on the job. For example a prime contractor's subcontractor (B) is referred to as the second tier. When B subcontracts with C, C becomes the third tier, etc.

Tied quote means the quote will be considered only if all of the bid items are included.

Untied quote means that any item or group of items quoted may be used for price noted on the quote whether one or all are used.

**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 – Statewide6.9%
 - b. Goals for Minority Participation in Each Trade by County:
Barnes, Cass, Dickey, Eddy, Foster, Griggs, LaMoure, Logan,
McIntosh, Ransom, Richland, Sargent, Steele, Stutsman, Traill0.7%
 - Grand Forks1.2%
 - Benson, Cavalier, Nelson, Pembina, Ramsey, Towner, Walsh2.0%
 - Burleigh, Morton0.4%
 - 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, Williams4.4%

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).

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

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

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

CARGO PREFERENCE ACT (CPA)

DESCRIPTION

The Federal Highway Administration (FHWA) in partnership with the Federal Maritime Administration (MARAD) has mandated the implementation of 46 CFR 381 making the cargo preference requirements applicable to the Federal Aid Highway Program.

The requirements of this Special Provision apply to items transported by ocean vessel.

CONTRACT REQUIREMENTS

A. General

Utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage 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. Gross tonnage is computed separately for dry bulk carriers, dry cargo liners, and tankers.

Furnish a legible, English language copy of a rated 'on-board' commercial ocean bill-of-lading for each shipment of cargo described in the previous paragraph. Furnish the bill-of-lading within 20 days following the date of loading for shipments originating in the United States and within 30 working days following the date of loading from shipments originating outside the United States.

Furnish bills-of-lading to the Engineer and to the following:

Division of National Cargo
Office of Market Development
Maritime Administration
Washington, DC 20590

B. Subcontracts

Include the language in Section "A, General" of this Special Provision in all subcontracts issued pursuant to this contract.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

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

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

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

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

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

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

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

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

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

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

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

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

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**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 one of these lists before entry of the subcontractor into LCPtracker. These lists may be found at <https://www.dot.nd.gov/pacer/qualified.htm> and <https://www.dot.nd.gov/pacer/registered.htm>. 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/LCPtracker page at <https://www.dot.nd.gov/divisions/civilrights/laborcompliance.htm>. 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.

09/06/2017

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

Payments made to all tiers of subcontractors must be reported electronically using the B2GNow system. Paper forms (Monthly Record of DBE Project Payments – SFN 60638) will no longer be accepted.

After award, the Prime Contractor (Prime) must:

1. Create a new account if not already in the system. Create a user for each employee who will use the system. If there is no account already set up, you can email Customer Support directly from the Account Lookup page. Your email address will be your user ID. Customer Support will email you with the information you need to log in.
2. Once the project has been awarded and the Utilization Plan (UP) has been created in the system and assigned to the contractor it must be filled out and submitted. An automated email message will be sent to a designated individual within the company alerting them that a UP is pending. Log into the system using the link provided in the email. For each contract the Prime must add all DBE and non-DBE subs being used on the project. When all information has been provided submit the UP. Civil Rights will review the UP and if everything is in order it will be approved. If changes need to be made the UP will be returned to the contractor and they will have 7 days to make the necessary adjustments and resubmit. If DBE or non-DBE subcontractors are added after the initial UP is set up the Prime can submit a request for them to be added.
3. Once the UP is submitted the project is “locked in” after Financial Management has processed the project in their system. After a UP is locked in payments from NDDOT to the Prime are reported through the system. The Prime must start reporting DBE and non-DBE subcontractor payments through the system in accordance with prompt pay guidelines outlined in the contract.
4. A user manual for UP’s and recording project payments is available to the contractors within the system. After login they can go to View>>My Utilization Plans and they will find the guide on the top of the Utilization Plan screen. They do not have to have a current UP assigned to them to see this guide. The guide is also on the actual UP page when a UP is assigned to them.
5. For further information on the Certification and Compliance System, go to the NDDOT Civil Rights page at <https://www.dot.nd.gov/divisions/civilrights/civilrights.htm>. There is various training available on a regular basis, to sign up for training go to the main Certification and Compliance System page and click the “Training and Events” box. Contractors that need to obtain an account or need subcontractors set up within the system should call the NDDOT Civil Rights Division at (701) 328-3116 or email civilrights@nd.gov

10/3/2017

NOTICE:

Electrical work done outdoors on highway construction projects is covered by the Line Construction rates rather than Electrician rates. When electrical work is performed on or within a commercial building only, such as a rest area, the job classification Electrician is to be used. Any other electrical work on a federal-aid highway construction project in North Dakota is covered by the line construction rates. The minimum wage and fringe amount stated in the attached wage determination within this proposal is required for such classification.

Apprentices in Line Construction: Apprentices in Line Construction must be classified and paid as Apprentice Linemen with a percentage of journeyman's pay that reflects the apprentice's progress level of training. Additionally, they must be enrolled in a bona fide lineman Apprentice Program regardless if they are also enrolled in an indoor Electrical Apprentice Program.

Electrical work may not be done by any Laborer classification under the ND Century Code. The Group 2 Laborer, Conduit Layer may only handle low voltage data or telephone lines and may not install or handle electrical conduit.

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

<https://www.dot.nd.gov/manuals/civilrights/davisbacon.pdf>

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

NDDOT's *Davis-Bacon Wage and Payroll Requirements Handbook* is available at:
www.dot.nd.gov/manuals/civilrights/davisbacon.pdf

U.S. DEPARTMENT OF LABOR

STATE NORTH DAKOTA	COUNTY STATEWIDE	ND20220054 Page 1
		DATE OF DECISION 01-07-22 Revised 01/14/2022 (Mod No. 1)

CARPENTERS

CEMENT MASONS/FINISHERS

LINE CONSTRUCTION:

- Lineman
- Cable Splicer
- Line Equipment Operator
- Groundman

ELECTRICIANS:

- Electrician
- Cable Splicer
(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
- Cable Splicer
(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
- Cable Splicer
(Burleigh, Morton and Stark Counties)

- Electrician
(Cass County)

WELDERS:

Receive rate prescribed for craft performing operation to which welding is incidental

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$30.60	\$ 7.60
30.60	7.60
46.38	7.30 + 29.5%
46.38	7.30 + 29.5%
39.37	7.30 + 29.5%
26.25	7.30 + 19.5%
48.00	7.80 + 29.5%
48.00	7.80 + 29.5%
37.20	11.35 + 11.5%
38.82	11.35 + 11.5%
48.00	7.80 + 29.5%
48.00	7.80 + 29.5%
14.72	3.40

LABOR RATES

Page 2 of 4

01-07-2022

Revised 01/14/2022 (Mod No. 1)

ND20220054

Page 2

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 and 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 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; Nozzlemans; Reinforcing 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 and Traveling Tower Crane.

Group 2

All Cranes 40 tons and up to 59 tons; Backhoe Operator 3 CY. and over; Creter Crane; Dredge Operator 12" and over; Equipment Dispatcher; Equipment Dispatcher, 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. and Tugboat

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$22.65	\$ 3.15
22.90	3.15
23.05	3.15
23.80	3.15
31.60	18.85
30.20	18.85

LABOR RATES

Page 3 of 4

01-07-2022

Revised 01/14/2022 (Mod No. 1)

ND20220054

Page 3

POWER EQUIP. OPERATORS: (CONT.)

Group 3

All Cranes 39 tons and under; Asphalt Paving Machine Operator; Asphalt Plant Operator; Automated Grade Trimmer; Backhoe Operator, 1 CY. up to and including 2-1/2 CY.; Boom Truck Hydraulic 8 tons and over; Cableway Operator; Concrete Batch Plant Operator (electronic or manual); Concrete Mixer Paving Machine Operator; Concrete Paver Bridge Decks; Concrete Pump; Concrete Spreader Operator and Belt Placer; Crushing Plant Operator; Dozer Operator; Dredge Operator or Engineer 11" and under; Drill Rigs, Heavy Duty Rotary or Churn or Cable Drill; Front End Loader Operator, 3-1/2 CY up to and including 7-1/2 CY; Gravel Washing and Screening Plant Operator; Locomotive, all types; Mechanic or Welder(Heavy Duty); Motor Grader Operator; Pavement Breaker (Non-Hydro Hammer Type, Pipeline Wrapping, Cleaning and Bending Machine Operator; Power Actuated Auger and Horizontal Boring Machine Operator, 6" and over; Refrigeration Plant Engineer; Rota Milling Machine (Surface Planer), 43" and over; Scraper Operator; Slip Form Concrete Paving Operator; Tandem Pushed Quad 9 or similar; Tractor with Boom Attachment; Trenching Machine Operator, 100 H.P. and over).

Group 4

Articulated/Off Road Hauler; Asphalt Dump Person; Asphalt Paving Screen 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; Grade Person; Gravel Screening Plant Operator (not Crushing or Washing); Greaser; Lazar Screed Operator; longitudinal Float and Spray Operator; Micro Surfacers Machine; Motor Grader Operator (Haul Roads); Paving Breaker Hydro Hammer 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; Fuel/ Lube Operator

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; Power Actuated Auger and Horizontal Boring Machine Operator, up to and including 5"; Roller (on other than hot mix asphalt

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$29.95	\$18.85
29.80	18.85

LABOR RATES

Page 4 of 4

01-07-2022

Revised 01/14/2022 (Mod No. 1)

ND20220054

Page 4

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); Guniting 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

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$28.95	\$18.85
27.65	18.85
29.87	15.60
29.99	15.60
30.30	15.60
30.30	15.60
31.82	15.60

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses [29 CFR, 5.5 (a) (1) (ii)].

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION (NDDOT)

2021 ON-THE-JOB TRAINING PROGRAM 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. 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 1, 2020 to March 31, 2021. Trainee assignments are not project specific; that means the contractor may train program participants on any project where training opportunities exist.

The number of trainee positions assigned will be determined by formula based on calculations involving particular project specification numbers on applicable projects. 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 1, 2020 to March 31, 2021:

6,000,000 to 15,000,000	1	trainee
15,000,001 to 23,000,000	2	trainees
23,000,001 to 31,000,000	3	trainees
31,000,001 and above	4	trainees

A maximum of four (4) trainee positions in a federal fiscal year will be assigned to any prime contractor regardless of dollar amount. Carryover positions from a prior construction season are not included in the four trainee maximum, e.g., a contractor with one carryover and four assigned positions may have a total five trainees.

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

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

OJT Program Manual: Includes program requirements, wage rates, and curriculum:

<https://www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf>

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>

Davis-Bacon and Related Acts (DBRA) Handbook: <https://www.dot.nd.gov/manuals/civilrights/davisbacon.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 of any additional position assignments.
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. See attachment 3.

- B. Pre-approved curriculum: NDDOT's OJT Program Manual contains pre-approved training curriculum for a

number of skilled trade positions. Contractors should select a training program(s) based on their company's employment/staffing needs.

- C. Customized curriculum: To request a training curriculum not included in the pre-approved curriculum, submit a written request for approval by NDDOT and FHWA.

The request must include:

- A training curriculum, including the classification requested, minimum number of hours required, and type of training the individual will receive to achieve 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 who are outside the targeted groups.

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.

- A. The OJTSS consultant will assess when the trainees have completed the specified number of hours and their wages are increased accordingly. The OJTSS consultant will also assure that applicable fringe benefits are paid either directly to the trainees or for the trainee into approved plans, funds, or programs.
- B. The OJTSS consultant is charged with visiting trainees and monitoring their progress under the OJT Program. To facilitate the on-site visits, the OJTSS consultant will contact contractors for the location of the trainees weekly.

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. Make trainees available to the OJTSS consultant for at least two on-site visits during the construction season.
- 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. 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.
- H. 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.
- I. 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.
- J. 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 in order 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 in order to complete the OJT Program. If transfers are made, CRD must be notified and provided with the name of the trainer. The training hours will count toward overall OJT Program completion.
- M. May train trainees on municipal, private, out-of-state projects 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.
- N. 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.
- O. 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.
- P. May not use one trainee to simultaneously fill multiple trainee positions
- Q. 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 pre-approved by CRD if the contractor wishes to count the classroom hours as training hours and be reimbursed.

Submit a proposed classroom training curriculum to CRD for approval. Define the type of training the individual will receive, classroom training curriculum, and the minimum number of hours required. The Department will determine the number of hours of credit each trainee will receive toward their training. No retroactive approval will be granted.
- B. Contractors will be reimbursed for classroom training hours after the trainee has completed 80 hours of work on highway construction projects.
- C. Reimbursement for classroom training will be limited to 60 hours per trainee per construction season. Reimbursement for classroom training required under the NDDOT Transportation Technician Qualification Program will be at the NDDOT discretion.
- D. The minimum wage scale to be used for classroom training will be that of the first federal-aid highway construction project on which the trainee will be employed. If the trainee is already employed on a federal-aid highway construction project, the trainee will be paid in accordance with the minimum wage scale applicable to that project. However, if the first project on which the trainee will be employed is a state funded only contract, the minimum wage scale to be used for the classroom training will be that of the appropriate DBRA wage in effect at the time of award of the state funded contract.

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 state funded only

project, must be paid the DBRA wage rate in effect at the time of award for the type of work the trainee is performing as a trainee.

- 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.
- 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.

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.
4. Non-minority males who are economically disadvantaged must obtain written certification from Job Service North Dakota (JSND) to qualify for the OJT Program. Contractors wishing to hire and enroll economically disadvantaged candidates must provide JSND's certification along with SFN 60226 and the employment application when requesting trainee approval.
 - JSND is the only agency that may certify an individual as economically disadvantaged. If JSND refers the candidate to the contractor, written certification under this category will be provided to the contractor at the time of the interview.
 - Any person wishing to obtain this certification must apply to JSND and complete the Workforce Investment Act Program's Application for Eligibility (SFN 7857). A contractor recruiting a candidate who may qualify must contact the Workforce Investment Act Program Manager at JSND. JSND contacts are also online:
<http://www.dot.nd.gov/divisions/civilrights/docs/jobservice-workforce-invest-contacts.pdf>

XII. BASIS OF PAYMENT

- B. Contractors will be paid \$4.00 for each hour of training in accordance with the OJT Program Manual.
- C. 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. <http://www.dot.nd.gov/forms/sfn51023.pdf>
- D. 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.
- E. 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.

XV. DEFINITIONS

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

Carryover Trainee: Trainee scheduled to continue training hours under prior year's approved program.

CRD: NDDOT's Civil Rights Division administers the NDDOT On-the-Job Training Program.

Good Faith Efforts: Documentation supporting a contractor's efforts to fulfill the program requirements, e.g., new hires list, advertising examples/locations, current employees reviewed for upgrades, etc.

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

OJT Supportive Services (OJTSS): Department contractor providing in-person oversight, support, and guidance to contractors and trainees to increase the effectiveness of approved training programs.

Trainee: A person who receives training through an apprenticeship program or other FHWA approved program.

Trainer/Supervisor: Contractor's employee assigned to train, supervise, and support a trainee.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES

1. 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.

2. CONSTRUCTION REQUIREMENTS

Develop a SWPPP specific to the project. The creation of the SWPPP is a cooperative effort between the NDDOT who creates the project plan sheets and the Contractor who creates a complete SWPPP which incorporates the plan sheets and the Contractor's means and methods. The project plan sheets by themselves do not meet the requirements of a complete SWPPP and should not be considered as such. The Contractor has the flexibility to modify the design and implementation of the temporary erosion and sediment controls to match the Contractor's means and methods and/or field conditions. These changes must be documented in the SWPPP and meet all regulatory requirements.

Obtain appropriate permit coverage for the activities conducted in Contractor Controlled Areas. A permit will be required for these areas regardless of their size. The NDDOT will have no responsibility for these areas. 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.

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

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

Update the SWPPP as work progresses, or as directed by the Engineer. Update the SWPPP to show changes due to revisions in work schedules or sequence of construction. Update the site map to reflect erosion and sediment ESCMs that have been installed, changed, or removed.

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.

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

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.

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.

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

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.

Provide copies of all inspections, documentation, record keeping, maintenance, remedial actions, and repairs required by the applicable permits to the Engineer. Provide inspection and maintenance reports within 3 working days after an inspection has been conducted.

Provide, 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 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 Erosion & Sediment Control Construction Certification Training at the preconstruction conference and will maintain that certification through the term of the contract.

Provide immediate written notification to the Engineer of proposed changes to the erosion control plan or SWPPP. The Engineer will review the proposed changes and determine if they are adequate. Documentation of maintenance and inspections that does not affect the erosion control plan or SWPPP does not require approval by the Engineer.

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

3. Erosion and Sediment Control Supervisor.

A. General. Designate an erosion and sediment control supervisor. Provide the name and contact information for the supervisor at the preconstruction meeting. If this erosion and sediment control supervisor becomes unavailable on the project, designate a replacement supervisor. Notify the Engineer if this supervisor changes and provide the contact information for the new supervisor.

B. Qualifications. The supervisor shall be:

1. An employee of the Prime Contractor;
2. Familiar with installation, maintenance and removal of ESCMs and the requirements of the erosion and sediment control plans, applicable permit requirements, specifications, plans and this provision; and
3. Competent to supervise personnel in erosion and sediment control operations.
4. Certified through the NDDOT Erosion & Sediment Control Construction Certification Training and maintain that training throughout the term of the contract.

C. Duties. The supervisor shall:

1. Provide erosion and sediment control as required by the SWPPP, Plans, and Specifications.
2. Be on the site to supervise the installation, operation, inspection, maintenance, and removal of the erosion and sediment 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.

4. 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.

5. BASIS OF PAYMENT

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

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.

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".

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

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

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
LOCAL AGENCY CONTRACTS

References to NDDOT, Department, Director, or Engineer in the Standard Specifications for Road and Bridge Construction and other portions of the Contract must be construed as referring to the Owner of the project.

If the Contractor intends to file a claim for additional compensation for work or material not covered by the Contract, the Contractor is required to prosecute the claim in accordance with the Standard Specifications for Road and Bridge Construction, Section 104.05, "Claims for Adjustment". The provisions of Section 104.05 D, "Conditions Precedent to Contractor's Demand for Arbitration", are not applicable to this Contract, nor are the provisions of North Dakota Century Code §24-02-26 et seq. regarding arbitration applicable, as the North Dakota Department of Transportation is not a party to the Contract.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

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. Night-time 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.

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 a minimum of 7 calendar days before anticipated nighttime operations. The Engineer may deny the request or delay approval if it would require additional staffing considerations. If nighttime operations requires 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

SPECIAL PROVISION

BITUMEN TESTING PRICE ADJUSTMENTS

DESCRIPTION

This Special Provision outlines the Contract Price Adjustment procedures for acceptance of PG Asphalt Binder Using the Multiple Stress Creep Recovery (MSCR) Test under AASHTO M 332.

MATERIAL ACCEPTANCE SPECIFICATION

A. Sampling.

Obtain one sample of asphalt binder for each 250 tons of binder material supplied to the project. Obtain the sample as prescribed in the NDDOT Field Sampling and Testing Manual, Procedure NDDOT 1. Each 250 tons of material will represent a subplot and 4 sublots will constitute a lot of material. Partial lots will consist of however many subplot samples were collected for that lot.

B. Original and Check Samples.

Each sample consists of two parts, an original and a check. The Engineer will perform tests using the original sample first.

If a test returns a value resulting in a pay factor of less than 1.00, the Engineer will perform that test on the check sample and the check sample results will be used to determine the pay factor for the material.

C. Testing Parameters.

The Engineer will randomly select one subplot for testing per lot.

If the check sample results in a pay factor of less than 1.00 the Engineer will perform the substandard tests on the remaining sublots within that lot.

D. Determination of Pay Factor.

The Engineer will apply the pay factors in the Basis of Payment section of this Special Provision to each individual subplot of material. If more than one test parameter in a subplot results in a pay factor of less than 1.00, the Engineer will apply the pay factor that results in the largest monetary deduction to that subplot.

BASIS OF PAYMENT

The pay factor determined by the Engineer will be applied to the "PG _____ Asphalt Cement" contract item. The pay factor will be multiplied by the unit cost of the item and the quantity of oil represented by the sample.

Table 1
Requirements on Original Binder

Specification	Test Result	Pay Factor (Percent)
Dynamic Shear AASHTO T 315 $G^*/\sin \delta$ Min. 1.00 kPa	≥ 1.00	1.00
	0.97 – 0.99	0.95
	0.94 – 0.96	0.90
	0.91 – 0.93	0.85
	< 0.91	0.70

Table 2
Requirements on Rolling Thin Film Oven (RTFO) Residue

Specification	Test Result	Pay Factor (Percent)	Specification	Test Result	Pay Factor (Percent)
Standard Traffic "S" AASHTO T 350 $J_{nr@3.2}$ Max. 4.5 kPa ⁻¹	≤ 4.5	1.00			
	4.6	0.95			
	4.7	0.90			
	4.8	0.85			
	> 4.8	0.70			
Heavy Traffic "H" AASHTO T 350 $J_{nr@3.2}$ Max. 2.0 kPa ⁻¹	≤ 2.0	1.00	Heavy Traffic "H" AASHTO R 92 Percent Recovery @ 3.2 kPa Min. 30%	> 30	1.00
	2.1	0.95		29	0.95
	2.2	0.90		28	0.90
	2.3	0.85		27	0.85
	> 2.3	0.70		< 27	0.70
Very Heavy Traffic "V" AASHTO T 350 $J_{nr@3.2}$ Max. 1.0 kPa ⁻¹	≤ 1.0	1.00	Very Heavy Traffic "V" AASHTO R 92 Percent Recovery @ 3.2 kPa Min. 55%	> 55	1.00
	1.1	0.95		54	0.95
	1.2	0.90		53	0.90
	1.3	0.85		52	0.85
	> 1.3	0.70		< 52	0.70
Extreme Traffic "E" AASHTO T 350 $J_{nr@3.2}$ Max. 0.5 kPa ⁻¹	≤ 0.5	1.00	Extreme Traffic "E" AASHTO R 92 Percent Recovery @ 3.2 kPa Min. 75%	> 75	1.00
	0.6	0.95		74	0.95
	0.7	0.90		73	0.90
	0.8	0.85		72	0.85
	> 0.8	0.70		< 72	0.70

Table 3
Requirements for Pressure Aging Vessel (PAV)
Residue

Specification	Test Result	Pay Factor (Percent)
Standard Traffic "S" AASHTO T 315 DSR, $G^*(\sin \delta)$ Max. 5000 kPa	≤ 5000	1.00
	5001 - 5200	0.95
	5201 - 5400	0.90
	5401 - 5600	0.85
	> 5600	0.70
Traffic "H", "V", "E" AASHTO T 315 DSR, $G^*(\sin \delta)$ Max. 6000 kPa	≤ 6000	1.00
	6001 - 6050	0.95
	6051 - 6100	0.90
	6101 - 6150	0.85
	> 6150	0.70
Creep Stiffness AASHTO T 313 Max. 300 mPa	≤ 300	1.00
	301 - 310	0.95
	311 - 320	0.90
	321 - 330	0.85
	> 330	0.70
m-value AASHTO T 313 Min. 0.300	≥ 0.300	1.00
	0.295 – 0.299	0.95
	0.290 – 0.294	0.90
	0.285 – 0.289	0.85
	< 0.285	0.70

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
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

A. Technological Equipment Prohibitions.

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.

B. Contractor Certification.

The Prime Contractor must complete the information below, sign this Special Provision, and submit the signed document to the Engineer at the preconstruction conference. This signature affirms that no prohibited products will be used in the project.

Project Number(s): _____

PCN(s): _____

Company Name: _____

Signatory Name (printed): _____

Signature: _____

Date: _____

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**SPECIAL PROVISION****HMA CORING, ACCEPTANCE, AND PAY FACTORS****DESCRIPTION**

This special provision modifies portions of Section 430 of the 2020 Standard Specifications for Road and Bridge Construction. It changes the requirements of shoulder construction, depending on the method of construction; updates coring requirements for the changes in subplot size; and to clarify how contract price adjustments are calculated.

CONSTRUCTION REQUIREMENTS

Replace Section 430.04 I, "Compaction" and Section 430.04 M, "Acceptance" with the following text.

I. Compaction.**1. General.**

Remove all surface irregularities before beginning compaction.

Sequence rolling operations and select the type and the number of rollers to match production and to attain the required density before the mat temperatures fall below 185°F.

In areas not accessible to rollers, compact the pavement mat with hand or mechanical tampers.

2. Calculated Density.**a. General.**

Use calculated density on mainline pavement, interstate crossroads, ramps, turn lanes, rest area approaches, and parking lots.

b. Coring.**(1) General.**

Obtain pavement cores at locations designated by the Engineer under the observation of the Engineer.

Use a machine that cuts a cylindrical core sample without disturbing the density of the sample. Complete coring on or before the working day following the placement of the lift. Obtain a core with a smooth outer surface, no distortion of the cylindrical shape, and no displacement of the aggregate particles. Obtain a core that is 4 to 6 inches in diameter and the full depth of the in place asphalt.

Fill core holes before placing the subsequent lift of pavement. If there is no subsequent lift of pavement, fill the core hole within 24 hours of obtaining the core. Remove free standing water before filling core holes. Fill core holes in 2

inch lifts using material from the same mix design used on the roadway. Compact each lift using a hand tamper.

(2) Pavement Density Cores.

Use a masonry saw to cut the core so that only the layer to be tested is removed.

Label each core, using a system approved by the Engineer, to identify the location from which the core was obtained.

(3) Pavement Thickness Determination Cores.

Obtain pavement thickness determination cores after the final lift of pavement has been placed. Label the cores. The Engineer will take possession of these cores immediately upon extraction. Do not cut these cores.

3. Ordinary Compaction.

a. General.

Use ordinary compaction on shoulders, driveways, section line approaches, bike paths, leveling courses, and patches.

Ordinary compaction consists of breakdown rolling, intermediate rolling, and finish rolling. Compact the bituminous material until the surface is tightly bound and shows no displacement under operation of the roller.

For patching, immediately after spreading perform initial rolling with pneumatic-tired rollers or combination rollers.

b. Breakdown Rolling.

Breakdown rolling consists of one or more complete coverage with a roller meeting the requirements of one of the following Sections:

- 151.01 A.3, “Self-Propelled Pneumatic-Tired Rollers”;
- 151.01 B.2, “Smooth-Faced Steel-Wheel Roller: Tandem – Type A”;
- 151.01 C, “Vibratory Rollers”; or
- 151.01 D, “Combination Rollers”.

c. Intermediate Rolling.

Follow breakdown rolling with intermediate rolling with a roller conforming to Section 151.01 A.3, “Self-Propelled Pneumatic-Tired Rollers”, or 151.01 D, “Combination Rollers” until the surface is tightly bound and shows no displacement under the roller.

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

d. Finish Rolling.

Perform the finish rolling with a roller conforming to Section 151.01 B.3, “Smooth-Faced Steel-Wheel Roller: Tandem – Type B”, or 151.01 C, “Vibratory Rollers” in the static mode, and continue until roller marks are eliminated.

M. Acceptance.

1. General.

The Engineer will accept bituminous mix based on the criteria in this section.

The Engineer will exclude material used in shoulder placement when calculating the total quantity of material affected by pay factors and will not designate core locations within shoulder areas.

2. Aggregate.

The Engineer will accept aggregate used in the mix based on QC tests that are verified by QA testing, and the control limits specified in Section 430.04 E.5, "Control Limits".

If the results for two consecutive aggregate gradation tests in a single day fall outside the single test target value control limits, the Engineer will apply a contract price adjustment as specified in Section 430.06 C, "Contract Price Adjustments".

3. Asphalt Content.

The Engineer will base the acceptance of the asphalt content of bituminous mix on the totalizer readings obtained as specified in Section 430.04 E, "QC Testing" and SFN 9988, "Mix Bitumen Cut-Off Report" and will apply a contract price adjustment as specified in Section 430.06 C, "Contract Price Adjustments".

If the average asphalt content, as determined by the Engineer according to SFN 9988, "Mix Bitumen Cut-off Report" deviates from the target value by 0.40 percentage points or more, the Engineer may reject the material. If the material is accepted, the Engineer will apply a contract price adjustment as specified in Section 430.06 C, "Contract Price Adjustments".

4. Field Density.

This section will apply when the pavement is constructed as specified in Section 430.04 I.2, "Calculated Density".

The Engineer will base acceptance of the density of hot mix asphalt on the average density of the pavement compared to the daily average maximum theoretical density. The comparison will be made using SFN 59132, "Density Pay Factor".

The Engineer will determine the density of pavement based on lots. A lot is equal to the amount of material, in tons, placed each production day.

A subplot is defined as a single lift, one paver width wide, and 1,000 feet long. If a partial subplot is less than 500 feet, it will be included in the previous subplot. A partial subplot 500 feet or greater will be considered a separate subplot.

The individual subplot densities will be averaged to determine the density of the pavement lot.

If the average density of the pavement compared to the daily average maximum theoretical density is above the values in Table 430-10, the Engineer will apply the adjustment factors specified in Section 430.06 C, "Contract Price Adjustments".

If the average density of the pavement compared to the daily average maximum theoretical density is at or below the values specified in Table 430-10, remove and replace the pavement.

Table 430-10

Superpave FAA 40, 41, 42, and 43	Superpave FAA 44 and 45
88.0%	89.0% ¹

¹ When the lift of pavement is placed on aggregate base, reclaimed material, or cold in place recycle material this number is reduced to 88.0%

BASIS OF PAYMENT

Replace Section 430.04 C.1, "General" with the following text.

C. Contract Price Adjustments.

1. General

The Engineer will calculate the Combined Adjustment Factor by multiplying the individual adjustment factors for:

- Aggregate gradation;
- Asphalt content; and
- Compaction.

1.0 will be subtracted from the Combined Adjustment Factor to determine the Contract Price Adjustment.

The contract price adjustment will be determined by multiplying the Contract Price Adjustment Factor by the total tons of hot mix asphalt placed during a single day and the contract unit price for "Superpave, FAA ___" or "RAP Superpave FAA ___".

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

UTILITY COORDINATION

AC-NHU-CVD-1-981(123) - 22929

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

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.

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

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.

Rev. 2019-09-27

UE ID #	Utility Coordination Exhibits	Approx. Sta From	Approx. Sta To	LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Reimbursable	Non-Reimbursable	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Resolution Criteria / Comments <small>(The following information for the Contractor is based on early coordination with utilities. Information is approximate. Details for the schedule and construction phasing will need to be finalized between the Contractor and Utility Companies. Comments also outline other items that Contractor will need to account for in potential phasing for the project).</small>	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)	UTILITY ENCOUNTER TYPE (UE)		Quantity of Pothole Utility	Pot Hole ID#
																	Protect in Place	Conflict		
-	-	-	to	-	-	-	-	-	-	-	Level 4	GENERAL NOTE ABOUT CEC POWER LINES: CEC plans to start on the east end of the project and work west, particularly focused to get conflict 59 removed for the 26th St roundabout. CEC prefers to leave the remaining poles in place until services can get cutover to the new underground, as this line is challenging to sectionalize. If installation goes well, construction will take ~8 weeks and poles would be removed in the week following.	Capital Electric Cooperative Incorporat	Power Pole		10W		X		
CENLINK-1	1	61+77	to	-	RT	PR43rdE		1	1.0	EA	Level 3	Contractor to coordinate with CenturyLink on final grading elevations and CenturyLink will adjust.	Century Link	Vault	2D	1D		X	0	-
DACANE-1	1	61+82	to	-	RT	PR43rdE		1	1.0	EA	Level 4	Handhole in conflict with proposed shared use path. Handhole to be shifted to the south about 5ft to clear path.	Dakota Carrier Network	Vault	2W	1D		X	0	-
WERITI-1	1	61+90	to	-	RT	PR43rdE			55.0	LF	Level 2	Depth of facility is unknown. Notify West River Telephone 2 weeks in advance of working around lines so they are aware of construction activities.	West River Telephone Incorporated	Telephone/Fiber Optic Line			X		0	-
CENLINK-2	2	63+93	to	64+08	LT	PR43rdE		18	18.0	LF	Level 2	Protect in place	Century Link	Telephone/Fiber Optic Line			X		0	-
CENLINK-4	2	63+93	to	64+08	LT	PR43rdE		15	15.0	LF	Level 2	Protect in place	Century Link	Telephone/Fiber Optic Line			X		1	CENLINK-4-1PH
CENLINK-3	2	63+94	to	64+08	LT	PR43rdE		36	36.0	LF	Level 2	Protect in place	Century Link	Telephone/Fiber Optic Line			X		0	-
MIDCAB-46	2	63+96	to	64+03	LT	PR43rdE		35	35.0	LF	Level 2		Mid-Continent Cable	Telephone/Fiber Optic Line			X		0	-
MONUTI-23	2	63+98	to	63+98	RT	PR43rdE		51	51.0	LF	Level 2	Verify signal foundation location relative to gas main.	Montana-Dakota Utilities	Gas Line			X		1	MONUTI-23-1PH
MONUTI-39	2	63+98	to	63+98	LT	PR43rdE		47	47.0	LF	Level 2	Contractor to verify gas line depth prior to installing inlet structure and pipe.	Montana-Dakota Utilities	Gas Line			X			-
BECOCO-1	2	64+22	to	-	Crossing	PR43rdE		183	183.0	LF	Level 2	Fiber crossing 43rd Ave	Bek Communications Cooperative	Telephone/Fiber Optic Line			X		0	-
MONUTI-24	2	64+45	to	64+45	RT	PR43rdE		14	14.0	LF	Level 3	Verify gas depth prior to installing pipe.	Montana-Dakota Utilities	Gas Line				X	1	MONUTI-24-1PH
DACANE-2	2	64+80	to	64+94	RT	PR43rdE		23	23.0	LF	Level 2	FO line crossing proposed storm sewer and watermain. Depth of FO line is unknown. Verify depth during construction.	Dakota Carrier Network	Telephone/Fiber Optic Line	2W	1D	X		0	-
DACANE-4	2	64+80	to	65+02	RT	PR43rdE		53	53.0	LF	Level 3	FO line to be lowered in conjunction with DACANE-3 handhole.	Dakota Carrier Network	Vault	2W	1D		X	0	-
CENLINK-5	2	64+83	to	-	LT	PR43rdE		1	1.0	EA	Level 3	Contractor to coordinate with CenturyLink on final grading elevations and CenturyLink will adjust.	Century Link	Pedestal	2D	1D		X	0	-
MIDCAB-1	2, 3, 4, 5, 6	64+86	to	87+25	RT	PR43rdE			2240	LF	Level 1	This line is to be abandoned, estimated to be about June 2022.	Mid-Continent Cable	TV Line					0	-
DACANE-3	2	65+03	to	-	RT	PR43rdE		1	1.0	EA	Level 3	Handhole to be lowered during construction. DCN's intent is to perform adjustment in the early part of the construction season.	Dakota Carrier Network	Telephone/Fiber Optic Line	2W	1D		X	0	-
MIDCAB-2	2, 3	66+00	to	68+53	LT	PR43rdE		560	560.0	LF	Level 3	During wall construction, depending on contractors excavation needed to install foundation, support exposed Fiber line for duration of excavation. Road Contractor to coordinate with Midco.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
CAELCI-1	2	66+20	to	-	LT	PR43rdE		1	1.0	EA	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
CAELCI-2	3	68+38	to	-	LT	PR43rdE		1	1.0	EA	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
MIDCAB-3	3	68+99	to	-	LT	PR43rdE		1	1.0	EA	Level 2	Vault located on the edge of the construction limits. Protect in place	Mid-Continent Cable	Vault	1W			X	0	-
CAELCI-3	3	69+15	to	-	RT	PR43rdE		1	1.0	EA	Level 3	Road Contractor to coordinate with CEC; CEC will lower facilities in place	Capital Electric Cooperative Incorporat	Electric Transformer	3D			X	0	-
CAELCI-4	3	69+15	to	69+15	RT	PR43rdE		34	34.0	LF	Level 3	Road Contractor to coordinate with CEC; CEC will lower facilities in place	Capital Electric Cooperative Incorporat	Electric Line	3D			X	0	-
CAELCI-5	3	69+15	to	69+74	RT	PR43rdE		58	58.0	LF	Level 3	Road Contractor to coordinate with CEC; CEC will lower facilities in place	Capital Electric Cooperative Incorporat	Electric Line	3D			X	0	-
CAELCI-6	3	69+74	to	69+74	Crossing	PR43rdE		120	9	129.0	Level 3	Road Contractor to coordinate with CEC; CEC will lower facilities in place	Capital Electric Cooperative Incorporat	Electric Line	3D			X	0	-
CAELCI-7	3	69+74	to	-	LT	PR43rdE		1	1.0	EA	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
CAELCI-8	3	70+89	to	-	LT	PR43rdE		1	1.0	EA	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
CAELCI-73	3	72+50		-	RT	PR43rdE		1	1.0	EA	Level 3	Road Contractor to coordinate with CEC; CEC will raise fiber optic vault to finished grade. Road contractor to be aware of fiber optic cable on south side of 43rd from stations ~72 thru 88; excavations of more than 1 ft must be coordinated with CEC.	Capital Electric Cooperative Incorporat	Vault	3D			X	0	-
CAELCI-9	4	73+38	to	-	LT	PR43rdE		1	1.0	EA	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
MIDCAB-4	4	74+82	to	75+74	LT	PR43rdE		92	92.0	LF	Level 3	Lower in place.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	2D		X	0	-
MIDCAB-5	4	74+98	to	-	RT	PR43rdE		1	1.0	EA	Level 4	This line is to be abandoned, estimated to be about June 2022.	Mid-Continent Cable	Pedestal				X	0	-
CAELCI-10	4	75+90	to	-	LT	PR43rdE		1	1.0	EA	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
CAELCI-11	5	78+40	to	-	LT	PR43rdE		1	1.0	EA	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
CAELCI-12	5	80+88	to	-	LT	PR43rdE		1	1.0	EA	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
CAELCI-13	6	83+37	to	-	LT	PR43rdE		1	1.0	EA	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
CAELCI-14	6	85+86	to	-	LT	PR43rdE		1	1.0	EA	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
CAELCI-15	6	85+90	to	85+90	Crossing	PR43rdE		4	43	47.0	Level 3	CEC will abandon underground road crossing and will install new underground at edge of ROW on south side of 43rd east to 19th St intersection	Capital Electric Cooperative Incorporat	Electric Line	3D			X	0	-
DACANE-5	7	88+21	to	88+22	RT	PR43rdE		15	15.0	LF	Level 3	FO line crossing proposed storm inlet structure, depth of line unknown. Contractor to work with DCN to adjust line by slack during construction. If not enough slack, DCN will install new conduit and run the FO line through it. Applies to utility encounters 5-7	Dakota Carrier Network	Telephone/Fiber Optic Line	2W	5D		X	0	-
DACANE-6	7	88+24	to	88+26	RT	PR43rdE		15	15.0	LF	Level 2	FO line crossing proposed watermain, depth of line unknown. Contractor to work with DCN to adjust line by slack during construction. If not enough slack, DCN will install new conduit and run the FO line through it. Applies to utility encounters 5-7	Dakota Carrier Network	Telephone/Fiber Optic Line	2W	5D	X		0	-
DACANE-7	7	88+27	to	88+28	Crossing	PR43rdE		15	15.0	LF	Level 3	FO line crossing proposed storm sewer, depth of line unknown. If able to, Contractor to work with DCN to adjust line by slack during construction. If not enough slack, DCN will install new conduit and run the FO line through it. Applies to utility encounters 5-7	Dakota Carrier Network	Telephone/Fiber Optic Line	2W	5D		X	0	-
MIDCAB-6	7	88+28	to	-	RT	PR43rdE		15	15.0	LF	Level 3	Road Contractor to coordinate with Midco prior to excavation to determining the exact depths and conflicts with crossing. Midco will need at least 2 weeks after line is placed if splicing is needed.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-

UE ID #	Utility Coordination Exhibits	Approx. Sta From	Approx. Sta To	LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Reimbursable	Non-Reimbursable	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Resolution Criteria / Comments <small>(The following information for the Contractor is based on early coordination with utilities. Information is approximate. Details for the schedule and construction phasing will need to be finalized between the Contractor and Utility Companies. Comments also outline other items that Contractor will need to account for in potential phasing for the project).</small>	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)	UTILITY ENCOUNTER TYPE (UE)		Quantity of Pothole Utility	Pot Hole ID#	
																	Protect in Place	Conflict			
MIDCAB-7	7	88+31	to	-	Crossing	PR43rdE		15	15.0	LF	-7	Level 3	Road Contractor to coordinate with Midco prior to excavation to determining the exact depths and conflicts with crossing. Midco will need at least 2 weeks after line is placed if splicing is needed.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
MIDCAB-8	7	88+32	to	-	RT	PR43rdE		15	15.0	LF	-8	Level 3	Road Contractor to coordinate with Midco prior to excavation to determining the exact depths and conflicts with crossing. Midco will need at least 2 weeks after line is placed if splicing is needed.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
MIDCAB-9	7	88+34	to	-	Crossing	PR43rdE		15	15.0	LF	-7	Level 3	Road Contractor to coordinate with Midco prior to excavation to determining the exact depths and conflicts with crossing. Midco will need at least 2 weeks after line is placed if splicing is needed.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
DACANE-8	7	88+34	to	-	LT	PR43rdE	1		1.0	EA	1	Level 3	Handhole to be raised during construction.	Dakota Carrier Network	Vault	2W	1D		X	0	-
BECOCO-3	7	88+36	to	89+57	LT	PR43rdE	43	77	120.0	LF	-5	Level 4	BEK to abandon line. 2" orange duct. BEK may work with other utilities to relocate if coordination works out, or plan to bore new line after construction is completed.	Bek Communications Cooperative	Telephone/Fiber Optic Line				X	0	-
BECOCO-2	7	88+36	to	-	LT	PR43rdE	1		1.0	EA	2	Level 3	DCN - BEK connection handhole. Adjust in place.	Bek Communications Cooperative	Pedestal	10D			X	0	-
CAELCI-16	7	88+42	to	88+42	Crossing	PR43rdE		15	15.0	LF	2	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X	0	-
CAELCI-17	7	88+43	to	88+43	Crossing	PR43rdE		15	15.0	LF	2	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X	0	-
CAELCI-18	7	88+44	to	88+44	Crossing	PR43rdE		15	15.0	LF	2	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	2D			X	0	-
CAELCI-19	7	88+45	to	88+45	Crossing	PR43rdE		15	15.0	LF	<-1	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X	0	-
CAELCI-20	7	88+46	to	88+46	Crossing	PR43rdE		15	15.0	LF	<-1	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X	0	-
CAELCI-21	7	88+46	to	88+46	Crossing	PR43rdE		15	15.0	LF	<-1	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	2D			X	0	-
CAELCI-22	7	88+49	to	88+49	Crossing	PR43rdE	12		12.0	LF	1	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X	0	-
CAELCI-23	7	88+49	to	88+49	Crossing	PR43rdE	12		12.0	LF	1	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	2D			X	0	-
MIDCAB-10	7	88+50	to	-	RT	PR43rdE		15	15.0	LF	-8	Level 3	Road Contractor to coordinate with Midco prior to excavation to determining the exact depths and conflicts with crossing. Midco will need at least 2 weeks after line is placed if splicing is needed.	Mid-Continent Cable	TV Line	2W	3W		X	0	-
MIDCAB-11	7	88+52	to	-	Crossing	PR43rdE		15	15.0	LF	-7	Level 3	Road Contractor to coordinate with Midco prior to excavation to determining the exact depths and conflicts with crossing. Midco will need at least 2 weeks after line is placed if splicing is needed.	Mid-Continent Cable	TV Line	2W	3W		X	0	-
CAELCI-24	7	88+53	to	-	LT	PR43rdE		1	1.0	EA	3	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
CAELCI-25	7	88+53	to	88+71	Crossing	PR43rdE	17	1	18.0	LF	1	Level 4	Feedpoint for street lighting to be relocated by Others, CEC will connect existing secondary conductors to new feedpoint	Capital Electric Cooperative Incorporat	Electric Line	3D			X	0	-
CENLINK-6	7	88+56	to	-	LT	PR43rdE		1	1.0	EA	3	Level 4	CenturyLink to move either in proposed boulevard or north of sidewalk if utility easement is provided. Will need to coordinate with Contractor on fill placement so utility can be moved.	Century Link	Pedestal	2D	3D		X	0	-
CENLINK-8	7	88+58	to	88+60	RT	PR43rdE		15	15.0	LF	-9	Level 2	Contractor to coordinate with Centurylink to lower or raise in place to avoid storm sewer.	Century Link	Telephone/Fiber Optic Line	2D	1D		X	1	CENLINK-8-1PH
CENLINK-7	7	88+59	to	-	LT	PR43rdE		1	1.0	EA	3	Level 4	CenturyLink to move either in proposed boulevard or north of sidewalk if utility easement is provided. Will need to coordinate with Contractor on fill placement so utility can be moved.	Century Link	Pedestal	2D	3D		X	0	-
CENLINK-9	7	88+60	to	88+60	Crossing	PR43rdE		15	15.0	LF	-6	Level 3	Contractor to coordinate with Centurylink to lower or raise in place to avoid storm sewer.	Century Link	Telephone/Fiber Optic Line	2D	1D		X	1	CENLINK-9-1PH
MONUTI-2	7	88+60	to	-	RT	PR43rdE		15	15.0	LF	-9	Level 2	Watermain crossing. Verify depth prior to watermain construction.	Montana-Dakota Utilities	Gas Line				X	0	-
MONUTI-1	7	88+61	to	-	RT	PR43rdE		15	15.0	LF	-6	Level 3	Storm sewer crossing. Verify depth prior to storm sewer placement. Coordinate relocation work during construction.	Montana-Dakota Utilities	Gas Line				X	0	-
MIDCAB-12	7	88+62	to	88+64	LT	PR43rdE	15		15.0	LF	-3	Level 4	Road Contractor to coordinate with Midco prior to excavation to determining the exact depths and conflicts with crossing. Midco will need at least 2 weeks after line is placed if splicing is needed.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
CENLINK-10	7	88+64	to	88+74	LT	PR43rdE	15	5	20.0	LF	-4	Level 4	Contractor to coordinate with Centurylink to move, CenturyLink may need to cut a loop in.	Century Link	Telephone/Fiber Optic Line	2D	3D		X	0	-
MONUTI-40	7	88+74	to	88+82	LT	PR43rdE		9	9.0	LF	-3	Level 3	Storm sewer crossing. Verify gas line elevation prior to installation.	Montana-Dakota Utilities	Gas Line				X	1	MONUTI-40-1PH
MIDCAB-13	7	88+77	to	89+46	LT	PR43rdE		70	70.0	LF	-5	Level 4	Road Contractor to coordinate with Midco prior to excavation to determining the exact depths and conflicts with crossing. Midco will need at least 2 weeks after line is placed if splicing is needed.	Mid-Continent Cable	TV Line	2W	3W		X	0	-
CAELCI-26	7	88+79	to	88+94	LT	PR43rdE		15	15.0	LF	<-1	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	2D			X	0	-
CAELCI-27	7	88+79	to	88+94	LT	PR43rdE		15	15.0	LF	<-1	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X	0	-
MIDCAB-14	7	88+81	to	88+97	LT	PR43rdE		16	16.0	LF	-5	Level 3	Road Contractor to coordinate with Midco prior to excavation to determining the exact depths and conflicts with crossing. Midco will need at least 2 weeks after line is placed if splicing is needed.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
CENLINK-11	7	88+82	to	88+92	LT	PR43rdE		10	10.0	LF	-3	Level 2	This line is approximately 0.5' below the invert of the pipe. Contractor should take care when excavating storm sewer.	Century Link	Telephone/Fiber Optic Line				X	1	CENLINK-11-1PH
CENLINK-12	7	88+82	to	88+92	LT	PR43rdE		10	10.0	LF	-3	Level 3	Contractor to coordinate with Centurylink to lower or raise in place to avoid storm sewer.	Century Link	Telephone/Fiber Optic Line	2D	1D		X	1	CENLINK-12-1PH
CENLINK-13	7	88+82	to	88+92	LT	PR43rdE		10	10.0	LF	-3	Level 3	Contractor to coordinate with Centurylink to lower or raise in place to avoid storm sewer.	Century Link	Telephone/Fiber Optic Line	2D	1D		X	2	CENLINK-13-1 PH to 2PH
CENLINK-14	7	88+82	to	88+92	LT	PR43rdE		10	10.0	LF	-3	Level 3	Contractor to coordinate with Centurylink to lower or raise in place to avoid storm sewer.	Century Link	Telephone/Fiber Optic Line	2D	1D		X	1	CENLINK-14-1PH
MIDCAB-15	7	89+09	to	89+24	LT	PR43rdE		15	15.0	LF	-12	Level 2	Depth of line unknown, anticipated to be protect in place based on depth of waterline. Road Contractor to coordinate with Midco.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
CENLINK-15	7	89+12	to	89+22	LT	PR43rdE		10	10.0	LF	-12	Level 2	Protect in place	Century Link	Telephone/Fiber Optic Line				X	0	-
CENLINK-16	7	89+12	to	89+22	LT	PR43rdE		10	10.0	LF	-12	Level 2	Protect in place	Century Link	Telephone/Fiber Optic Line				X	0	-
CENLINK-17	7	89+12	to	89+22	LT	PR43rdE		10	10.0	LF	-12	Level 2	Protect in place	Century Link	Telephone/Fiber Optic Line				X	0	-
MONUTI-34	7	89+42	to	89+42	LT	PR43rdE		15	15.0	LF	-4	Level 3	Watermain crossing. Verify depth prior to watermain construction.	Montana-Dakota Utilities	Gas Line				X	1	MONUTI-34-1PH
CAELCI-28	7	89+53	to	89+53	LT	PR43rdE	19		19.0	LF	<-1	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X	0	-

UE ID #	Utility Coordination Exhibits	Approx. Sta From	Approx. Sta To	LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Reimbursable	Non-Reimbursable	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Resolution Criteria / Comments <small>(The following information for the Contractor is based on early coordination with utilities. Information is approximate. Details for the schedule and construction phasing will need to be finalized between the Contractor and Utility Companies. Comments also outline other items that Contractor will need to account for in potential phasing for the project).</small>	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)	UTILITY ENCOUNTER TYPE (UE)		Quantity of Pothole Utility	Pot Hole ID#
																	Protect in Place	Conflict		
MONUTI-6	7	89+53	to	-	LT	PR43rdE	19	19.0	LF	-8	Level 2	Protect in place.	Montana-Dakota Utilities	Gas Line			X		0	-
MONUTI-42	7	89+58	to	89+58	Crossing	PR43rdE		10	LF	-7	Level 3	Electric line in conflict with storm sewer. Need to lower line 1FT to clear pipe.	Montana-Dakota Utilities	Electric Line	3W	2W		X	2	MONUTI-42-1 PH to 2PH
MONUTI-5	7	89+59	to	-	LT	PR43rdE	11	14	LF	-8	Level 2	Protect in place.	Montana-Dakota Utilities	Electric Line	2W	1W	X		0	-
MONUTI-3	7	89+60	to	-	RT	PR43rdE	15	15.0	LF	-8	Level 3	Pothole shows electric line at same elevation as top of watermain. Coordinate with MONUTI-42. MDU requests road removal and cut to subgrade before lowering.	Montana-Dakota Utilities	Electric Line	2W	1W		X	0	-
CAELCI-29	7	89+66	to	89+66	Crossing	PR43rdE	11	11.0	LF	4	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D		X		0	-
CAELCI-30	7	89+67	to	89+67	Crossing	PR43rdE		24	LF	1	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D		X		0	-
CAELCI-72	7	89+67	to	-	RT	PR43rdE		15	LF	-7	Level 3	Not necessary to lower cable under water/sewer; Road Contractor to coordinate with CEC, CEC will de-energize and expose cable	Capital Electric Cooperative Incorporat	Electric Line	3D			X	0	-
CAELCI-31	7	89+69	to	-	LT	PR43rdE		1	EA	3	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
MONUTI-7	7	89+72	to	89+87	LT	PR43rdE		15	LF	-7	Level 2	Protect in place.	Montana-Dakota Utilities	Gas Line			X		0	-
CAELCI-32	7	91+02	to	-	LT	PR43rdE		1	EA	3	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
MIDCAB-16	7	92+23	to	92+38	LT	PR43rdE		15	LF	-2	Level 3	Contractor to coordinate with Midco to lower in place.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
MONUTI-4	7	92+25	to	92+37	LT	PR43rdE		12	LF	-3	Level 3	Storm inlet. Pothole indicates gas line and inlet base at same elevation. Coordinate with MDU on lowering line.	Montana-Dakota Utilities	Gas Line	2W	1D		X	1	MONUTI-4-1PH
CAELCI-33	8	93+52	to	-	LT	PR43rdE		1	EA	2	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
CAELCI-34	8	96+02	to	-	LT	PR43rdE		1	EA	6	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
CAELCI-35	9	98+20	to	-	LT	PR43rdE		1	EA	9	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
MONUTI-8	9	98+20	to	99+10	RT	PR43rdE	90	90.0	LF	-6	Level 3	Box culvert installation. Pothole of electric line shows elevation of 1727.09 & 1727.92. Design elevation is approx 1725.0. Will need to lower line. Contractor to coordinate with MDU regarding the lowering of the facilities.	Montana-Dakota Utilities	Electric Line	3W	2W		X	1	MONUTI-8-1PH
MONUTI-9	9	98+20	to	99+10	RT	PR43rdE	90	90.0	LF	-6	Level 3	Box culvert installation. No pothole information on gas line. Verify depth prior to box culvert installation and coordinate with MDU on possible relocation.	Montana-Dakota Utilities	Gas Line	3W	1D		X	2	MONUTI-9-1 PH to 2PH
CENLINK-18	9	98+23	to	99+22	LT	PR43rdE	99	99.0	LF	-5	Level 3	Contractor to coordinate box culvert installation with Centurylink. Centurylink will lower line when area is dewatered during box construction.	Century Link	Telephone/Fiber Optic Line	2D	3D		X	1	CENLINK-18-1PH
BECOCO-4	9	98+25	to	99+23	LT	PR43rdE		98	LF	-5	Level 3	BEK to abandon line. BEK may work with other utilities to relocate if coordination works out.	Bek Communications Cooperative	Telephone/Fiber Optic Line				X	0	-
CENLINK-19	9	98+26	to	98+19	LT	PR43rdE	93	93.0	LF	-5	Level 3	Contractor to coordinate box culvert installation with Centurylink. Centurylink will lower line when area is dewatered during box construction.	Century Link	Telephone/Fiber Optic Line	2D	3D		X	1	CENLINK-19-1PH
CAELCI-36	9	98+26	to	99+11	LT	PR43rdE	85	85.0	LF	-3	Level 3	***Need confirmation, Pothole data suggests minimum of 7ft lowering required. Road Contractor to coordinate with CEC; CEC will expose, dig back for sufficient depth, splice and lower in place.	Capital Electric Cooperative Incorporat	Electric Line	5D			X	2	CAELCI-36-1 PH to 2PH
CAELCI-37	9	98+26	to	99+11	LT	PR43rdE	85	85.0	LF	-3	Level 3	***Need confirmation, Pothole data suggests minimum of 7ft lowering required. Road Contractor to coordinate with CEC; CEC will expose, dig back for sufficient depth, splice conduit, pull in slack fiber, and lower in place.	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	5D			X	0	-
MIDCAB-17	9	98+29	to	99+07	LT	PR43rdE	78	78.0	LF	-4	Level 3	Contractor to coordinate with Midco to lower in place. Coax line.	Mid-Continent Cable	TV Line	1W	2D		X	0	-
MIDCAB-18	9	98+36	to	99+03	LT	PR43rdE		67	LF	-2	Level 3	Road Contractor to coordinate with Midco prior to excavation to determining the exact depths and conflicts with crossing. Midco will need at least 2 weeks after line is placed if splicing is needed.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
CAELCI-38	9	100+17	to	-	LT	PR43rdE		1	EA	4	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
BECOCO-5	9,10	101+87	to	103+44	LT	PR43rdE		157	LF	-2	Level 2	Fiber line, depth unknown.	Bek Communications Cooperative	Telephone/Fiber Optic Line				X	0	-
CAELCI-39	9	102+48	to	-	LT	PR43rdE		1	EA	1	Level 3	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
MONUTI-41	10	103+87	to	-	Crossing	PR43rdE		11	LF	<-1	Level 2	Protect in place	Montana-Dakota Utilities	Gas Line			X		0	-
MONUTI-10	10	103+87	to	-	RT	PR43rdE		11	LF	-6	Level 3	Storm sewer crossing. Verify depth prior to storm sewer placement. Coordinate relocation work during construction.	Montana-Dakota Utilities	Gas Line				X	0	-
MONUTI-11	10	103+87	to	-	RT	PR43rdE	10	10.0	LF	-10	Level 3	Watermain crossing. Verify depth prior to storm sewer placement. Coordinate relocation work during construction.	Montana-Dakota Utilities	Gas Line				X	0	-
CAELCI-40	10	104+30	to	-	LT	PR43rdE		1	EA	2	Level 3	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
MIDCAB-19	10	104+64	to	104+84	LT	PR43rdE		20	LF	-4	Level 3	Coordinate with Midco to lower in place.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
BECOCO-6	10	104+65	to	105+75	LT	PR43rdE		110	LF	-5	Level 4	BEK to abandon line. BEK may work with other utilities to relocate if coordination works out, or plan to bore new line after construction is completed.	Bek Communications Cooperative	Telephone/Fiber Optic Line				X	0	-
CAELCI-41	10	104+66	to	104+86	LT	PR43rdE		20	LF	<1	Level 3	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X	0	-
MIDCAB-20	10	104+84	to	104+88	LT	PR43rdE		24	LF	-5	Level 3	Coordinate with Midco to lower in place.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
MIDCAB-21	10	104+84	to	105+79	LT	PR43rdE		97	LF	-4	Level 3	Coordinate with Midco to lower in place.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
CAELCI-42	10	104+86	to	104+86	LT	PR43rdE	4	7	LF	<-1	Level 3	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X	0	-
MIDCAB-22	10	104+88	to	-	LT	PR43rdE		1	EA	<1	Level 2	Pedestal on edge of construction limits. Slight vertical adjustment may be necessary, otherwise Protect in place.	Mid-Continent Cable	Pedestal	1W			X	0	-
CENLINK-20	10	105+00	to	105+42	LT	PR43rdE		41	LF	-2	Level 2	Protect in place	Century Link	Telephone/Fiber Optic Line				X	2	CENLINK-20-1 PH to 2PH
CAELCI-43	10	105+01	to	105+42	LT	PR43rdE		41	LF	<1	Level 3	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X	0	-
CAELCI-44	10	105+01	to	105+42	LT	PR43rdE		41	LF	<1	Level 3	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	2D			X	0	-

UE ID #	Utility Coordination Exhibits	Approx. Sta From	Approx. Sta To	LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Reimbursable	Non-Reimbursable	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Resolution Criteria / Comments (The following information for the Contractor is based on early coordination with utilities. Information is approximate. Details for the schedule and construction phasing will need to be finalized between the Contractor and Utility Companies. Comments also outline other items that Contractor will need to account for in potential phasing for the project).	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)	UTILITY ENCOUNTER TYPE (UE)		Quantity of Pothole Utility	Pothole ID#				
																	Protect in Place	Conflict						
MONUTI-12	10	105+01	to	105+42	LT	PR43rdE		41	41.0	LF	-3	Level 2	Pothole shows line clearing anticipated cut. Protect in place.	Montana-Dakota Utilities	Gas Line			X		1	MONUTI-12-1PH			
CAELCI-45	10	106+29	to	-	LT	PR43rdE		1	1.0	EA	2	Level 3	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X		0	-		
MONUTI-13	11	108+35	to	108+56	RT	PR43rdE		21	21.0	LF	-2	Level 2	Storm sewer crossing. Verify depth prior to storm sewer placement. Coordinate relocation work during construction.	Montana-Dakota Utilities	Electric Line	3W	2W	X			0	-		
CAELCI-46	11	108+80	to	-	LT	PR43rdE		1	1.0	EA	0	Level 2	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X		0	-		
MONUTI-14	11	109+16	to	109+43	RT	PR43rdE		27	27.0	LF	-12	Level 2	Storm sewer crossing. Verify depth prior to storm sewer placement. Coordinate relocation work during construction.	Montana-Dakota Utilities	Electric Line	3W	2W	X			0	-		
BECOCO-7	11	109+82	to	110+11	LT	PR43rdE		29	29.0	LF	-9	Level 3	Fiber line, depth unknown. Contractor to verify depth prior to excavation and coordinate with BEK if adjustment is required.	Bek Communications Cooperative	Telephone/Fiber Optic Line	10D				X		0	-	
CENLINK-21	11	109+88	to	110+02	LT	PR43rdE		15	15.0	LF	-7	Level 2	Utility line is approximately 1.5' below the invert of the storm sewer pipe. Care should be taken when excavating storm sewer trench.	Century Link	Telephone/Fiber Optic Line				X		2	CENLINK-21-1 PH to 2PH		
MIDCAB-23	11	109+88	to	110+00	LT	PR43rdE		12	12.0	LF	-10	Level 3	Coordinate with Midco to lower in place.	Mid-Continent Cable	TV Line	2W	3W			X		0	-	
MONUTI-15	11	109+89	to	109+99	LT	PR43rdE		10	10.0	LF	-10	Level 4	Storm sewer crossing. Verify depth prior to storm sewer placement. Coordinate relocation work during construction.	Montana-Dakota Utilities	Gas Line	3W	1D			X		1	MONUTI-15-1PH	
MIDCAB-24	11	109+90	to	110+02	LT	PR43rdE		12	12.0	LF	-10	Level 3	Coordinate with Midco to lower in place.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W			X		0	-	
CAELCI-47	11	109+95	to	109+99	LT	PR43rdE		4	4.0	LF	0	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X		0	-		
CAELCI-48	11	109+95	to	109+99	LT	PR43rdE		4	4.0	LF	0	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	2D			X		0	-		
CAELCI-49	11	111+32	to	-	LT	PR43rdE		1	1.0	EA	0	Level 2	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X		0	-		
CAELCI-50	12	113+81	to	-	LT	PR43rdE		1	1.0	EA	2	Level 3	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	5D				X		0	-	
MONUTI-22	12	114+77	to	116+26	LT	PR43rdE		149	149.0	LF	-9	Level 3	Relocate in conjunction with MONUTI-17.	Montana-Dakota Utilities	Gas Line	3W	2W			X		0	-	
MONUTI-20	12	114+77	to	-	LT	PR43rdE		18	18.0	LF	2	Level 3	Relocate in conjunction with MONUTI-17.	Montana-Dakota Utilities	Gas Line	3W	2W			X		0	-	
MIDCAB-28	12	114+79	to	114+87	Crossing	PR43rdE		70	70.0	LF	-11	Level 3	Road Contractor to coordinate with Midco prior to excavation to determining the exact depths and conflicts with crossing. Midco will need at least 2 weeks after line is placed if splicing is needed.	Mid-Continent Cable	TV Line					X		0	-	
MIDCAB-25	12	114+81	to	114+89	Crossing	PR43rdE		70	70.0	LF	-8	Level 3	Road Contractor to coordinate with Midco prior to excavation to determining the exact depths and conflicts with crossing. Midco will need at least 2 weeks after line is placed if splicing is needed.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W			X		0	-	
MONUTI-16	12	114+86	to	-	Crossing	PR43rdE		20	74	94.0	LF	-9	Level 2	One pothole take indicates line clears cut. However, contractor should verify that the gas line does not increase in elevation on the north side of 43rd Avenue.	Montana-Dakota Utilities	Gas Line				X		1	MONUTI-16-1PH	
BECOCO-8	12	114+88	to	117+17	LT	PR43rdE		143	86	229.0	LF	-11	Level 3	BEK to abandon line. BEK may work with other utilities to relocate if coordination works out, or plan to bore new line after construction is completed. Contractor can request meetup with BEK locators for any BEK encounter/questions: Darin-701-936-3743 or Joe-701-426-5700.	Bek Communications Cooperative	Telephone/Fiber Optic Line					X		0	-
MONUTI-37	12	114+90	to	116+20	RT	PR43rdE		133	133.0	LF	-1	Level 2	1FT cut, protect in place	Montana-Dakota Utilities	Electric Line	3W	2W			X		0	-	
MONUTI-18	12	114+93	to	118+76	LT	PR43rdE		382	382.0	LF	-9	Level 3	MDU plans to relocate line and run joint with other utilities. Road Contractor to coordinate timing prior to construction.	Montana-Dakota Utilities	Gas Line	3W	2W			X		2	MONUTI-18-1 PH to 2PH	
MONUTI-19	12	114+93	to	-	LT	PR43rdE		5	5.0	LF	1	Level 3	Relocate in conjunction with MONUTI-18.	Montana-Dakota Utilities	Gas Line	3W	2W			X		0	-	
CENLINK-22	12	115+17	to	117+23	LT	PR43rdE		60	197	257.0	LF	-4	Level 3	Contractor to coordinate with CenturyLink. CenturyLink may create temporary route to north while excavation occurs in the roundabout and then trench in once grading is complete. Contractor and CenturyLink to coordinate limits of excavation.	Century Link	Telephone/Fiber Optic Line	2D	9D			X		0	-
CAELCI-51	12	115+23	to	115+83	LT	PR43rdE		9	50	59.0	LF	-3	Level 3	Road Contractor to coordinate with CEC; CEC will lower facilities in place	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	5D				X		1	CAELCI-51-1PH
CAELCI-52	12	115+23	to	115+83	LT	PR43rdE		9	50	59.0	LF	-3	Level 3	Road Contractor to coordinate with CEC; CEC will lower facilities in place	Capital Electric Cooperative Incorporat	Electric Line	5D				X		1	CAELCI-52-1PH
CENLINK-25	12	115+47	to	116+03	LT	PR43rdE		29	27	56.0	LF	-10	Level 3	Contractor to coordinate with CenturyLink. CenturyLink may create temporary route to north while excavation occurs in the roundabout and then trench in once grading is complete. Contractor and CenturyLink to coordinate limits of excavation.	Century Link	Telephone/Fiber Optic Line	2D	9D			X		0	-
CENLINK-26	12	115+47	to	116+03	LT	PR43rdE		29	27	56.0	LF	-10	Level 3	Contractor to coordinate with CenturyLink. CenturyLink may create temporary route to north while excavation occurs in the roundabout and then trench in once grading is complete. Contractor and CenturyLink to coordinate limits of excavation.	Century Link	Telephone/Fiber Optic Line	2D	9D			X		0	-
CENLINK-27	12	115+49	to	115+49	RT	PR43rdE		38	38.0	LF	<-1	Level 2	Protect in place	Century Link	Telephone/Fiber Optic Line				X		0	-		
CENLINK-28	12	115+49	to	115+49	RT	PR43rdE		38	38.0	LF	<-1	Level 2	Protect in place	Century Link	Telephone/Fiber Optic Line				X		0	-		
CENLINK-23	12	115+51	to	-	Crossing	PR43rdE		131	131.0	LF	-9	Level 3	Contractor to coordinate with CenturyLink. CenturyLink may create temporary route to north while excavation occurs in the roundabout and then trench in once grading is complete. Contractor and CenturyLink to coordinate limits of excavation.	Century Link	Telephone/Fiber Optic Line	2D	9D			X		1	CENLINK-23-1PH	
CENLINK-24	12	115+51	to	-	Crossing	PR43rdE		131	131.0	LF	-9	Level 3	Contractor to coordinate with CenturyLink. CenturyLink may create temporary route to north while excavation occurs in the roundabout and then trench in once grading is complete. Contractor and CenturyLink to coordinate limits of excavation.	Century Link	Telephone/Fiber Optic Line	2D	9D			X		1	CENLINK-24-1PH	
MIDCAB-26	12	115+55	to	-	RT	PR43rdE		1	1.0	EA	-1	Level 2	Pedestal on edge of construction limits. Slight vertical adjustment may be necessary, otherwise Protect in place.	Mid-Continent Cable	Pedestal	1W				X		0	-	
MIDCAB-27	12	115+55	to	116+91	RT	PR43rdE		114	31	145.0	LF	-1	Level 3	Coordinate with Midco to lower in place.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W			X		0	-
MIDCAB-30	12	115+55	to	117+10	LT	PR43rdE		62	194	256.0	LF	-11	Level 1	To be abandoned Coax line.	Mid-Continent Cable	Telephone/Fiber Optic Line						0	-	
CAELCI-53	12	115+84	to	-	LT	PR43rdE		1	1.0	EA	-2	Level 3	Road Contractor to coordinate with CEC; CEC will move fiber optic vault west to edge of roadway curb	Capital Electric Cooperative Incorporat	Electric Vault	5D				X		0	-	
CAELCI-54	12	115+84	to	115+90	Crossing	PR43rdE		24	135	159.0	LF	-3	Level 3	Road Contractor to coordinate with CEC; CEC will lower facilities in place	Capital Electric Cooperative Incorporat	Electric Line	5D				X		2	CAELCI-54-1 PH to 2PH
CAELCI-55	12	115+85	to	115+91	Crossing	PR43rdE		17	135	152.0	LF	-3	Level 3	Road Contractor to coordinate with CEC; CEC will lower facilities in place	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	5D				X		2	CAELCI-55-1 PH to 2PH
CAELCI-56	12	115+85	to	116+85	LT	PR43rdE		118	118.0	LF	-8	Level 3	Fiber optic cable may need to be replaced due to insufficient slack for lowering in place. Road Contractor to coordinate with CEC; CEC will lower, splice conduit, pull in fiber.	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	5D				X		1	CAELCI-56-1PH	
CAELCI-57	12	115+90	to	116+84	RT	PR43rdE		94	94.0	LF	<-1	Level 3	****Need to confirm. Pothole data suggests lowering of 4 feet necessary. Road Contractor to coordinate with CEC; CEC will lower electric line in place.	Capital Electric Cooperative Incorporat	Electric Line	5D				X		0	-	
CAELCI-58	12	115+91	to	116+84	RT	PR43rdE		93	93.0	LF	<-1	Level 3	****Need to confirm. Pothole data suggests lowering of 4 feet necessary. Road Contractor to coordinate with CEC; CEC will lower fiber optic line in place, splice conduit, pull in slack fiber.	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	5D				X		1	CAELCI-58-1PH	

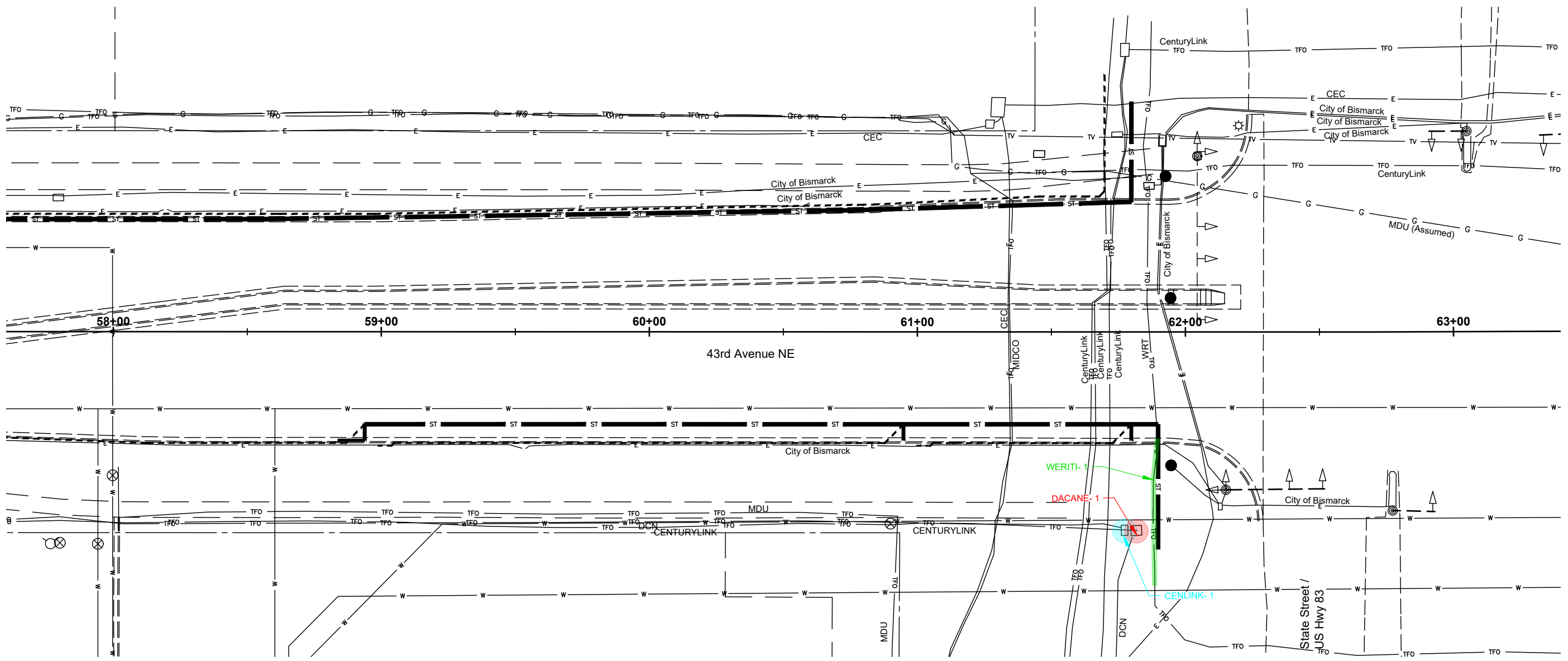
UE ID #	Utility Coordination Exhibits	Approx. Sta From	Approx. Sta To	LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Reimbursable	Non-Reimbursable	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Resolution Criteria / Comments (The following information for the Contractor is based on early coordination with utilities. Information is approximate. Details for the schedule and construction phasing will need to be finalized between the Contractor and Utility Companies. Comments also outline other items that Contractor will need to account for in potential phasing for the project).	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)	UTILITY ENCOUNTER TYPE (UE)		Quantity of Pothole Utility	Pot Hole ID#
																	Protect in Place	Conflict		
CENLINK-29	12	116+03	to	-	PR43rdE	1		1.0	EA	-10	Level 4	Will relocate when temporary line goes in. May be able to be removed.	Century Link	Pedestal	2D	9D		X	0	-
CENLINK-30	12	116+03	to	117+11	LT	108		108.0	LF	-9	Level 3	Contractor to coordinate with CenturyLink. CenturyLink may create temporary route to north while excavation occurs in the roundabout and then trench in once grading is complete. Contractor and CenturyLink to coordinate limits of excavation.	Century Link	Telephone/Fiber Optic Line	2D	9D		X	0	-
MONUTI-36	12	116+20	to	116+63	RT	43		43.0	LF	6	Level 3	Storm sewer crossing. MDU to lower to clear. Coordinate work during construction.	Montana-Dakota Utilities	Electric Line	3W	2W		X	0	-
CAELCI-59	12	116+21	to	-	LT		1	1.0	EA	-5	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	5D			X	0	-
MONUTI-21	12	116+26	to	-	LT		1	1.0	EA	-4	Level 4	Relocate in conjunction with MONUTI-17.	Montana-Dakota Utilities	Gas Valve	3W	2W		X	0	-
MONUTI-17	12	116+28	to	-	Crossing	161	136	297.0	LF	-11	Level 3	12IN HP Gas Main - MDU planning on relocating first thing in the spring when weather allows. MDU would prefer road contractor to take excess cut material out over exiting and proposed gas main before installing new main. MDU will then place new gas main to the east of existing main. Work is estimated to take 2 weeks.	Montana-Dakota Utilities	Gas Line	3W	2W		X	4	MONUTI-17-1 PH to 4PH
MIDCAB-29	12	116+49	to	-	LT		1	1.0	EA	-8	Level 1	To be abandoned Coax line.	Mid-Continent Cable	Pedestal					0	-
MONUTI-35	12, 13	116+63	to	118+96	RT	234		234.0	LF	-1	Level 2	1FT cut, protect in place	Montana-Dakota Utilities	Electric Line	3W	2W	X		0	-
CAELCI-60	12	116+85	to	-	RT	1		1.0	EA	0	Level 3	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Locker	2D			X	0	-
CAELCI-61	12,13	116+93	to	120+98	RT	405		405.0	LF	-1	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X	0	-
CAELCI-62	12,13	116+93	to	120+98	RT	405		405.0	LF	-1	Level 2	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	2D			X	0	-
MONUTI-27	15	3+89	to	-	RT		30	30.0	LF	-3	Level 2	Protect in place	Montana-Dakota Utilities	Gas Line				X	0	-
MIDCAB-31	15	3+92	to	4+07	Crossing	23	50	73.0	LF	-3	Level 3	Coordinate with Midco to lower in place.	Mid-Continent Cable	TV Line	1W	2D		X	0	-
MONUTI-26	15	3+93	to	-	Crossing		44	44.0	LF	-3	Level 3	Verify gas depth prior to road cut.	Montana-Dakota Utilities	Gas Line				X	0	-
MONUTI-25	15	3+94	to	-	LT	2	10	12.0	LF	-3	Level 2	Protect in place	Montana-Dakota Utilities	Gas Line				X	0	-
MIDCAB-32	15	4+24	to	4+34	Crossing	17	47	64.0	LF	-3	Level 3	Coordinate with Midco to lower in place.	Mid-Continent Cable	Telephone/Fiber Optic Line	1W	2D		X	0	-
MONUTI-28	15	5+01	to	5+14	LT	13		13.0	LF	<1	Level 2	Protect in place	Montana-Dakota Utilities	Gas Line				X	0	-
CENLINK-31	15	5+08	to	5+67	LT	59		59.0	LF	-2	Level 1	Utility line is approximately 5' below existing ground according to pothole data. The max cut is only 2'. This is not a conflict.	Century Link	Telephone/Fiber Optic Line					2	CENLINK-31-1 PH to 2PH
DACANE-9	15	5+10	to	5+56	LT	46		46.0	LF	-2	Level 3	FO Line crossing, depth unknown. To be adjusted during construction	Dakota Carrier Network	Telephone/Fiber Optic Line	2W	1D		X	0	-
CAELCI-63	15	5+12	to	5+54	LT	43		43.0	LF	<-1	Level 3	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Electric Line	2D			X	0	-
MIDCAB-33	15	5+13	to	5+55	LT		42	42.0	LF	-3	Level 3	Coordinate with Midco to lower in place.	Mid-Continent Cable	Telephone/Fiber Optic Line	1W	2D		X	0	-
MONUTI-29	15	5+14	to	5+54	LT	40		40.0	LF	-3	Level 3	Verify gas depth prior to road cut.	Montana-Dakota Utilities	Gas Line				X	0	-
CAELCI-64	15	5+14	to	5+54	LT	41		41.0	LF	<-1	Level 3	No actions necessary; CEC to monitor during construction	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	2D			X	0	-
MIDCAB-34	15	5+15	to	5+53	LT	39		39.0	LF	-3	Level 3	Coordinate with Midco to lower in place.	Mid-Continent Cable	TV Line	1W	2D		X	0	-
MONUTI-30	15	5+54	to	5+68	LT	15		15.0	LF	<1	Level 2	Protect in place	Montana-Dakota Utilities	Gas Line				X	0	-
MIDCAB-35	16	8+56	to	9+31	LT		75	75.0	LF	<1	Level 2	Protect in place	Mid-Continent Cable	Telephone/Fiber Optic Line	1W			X	0	-
MONUTI-31	16	8+80	to	-	Crossing	4	48	52.0	LF	-3	Level 2	Protect in place	Montana-Dakota Utilities	Gas Line				X	2	MONUTI-31-1 PH to 2PH
CENLINK-32	17	12+28	to	12+66	LT	39		39.0	LF	-3	Level 3	Contractor to coordinate box culvert installation with Centurylink. Centurylink will lower line when area is dewatered during box construction.	Century Link	Telephone/Fiber Optic Line	2D	1D		X	1	CENLINK-32-1PH
DACANE-10	17	12+34	to	13+40	LT	106		106.0	LF	-6	Level 3	Depth of FO line unknown. Contractor to work with DCN and determine depth during construction. If in conflict, DCN can place new conduit and reroute fiber through new conduit.	Dakota Carrier Network	Telephone/Fiber Optic Line	2W	5D		X	0	-
MIDCAB-36	17	12+48	to	12+71	LT	23		23.0	LF	-6	Level 3	Coordinate prior to excavation to determining the exact depths and location. Will need at least 2 weeks when line is placed if splicing is needed.	Mid-Continent Cable	TV Line	2W	3W		X	0	-
CAELCI-65	17	12+53	to	13+43	LT	85	7	92.0	LF	10	Level 3	Prefer having fiber optic line above drainage structure but ~4ft below finished grade. Road Contractor to coordinate with CEC; CEC will expose and raise line.	Capital Electric Cooperative Incorporat	Telephone/Fiber Optic Line	3D			X	0	-
CAELCI-66	17	12+53	to	13+43	LT	85	7	92.0	LF	10	Level 3	Prefer having electric line above drainage structure but ~4ft below finished grade. Road Contractor to coordinate with CEC; CEC will expose and raise line.	Capital Electric Cooperative Incorporat	Electric Line	3D			X	0	-
MONUTI-32	17	12+53	to	13+42	LT	85	4	89.0	LF	-5	Level 3	Box culvert construction. Verify gas line elevation prior to installation.	Montana-Dakota Utilities	Gas Line				X	0	-
MIDCAB-37	17	12+56	to	12+79	LT	23		23.0	LF	-6	Level 3	Coordinate prior to excavation to determining the exact depths and location. Will need at least 2 weeks when line is placed if splicing is needed.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
CAELCI-67	17	12+77	to	-	LT	1		1.0	EA	<1	Level 4	CEC to convert OH to underground in utility easement at edge of ROW; CEC will remove overhead line	Capital Electric Cooperative Incorporat	Power Pole	3D			X	0	-
CENLINK-33	17	12+95	to	13+43	LT	50		50.0	LF	-2	Level 2	Protect in place	Century Link	Telephone/Fiber Optic Line				X	1	CENLINK-33-1PH
MIDCAB-38	17	13+16	to	13+31	LT	15		15.0	LF	-6	Level 3	Coordinate prior to excavation to determining the exact depths and location. Will need at least 2 weeks when line is placed if splicing is needed.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-
MIDCAB-39	17	13+19	to	13+40	LT		21	21.0	LF	-6	Level 3	Coordinate prior to excavation to determining the exact depths and location. Will need at least 2 weeks when line is placed if splicing is needed.	Mid-Continent Cable	TV Line	2W	3W		X	0	-
MIDCAB-40	17	13+52	to	13+63	LT		11	11.0	LF	-11	Level 2	Waterline for fire hydrant is approx -11' below existing ground	Mid-Continent Cable	Telephone/Fiber Optic Line	1W			X	0	-
MIDCAB-41	17	15+11	to	15+26	LT	4	11	15.0	LF	-4	Level 3	Road Contractor coordinating with Midco to raise to proposed grade. Will determine full extent of work needed.	Mid-Continent Cable	TV Line	2W	3W		X	0	-
MIDCAB-42	17	15+13	to	15+23	LT		15	15.0	LF	-4	Level 3	Road Contractor coordinating with Midco to raise to proposed grade. Will determine full extent of work needed.	Mid-Continent Cable	Telephone/Fiber Optic Line	2W	3W		X	0	-

UE ID #	Utility Coordination Exhibits	Approx. Sta From	Approx. Sta To	LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Reimbursable	Non-Reimbursable	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Resolution Criteria / Comments <small>(The following information for the Contractor is based on early coordination with utilities. Information is approximate. Details for the schedule and construction phasing will need to be finalized between the Contractor and Utility Companies. Comments also outline other items that Contractor will need to account for in potential phasing for the project).</small>	Utility Company	Type of Facility	After Notification - Time For Utility to Mobilize <small>(D = Working Day, W = Week)</small>	Estimated Time to Complete Relocation <small>(D = Working Day, W = Week)</small>	UTILITY ENCOUNTER TYPE (UE)		Quantity of Pothole Utility	Pot Hole ID#
																	Protect in Place	Conflict		
CAELCI-68	17	15+13	to	-	LT	PR 19thSouth	1		1.0	EA	1	Level 4	Road Contractor to coordinate with CEC; CEC will move facilities west of proposed sidewalk	Capital Electric Cooperative Incorporat	Electric Locker	3D		X	0	-
MONUTI-33	17	15+15	to	15+30	LT	PR 19thSouth		15	15.0	LF	-4	Level 3	Storm sewer crossing. Verify gas line elevation prior to installation.	Montana-Dakota Utilities	Gas Line			X	0	-
MONUTI-38	17	15+15	to	-	Crossing	PR 19thSouth	4	32	36.0	LF	-5	Level 2	Protect in place.	Montana-Dakota Utilities	Gas Line			X	2	MONUTI-38-1 PH to 2PH
CENLINK-34	17	15+15	to	15+30	LT	PR 19thSouth		15	15.0	LF	-4	Level 3	Contractor to coordinate with Centurylink to lower or raise in place to avoid storm sewer.	Century Link	Telephone/Fiber Optic Line	2D	1D	X	0	-
CAELCI-69	17	15+16	to	-	LT	PR 19thSouth		1	1.0	EA	<1	Level 4	Road Contractor to coordinate with CEC; CEC will move facilities west of proposed sidewalk	Capital Electric Cooperative Incorporat	Power Pole	3D		X	0	-
MIDCAB-43	17	15+18	to	-	LT	PR 19thSouth	1		1.0	EA	1	Level 4	Will relocate to the west near 2 Midco peds. Need additional time to determine if fiber splicing is needed. Will also need to coordinate powering the cabinets when moving the power source.	Mid-Continent Cable	Electric Locker	2W	3W	X	0	-
CAELCI-70	17	15+18	to	-	LT	PR 19thSouth	1		1.0	EA	1	Level 4	Road Contractor to coordinate with CEC; CEC will move facilities west of proposed sidewalk	Capital Electric Cooperative Incorporat	Electric Meter	3D		X	0	-
CAELCI-71	17	15+18	to	-	LT	PR 19thSouth	1		1.0	EA	<1	Level 4	Road Contractor to coordinate with CEC; CEC will move facilities west of proposed sidewalk	Capital Electric Cooperative Incorporat	Electric Locker	3D		X	0	-
MIDCAB-44	17	15+20	to	-	LT	PR 19thSouth	1		1.0	EA	1	Level 3	Road Contractor to coordinate with Midco to raise to proposed grade. Will determine full extent of work needed in the field.	Mid-Continent Cable	Pedestal	2W	3W	X	0	-
MIDCAB-45	17	15+21	to	-	LT	PR 19thSouth	1		1.0	EA	1	Level 3	Road Contractor coordinating with Midco to raise to proposed grade. Will determine full extent of work needed.	Mid-Continent Cable	Pedestal	2W	3W	X	0	-
CAELCI-74	17	15+25	to	-	LT	PR 19thSouth	1		1.0	EA	3	Level 4	Road Contractor to coordinate with CEC; CEC will move facilities west of proposed sidewalk	Capital Electric Cooperative Incorporat	Vault	3D		X	0	-

Utility Company Information			
Utility Company	Contact Name	Phone Number	Email
Mid Continent Cable	Lance Bauer	701-319-0248	Lance.Bauer@Midco.com
Montana-Dakota Utilities (Gas)	Toby Gross	701-224-5827	Toby.Gross@MDU.com
Century Link	Connie Kassian	701-222-6889	Connie.Kassian@CenturyLink.com
Capital Electric	Greg Owen	701-712-7908	grego@capitalelec.com
Montana-Dakota Utilities (Electric)	Matthew Williams	701-690-9389	Matthew.Williams@MDU.com
Dakota Carrier Network	Michael Mack	701-364-1305	MMack@DakotaCarrier.com
BEK Communications	Kurt Anderson	701-475-1254	kurta@bektel.coop
Western Area Power Administration	Bob Ibeneme	701-221-4515	ibeneme@wapa.gov
West River Telcom	Cole Grinsteiner	701-748-2211	coleg@wrtc.com

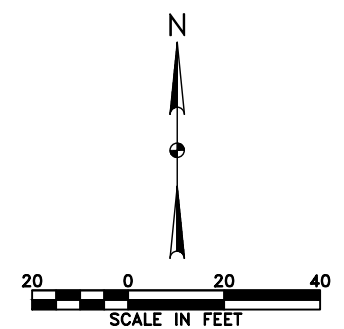
Level 1	Utility not exposed by proposed improvements, no impacts.
Level 2	Utility exposed by proposed improvements but no permanent impacts, contractor to protect in place and perform careful excavation.
Level 3	Utility permanently impacted by proposed improvements and requires vertical adjustment only. 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.

STATE	PROJECT NO.	SEC. NO.	SHEET NO.
ND	AC-NHU-CVD-1-981(123)	60	1

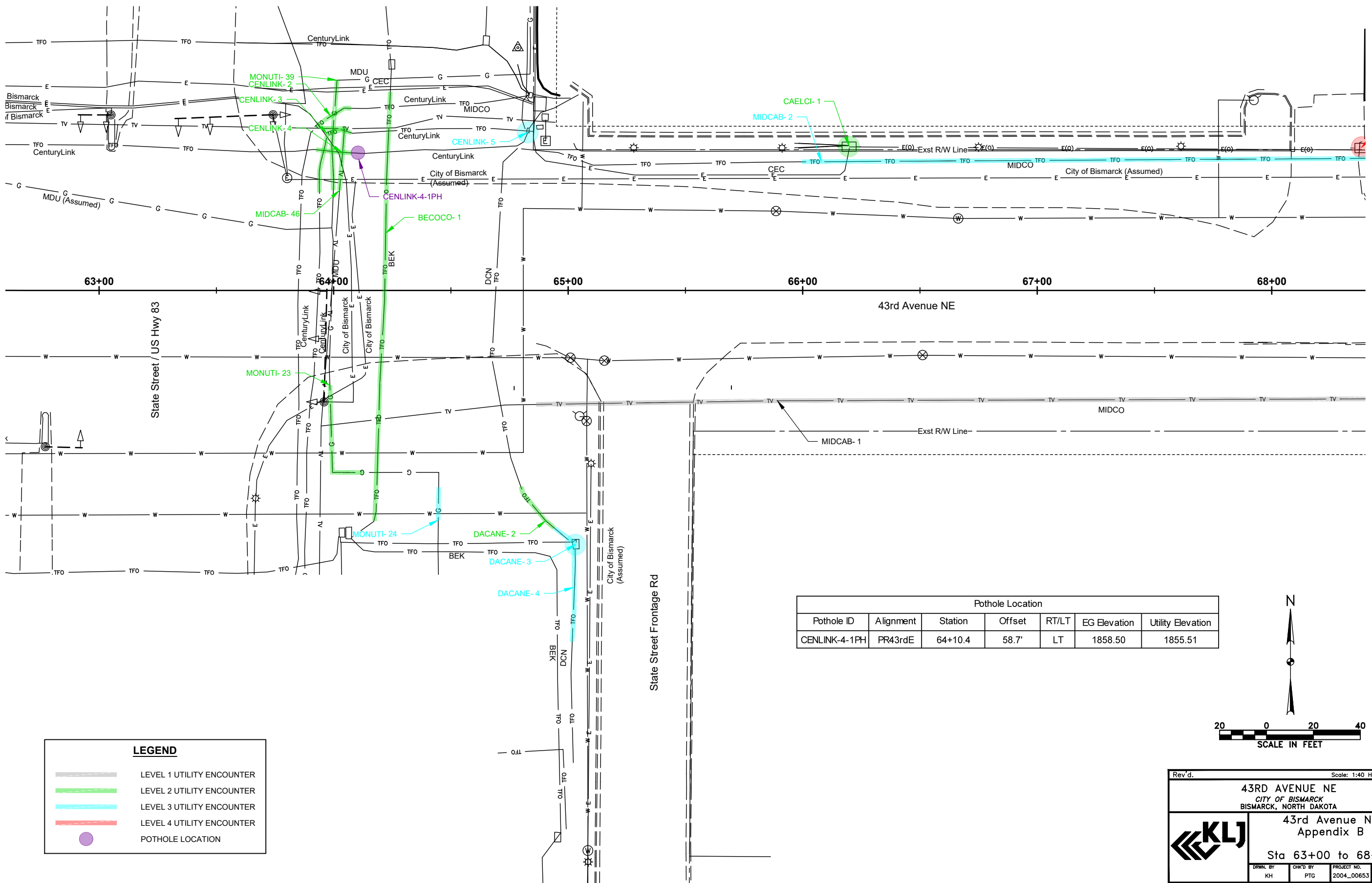


LEGEND

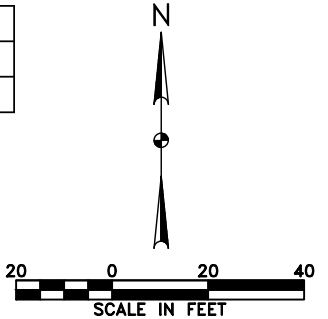
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION



Rev'd.	Scale: 1:40 Hor 1:10 Ver
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA	
43rd Avenue NE Appendix B Sta 58+00 to 63+00	
DRWN. BY KH	CHK'D BY PTG
PROJECT NO. 2004_00653	DATE 12/2021
© KLJ 2021	



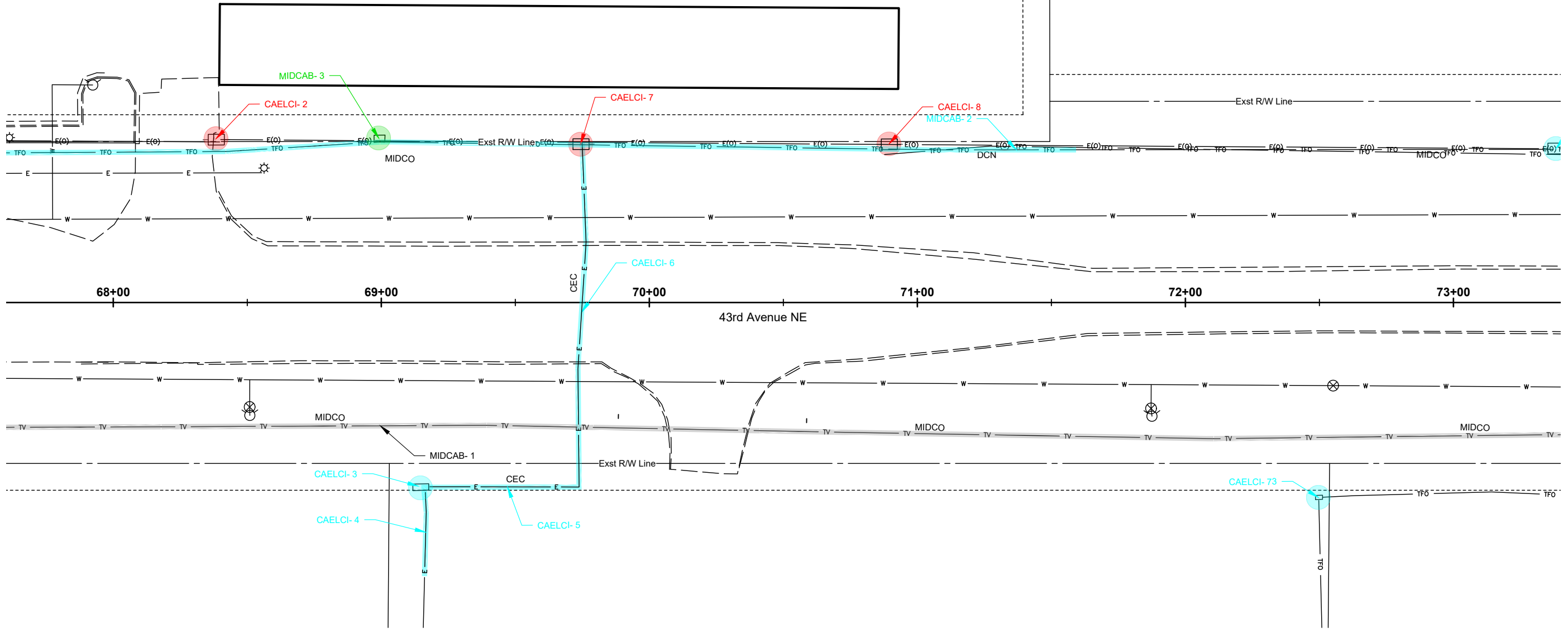
Pothole Location						
Pothole ID	Alignment	Station	Offset	RT/LT	EG Elevation	Utility Elevation
CENLINK-4-1PH	PR43rdE	64+10.4	58.7'	LT	1858.50	1855.51



LEGEND	
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION

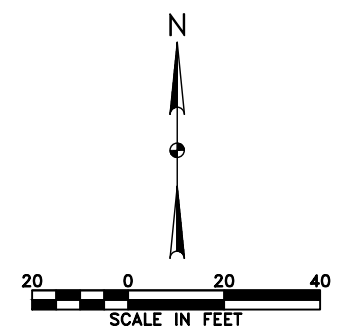
Rev'd.		Scale: 1:40 Hor. 1:10 Ver.	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
		43rd Avenue NE Appendix B	
		Sta 63+00 to 68+00	
DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021
© KLJ 2021			

STATE	PROJECT NO.	SEC. NO.	SHEET NO.
ND	AC-NHU-CVD-1-981(123)	60	3



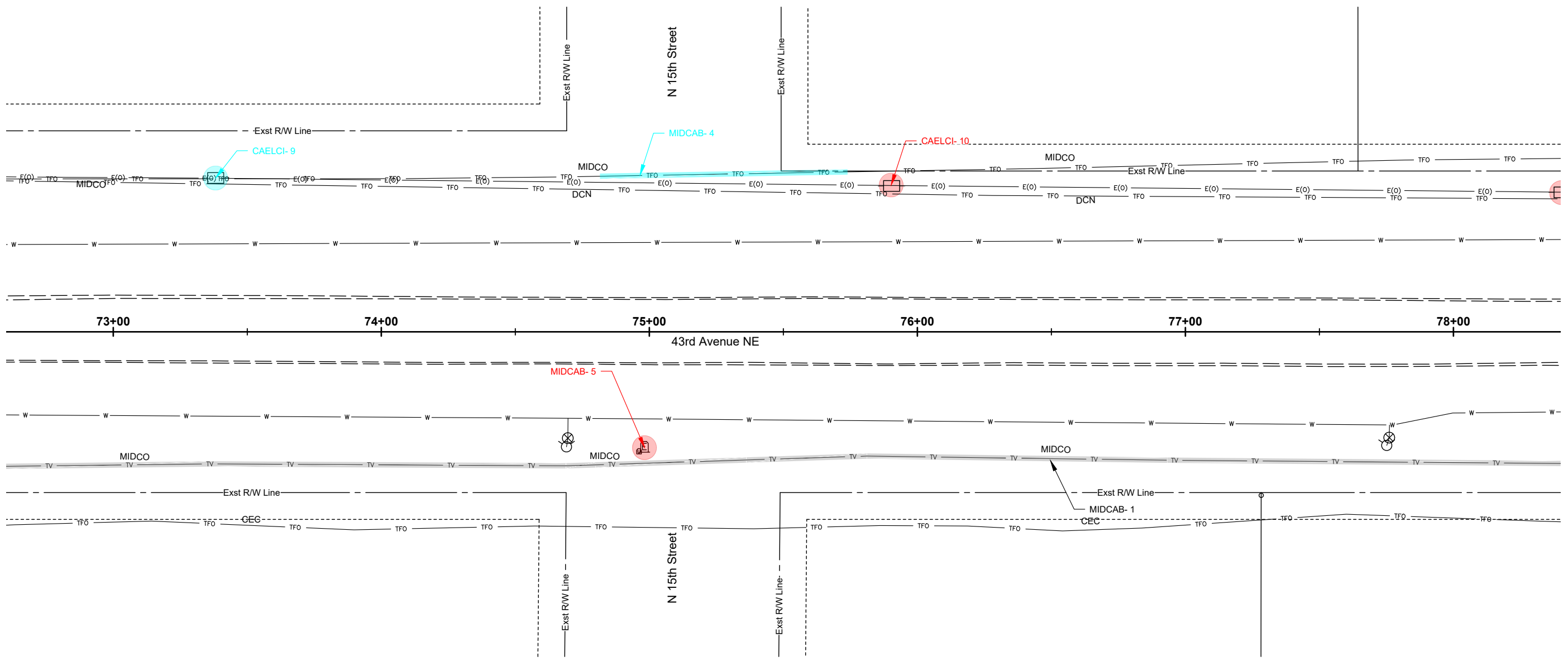
LEGEND

	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION



Rev'd.		Scale: 1:40 Hor 1:10 Ver	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
		43rd Avenue NE Appendix B	
		Sta 68+00 to 73+00	
DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021
© KLJ 2021			

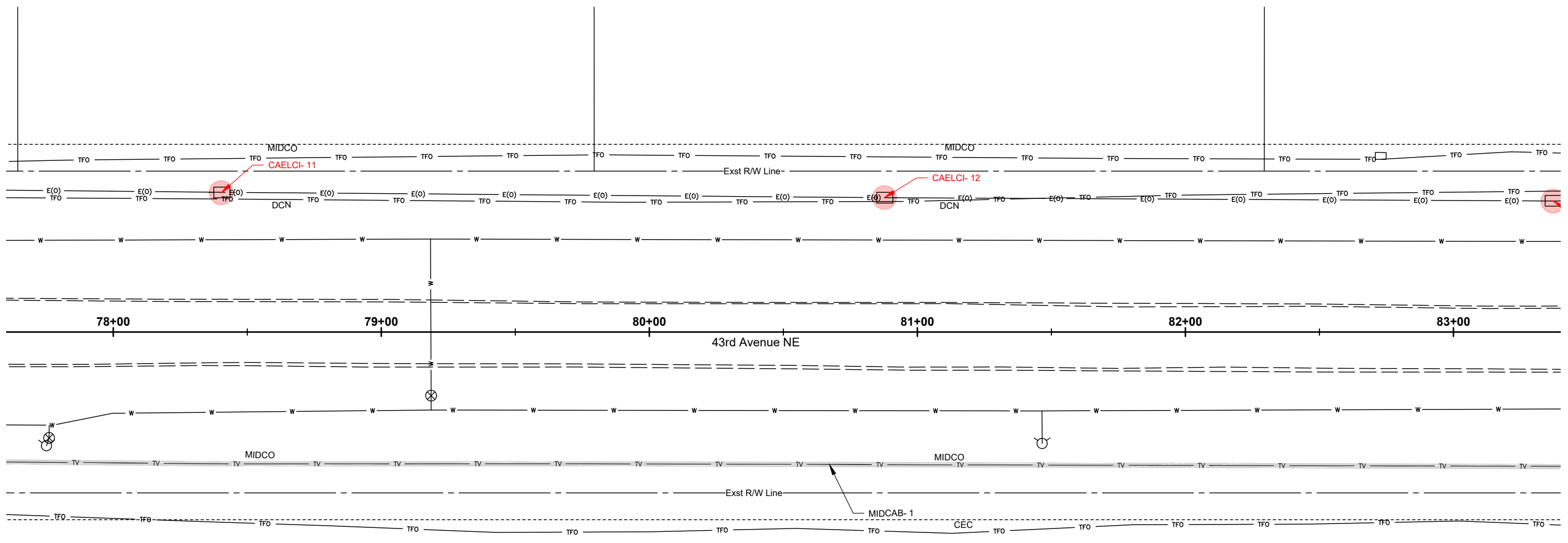
STATE	PROJECT NO.	SEC. NO.	SHEET NO.
ND	AC-NHU-CVD-1-981(123)	60	4



LEGEND	
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION

Rev'd.		Scale: 1:40 Hor. 1:10 Ver.	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
	43rd Avenue NE Appendix B Sta 73+00 to 78+00		
	DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653
© KLJ 2021			

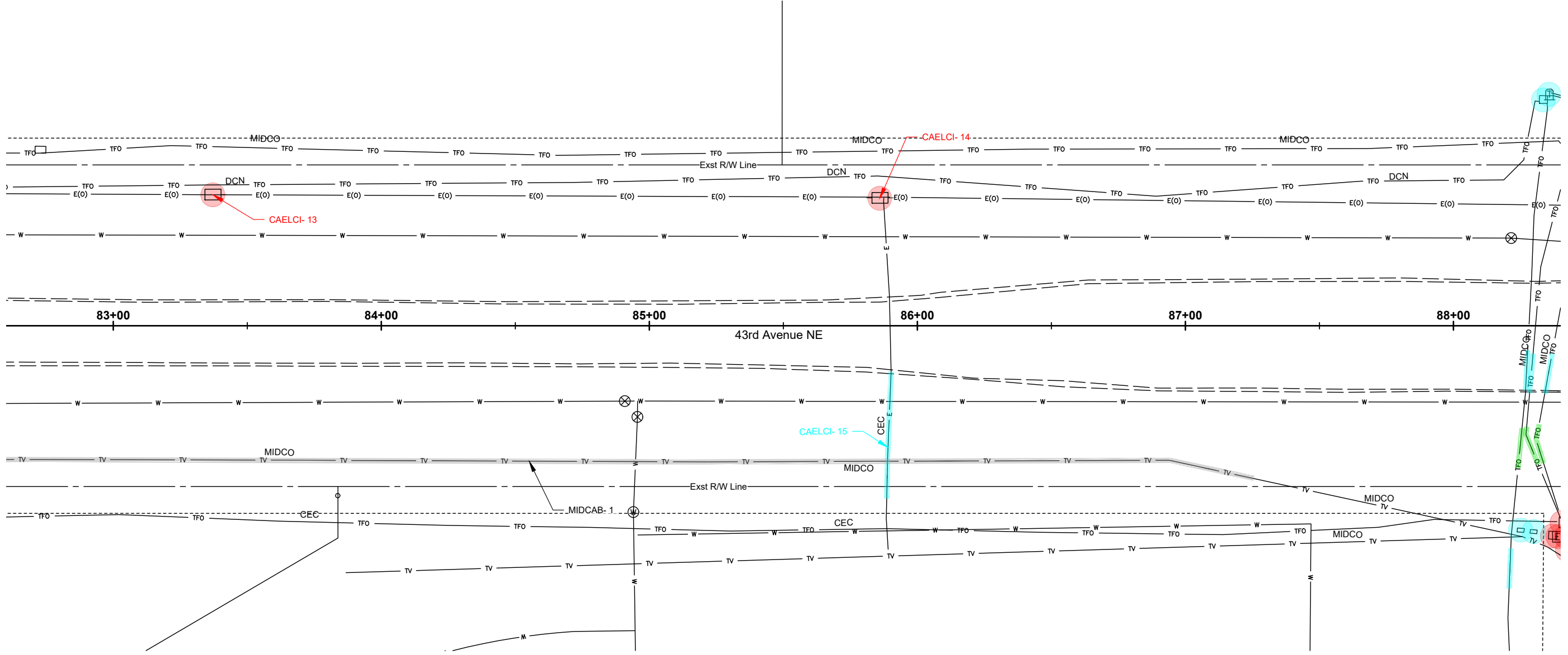
STATE	PROJECT NO.	SEC. NO.	SHEET NO.
ND	AC-NHU-CVD-1-981(123)	60	5



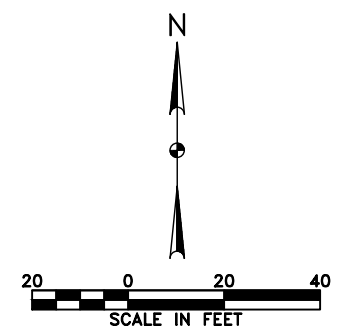
LEGEND	
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION

Rev'd.		Scale: 1:40 Hor. 1:10 Ver.	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
	43rd Avenue NE Appendix B Sta 78+00 to 83+00		
	DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653
© KLJ 2021			

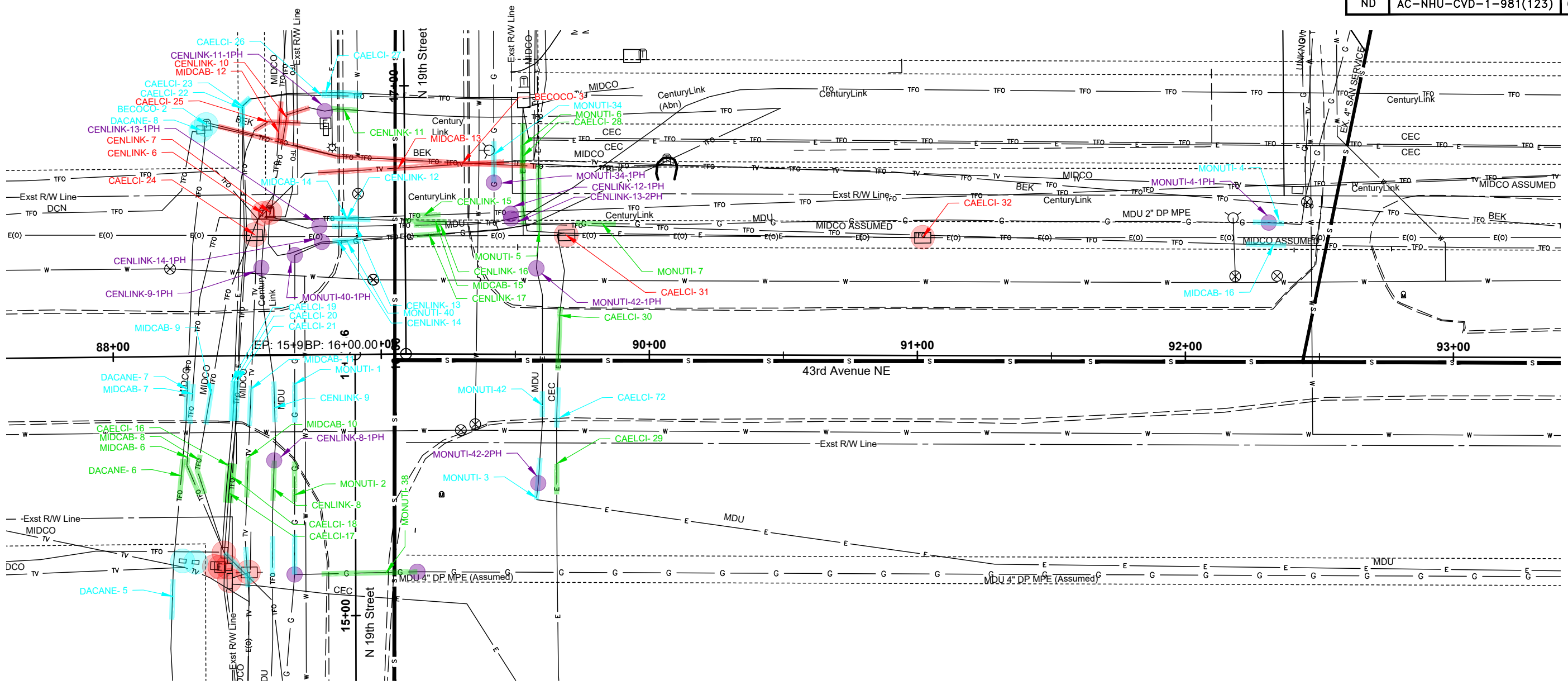
STATE	PROJECT NO.	SEC. NO.	SHEET NO.
ND	AC-NHU-CVD-1-981(123)	60	6



LEGEND	
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION



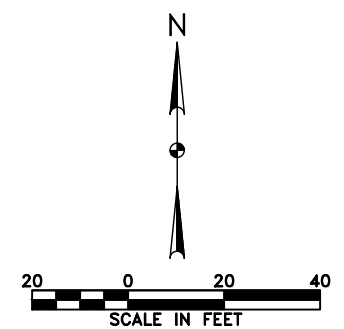
Rev'd.		Scale: 1:40 Hor 1:10 Ver	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
		43rd Avenue NE Appendix B	
		Sta 83+00 to 88+00	
DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021
© KLJ 2021			



LEGEND

- LEVEL 1 UTILITY ENCOUNTER
- LEVEL 2 UTILITY ENCOUNTER
- LEVEL 3 UTILITY ENCOUNTER
- LEVEL 4 UTILITY ENCOUNTER
- POTHOLE LOCATION

Pothole Location						
Pothole ID	Alignment	Station	Offset	RT/LT	EG Elevation	Utility Elevation
CENLINK-9-1PH	PR43rdE	88+55.6	32.6'	LT	1747.74	1741.90
CENLINK-8-1PH	PR43rdE	88+59.6	39.2'	RT	1747.95	1743.23
MONUTI-40-1PH	PR43rdE	88+68.2	37.3'	LT	1747.80	1743.59
CENLINK-13-1PH	PR43rdE	88+76.6	48.1'	LT	1747.41	1742.56
CENLINK-14-1PH	PR43rdE	88+78.3	42.1'	LT	1748.08	1744.17
CENLINK-11-1PH	PR43rdE	88+80.0	90.8'	LT	1748.46	1743.02
MONUTI-34-1PH	PR43rdE	89+41.9	64.0'	LT	1748.23	1744.78
CENLINK-13-2PH	PR43rdE	89+44.0	46.6'	LT	1747.21	1741.92
CENLINK-12-1PH	PR43rdE	89+44.6	49.7'	LT	1747.24	1742.77
MONUTI-42-1PH	PR43rdE	89+57.8	32.1'	LT	1746.29	1742.20
MONUTI-42-2PH	PR43rdE	89+58.7	48.1'	RT	1744.73	1740.57
MONUTI-4-1PH	PR43rdE	92+30.9	50.0'	LT	1744.20	1740.32



Rev'd. Scale: 1:40 Hor. 1:10 Ver.

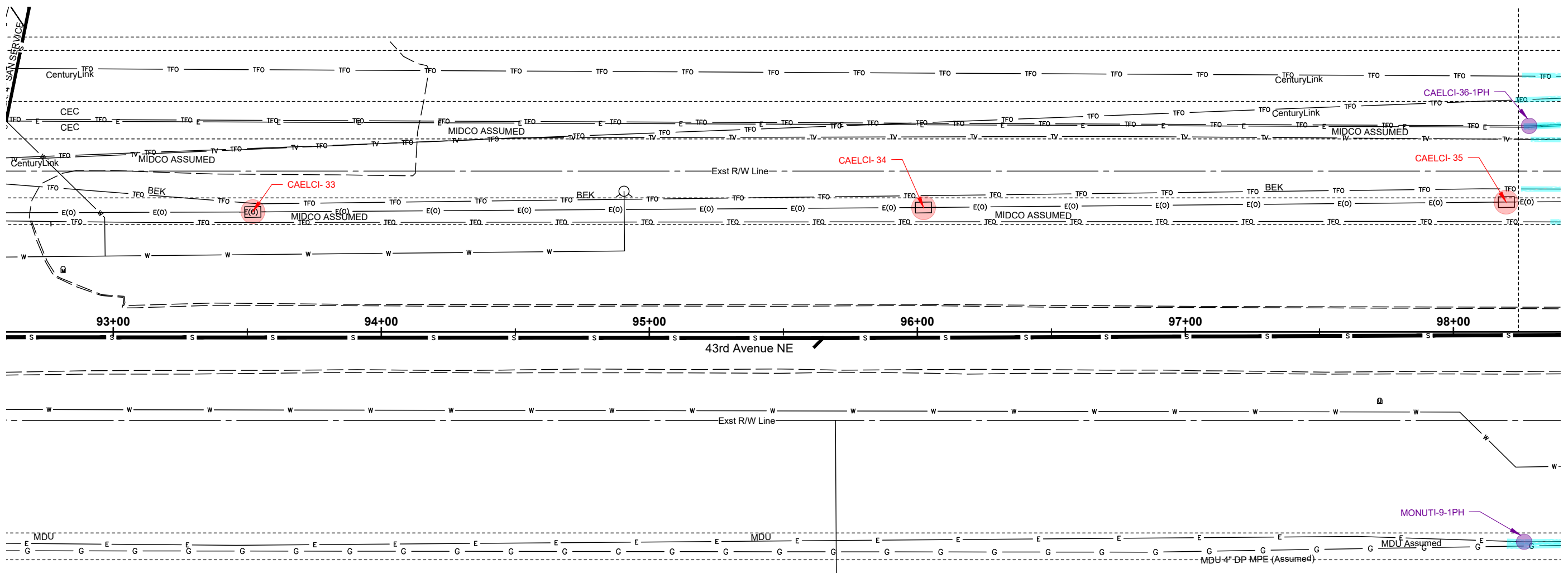
43RD AVENUE NE
 CITY OF BISMARCK
 BISMARCK, NORTH DAKOTA

43rd Avenue NE
 Appendix B
 Sta 88+00 to 93+00

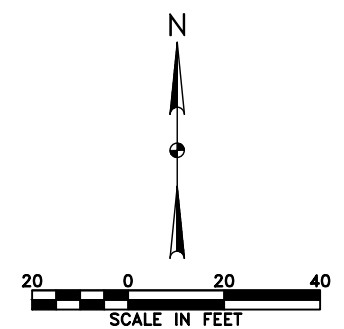
DRWN. BY	CHK'D BY	PROJECT NO.	DATE
KH	PTG	2004_00653	12/2021

© KLJ 2021

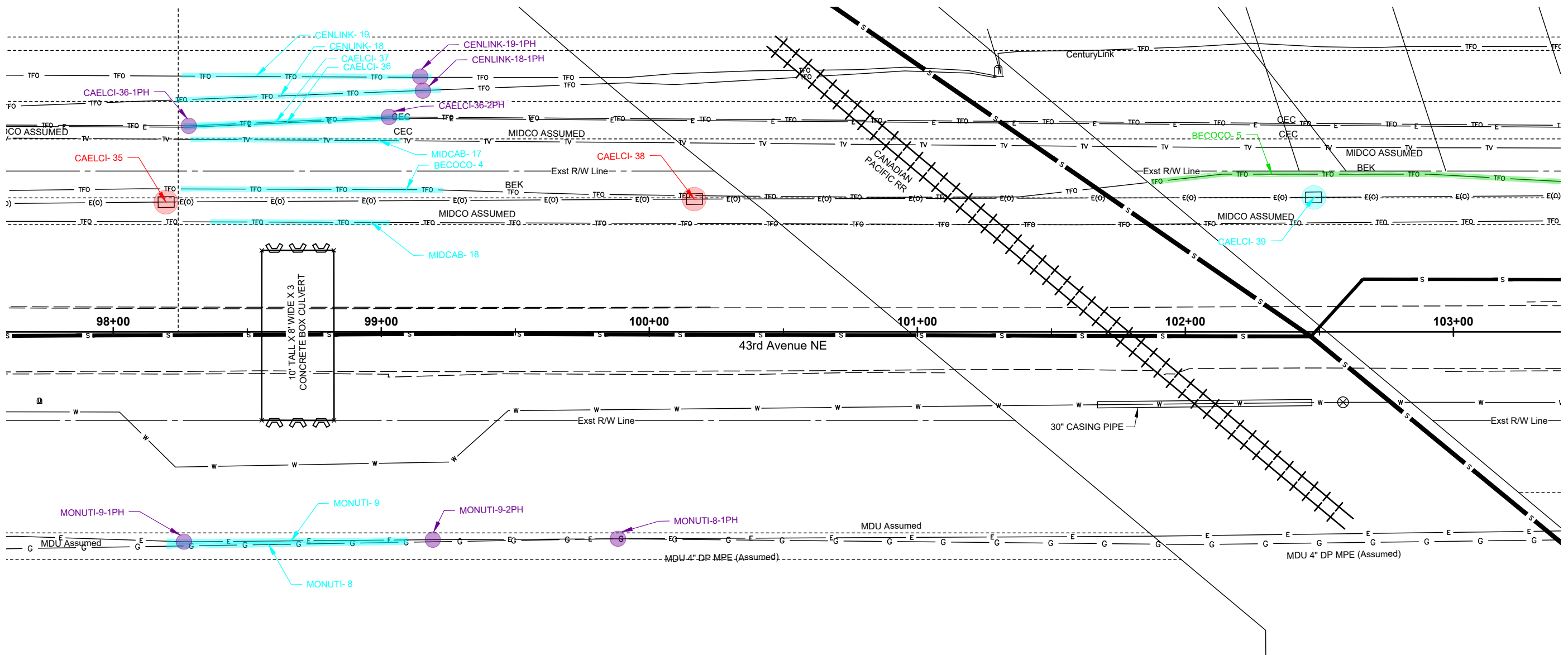
STATE	PROJECT NO.	SEC. NO.	SHEET NO.
ND	AC-NHU-CVD-1-981(123)	60	8



LEGEND	
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION

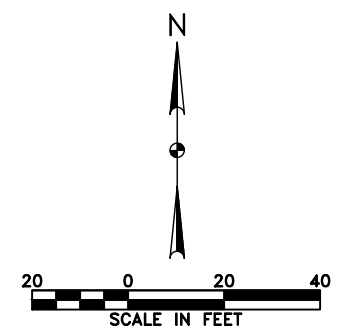


Rev'd.		Scale: 1:40 Hor. 1:10 Ver.	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
		43rd Avenue NE Appendix B	
		Sta 93+00 to 98+00	
DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021

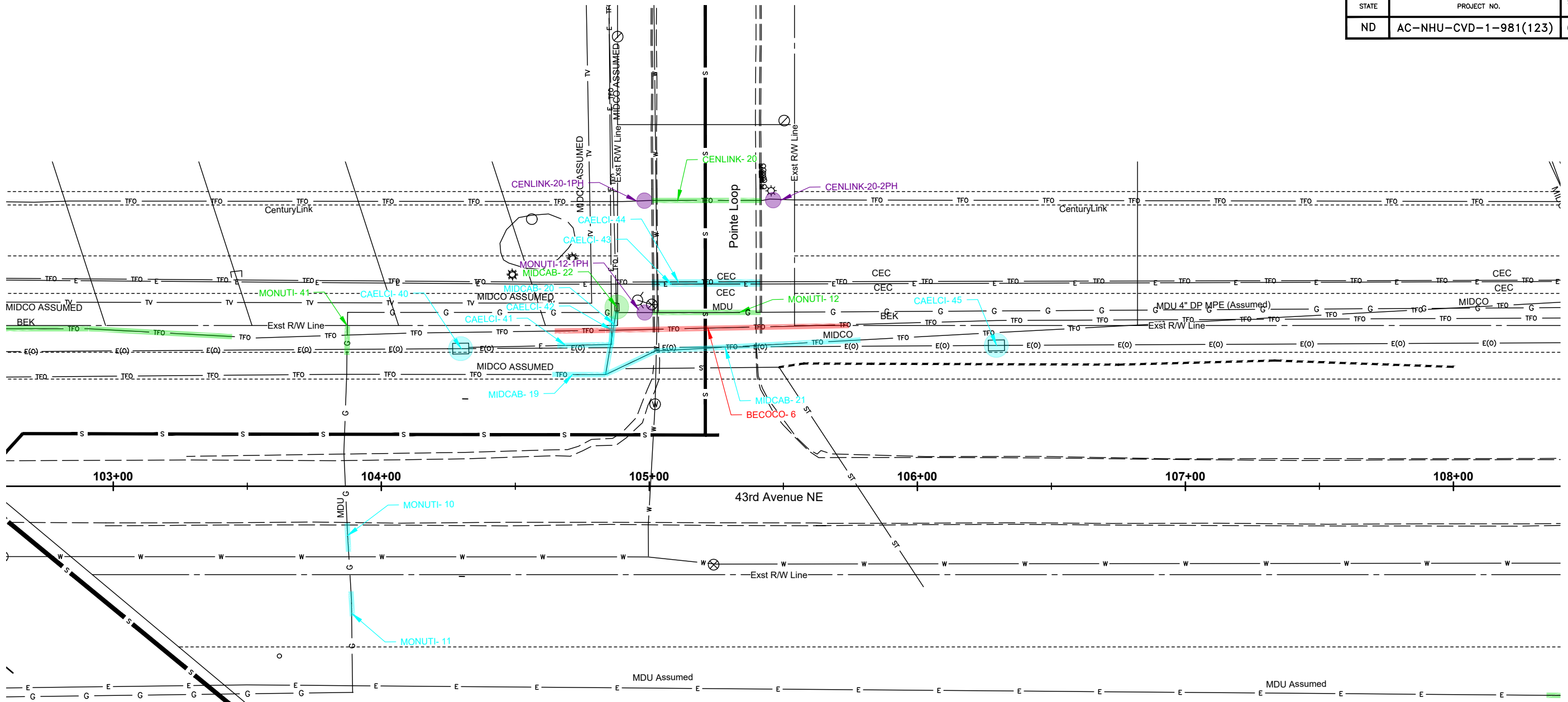


Pothole Location						
Pothole ID	Alignment	Station	Offset	RT/LT	EG Elevation	Utility Elevation
MONUTI-9-1PH	PR43rdE	98+26.4	78.3'	RT	1729.20	1726.23
CAELCI-36-1PH	PR43rdE	98+28.2	76.9'	LT	1731.56	1726.31
CAELCI-36-1PH	PR43rdE	99+03.9	80.2'	LT	1731.04	1726.71
CENLINK-19-1PH	PR43rdE	99+16.2	95.0'	LT	1733.54	1731.42
CENLINK-18-1PH	PR43rdE	99+17.0	90.1'	LT	1733.65	1731.37
MONUTI-9-2PH	PR43rdE	99+19.3	77.5'	RT	1731.19	1727.09
MONUTI-8-1PH	PR43rdE	99+88.3	77.2'	RT	1730.16	1727.92

LEGEND	
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION

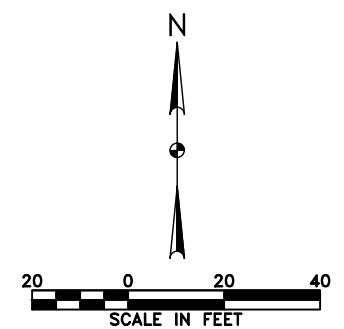


Rev'd.		Scale: 1:40 Hor 1:10 Ver	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
		43rd Avenue NE Appendix B Sta 98+00 to 103+00	
DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021

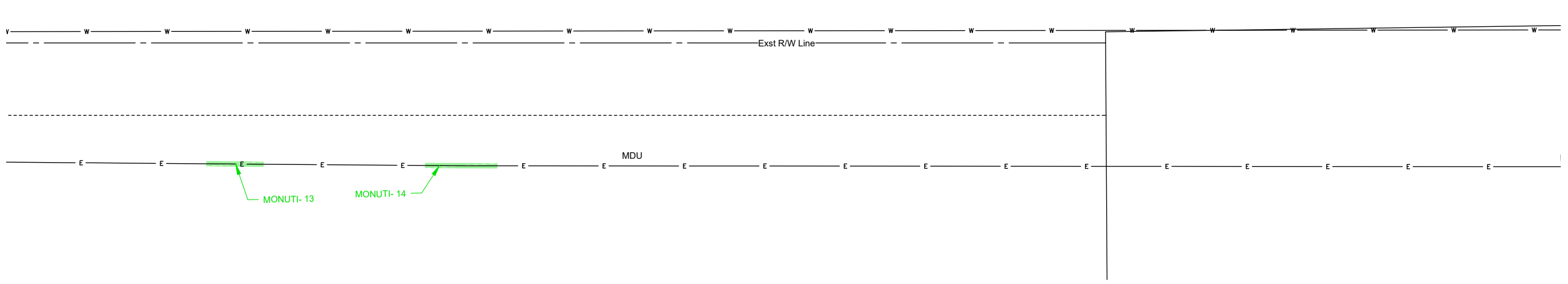
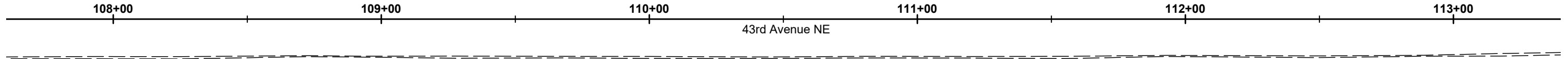
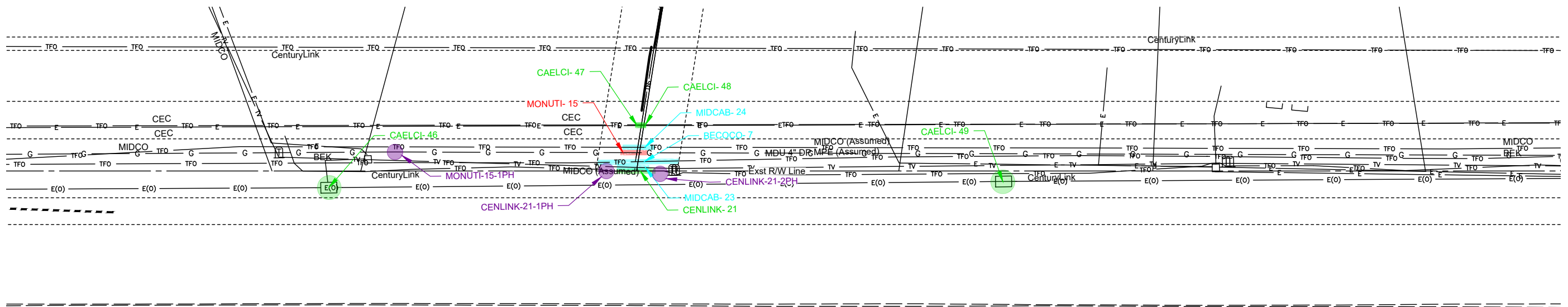


Pothole Location						
Pothole ID	Alignment	Station	Offset	RT/LT	EG Elevation	Utility Elevation
CENLINK-20-1PH	PR43rdE	104+98.8	106.6'	LT	1735.46	1733.45
CENLINK-20-2PH	PR43rdE	105+45.0	107.3'	LT	1735.33	1733.45
MONUTI-12-1PH	PR43rdE	104+98.0	64.8'	LT	1734.73	1729.25

LEGEND	
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION



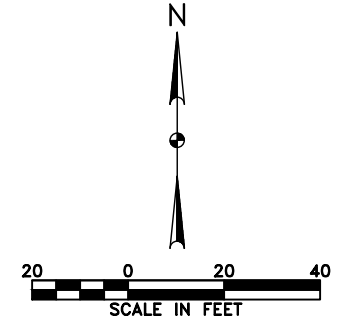
Rev'd.		Scale: 1:40 Hor 1:10 Ver	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
		43rd Avenue NE Appendix B	
		Sta 103+00 to 108+00	
DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021
© KLJ 2021			



Pothole Location						
Pothole ID	Alignment	Station	Offset	RT/LT	EG Elevation	Utility Elevation
MONUTI-15-1PH	PR43rdE	109+05.1	67.1'	LT	1752.26	1749.22
CENLINK-21-1PH	PR43rdE	109+85.5	59.9'	LT	1752.68	1749.40
CENLINK-21-2PH	PR43rdE	110+05.4	60.0'	LT	1754.43	1751.02

LEGEND

- LEVEL 1 UTILITY ENCOUNTER
- LEVEL 2 UTILITY ENCOUNTER
- LEVEL 3 UTILITY ENCOUNTER
- LEVEL 4 UTILITY ENCOUNTER
- POTHOLE LOCATION



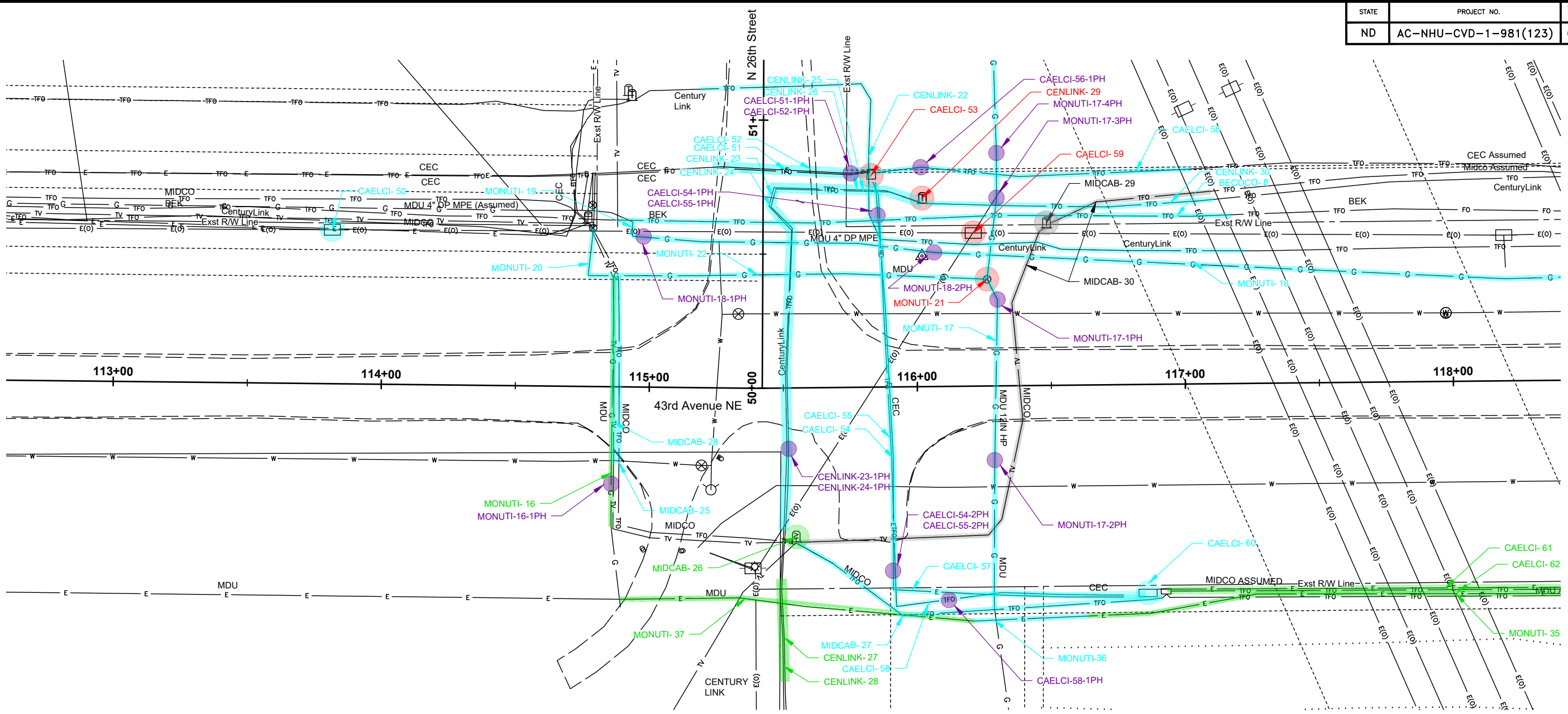
Rev'd. Scale: 1:40 Hor. 1:10 Ver.

43RD AVENUE NE
CITY OF BISMARCK
BISMARCK, NORTH DAKOTA

43rd Avenue NE
Appendix B
Sta 108+00 to 113+00

DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021
----------------	-----------------	---------------------------	-----------------

© KLJ 2021

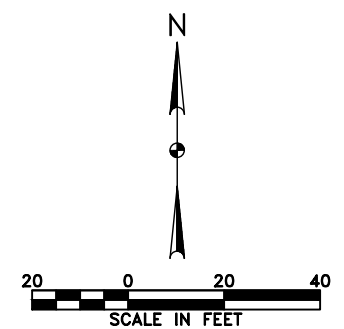


Pothole Location						
Pothole ID	Alignment	Station	Offset	RT/LT	EG Elevation	Utility Elevation
MONUTI-17-2PH	PR43rdE	116+28.6	27.7'	RT	1782.75	1778.92
MONUTI-17-1PH	PR43rdE	116+30.2	32.2'	LT	1782.45	1779.78
MONUTI-17-3PH	PR43rdE	116+30.2	70.2'	LT	1785.42	1780.92
MONUTI-17-4PH	PR43rdE	116+30.3	86.9'	LT	1785.51	1781.19

Pothole Location						
Pothole ID	Alignment	Station	Offset	RT/LT	EG Elevation	Utility Elevation
MONUTI-16-1PH	PR43rdE	114+86.0	36.6'	RT	1775.58	1771.84
MONUTI-18-1PH	PR43rdE	114+97.3	56.2'	LT	1775.80	1774.05
CENLINK-23-1PH	PR43rdE	115+51.8	22.7'	RT	1779.71	1777.42
CENLINK-24-1PH	PR43rdE	115+51.8	22.7'	RT	1779.71	1776.26
CAELCI-51-1PH	PR43rdE	115+76.0	79.8'	LT	1780.22	1775.99
CAELCI-52-1PH	PR43rdE	115+76.0	79.8'	LT	1780.22	1775.98
CAELCI-54-1PH	PR43rdE	115+85.8	64.1'	LT	1780.66	1777.37
CAELCI-55-1PH	PR43rdE	115+85.8	64.1'	LT	1780.66	1777.32
CAELCI-54-2PH	PR43rdE	115+90.2	68.6'	RT	1780.16	1776.33
CAELCI-55-2PH	PR43rdE	115+90.2	68.6'	RT	1780.16	1776.36
CAELCI-56-1PH	PR43rdE	116+02.1	81.9'	LT	1783.66	1780.50
MONUTI-18-2PH	PR43rdE	116+06.9	50.0'	LT	1783.43	1779.96
CAELCI-58-1PH	PR43rdE	116+11.0	79.8'	RT	1780.70	1778.14

LEGEND

- LEVEL 1 UTILITY ENCOUNTER
- LEVEL 2 UTILITY ENCOUNTER
- LEVEL 3 UTILITY ENCOUNTER
- LEVEL 4 UTILITY ENCOUNTER
- POTHOLE LOCATION



Rev'd. Scale: 1:40 Hor. 1:10 Ver.

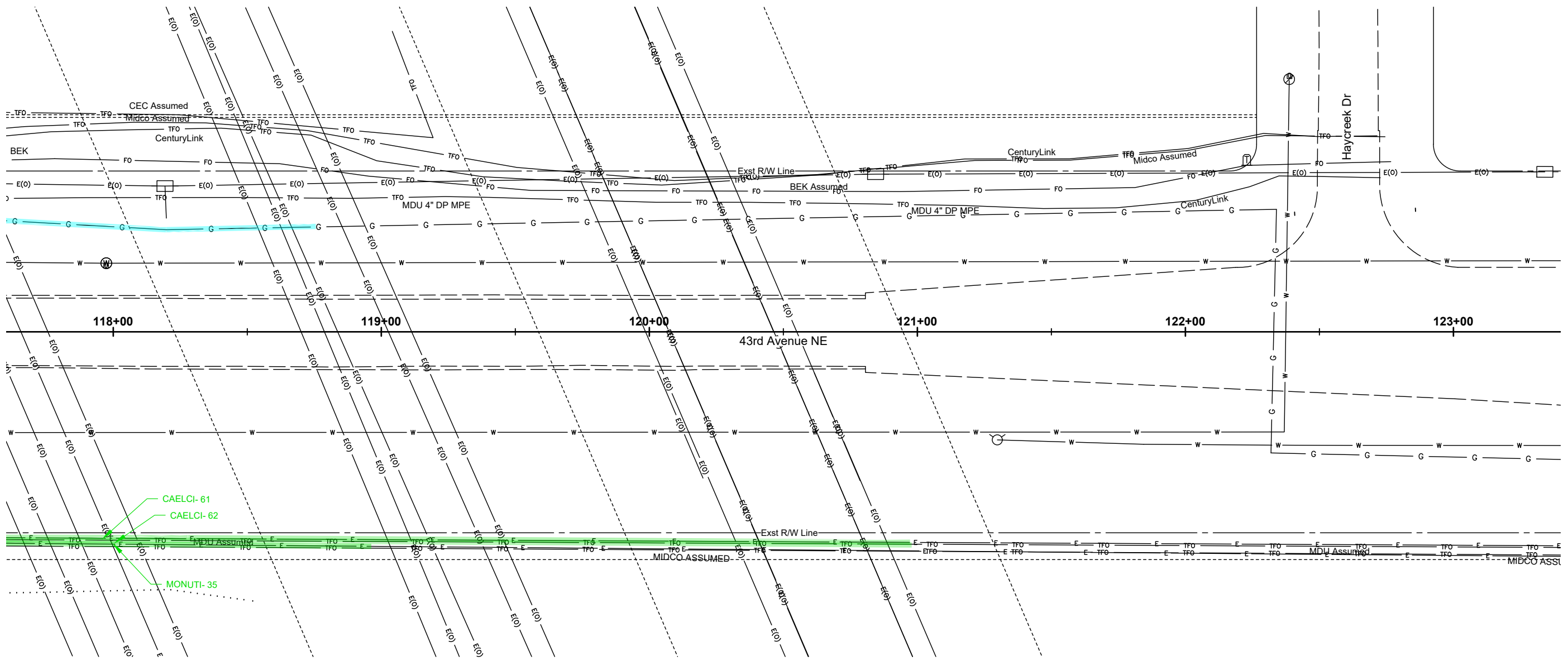
43RD AVENUE NE
CITY OF BISMARCK
BISMARCK, NORTH DAKOTA

43rd Avenue NE
Appendix B
Sta 113+00 to 118+00

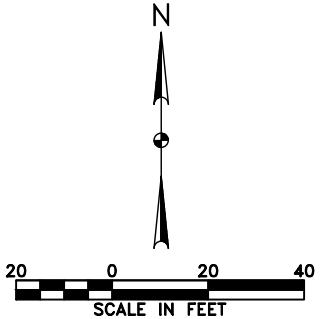
DRWN. BY	CHK'D BY	PROJECT NO.	DATE
KH	PTG	2004_00653	12/2021

© KLJ 2021

STATE	PROJECT NO.	SEC. NO.	SHEET NO.
ND	AC-NHU-CVD-1-981(123)	60	13

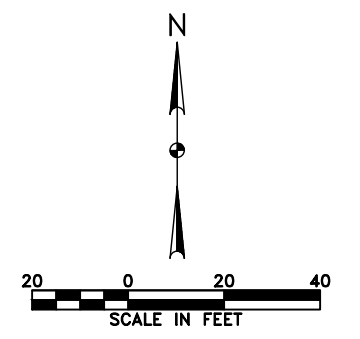
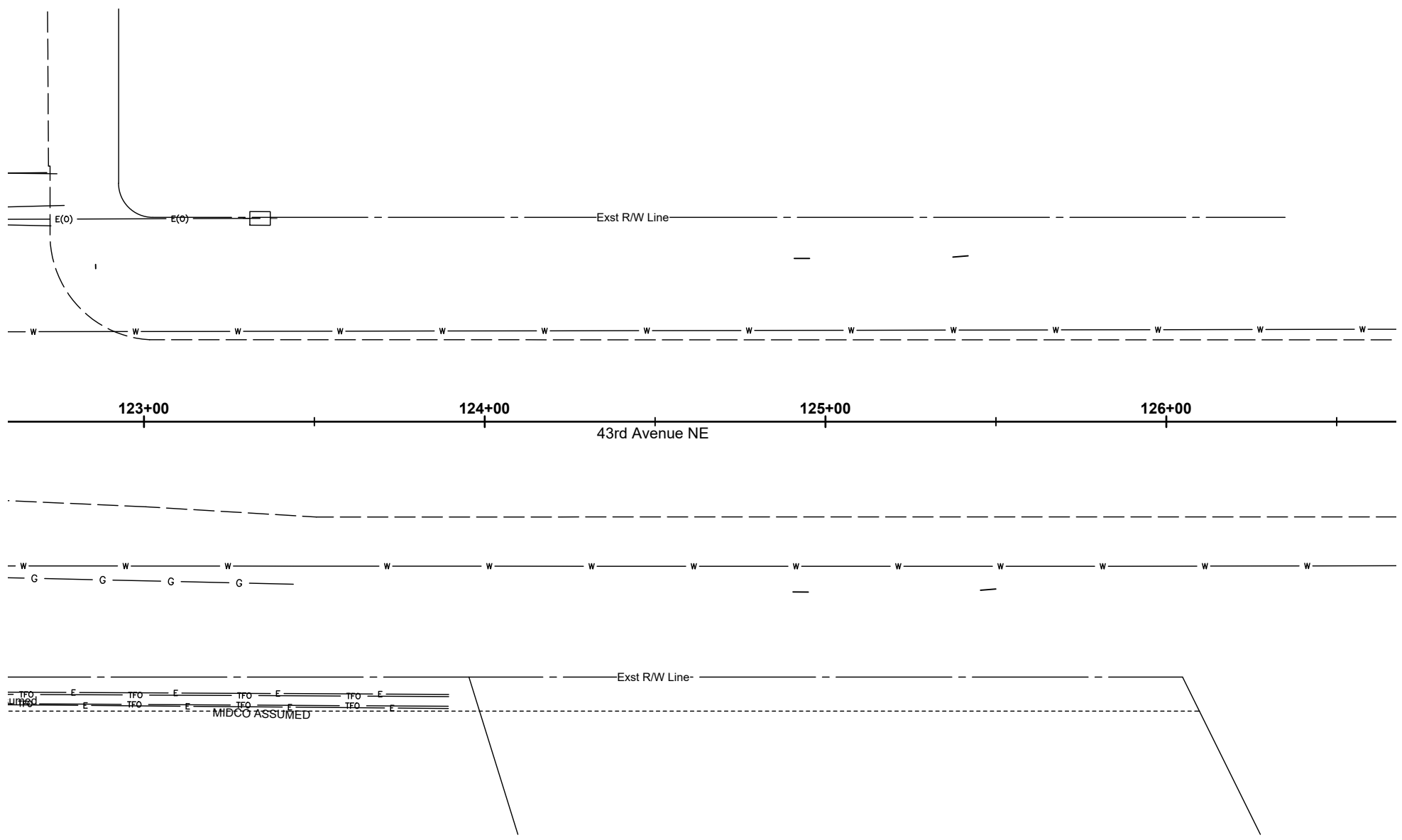







LEGEND	
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION




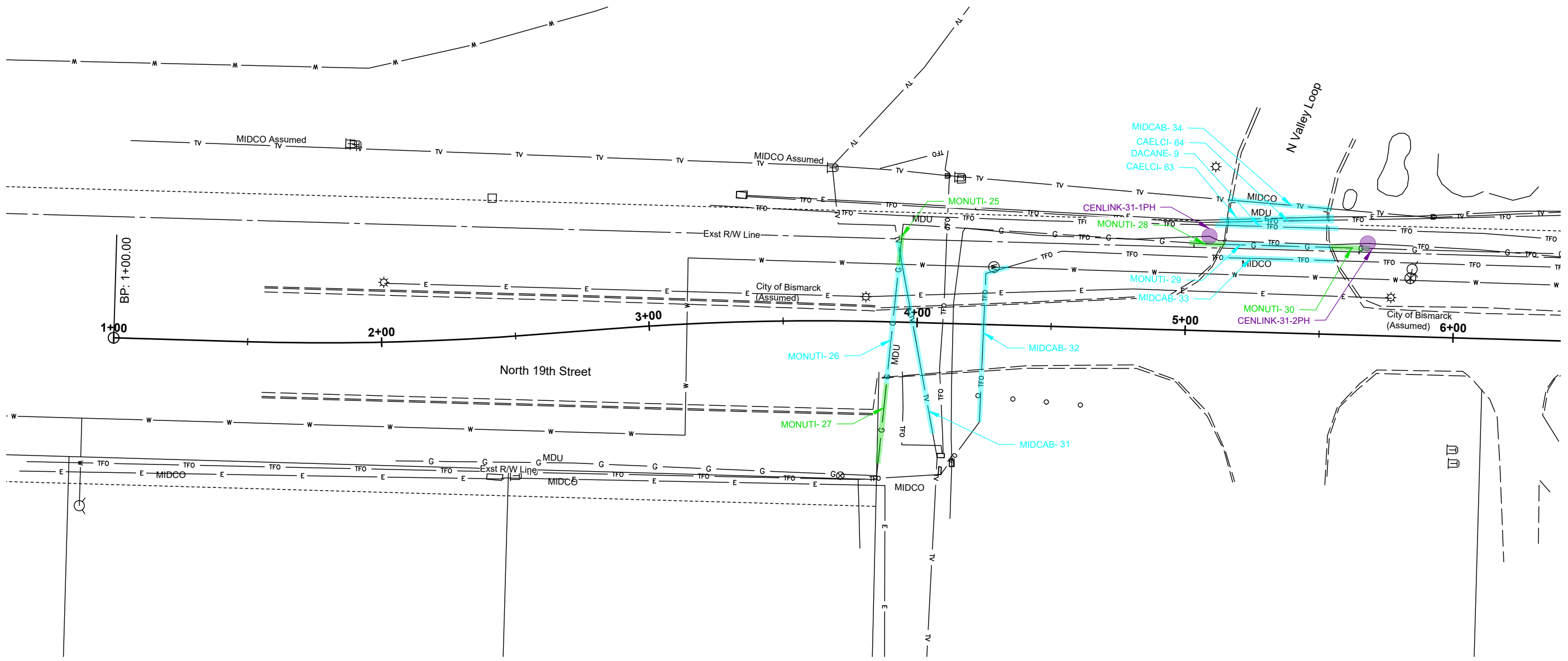
Rev'd.		Scale: 1:40 Hor 1:10 Ver	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
		43rd Avenue NE Appendix B	
		Sta 118+00 to 123+00	
DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021

STATE	PROJECT NO.	SEC. NO.	SHEET NO.
ND	AC-NHU-CVD-1-981(123)	60	14

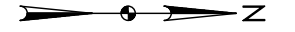


LEGEND	
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION

Rev'd.		Scale: 1:40 Hor 1:10 Ver	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
	43rd Avenue NE Appendix B Sta 123+00 to 126+00		
	<small>DRWN. BY</small> KH	<small>CHK'D BY</small> PTG	<small>PROJECT NO.</small> 2004_00653
<small>© KLJ 2021</small>			

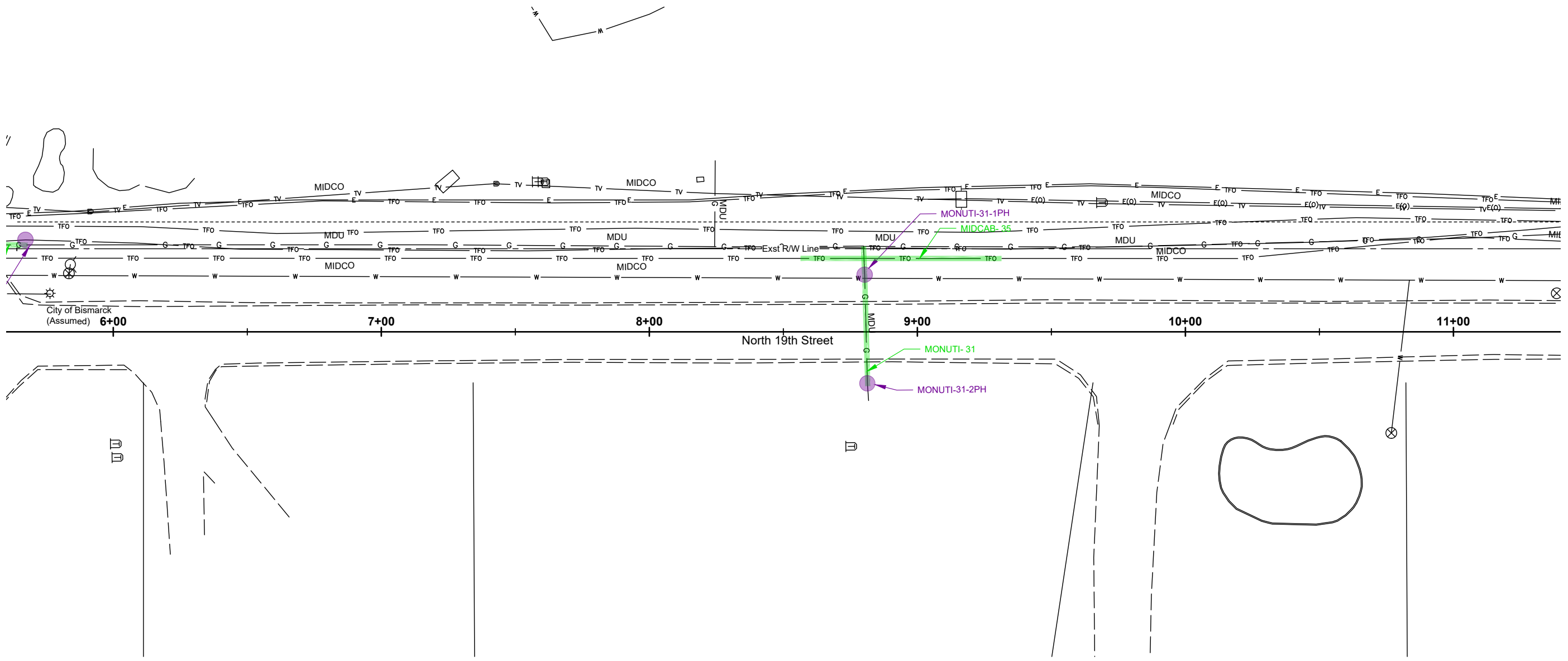


Pothole Location						
Pothole ID	Alignment	Station	Offset	RT/LT	EG Elevation	Utility Elevation
CENLINK-31-1PH	PR19thStS	5+08.1	35.3'	LT	1798.29	1793.03
CENLINK-31-2PH	PR19thStS	5+67.3	34.3'	LT	1796.45	1792.12



LEGEND	
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION

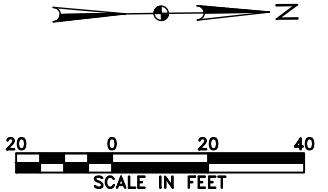
Rev'd.		Scale: 1:40 Hor 1:10 Ver	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
		North 19th Street Appendix B	
		Sta 1+00 to 6+00	
DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021
© KLJ 2021			



Pothole Location						
Pothole ID	Alignment	Station	Offset	RT/LT	EG Elevation	Utility Elevation
MONUTI-31-1PH	PR19thStS	8+80.4	21.3'	LT	1781.78	1776.38
MONUTI-31-2PH	PR19thStS	8+81.4	19.3'	RT	1781.75	1778.51

LEGEND

- LEVEL 1 UTILITY ENCOUNTER
- LEVEL 2 UTILITY ENCOUNTER
- LEVEL 3 UTILITY ENCOUNTER
- LEVEL 4 UTILITY ENCOUNTER
- POTHOLE LOCATION



Rev'd. Scale: 1:40 Hor 1:10 Ver

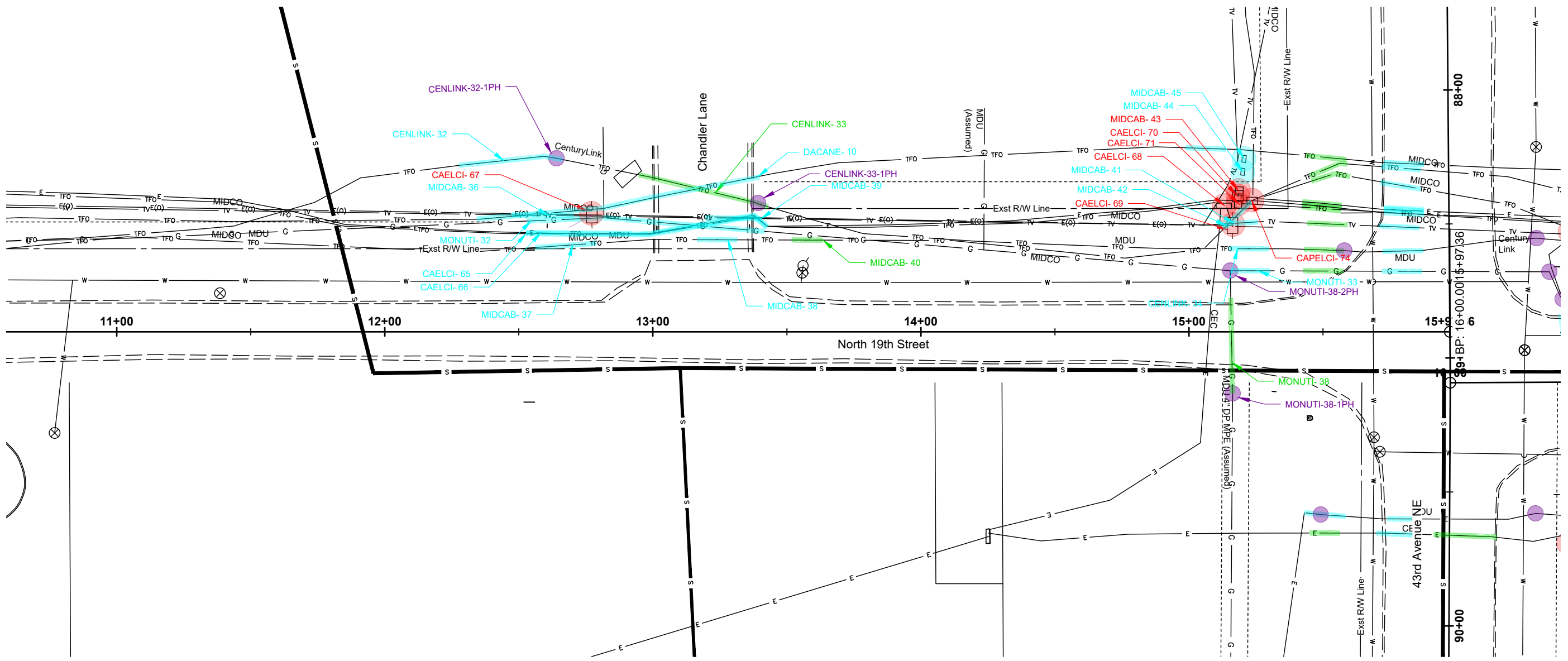
43RD AVENUE NE
CITY OF BISMARCK
BISMARCK, NORTH DAKOTA

North 19th Street
Appendix B

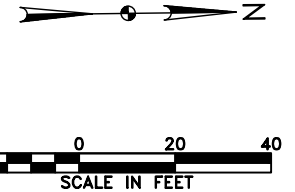
Sta 6+00 to 11+00

DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021
----------------	-----------------	---------------------------	-----------------

© KLJ 2021



Pothole Location						
Pothole ID	Alignment	Station	Offset	RT/LT	EG Elevation	Utility Elevation
CENLINK-32-1PH	PR19thStS	12+64.1	64.7'	LT	1749.01	1745.01
MONUTI-38-2PH	PR19thStS	15+15.4	22.8'	LT	1746.23	1743.45
MONUTI-38-1PH	PR19thStS	15+16.3	23.0'	RT	1746.47	1741.66



LEGEND

- LEVEL 1 UTILITY ENCOUNTER
- LEVEL 2 UTILITY ENCOUNTER
- LEVEL 3 UTILITY ENCOUNTER
- LEVEL 4 UTILITY ENCOUNTER
- POTHOLE LOCATION

Rev'd. Scale: 1:40 Hor. 1:10 Ver.

43RD AVENUE NE
CITY OF BISMARCK
BISMARCK, NORTH DAKOTA

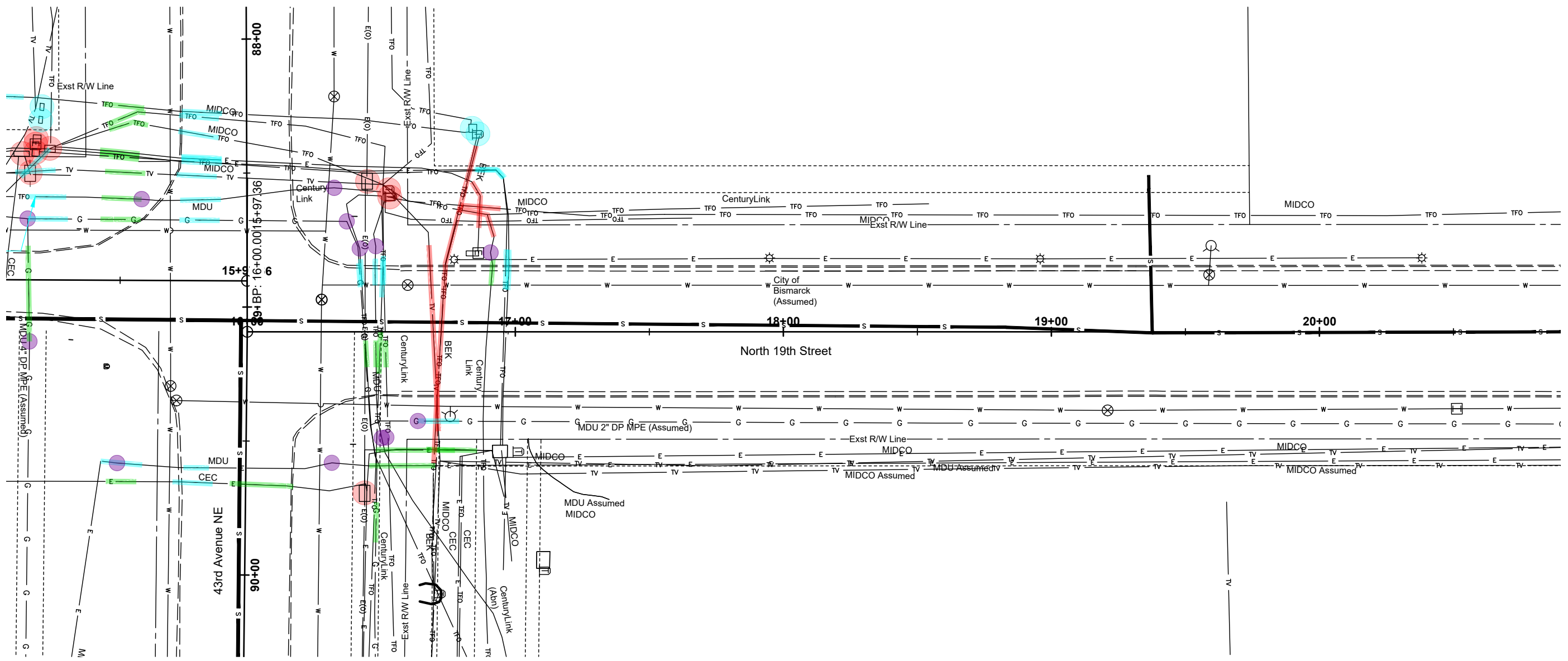
North 19th Street
Appendix B

Sta 11+00 to 16+00

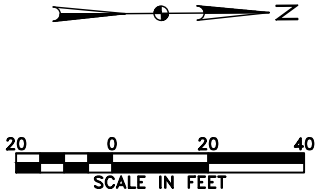
DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021
----------------	-----------------	---------------------------	-----------------

© KLJ 2021

STATE	PROJECT NO.	SEC. NO.	SHEET NO.
ND	AC-NHU-CVD-1-981(123)	60	18

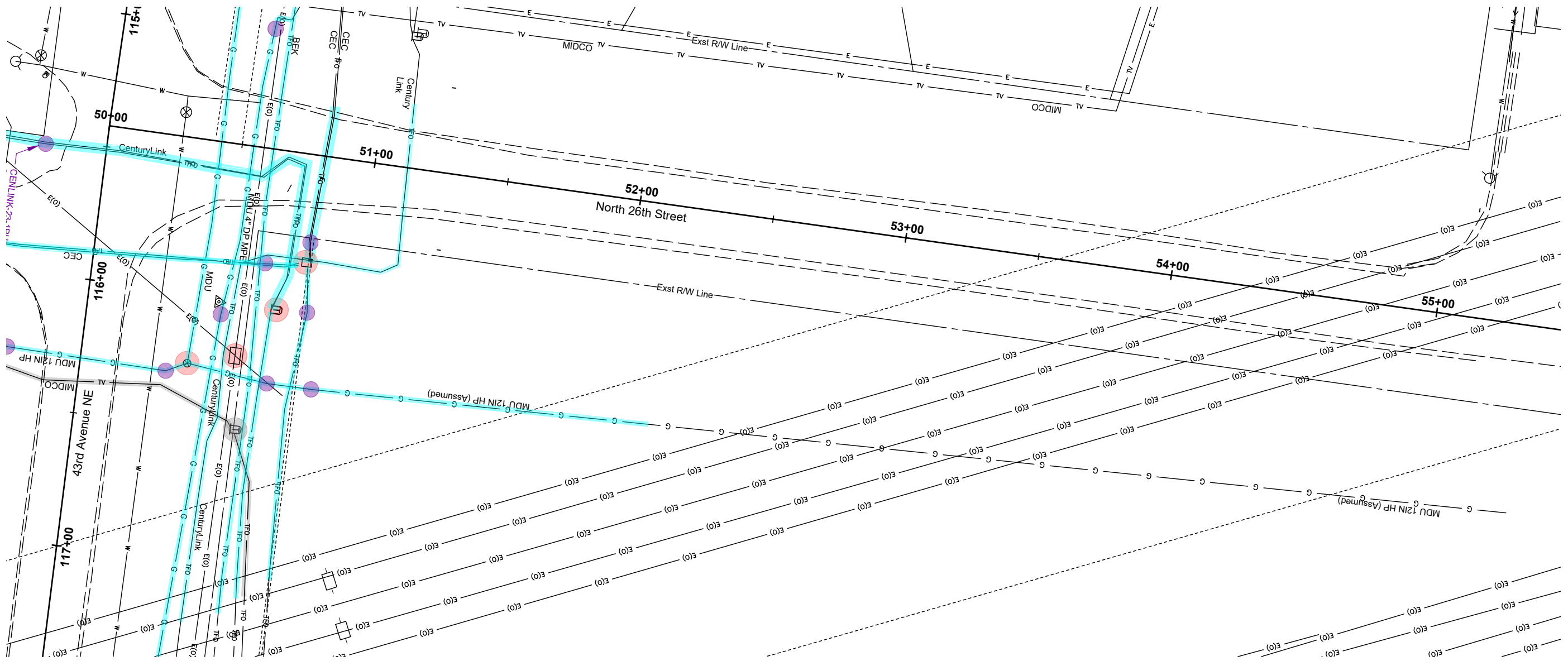


LEGEND	
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION

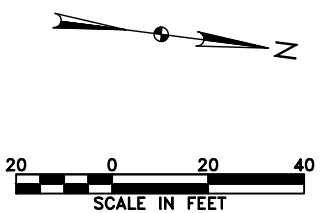


Rev'd.		Scale: 1:40 Hor 1:10 Ver	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
		North 19th Street Appendix B	
		Sta 16+00 to 20+00	
DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021

STATE	PROJECT NO.	SEC. NO.	SHEET NO.
ND	AC-NHU-CVD-1-981(123)	60	19



LEGEND	
	LEVEL 1 UTILITY ENCOUNTER
	LEVEL 2 UTILITY ENCOUNTER
	LEVEL 3 UTILITY ENCOUNTER
	LEVEL 4 UTILITY ENCOUNTER
	POTHOLE LOCATION



Rev'd.		Scale: 1:40 Hor 1:10 Ver	
43RD AVENUE NE CITY OF BISMARCK BISMARCK, NORTH DAKOTA			
		North 26th Street Appendix B	
		Sta 100+00 to 105+25	
DRWN. BY KH	CHK'D BY PTG	PROJECT NO. 2004_00653	DATE 12/2021
© KLJ 2021			

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION (SP)

RAILROAD REQUIREMENTS

AC-NHU-CVD-1-981(123) – PCN 22929

This Special Provision incorporates requirements set forth by Canadian Pacific Railroad (CP) and Dakota, Missouri Valley, and Western Railroad (DMVW). Prior to any work within railroad right of way, the following must be completed/submitted:

- Complete and submit the “RIGHT OF ENTRY LICENSE AGREEMENT” that is attached to this Special Provision. The agreement will be provided in Word format by the Engineering upon request.
- Abide by the “Minimum Safety Requirements for Contractors Working on CP Property in the United States”. See attached for document.
- Request flagging from DMVW if work will be completed within 25-feet of the railroad tracks. Flagging needs to be requested 48-hours prior to the work. Flagging will be charged at \$100/hour. Contact Troy Fast (701-595-7124) for flagging needs.
- A conditional permit for the installation of the waterline through railroad right of way has been granted. Prior to beginning work on the waterline crossing, submit the following items to the Engineer:
 - Dewatering Plan
 - Recovery Plan
 - Work Plan (including a detailed description of construction methods and equipment)

RIGHT OF ENTRY LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “**Agreement**”) is made by and between **Soo Line Railroad Company** doing business as Canadian Pacific and **Add Your Company Name** .

1. PARTIES

SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as Canadian Pacific with general offices at:

Address	Contact Info	
Canadian Pacific Plaza 120 South 6th St. – Suite 700 Minneapolis, Minnesota 55402	Name:	Matthew Miller
	Phone:	(612) 330-4556
	Fax:	
	Email:	matthew_miller@cpr.ca

hereinafter called “**CP**,”

and **Add Your Company Name** , a whose address is:

Address	Contact Info	
Add Your Address	Name:	Your Name
	Phone:	
	Fax:	
	Mobile:	
	Email:	

hereinafter called “**Licensee**.”

2. PROPERTY; SCHEDULE; GRANT OF LICENSE

2.1 Property

CP hereby grants Licensee a license to enter in and upon certain property owned or controlled by CP in **Add Your City Location**, **Add Your State Location** near railroad mile post **Add MP** +/- on the **Add Subdivision** Subdivision, as shown upon the map labeled **Exhibit A** that is attached hereto and made a part hereof (the “**Property**”)

2.2 Work Schedule

for the sole for the purpose of performing, generally, the following activities: **Add a Detailed description of your Work/Project** (the “**Work**”), as detailed in Licensee’s plans, specifications and special provisions. The Work is subject to approval by CP’s authorized representative.

2.3 Grant of License

This license is granted subject to all the terms and conditions set forth below and applies to all Work and activities upon the Property that may be performed by Licensee through its employees, agents, and contractors. For the purposes of this Agreement, the actions and omissions of such employees, agents, and contractors shall be deemed the actions and omissions of Licensee.

2.4 Agreement to be Available at Work Site

Licensee shall keep a copy of this Agreement at the Work site and shall make it available upon demand by any employee or agent of CP.

3. TERM, EFFECTIVE DATE, EXPIRATION & TERMINATION

3.1 Term

The term of this Agreement shall

Commence at 12:01 am on **Add Your Start Date, 2020** (the “Commencement Date”); and

Expire at 11:59 pm on **Add Your End Date, 2020** (the “Expiration Date”)

the “Term.” Upon agreement between CP and Licensee, the Term may be lengthened or shortened without affecting any other provisions of this Agreement.

3.2 Effective Date

This Agreement shall be effective upon the date that it has been signed by both parties.

3.3 Expiration

This Agreement will expire at the Expiration Date, or when the Work is completed, whichever occurs first. Notwithstanding any other provision of this Agreement, the preceding sentence shall not terminate or limit any claim by CP against Licensee arising prior to the Expiration Date. If the Work includes monitoring wells, and if such wells remain on the Property after the Expiration Date, this Agreement shall remain in effect for those wells until the earlier of the following:

- (i) the date they are properly closed (*i.e.*, sealed and abandoned in accordance with applicable legal requirements) by Licensee or
- (ii) the date CP assumes ownership of such wells pursuant to section 10.8.

3.4 TERMINATION; EXCLUSION

Notwithstanding anything to the contrary contained herein, this Agreement is terminable by CP prior to the Expiration Date in the event Licensee breaches any of its obligations under this Agreement. If CP elects to terminate this Agreement, it shall give Licensee notice of termination, which notice shall specify the obligation or obligations breached by Licensee; and this Agreement shall terminate 30 days after such notice is given (provided, however, that this Agreement shall not terminate if the breach is cured within said 30 day period). The early termination of this Agreement shall not terminate or limit any claim by CP against Licensee arising prior to such termination. If Licensee is in breach of any of its obligations under this Agreement, any employee or agent of CP may order Licensee off the Property, in which case Licensee shall immediately leave the Property; moreover, Licensee shall leave the property immediately upon receipt of a notice given pursuant to this section 3.4; and in either case, Licensee shall not re-enter the Property until such time as the breach is cured.

4. PAYMENTS

4.1 License Fee

In consideration of the permissions herein granted, Licensee shall with its execution hereof pay to CP the sum of **One Thousand Five Hundred Dollars (\$1,500.00)**.

4.2 Utilities

Licensee shall assume and timely pay for any gas, electrical, telephone, computer, sewer, water, storm water, waste or trash removal or any other service or commodity connected with the Work, collectively “**Utility Service.**” If any Utility Service fee is in common with CP or other parties, Licensee shall be liable for its proportionate share of any such Utility Service Fee and upon receipt of a bill therefor, promptly pay CP or such other party for its share. It shall be a default of the terms of this license if it can be shown that Licensee has not made such payments within 30 days if due to CP, or within 60 days if payable to any other party.

4.3 Mechanics' And Materialmen's Liens

If any mechanics' or materialmen's lien, or similar lien, is asserted against the Property, or any other property of CP, as a consequence of the Work, Licensee shall immediately satisfy, defend, or obtain the release of such lien, all at Licensee's expense, and Licensee shall indemnify and defend CP against any Claims arising out of or connected with such lien.

4.4 Additional Charges

Licensee shall within 30 days of receipt of a bill therefor, pay to CP costs for flagging, track changes or damage, or other such charges as may be provided by this Agreement or that CP may reasonably impose in connection with Licensee's Work.

4.5 Due Dates; Penalties; Other Charges

4.3.1 Due Dates

Any item, submission or payment required to be made shall be deemed timely made if received by the other party on or before the specified due date, or prior to expiration of the applicable period for compliance, submission or payment.

4.3.2 Late Fees

In addition to any amounts payable by Licensee to CP, Licensee shall pay CP a late fee for any payment not timely made by Licensee. The late fee shall be at the rate for overdue accounts set by CP's Accounting Department that is in effect at the time that that any such payment is due. Said late fee shall initially be an amount equal to 1% of the invoice amount per month.

4.3.3 Fines and Service Fees

In addition to any other amounts payable by Licensee to CP, Licensee shall pay CP for any bank fines or service incurred by it in connection with the handling, non-payment, return or currency conversion incurred by CP in connection with processing of any payment made by Licensee to CP.

4.6 Work At No Cost To CP

The Work completed by Licensee shall be performed at no cost to CP.

5. CONTACT, NOTICES, ETC.

5.1 Contact Persons; Communications

Communications pursuant to this Agreement shall be directed to the contact persons designated in Section 1 or their designees. Either party may change its contact person, or the address(es), telephone number, or fax number for the contact person, by notice to the other party.

5.2 Notices

Except as otherwise provided in this Agreement, all notices pursuant to this Agreement shall be in writing and shall be effective upon delivery to the address or fax number of the contact person for the party to whom notice is being given. If notice is given by fax, the notice shall not be deemed effective until received in legible form.

5.3 Notification Prior To Beginning Work

Licensee must notify CP's contact person by telephone at least three working days prior to beginning any separate phase of the Work, and again promptly after such phase of the Work has been completed.

6. PERMITTED & PROHIBITED USES; RIGHTS OF CP

6.1 Permitted Uses

6.1.1 The Work

The use of Property by Licensee shall be limited to the completion of the Work set forth in Section 2.2., or such other activities as may be approved by CP in writing.

6.1.2 Government Authorities

Licensee may permit governmental authorities other than Licensee with jurisdiction over the Work to enter the Property for the purpose of inspecting or monitoring the Work. Whenever possible, Licensee shall advise CP (by telephone or other means calculated to bring the matter to CP's immediate attention) prior to permitting such governmental authorities to enter the Property for such purposes. The actions and omissions of such governmental authorities while on the Property for such inspections and monitoring shall be deemed the actions and omissions of Licensee. Licensee is not authorized to permit governmental authorities other than Licensee to enter the Property for any other purpose.

6.2 Prohibited Uses and Activities

Licensee shall not use, occupy or permit the Property to be used for any purpose, activity or improvement except as provided in this Agreement or as may be approved of in writing by CP. Specifically, Licensee shall not:

6.2.1 Advertising

permit any advertisements or signs upon the Property;

6.2.2 Use of Hazardous Substances

without prior written disclosure to and approval by CP, Use or authorize the Use of any Hazardous Substance on the Property, including installation of any above or underground storage tanks; subject thereto, Licensee shall arrange at its own cost for the lawful transportation and off-site disposal of any and all Hazardous Substances that it shall Use or generate;

6.2.3 Use of Premises for waste treatment or as storage or disposal facility

cause or allow the Property or any of CP's adjacent property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or to otherwise bring any such property within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or any similar state statute or local ordinance; or

6.2.4 Subleasing is prohibited

sublease the Property or the permissions or rights herein granted in any manner or form.

6.3 Reservations and Rights of CP

6.3.1 Railroad Activities Take Priority over Work

All Work by Licensee shall always and all times be subordinate to the needs of CP in connection with the operation and movement of railroad trains and equipment, and the repair of railroad track, structures, communications and appurtenances thereto.

6.3.2 Reservation of prior and future uses not inconsistent with Licensee's activities

The rights herein granted to Licensee are subject to the rights granted in all other licenses, permits and easements for tracks, roads, walkways, poles, wires, pipelines, sewers, billboards and other improvements that exist or may be placed upon, across, above or underneath the Property by CP, or its employees, agents, licensees, grantees, representatives or invitees. Further, CP reserves unto itself the right to place (or to give others the right to place) additional tracks, roads, walkways, poles, wires, pipelines, sewers and billboards upon, across, above or underneath the Property in any manner that does not unreasonably interfere with Licensee's Work.

6.3.3 **Monitoring**

CP may elect to be present during the conduct of the Work and to monitor same.

7. COVENANTS, CONDUCT & RESPONSIBILITIES

7.1 Definitions

- 7.1.1 **"Claim"** or **"Claims"** means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultants' fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);
- 7.1.2 **"Environmental Law"** or **"Environmental Laws"** means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law, ordinance, order or decree dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted;
- 7.1.3 **"Hazardous Substance"** or **"Hazardous Substances"** means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law;
- 7.1.4 **"Release"** or **"Released"** means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or spreading of any Hazardous Substance into the environment, as "environment" is defined in CERCLA;
- 7.1.5 **"Response"** or **"Respond"** means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance;
- 7.1.6 **"Use"** means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon.

7.2 Investigation; Compliance with Laws; Safety Requirements

7.2.1 **Tenants and Licensees in possession of Property**

Before entering the Property, Licensee shall secure the consent of all persons or entities who are using or occupying any portion of the Property. CP will cooperate with Licensee to obtain consent from any such person or entity who unreasonably withholds consent.

7.2.2 **Underground Utilities and Structures**

- a. Licensee shall be responsible for determining the location of all underground utilities (electric lines, telephone lines, gas lines, steam lines, sewer lines, water lines, fiber optic cables, pipes, wires, and the like) and underground structures.

- b. Licensee shall call **CPCBYD “Canadian Pacific Call before You Dig”** at **1-866-291-0741 for Signal, Fiber Optics, and Power for CP Facilities on Canadian Pacific Right of Way and the STATE “ONE CALL”** a minimum of 5 business prior to commencing any excavation or boring on the Property.
- c. CP will cooperate with Licensee to identify the location of underground utilities and structures known to CP, but such cooperation shall not relieve Licensee from its primary responsibility to determine the locations of such utilities and structures.

7.2.3 Permits And Licenses; Compliance With Laws

Licensee shall secure, at no expense to CP, any permits or licenses required in connection with the Work and shall comply with all laws applicable to the Work and the Property, including (but not limited to) any laws, standards, regulations, and permit requirements relating to environmental pollution or contamination or to occupational health and safety. Licensee shall indemnify and defend CP against any and all Claims arising out of or connected with the violation of any law by Licensee while on or about the Property.

7.2.4 Compliance with CP Safety Requirements; Identification

- a. While on the Property, Licensee shall comply with the safety requirements of CP, as such requirements may be amended from time to time during the duration of the Work, all at no expense to CP. CP's safety requirements are set forth “**Exhibit B**” titled “**MINIMUM SAFETY REQUIREMENTS FOR CONTRACTORS WORKING ON RAILWAY PROPERTY**” and in CP's current safety handbook. One free copy of the current safety handbook will be provided to Licensee by the CP contact person. Additional copies will be provided at Licensee's expense. Licensee shall be responsible for ensuring that any person performing any of the Work for or on behalf of Licensee shall comply with the CP safety requirements that would apply to a CP employee performing similar work.
- b. Prior to any entry onto the Property, Licensee and every employee, agent or subcontractor who carries out any part of the Work on the Property shall successfully complete the safety training available through the e-railsafe program at www.e-railsafe.com in respect to requirements for Canadian Pacific operations.
<if applicable>
- c. Licensee and every employee, agent or subcontractor who carries out any part of the Work on the Property shall at all times wear and visibly display the identification badge issued to them following successful completion of the e-railsafe safety training together with whatever additional identification materials that CP may reasonable require.

7.3 Work In Close Proximity To Railroad Operations; Drainage

7.3.1 Interference with Railroad Operations

Licensee shall keep CP fully apprised of its proposed activities on the Property so as to prevent any interference with the operations of CP's trains or equipment (or trains or equipment of others) operating on or near the Property.

7.3.2 Clearance

No work shall be done or any equipment or other obstruction placed over or within 25 feet laterally of the centerline of any track without advance notification to CP prior to performing such work or placing such equipment or obstruction.

7.3.3 Flagging

Licensee must make arrangements with CP for such flagging or watchman service as CP deems necessary for the protection of railroad traffic. All such flagging and watchman service shall be provided by CP at Licensee's expense. The fact that CP provides such service shall not relieve Licensee from any liability under this Agreement. CP's labor and material additives are subject to change without notice to Licensee, and CP shall be reimbursed based upon its labor and material additives actually in effect as of the date of such service.

7.3.4 Certain Work Close To Track Not Permitted; Lateral Support

- a. Unless otherwise agreed to in writing by CP, excavations, borings, wells, pits, test holes, probe sites, and the like shall not be located closer than 25 feet from the centerline of the nearest railroad track on or adjacent to the Property nor shall it take or allow any action upon the Property that would materially impair the lateral or subadjacent support of adjacent lands or railroad tracks.;
- b. Unless otherwise agreed to in writing by CP, drilling and excavating equipment and related equipment shall not be located closer than 25 feet from the nearest rail of any such track;
- c. In the event that CP permits excavations, borings, wells, pits, test holes, probe sites, or the like in close proximity to tracks, embankments or other features providing lateral or subadjacent support to land or tracks, then notwithstanding anything to the contrary in this license, Licensee shall be responsible for designing and constructing at no cost to CP any measure that is required to prevent the collapse, erosion or impairment to said land or tracks.

7.3.5 Storm Water

Licensee shall not, without the advance written approval of CP, make any changes to the Property that would either increase the historic flow rate of storm water from the Property or create an impediment to the historic flow of storm water to the Property. Unless otherwise agreed in writing, as between CP and Licensee it is understood and agreed that Licensee shall, at Licensee's cost and expense, be responsible for the construction, maintenance, repair and replacement upon the real property or other land not belonging to CP such storm sewer lines, manholes, mains, rip rap, boulders, wing walls, ditches and related to improvements required for Licensee's compliance with this section.

7.3.6. Fencing <If applicable>

Licensee shall, at no cost to CP, construct and maintain during the term hereof a fence acceptable to CP in the location(s) designated on Exhibit A. Following completion of the Work, the Licensee shall remove the fencing, remove any post footings or concrete, and fill and tamp any post holes with clean fill material.

7.4 Conduct

7.4.1 Property clean, safe and free from nuisances

Licensee shall not permit the existence of any nuisance upon the Property and shall at all times keep the Property in a proper, clean, safe and sanitary condition, and free from accumulations of waste materials, debris or refuse.

7.4.2 Release of Hazardous Substances

Licensee shall not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Property.

7.4.3 Response Actions

Licensee shall promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Property caused by, or attributable to, any act or omission of Licensee (or Licensee's employees, agents, representatives or invitees) that could:

- a. give rise to any Claim under any Environmental Law,
- b. cause a public health or workplace hazard, or
- c. create a nuisance.

7.5 Required Notices/Disclosures

7.5.1 Transportation and Disposal Contracts

Licensee shall, upon written request by CP, provide CP with copies of transportation and disposal contracts and manifests for Hazardous Waste, any permits issued under any Environmental Laws, and any other documents demonstrating that Licensee has complied with all Environmental Laws relating to the Property

7.5.2 Releases or Suspected Releases

Licensee shall promptly notify CP of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release.

7.5.3 Notices, summons citations, etc.

Licensee shall promptly provide CP with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, concerning:

- a. any Release of a Hazardous Substance on, to or from the Property,
- b. the imposition of any lien on the Property, or
- c. any alleged violation of or responsibility under any Environmental Law relating to the Property.

7.5.4 Other Reports

Licensee shall, at CP's option, provide CP, at no cost to CP, a copy of any other report, summary or written test results, collectively "**Report**," pertaining to the Work. If any such Report is to be filed or made available to any governmental agency, other than Licensee, acting in a regulatory capacity, other than Licensee, then Licensee shall also give CP a reasonable time (not less than 5 working days) to review and comment on a draft of such Report and when preparing any such final Report pertaining to the Work, Licensee or its contractor shall give due consideration to CP's comments with respect to the draft of that Report. Licensee will promptly provide CP with a copy of any final Report.

7.6 CP's right to Participate in Response Actions

Following receipt of any notice, order, claim, investigation, information request, letter, summons, citation, directive, or other communication identified in section 7.5.3 in connection with any action taken pursuant to section 7.4.3, Licensee shall notify CP of any and all investigations, telephone conferences, settlement discussions, remediation plans and all other interactions, direct or indirect, with governmental or regulatory officials, and Licensee shall take all action necessary to ensure that any indemnification, release, waiver, covenant not to sue, or hold harmless agreement benefiting Licensee and arising out of such activities, whether from a governmental or regulatory entity or from a private entity, also benefits CP to at least the same extent as Licensee.

7.7 Restoration of Property

Upon completion of the Work or expiration or early termination of this Agreement, whichever occurs first, Licensee shall remove any debris resulting therefrom and shall restore the Property to the condition it was in prior to the commencement of the Work (or such other condition as is satisfactory to CP). All excavations are to be backfilled and tamped. All borings shall be backfilled with grout. Drill cuttings shall not be used as backfill. Licensee shall dispose of all drill cuttings, soil and sediment samples, purge water, dewatering effluent, and water samples and all excess excavation material in a manner acceptable to CP and in accordance with all applicable laws, all at no expense to CP.

8. LIABILITY

8.1 Damage to CP Tracks, Facilities, and Equipment

If any tracks, facilities, or equipment owned, used, or maintained by CP are damaged in connection with the Work, CP shall repair (or arrange for the repair of) such damage and Licensee shall pay the full cost of such repair within 30 days after CP shall tender a bill therefor.

8.2 Assumption of Risk

Licensee is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about the Property. Without in any way limiting the scope of the preceding sentence, Licensee assumes the risk that monitoring wells, elevation bench marks, reference points, and other installations located on the Property may be disturbed, damaged, or destroyed by CP or third persons, and Licensee shall not make any claim against CP on account of same, even if such disturbance, damage, or destruction arises from the negligence of CP or its employees, agents, or invitees. Licensee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on the Property.

8.3 Indemnity

To the maximum extent permitted by applicable law, Licensee shall indemnify and defend the Indemnified Parties (as defined below) against all claims, demands, actions, suits, judgments, losses, damages, penalties, fines, and sanctions (collectively, "Claims") arising out of or relating to any destruction of (or damage to) any property or natural resource, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually arises in whole or in part from the Work, any action or omission of Licensee while on or about the Property pursuant to this Agreement, or the exercise by Licensee of the license granted by this Agreement. As used in this Agreement, Indemnified Parties means the following businesses and their officers, directors, employees, and agents: Soo Line Corporation, Soo Line Railroad Company, Delaware and Hudson Railroad Corporation, Dakota, Minnesota and Eastern Railroad Corporation, Soo Line Corporation, Wyoming, Dakota Railroad Properties, Inc., Central Maine & Quebec Railway, The Milwaukee Motor Transportation Company, Hiawatha Transfer Company, and Canadian and Pacific Railway Company, and their respective parent companies, subsidiaries, and affiliated companies, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to the Property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

9. INSURANCE

Licensee shall, at its own expense, obtain and maintain during the Term and prior to entering the Property, in a form and with an insurance company satisfactory to CP, policies of:

- (a) **Commercial General Liability** (C.G.L.) insurance with a limit of not less than Ten Million Dollars (\$10,000,000) for any one loss or occurrence for personal injury, bodily injury, or damage to property including loss of use thereof. This policy shall by its wording or endorsement include without limitation the following: **NOTE – For large projects that are high risk, please confirm with Risk Management whether \$10M CGL is sufficient or if a higher limit and/or additional requirements are necessary.**
- (i) CP and its associated or affiliated subsidiaries (and the Directors, Officers, employees, agents and trustees of all of the foregoing) as an additional insured with respect to obligations of the Licensee in this Agreement;
 - (ii) "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - (iii) blanket contractual liability, including the insurable liabilities assumed by the Licensee in this Agreement;
 - (iv) broad form products and completed operations;
 - (v) sudden and accidental pollution liability, if applicable;
 - (vi) shall not exclude property damage due to explosion, collapse, and underground hazards; and
 - (vii) shall not exclude operations on or in the vicinity of the railway right of way.
- (b) **Automobile Liability** insurance covering bodily injury and property damage in an amount not less than Two Million Dollars (\$2,000,000) per accident, covering the ownership, use and operation of any motor vehicles and trailers which are owned, non-owned, leased or controlled by the Licensee and used in regards to this Agreement.
- (c) **Workers Compensation** insurance which shall be in strict accordance with the requirements of the most current and applicable state Workers Compensation insurance laws, and Employers' Liability insurance including Occupational Disease insurance with limits of not less than One Million Dollars (\$1,000,000) each accident/each employee, and where appropriate coverage under said policies to be extended for liability under the FELA, USL&H Act, and the Jones Act. The Licensee shall, before any services are commenced under this License submit written evidence that it has obtained full Workers Compensation insurance coverage for persons whom it employs or may employ in carrying out the services under this License. CP and its associated or affiliated companies (and the Directors, Officers, employees, agents and trustees of all of the foregoing) shall be waived of any and all subrogation in the event of injury, death, losses, incidents, claims and potential claims.
- (d) **Contractor's Pollution Liability** insurance, including naming CP and its associated or affiliated subsidiaries (and the Directors, Officers, employees, agents and trustees of all the foregoing) as an additional insured, with a limit of not less than Two Million Dollars (\$2,000,000) for any one loss or pollution event. Coverage shall include, but not be limited to, claims for bodily injury, death, damage to property including the loss of use thereof, clean-up costs and associated legal defense expenses arising from pollution conditions caused by, and/or exacerbated by, services performed by the Licensee on behalf of CP. The policy shall be endorsed to contain a blanket contractual liability endorsement. If this policy is written on a "claims-made" basis it shall remain in effect for no less than twenty-four (24) months after the expiry or termination of this Agreement. **IF APPLICABLE – DEPENDS ON SCOPE OF WORK BEING PERFORMED – CONFIRM WITH RISK MANAGEMENT**

(collectively, the "Insurance Coverage").

Licensee agrees that the insurance requirements set out herein shall not limit or restrict its liabilities pursuant to this Agreement.

The Insurance Coverage required to be maintained pursuant to this Agreement shall be primary and not excess of any other insurance that may be available. Unless otherwise provided above, all insurance coverage shall take place in the form of an occurrence basis policy and not a claims made policy.

Licensee shall waive any and all subrogation in the event of injury, death, losses, incidents, claims and potential claims where permissible under the insurance policies required under this Insurance Section.

Licensee shall provide CP with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims, and potential claims concerning this Agreement as soon as practicable after the damage, loss, incident, or claim has been discovered. Licensee is responsible for any deductible and excluded loss under any insurance policy. The deductible in any insurance policy shall not exceed such maximum amount that a reasonably prudent business person would consider reasonable.

The Insurance Coverage shall be endorsed to provide CP with not less than thirty (30) days written notice in advance of cancellation.

Before Licensee enters the Property, CP must receive and approve certificates of insurance evidencing the Insurance Coverage outlined in this Section. Licensee may be required to annually provide a copy of updated certificate(s) of insurance evidencing the renewal of the above Insurance Coverage. Such certificate(s) of insurance shall be sent via email to matthew_miller@cpr.ca. Upon request, Licensee shall provide CP with certified copies of the insurance policies.

CP shall have no obligation to examine such certificate(s) or to advise Licensee if its Insurance Coverage is not in compliance with this Agreement. Acceptance of any certificate(s) which are not compliant with the requirements set out herein shall in no way whatsoever imply that CP has waived its insurance requirements.

CP reserves the right to require Licensee to obtain additional insurance where, in CP's reasonable opinion, the circumstances so warrant. If the Licensee fails to maintain the Insurance Coverage required in this Agreement, CP may, at its option, terminate this Agreement without notice.

10. ENTIRE AGREEMENT

10.1 Survival of Indemnity Provisions

The indemnification provisions of this Agreement shall survive its expiration or termination.

10.2 Mere License

The permission encompassed by this Agreement is a mere license to use the Property for the specified purpose and does not create any estate or interest in the Property.

10.3 No Warranty of Title

CP does not warrant that it has good title to the Property.

10.4 Assignment; Binding Effect

This Agreement may not be assigned by Licensee without the advance written consent of CP. Subject to the preceding sentence, this Agreement shall be binding upon, and inure to the benefit of, the parties' respective successors and assigns.

10.5 Governing Law

This Agreement shall be construed in accordance with the laws of the state of Minnesota.

10.6 Entire Agreement

This Agreement is the full, complete, and entire Agreement of the parties with respect to the subject hereof, and any and all prior writings, representations, and negotiations with respect to those subjects are superseded by this Agreement.

10.7 Headings

The headings used in this Agreement are provided solely as a convenient means of reference. They are not intended to, and do not, limit or expand the purpose or effect of the paragraphs to which they are appended. The headings shall not be used to construe or interpret this Agreement.

10.8 Singular and Plural

As used in this Agreement, the singular form of a word includes the plural form of that word, and vice versa, and this Agreement shall be deemed to include such changes to the accompanying verbiage as may be necessary to conform to the change from singular to plural, or vice versa.

10.9 Duplicate Copies and Counterparts

This Agreement may be executed in counterparts, which together shall constitute one and the same document. The parties may execute more than one copy of this Agreement, each of which shall constitute an original.

11. SIGNATURES.

THE PARTIES HERETO have executed this Agreement as evidence of their agreement to the terms herein.

Your Company Name

SOO LINE RAILROAD COMPANY
doing business as Canadian Pacific

By _____
Its **Your Name**
Date

By _____
Its Matthew Miller
Supervisor Public Works
Date

EXHIBIT A
Map of the Property

An Example for your reference
Cut and Paste a Copy and ADD a map of the location of the project

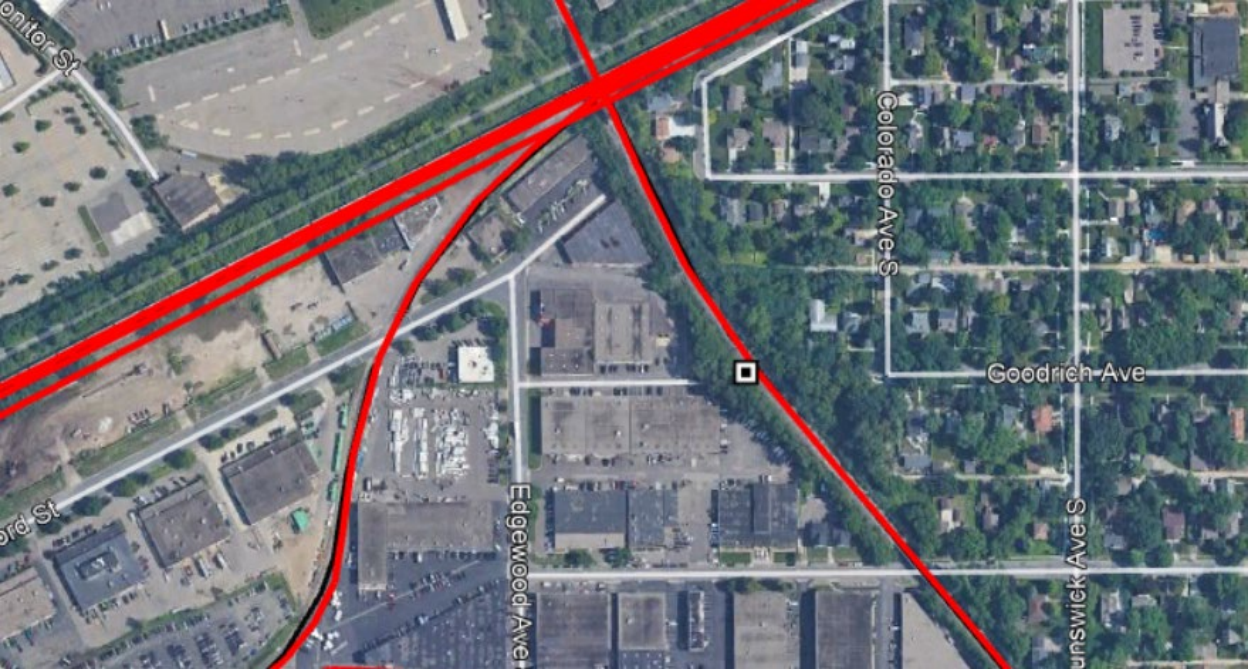


EXHIBIT B
Minimum Safety Rules for Work on Railroad Property



Minimum Safety Requirements for Contractors Working on CP Property in the United States



Approval Authority:	Corporate Risk	Effective Date:	October 1, 2018
Version:	3.0	Revision Date:	October 1, 2021

Table of Contents

Table of Contents	2
Introduction	3
1 Application	3
2 Definitions and Interpretation.....	3
3 Contractor Compliance & Responsibilities	5
4 Site Safety Plans	7
5 Safety Training.....	7
6 Safety Orientation.....	7
7 Safety Job Briefing	7
8 Applicable Legislation.....	8
9 Security Access to CP Property	9
10 Personal Conduct.....	10
11 Personal Protection.....	12
12 Railroad Track Protection.....	133
13 HAZCOM.....	17
14 Operation of Highway Vehicles	18
15 Tools, Equipment and Machinery	19
16 Emergency Response	21
17 Confined Space	23
18 Reportable Accidents, Incidents and Injuries	23
19 Reporting	24
20 Contractor & Contractor Personnel Acknowledgement	25
21 Attachment A - Emergency Information Sheet	27

Introduction

At Canadian Pacific (CP), safety is an integral part of the way we do business. We expect everyone working on Canadian Pacific's property to be unconditionally committed to safety. Safety must be given top priority and will take precedence over deadlines, production schedules, and all other considerations.

1 Application

1.1 Application

- 1.1.1 These Minimum Safety Requirements are applicable to all who work on CP property (except as noted in 1.13 and 1.14 below) including Contractors and other persons performing Work or otherwise providing services to Canadian Pacific on CP Property in the United States.
- 1.1.2 These Minimum Safety Requirements cannot be waived or altered, in whole or in part, without a prior Risk Assessment specific to the Work being conducted, and written consent has been provided by Manager-in-Charge.
- 1.1.3 Notwithstanding the foregoing, these Minimum Safety Requirements do not apply to other railroad companies who only operate trains on CP Property under various trackage or interchange agreements.
- 1.1.4 Further notwithstanding the foregoing, these Minimum Safety Requirements may not apply to Work or services provided in CP office premises, in which case, CP's Minimum Safety Requirements for Contractors Working in CP Offices may apply.

2 Definitions and Interpretation

2.1 Definitions

- 2.1.1 In these Minimum Safety Requirements, the following capitalized terms shall have the ascribed meaning below:
 - (a) **"Applicable Legislation"** means all applicable legislation, regulations, by-laws, codes, rules, standards, policies, procedures, promulgated by any federal, state, and municipal governmental body, including those of its agencies, having authority over CP and, or a Contractor in relation to the Work in the matter of health and safety of the person, property and, or the environment;
 - (b) **"Canadian Pacific"** or **"CP"** means Canadian Pacific Railway Company Ltd., and its subsidiaries and affiliates, and includes each of their respective directors, officers, employees, agent, and representatives;
 - (c) **"CP Personnel"** means CP's employees, agents, and representatives;
 - (d) **"CP Property"** means any building, facility, yard, track, right of way or other property owned or controlled by CP;
 - (e) **"Contractor"** means the company or person, and their respective employees and authorized agents, representative and subcontractors who are providing goods or services to CP; or on behalf of a third party working on CP property.
 - (f) **"Contractor Personnel"** means the Contractor's employees, and authorized agents, representative and subcontractors;
 - (g) **"Co-mingled Work"** means Work where Contractor Personnel works directly with or, in close proximity (time or space) to CP Personnel;

- (h) **“eTest”** an efficiency test. It is a planned procedure to evaluate compliance with rules, instructions and procedures, with or without the employee's knowledge.
- (i) **“Foul of Track”** means the placement of an individual or equipment within 4’ feet of the outside rail of a railway track that could be struck by a moving train or on- track work equipment (e.g. Hi-rail equipment).
- (j) **“Hazardous Materials”** means any substance, which is hazardous to persons or property and includes, without limiting the generality of the foregoing:
 - (i) radioactive, explosive, poisonous, or toxic substances;
 - (ii) any substance that if added to any water, would degrade or alter the quality of the water to the extent that it is detrimental to its use by man or by any animal, or plant;
 - (iii) any solid, liquid, gas or odor or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that endangers the health, safety, or welfare of persons, or the health of animal life, or causes damage to plant life or to property; and
 - (iv) substances declared to be hazardous, toxic or dangerous under any law or regulation now or hereafter enacted by any governmental authority having jurisdiction.
- (k) **“Manager-in-Charge”** means a CP manager as designated or otherwise identified by CP as being responsible for overseeing the Work to be performed, such Manager-in-Charge may include, but is not limited to Local CP Management, Superintendents, Chief Engineers, and Project Managers.
- (l) **“Mobile Equipment”** means any motorized and self-propelled equipment, excluding railroad equipment and highway vehicles, but including, for example, forklifts, tractors, cranes, ATVs, mules, motorized scissor lifts, telescopic boom lifts, and similar equipment that are not designed to operate or move on railroad tracks;
- (m) **“Office Premises”** means any building, facility, or portion thereof, or other premises, whether owned or controlled by CP, which is used solely for clerical or administrative purposes and which does not contain heavy equipment or machinery, as designated by CP from time to time;
- (n) **“Qualified and Authorized”** means a status attained by a person who has successfully completed any required training and demonstrated proficiency in the duties of a particular position or function and who has been given the right to act.
- (o) **“Railroad Equipment”** means trains, locomotives, railcars, on track equipment (track units), hi-rail vehicles and any other equipment designed to operate or move on railroad tracks;
- (p) **“Site Safety Plan”** means a documented plan which set out how Work is to be conducted in a safe manner, as required by Applicable Legislation, see 3.15 c);
- (q) **“Third Party Project”** means any work being performed on CP property that CP is not managing (i.e, road authority, utility company, commuter agency, or other similar entity, are on CP property for their own purposes, and not a project sponsored or managed by CP.
- (r) **“Work”** means the provision of products and services and related activities;
- (s) **“Work Site”** means any CP Property where CP Personnel or Contractor Personnel are present, or permitted to be present, while engaged in any Work, including any railroad equipment, mobile equipment and highway vehicles operated by or used to convey a person engaged in such Work. This applies also to work immediately adjacent to CP property which can pose a risk to safe railway operations (i.e., blasting, excavation next to ROW, etc).

2.2 Interpretation & Application

- 2.2.1 Where legislation is referred to in these Minimum Safety Requirements, it shall include all amendments and replacements thereto as promulgated from time to time.
- 2.2.2 Where standards, such as those of the American National Standards Institute (ANSI), are referred to in these Minimum Safety Requirements, they shall include all amendments and replacements thereof from time to time.
- 2.2.3 Where there is any ambiguity, inconsistencies, or omissions between or among any agreements with CP, expressed or implied; any Applicable Legislations; any applicable CP policies and practices; and any applicable industrial standards and practices, Contractor and Contractor Personnel shall adhere to that which is most stringent and current.

3 Contractor Compliance & Responsibilities

3.1 General Compliance

- 3.1.1 Contractor shall be fully and solely responsible for ensuring the health and safety of Contractor Personnel and for ensuring that its Work and other activities do not compromise the health and safety of CP Personnel or any other party, the protection of the environment, the protection of CP's property and those of any other party, and do not interfere with the safety of CP's railroad operations.
- 3.1.2 Contractor shall comply with and shall ensure all of Contractor Personnel are trained and qualified to safely perform the Work and that they comply with all Applicable Legislation pertaining to the protection against fire, safety, health, and environmental hazards, and with any license, permits, authorizations issued by the respective authority. Contractor shall provide CP with written certification that Contractor's safety program required by 49 CFR Part 243 has been approved by the Federal Railroad Administration (FRA) where applicable.
- 3.1.3 Contractor shall comply with and shall ensure all of Contractor Personnel comply with all terms and conditions of all agreements, expressed or implied, between Contractor and CP, and all applicable CP policies and practices.
- 3.1.4 Subject to the requirements of CP's Access Control Procedures, the contractor shall provide CP eRailsafe training for each employee engaged in work on CP property. Where there is no agreement between CP and the Contractor, the Contractor is responsible for meeting the additional requirements outlines within CP's Access Control Procedures.
- 3.1.5 Contractor shall provide Contractor Personnel, at its own expense, any and all safety equipment required to protect against injuries during the performance of the Work and shall ensure that Contractor Personnel are knowledgeable of and utilize safe practices in performing the Work.
- 3.1.6 The Contractor shall have a copy of the following documents at the Work Site at all times, and shall produce them as and when requested by CP:
 - (a) These Minimum Safety Requirements for Contractors Working on CP Property;
 - (b) Licenses, certifications, permits, training records or other documents required by Applicable Legislation or these Minimum Safety Requirements;
 - (c) Contractor's Site Safety Plan;
 - (d) Contractor's Emergency Information Sheet (see Attachment A); and
 - (e) Any additional documents required by Contract or by agreement with Manager-in-Charge.
 - (f) Employee identification (eRailsafe badge – see 9.1.1).

3.2 Compliance Assurance

- 3.2.1 CP reserves the right to observe, inspect, test and audit Contractor and Contractor Personnel for compliance with all requirements herein, and to demand and receive all relevant records, documentation, and materials evidencing compliance, at any time, and from time to time.
- 3.2.2 Failure of the Contractor or Contractor Personnel to comply with any applicable provisions herein may be considered a material breach, and in addition to all other remedies available, CP may without prejudice:
 - (a) take over control of that Work or activity;
 - (b) order the Work to stop; and/or
 - (c) order Contractor Personnel to leave CP Property.
- 3.2.3 Upon the earlier of the completion of the Work, the expiration of the applicable agreement, or the request of a Manager-in-Charge, Contractor and Contractor Personnel shall return all identification, badges, access cards, and decals, issued or provided by CP to the Manager-in-Charge.

4 Site Safety Plans

4.1 General Requirements

- 4.1.1 Prior to starting any Work on CP Property, the Contractor must have a written Site Safety Plan that identifies:
 - (a) All applicable legislation, rules, policies and work practices in relation to the work being performed;
 - (b) Specific hazards that are associated with the Work being performed on CP property for CP, and Work being performed not for CP:
 - for example:
 - (i) Construction, maintenance or inspections of buildings;
 - (ii) Working on or adjacent to railroad tracks;
 - (iii) Maintenance or inspection or railroad tracks, crossings or signal systems;
 - (iv) Operating Railroad Equipment on CP tracks; or
 - (v) When/where Contractor Personnel work directly with or in proximity (time or space) to CP Personnel; and
 - (c) Methods of verifying compliance.
- 4.1.2 The Contractor will provide Manager-In-Charge with a copy of this Site Safety Plan on reasonable request.
- 4.1.3 The Contractor must be able to demonstrate an awareness of applicable legislation, rules, policies and work practices in relation to the work being performed.

5 Safety Training

5.1 Minimum Training & Qualifications

- 5.1.1 At its sole cost and expense, Contractor shall ensure that all Contractor Personnel be fully trained and qualified for the Work they will be performing. Contractors and Contractor Personnel shall meet, or exceed, all Applicable Legislation requirements relating to training and qualification, including but not limited to the requirements of 49 CFR Part 243.
- 5.1.2 Additionally, Contractor Personnel training and qualification shall meet or exceed all applicable industry standards.

5.2 Proof of Training & Qualification

- 5.2.1 Contractor Personnel shall at all times have proof of such training and qualifications and shall produce them as and when requested by the Manager-in-Charge.
- 5.2.2 CP reserves the right to inspect qualification certificates, licenses, training records and/or Work-history records for any Contractor Personnel, and, or to be provided with copies thereof, on reasonable request. In addition, CP reserves the right to perform eTests on contractor employees, and request discipline for non-conformance.

6 Safety Orientation

6.1 General Requirements

- 6.1.1 Prior to beginning Work, all Contractor Personnel shall participate in a CP authorized safety orientation, including on-site orientation presented by the Manager-in-Charge or designate.
- 6.1.2 Any time the scope of Work, location, condition or supervision changes, Contractor Personnel may be required to attend additional safety orientation sessions.
- 6.1.3 After successful completion of such safety orientation, Contractors must be able to produce company identification or an eRailsafe photo identification badge authorizing access to CP property unescorted for the purposes of conducting work. Managers have the ability to enter the tracking code into CM (Compliance management). Third parties who hire subcontractors must ensure required compliance while on CP property. The eRailsafe identification card shall be worn or be made visible at all times, or produced upon request and cannot be transferred under any circumstances.

7 Job Safety Briefing

- 7.1.1 Contractor Personnel shall attend all Job Safety Briefings as and when conducted. Contractor Personnel shall be solely and fully responsible for understanding the content of the Job Safety Briefing, and at a minimum shall:
 - (a) have an understanding of the scope of Work to be performed and an appreciation of the nature of the location, environment, and conditions where such Work is to be performed;
 - (b) be aware of specific or unusual hazardous condition, existing or potential and the control measures required to protect against, control, mitigate, or where possible, avoid said hazard; and
 - (c) have an emergency response plan/evacuation procedures.

- 7.1.2 Where Contractor Personnel are working directly with or in proximity (time or space) to CP Personnel, job safety briefings must include both CP Personnel and Contractor Personnel, and any other affected third parties. The job safety briefing shall identify nature and extent of the interaction between the Work being performed by Contractor Personnel, and those performed by CP Personnel or other third parties. Contractor Personnel shall inform CP Personnel, and any other third parties of known or potential unsafe conditions and hazards that may be created by, resulting from, or inherent in their Work and the corresponding preventative, mitigation, and/or control measures at all job briefings prior to commencing Work, or as soon as Contractor Personnel becomes aware of such conditions.
- 7.1.3 In all situations, all Contractor Personnel are expected to:
- (a) continually identify hazards and assess risk of hazards and to continually and clearly communicate all hazards to the Manager-in-Charge and to all other parties that may be affected at job safety briefings, and at any other time as and when appropriate or necessary;
 - (b) take actions that are within their assigned responsibility to eliminate or control hazards and risks; and
 - (c) immediately notify their supervisor or the Manager-in-Charge of hazards that pose unacceptable risk that they are unable to eliminate or control.
- 7.1.4 Where Contractor Personnel are unable to eliminate or control a hazard, Contractor Personnel shall take interim measures to protect people, property, equipment and the environment until the hazard can be properly assessed and appropriate corrective actions taken.

8 Applicable Legislation

8.1 General Requirements

- 8.1.1 Contractor and Contractor Personnel shall be solely responsible for identifying and complying with all Applicable Legislation. At a minimum, Contractor and Contractor Personnel shall comply with the federal legislations set out below which list is intended solely for general guidance, and not as a comprehensive list of all Applicable Legislation.
- 8.1.2 Additionally, the Association of American Railroads (AAR) is an industry association which can provide support and guidance on matters related to railroad safety and the transportation of hazardous materials.

8.2 Transportation of Hazardous Materials

- 8.2.1 When Work involves the handling or transportation of hazardous materials (hazmat), that Work must comply with Hazardous Materials Transportation Act and regulations administered by the Pipeline and Hazardous Materials Safety Administration (PHMSA).
- 8.2.2 Contractors shall be solely responsible for ensuring that all Contractor Personnel who handles, offers for transport and/or transports hazmat by any transportation mode are trained and hold a valid training certificate or is working under the direct supervision of someone who is trained and holds a valid training certificate. That training must be based on the Work that the person is expected to perform and the hazmat that the person is expected to handle, offer for transport or transport.
- 8.2.3 All U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations are published in Chapter I of title 49 of the Code of Federal Regulations (49 CFR).

8.3 Railroad Work

- 8.3.1 When Work involves the construction, alteration, operation, inspection and maintenance of any part of the general railroad system of transportation, that Work must comply with the Federal Railroad Safety Act and regulations administered by the Federal Railroad Administration (FRA).
- 8.3.2 Contractors shall be solely responsible for ensuring that all Contractor Personnel who perform railroad Work are trained and qualified in accordance with those regulations and hold valid certificates when required.
- 8.3.3 All FRA regulations are published in Chapter II of title 49 of the Code of Federal Regulations (49 CFR).

8.4 Occupational Safety & Health

- 8.4.1 Any Work being performed that may create a risk to the health and safety of any person, including CP Personnel and Contractor Personnel, when not covered by FRA regulations shall be governed by U.S. Department of Labor regulations administered by Occupational Safety and Health Administration (OSHA).
- 8.4.2 All OSHA regulations are published in Chapter XVII of title 29 of the Code of Federal Regulations (29 CFR).

8.5 Environmental Protection

- 8.5.1 Where Work is being performed that may impact the environment, that Work must comply with all applicable federal state, and local government legislation, regulations and standards.
- 8.5.2 Federal legislation is generally administered by the Environmental Protection Agency. A compilation of those laws and regulations can be accessed at <http://www.epa.gov/lawsregs/>

9 Security Access to CP Property

- 9.1.1 All Contractor Personnel must have personal identification and/or eRailsafe credentials authorizing access and in their possession at all times while on CP Property, and present them for review to any Manager-in-Charge, other CP managers and employees, Police Officer, security guard, or regulatory officer upon request:
 - (a) photo identification (e.g. driver's license); and
 - (b) proof of employment, document or card; and
 - (c) CP safety orientation certificate; or
 - (d) building access pass issued by CP or third party having control over CP premises; or
 - (e) CP security photo ID card or badge; or
 - (f) other proof of safety orientation and access authorization issued by CP.
 - (g) Valid eRailsafe card
- 9.1.2 Where any Work requires Contractor Personnel to ride in locomotive or other non-passenger railroad equipment, the Contractor must also possess a CP ACCESS PASS for riding non-passenger railroad equipment, signed by the responsible operating manager. Such a signed pass must be presented to the train crew or operator when boarding the equipment. Failure to possess such a pass will result in the equipment not moving, removal from the equipment, and/or the filing of trespasser charges.

9.2 Security Awareness

- 9.2.1 Contractor shall conduct employee background checks as is necessary to ensure that Contractor Personnel do not pose a security risk to CP, such security risk includes the risk of the commission of terrorist activities, sabotage, vandalism, theft, and violence. CP reserves the right, at all times, to require that Contractors undertake certain security training and/or performs background checks on Contractor Personnel, prior to allowing such Contractor Personnel to enter onto CP Property.
- 9.2.2 On request CP can make available a copy of CP's Railway Security Awareness Program for use by Contractor Personnel.

9.3 Firearms & Explosives

- 9.3.1 Firearms (loaded or empty) are not permitted on CP Property, except for Police officers and other designated government officials when authorized to do so.
- 9.3.2 No explosives will be permitted on CP Property without written approval by the Manager-in-Charge.

9.4 Reporting

Contractor Personnel must report any security concern, security incident, criminal activity (known or suspected), suspicious happenings and/or suspicious persons on CP Property to the Manager-in-Charge or to CP Police Services in accordance with Section 18.

10 Personal Conduct

10.1 Drug and Alcohol Prohibition

CP recognizes the problem of alcohol and substance abuse in today's society. This problem poses particular concerns to an employer who is subject to governmental regulations and seeks to promote the safety of the general public. CP has a concern for the safety, health and well-being of its employees as well as an obligation to comply with the United States Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulations. CP will comply with all statutes and regulations administered by the FRA in implementing the required 49 CFR §219 Drug and Alcohol Program. CP also expects employees of other railroads, visitors or contractors to comply with this regulation while on CP property, consistent with federal regulations. If subject to this regulation, Contractor shall be solely responsible for compliance with the 49 CFR Part 219. Contractor shall provide CP with proof of its compliance prior to performing services for CP and continued proof of compliance must be provided to CP immediately upon request. This proof of compliance will include, but will not be limited to, a copy of the 49 CFR §219 Drug and Alcohol Program Plan and FRA Approval Letter and Continued Certification of Compliance and Statistical Reporting. Periodic audits to ensure compliance with these regulations may be performed and cooperation and compliance is expected upon request.

If subject to other DOT modalities and regulations, such as the Federal Motor Carriers Safety Administration (FMCSA), compliance of that modality's drug and alcohol program guidelines will be required and periodic audits to ensure compliance with these regulations may be performed and cooperation and compliance is expected upon request.

- 10.1.1 Entry onto CP Property when in possession of, or under the influence of alcohol, intoxicants, narcotics, or controlled substances is strictly prohibited. Controlled substances include all Schedule 1 drugs (such as marijuana and "medical marijuana") and synthetic/designer drugs and/or any intoxicants or products labeled "not intended for human consumption".
- 10.1.2 The sale, trade, and/or offer for sale alcohol or controlled substances are prohibited.

- 10.1.3 Additionally, Contractor Personnel shall be free of any condition which may in any way adversely affect alertness, concentration, responsiveness, or the ability react calmly and responsibly to safety hazards.
- 10.1.4 CP reserves the right to request drug and/or alcohol tests for Contractor Personnel as and where required or permitted by law.

10.2 Inappropriate Behavior

- 10.2.1 CP is committed to maintaining a work environment that supports the dignity of all individuals. No person working at CP may be subjected to any form of discrimination or harassment, including sexual harassment.
- 10.2.2 Acts or threats of violence are unacceptable at all times on CP Property. Uttering of threats or committing acts of violence will result in the removal of the responsible Contractor Personnel from CP Property, termination of the Contract, and/or criminal charges.
- 10.2.3 Horseplay, practical jokes, fighting or any other activity that may create a safety hazard is not permitted.

10.3 Electronic Entertainment and Communication Devices

- 10.3.1 The use of personal entertainment devices, including portable audio and video devices such as compact DVD, CD, video game players, tablets, SMART watches and MP3 players, is prohibited:
 - (a) while Working on CP Property;
 - (b) while transporting CP Personnel, whether on and off CP Property; and
 - (c) while operating any CP highway vehicle, railroad equipment or mobile equipment, whether on and off CP Property.
- 10.3.2 The use of electronic communication devices, including cell phones, Smart Phones, Blackberries, walkie-talkies, PDAs, iPads, Tablets, GPS navigation units, portable computers, and similar devices, is prohibited:
 - (a) while operating any highway vehicle, unless it is stopped and parked in a safe location;
 - (b) while transporting CP Personnel, whether on and off CP Property;
 - (c) while operating or assisting in the operation of any railroad equipment or mobile equipment;
 - (d) while operating power tools, equipment or machinery;
 - (e) when Foul of Track for any reason;
 - (f) wherever use is prohibited by signage or by a CP manager; or
 - (g) whenever use of such a device creates an unsafe condition.
- 10.3.3 Notwithstanding the foregoing, company cell phones, radios, walkie-talkies, GPS units, iPads, tablets and other communication devices may be used solely for the conduct of business when authorized by the CP Manager-in-Charge and where not prohibited by state or municipal legislation. Any electronic communication device may be used when it is necessary to communicate an emergency condition.

10.4 Smoking

- 10.4.1 Smoking, including the use of e-cigarettes is prohibited on all CP Property, and in or on all highway vehicles, Railroad Equipment, and Mobile Equipment, except for CP designated outdoor smoking areas.

11 Personal Protection

11.1 Work Clothing

11.1.1 The Contractor must ensure that Contractor Personnel wear clothing that meets applicable legislation and is suitable to perform the work safely. This includes at minimum ankle length pants and waist length shirts with a minimum quarter-length sleeves at all times. Clothing must not interfere with vision, hearing or use of hands and feet.

11.2 Personal Protective Equipment (PPE)

11.2.1 The Contractor shall ensure that Contractor Personnel wear personal protective equipment required by applicable legislation, regulations, codes and industry standards as necessary to protect against personal injuries while on railroad property. All personal protective equipment shall meet applicable legislation and American National Standards Institute (ANSI) standards and shall be in good condition and be properly fitted.

11.2.2 The following mandatory personal protective equipment (“PPE”) shall be supplied by the Contractor at its own expense, and shall be worn at all times by Contractor Personnel while on CP Property:

- (a) safety hard hat, meeting ANSI 89.1 standards, except in office buildings or in enclosed vehicles or equipment;
- (b) safety footwear with protective toe caps and puncture resistant soles, meeting ASTM F2413 standards.
- (c) safety glasses with permanently attached side shields meeting ANSI Z87.1 standards in office buildings or enclosed highway vehicles. Note- transition lenses are not permitted;
- (d) high visibility fluorescent outerwear with retro reflective striping meeting ANSI 107 Class 2 standards not covered by other clothing or equipment, except where necessary for safety reasons such as where fall protection or pole climbing equipment is being used; and
- (e) any other PPE as required by applicable legislation or referenced standard, or as otherwise required to protect Contractor Personnel from injuries.

Type of Protection	Additional Recommendations
Hard Hats	Have hi-visibility characteristics which are not obscured by markings or decals
Safety Eyewear	Tinted safety eyewear must meet military standards for red signal recognition if operating railroad equipment (safety eyewear meeting this requirement is available from ORR Safety; ask for CP approved tinted safety eyewear) Transition lenses are discouraged and should be worn with caution when working in changing light conditions Personal sunglasses are discouraged and must not be worn when operating Railway Equipment Wear mesh face shields over top safety glasses when using any striking tool while performing on track maintenance work (e.g. spiking, snapping on/off anchors, etc.). If working alongside CP employees you will be required to comply with this practice.
Safety Footwear	Have defined heels Be laced and tied securely for ankle support When snow and ice conditions are present wear anti-slip winter footwear
High-Visibility Apparel	Lime-green is recommended when working on, or near tracks, or when performing Co-mingled Work

- 11.2.3 Contractor and Contractor Personnel shall be solely and fully responsible for assessing the risks related to the work and determining whether additional PPE may be required such as:
- (a) Nomex or Proban fire-retardant protective gear when performing certain Transportation of Dangerous Goods (TDG) work and/or handling certain Hazardous Materials, or performing specialized work.
 - (b) hearing protection when working in any area where noise exposure levels:
 - (i) are consistently equal to or greater 85 dBA;
 - (ii) exceed 115 dBA at any time; and
 - (iii) any other work areas where posted, or so notified by CP management.
 - (c) respiratory protection where Contractor Personnel may be exposed to occupational dusts/particulates, fumes, mists, gases and vapors, in which case, in which case Contractors must have a written Respiratory Protection Program that meets or exceeds applicable legislation;
 - (d) additional eye and face protection meeting ANSI standard Z87.1 (i.e. face shields, impact/splash goggles, welding/cutting goggles and welding helmets); and
 - (e) fall protection systems and equipment meeting appropriate ANSI Z359 standards as required by applicable legislation and as appropriate for the related fall hazards.
 - (f) fall protection when working on an unguarded surface over water, where the water is deeper than 4 feet, or where there is a hazard of drowning due to terrain, winter conditions, water velocity or current; contractors must use a fall protection system or a personal floatation device (PFD) meeting approved standards.

12 Railroad Track Protection

12.1 Contractor's Responsibilities for the Protection of Railroad Traffic and Property

- 12.1.1 Where the Work Site is in close proximity to, or is located on, above, or below railroad tracks, special attention, care and precautions shall be taken to ensure the safety of all Contractor Personnel, CP Personnel, all other third parties and to protect CP's property and railroad operations.
- 12.1.2 Contractor shall ensure that Contractor Personnel is made aware of all unique and inherent hazards in working near, on, above or below railroad tracks and shall ensure that all Contractor Personnel are fully trained and equipped to work safely.
- 12.1.3 Contractors who perform inspection, maintenance or repair to railroad tracks or track structures must be trained in accordance with FRA On Track Safety Rules (FRA 49 CFR Part 214, Subpart C - Roadway Worker Protection Regulations).
- 12.1.4 Contractors will not be allowed to foul a track unless:
- (a) They have been properly advised of the On Track Safety awareness procedures;
 - (b) A railroad employee who is qualified to provide protection is present at the work site, or.
 - (c) The Contractor has personnel present who are specifically trained, qualified and authorized to provide that protection.
- 12.1.5 All work shall be organized or executed in such a manner as to ensure no interference with the regularity and safety of railroad operations. No step or sequence of any Work that might directly

or indirectly affect the safe movement of railroad traffic shall be started without the approval of the Manager-in-Charge.

- 12.1.6 No temporary structure, materials, or equipment shall be permitted closer than 12 feet to the nearest rail of any track without prior approval in writing of the Manager-in-Charge.

Contractor Personnel shall at all times remain alert to the movement of trains, rolling stock and other railroad equipment.

- 12.1.7 Contractor Personnel shall be especially alert in yards and terminal areas as

- (a) Railroad equipment that appears to be stationary may be moving;
- (b) the rate of movement of railroad equipment may be faster than it appears;
- (c) Railroad equipment change tracks often; and movements may be occurring simultaneously on adjacent tracks.

- 12.1.8 The Contractor shall, at all times, conduct its operations in a wholly responsible manner to avoid damage to the CP's tracks or property.

12.2 50 feet Clearance Requirement

- 12.2.1 All work shall be performed as far away from railroad tracks as possible.

- 12.2.2 Unless authorized by CP, Contractor Personnel, equipment, and vehicles are not permitted to be within 50 feet of the closest track centerline.

- 12.2.3 In the event work must be carried out within 50 feet of the closest track written authorization must be obtained from the Manager-in-Charge, and Contractor Personnel must still remain at the maximum practicable distance from all railroad tracks at all times.

- 12.2.4 When crossing tracks, Contractor Personnel shall ensure a minimum of 50 feet separation between standing railroad equipment, stay at least 15 feet away from the end of the nearest equipment, and look both ways before crossing tracks, and if clear, walk at a right angle to the tracks.

- 12.2.5 No work activities or processes are allowed within 50 feet of the track while trains are passing through the work site unless specifically authorized.

12.3 Flagging Protection

- 12.3.1 When the Work requires Contractor Personnel to be within 50 feet of any railroad tracks, Contractor or Contractor Personnel shall notify and obtain the written approval of the Manager-in-Charge in advance of the intended start date, and when approved, shall only perform Work strictly in accordance with all terms and conditions of that approval.

- 12.3.2 Unless otherwise indicated by the Manager-in-Charge, proper protection against the movement of trains, rolling stock and other railroad equipment shall be deemed required at all times whenever Work or Contractor Personnel must be within 50 feet of the closet track. Protection may be provided only by a qualified CP employee through use of a flag person.

- 12.3.3 Where CP determines that flagging is required, then Work must be strictly conducted under the direction of a CP flag person or such other person designated by the Manager-in-Charge.

- 12.3.4 Contractor Personnel shall ensure that there is clear communication at all times between Contractor Personnel and any CP flag person. Contractor Personnel shall ensure that they are aware of:

- (a) flagging distance limits;
- (b) time limits; and
- (c) any adjacent tracks where movement of railroad equipment may still occur.

- 12.3.5 Contractor Personnel shall not assume that a train movement is being stopped or cleared unless clear communication is received directly from the CP flag person.
- 12.3.6 A job briefing between the CP flag person and all Contractor Personnel must occur before beginning any Work on or Foul of Track.
- 12.3.7 Blue signal protection is used to indicate that CP or Contractor Personnel are working on, under or between railroad equipment and movement of trains or other railroad equipment is prohibited. Blue signals must not be tampered with or obstructed. Blue signals can only be removed by the person or group of persons who originally applied it. Application, use, and removal of blue signals, when appropriate, may only be done under the authorization and guidance of the Manager-in-Charge.
- 12.3.8 Red flag protection is used to indicate that CP or Contractor Personnel are working on or foul of track, or the track is out of service and movement of trains or other railroad equipment is prohibited. Red flags must not be tampered with or obstructed. Application, use, and removal of red flags, when appropriate, may only be done under the authorization and guidance of the Manager-in-Charge.

12.4 Working on or near Tracks

- 12.4.1 When authorized to perform Work foul of track or otherwise be near railroad tracks, Contractor Personnel shall ensure all Contractor Personnel, equipment, and vehicles are kept as far away from railroad tracks as practicable, and shall at all times:
- (a) be alert to train movements and shall expect the movement of trains, engines, cars, or other mobile railroad equipment at any time, on any track, and in any direction, even if they appear to be stationary or in storage;
 - (b) not rely on others to protect them from train movement;
 - (c) stay at least 15 feet away from the ends of railroad equipment when crossing the track;
 - (d) ensure a minimum of 50 feet separation prior to crossing between Railroad Equipment;
 - (e) look both ways before crossing tracks, and if clear, walk at a right angle to them.
 - (f) never climb on, under or between railroad equipment;
 - (g) be aware of the location of structures or obstructions where track clearances are close;
 - (h) not stand on the track in front of an approaching engine, car or other equipment;
 - (i) stand at least 20 feet from the track(s) when there is a passing movement of trains, engines, cars, or other mobile railroad equipment, to prevent injury from flying debris or loose rigging and shall observe the train as it passes and be prepared to take evasive action in the event of an emergency;
 - (j) not stand on or between adjacent tracks in multiple track territory when a train is passing;
 - (k) not walk, stand or sit on the rails, between rails or on the end of ties, unless absolutely necessary. As the rail surface can be extremely slippery, personnel must step over the rails when crossing tracks. Personnel shall also be aware railroad ties can also be slippery and that railroad ballast can shift while walking on top of it. Situational awareness and use of proper footwear is important;
 - (l) not remain in a vehicle that is within 50 feet of a passing train unless specifically authorized, or where this is not possible.
 - (m) keep away from track switches as remotely operated switch points can move unexpectedly with enough force to crush ballast rock. Personnel shall stay away from any other railroad devices they are unsure of. Personnel shall not disturb or foul the ballast at any time.

- (n) Third party work that has a potential to impact rail traffic must take into account machine swing radius, vertical grade differences, overhead work, etc to ensure it will not impact a passing train; work and equipment must maintain a distance of 50 feet of a passing train.
- (o) When exiting on track machinery as trains are passing; exit on the opposite side.
 - (a) use 3-point contact when getting on/off any vehicle, equipment or track unit;
 - (b) face the vehicle or equipment/track unit when getting on/off
 - (c) place handheld items onto equipment/track unit or seek help prior to getting on/off
 - (d) get on/off on the operators side when possible

12.5 Equipment on or near tracks

- 12.5.1 Contractor Personnel shall not be Foul of Track with any piece of equipment without a CP flag person or other authorized track protection;
- 12.5.2 Contractor Personnel shall not move equipment across the tracks except at established road crossings, or unless under the protection and authorization of a CP flag person and only if the Work Site has been properly prepared for such a move. Tracked equipment will require a CP flag person any time railroad tracks are crossed.
- 12.5.3 Contractor Personnel shall not move equipment across railroad bridges or through tunnels, except as expressly authorized and only under such conditions as stipulated by the Manager-in-Charge.
- 12.5.4 When there is passing rail traffic, Contractor Personnel shall move equipment away from the tracks at least 50 feet, or where not possible, park the equipment as far away from the tracks as possible, exit to the side away from the track where the movement is taking place, and walk to a safe a distance.
- 12.5.5 When there is passing rail traffic, buckets, shovels, and loads on cranes must be lowered to the ground to rest, and cranes without a load must have their load line tightened or retracted to prevent movement.

12.6 Railroad Signs, Signals, Flags and other Communication Infrastructure

- 12.6.1 Signs, signals and flags shall not be obstructed, removed, relocated, disabled or altered in any way without proper authorization and qualification.
- 12.6.2 Only qualified Contractor Personnel who are authorized by CP are permitted to operate switches, derails, electric track mechanisms, signal and communication systems or other track control appliances.
- 12.6.3 Railroad pole lines carry electric power and should be treated as any other power lines.
- 12.6.4 The Contractor shall keep all Contractor Personnel informed of current weather conditions. Personnel shall stay alert for possible high water conditions, or flash floods. During severe weather conditions:
 - a) Personnel shall be prepared to take cover in the event of a tornado
 - b) Personnel shall not work while lightning is occurring
 - c) If storm conditions arise unexpectedly, Contractor Personnel shall ensure that equipment is in the clear of the tracks and secured before seeking cover. Contractor Personnel shall stay away from railroad tracks when visibility is poor, such as during fog or blizzard conditions.

Any Contractor personnel discovering a hazardous or potentially unsafe condition, which may affect the safe passage of railroad traffic, must advise CP Police immediately by calling the CP Police Communications Centre – 1-800-716-9132

12.7 Excavation

- 12.7.1 Before starting excavation operations, the Contractor shall ascertain that there are no underground wires, fiber optic cables, pipelines or other utilities which could be damaged or, if present, that such installations are properly protected. Fiber optic cables are present on most segments of the right-of-way. Prior to commencing any excavation, the Contractor shall contact the proper authority CP and/or public utility to obtain the necessary permit and to locate and protect such cables or other underground utilities.
- 12.7.2 Excavations shall not be left unattended unless they are properly protected; and the Manager-in-Charge shall be notified.
- 12.7.3 Contractors MUST obtain and maintain utility locates in accordance with applicable law.

13 HAZCOM

13.1 General Requirements

- 13.1.1 If at any time Contractor's Work involves the use, handling, storage, or disposal of Hazardous Materials ("Handling of Hazardous Materials"), Contractor Personnel must inform the Manager-in-Charge.
- 13.1.2 Contractors shall ensure that all Contractor Personnel are fully trained in the Handling of Hazardous Materials and that Contractor and Contractor Personnel are in full compliance with all Applicable Legislation, and as directed by the Manager-in-Charge.
- 13.1.3 Contractor Personnel shall have appropriate processes, systems and controls in place to prevent or otherwise mitigate potential environmental, health and safety risks associated with the Handling of Hazardous Materials.

13.2 Access to Safety Data Sheets (SDS)

- 13.2.1 Prior to beginning any Work that may expose CP Personnel to Hazardous Materials, Contractor or Contractor Personnel shall:
 - (a) provide a copy of the respective SDS to the Manager-in-Charge; and
 - (b) keep a copy of the SDS at the work site and ensure that it is readily available at all times.

13.3 Hazardous Material Incident or Spill

- 13.3.1 In the event of a hazardous material incident or spill, the Contractor must:
 - (a) ensure that no Contractor or CP Personnel have or will be exposed;
 - (b) take all reasonable actions to contain the spill;
 - (c) respond in accordance with its emergency response plan; and
 - (d) notify CP immediately in accordance with Section 18 below.

14 Operation of Highway Vehicles

14.1 Highway Vehicles

14.1.1 The following requirements apply to all highway vehicles, when operated on CP Property; or used to transport CP Personnel.

14.2 Regulations and Inspection

14.2.1 Before using a highway vehicle, Contractor Personnel shall:

- (a) complete a pre-trip inspection;
- (b) maintain an inspection log;
- (c) ensure periodic inspections are completed at official testing locations as required;
- (d) ensure the vehicle is maintained and in safe operating conditions at all times; and
- (e) ensure the vehicle is in compliance with applicable motor vehicle regulations and license requirements.

14.2.2 Vehicle maintenance, inspection records and logs must be made available to the Manager-in-Charge on request.

14.3 Vehicle Operator Requirements

14.3.1 Operation of highway vehicles is restricted to those Contractor Personnel who are licensed, qualified and authorized to do so. Such Contractor Personnel shall be responsible for the safety of all passengers at all times. For greater certainty, such Contractor Personnel shall:

- (a) hold a valid license for the class of vehicle being operated, in accordance with applicable local, state and federal requirements, and
- (b) strictly comply with all posted traffic signs, signals, and all shall obey all applicable legislation; and
- (c) maintain the required driver log, and make the log available to the Manager-in-Charge on request, and
- (d) comply with the requirements on the use of electronic devices as set out in Section 10 above.

14.4 Driving on CP Property

14.4.1 In addition to the requirements set out above, while on CP Property, Contractor Personnel shall:

- (a) travel only on designated roadways unless otherwise instructed;
- (b) keep daytime running lights on (if so equipped);
- (c) not exceed 15 mph unless otherwise posted;
- (d) come to a full stop at all blind corners, rail and roadway crossings;
- (e) yield the right of way to all Mobile Equipment and other non-highway equipment or service vehicles;
- (f) not operate vehicles (or any internal combustion equipment) inside buildings or enclosed structures unless adequate ventilation is provided;
- (g) not park Foul of Track unless on-track protection is provided;
- (h) not leave vehicles running unnecessarily;

- (i) park only in pre-determined or designated areas;
- (j) always use the parking brake (or wheel chocks) when leaving an unoccupied vehicle running; and
- (k) prior to operation of a vehicle the driver must conduct a walk around of the vehicle to identify any obstacles, clearance restrictions, or adjacent vehicles that may interfere with executing a safe movement.
- (l) where safe and practicable, pull vehicles through or back into marked parking spaces to avoid reverse collisions when exiting.
- (m) If a passenger is present, he exit the vehicle prior to a reverse movement to provide guidance and direction to the driver during the reverse movement and applies to commercial vehicles and vehicles with restricted rear views

14.4.2 All Contractor Personnel who will be operating a highway vehicle or Mobile Equipment in any CP intermodal facilities must complete a Driver Safety Orientation program prior to first entry, and from time to time thereafter as directed by the Manager-in-Charge.

14.5 Seat Belts

14.5.1 Seat belts must always be worn while operating or riding in any equipped vehicle unless Contractor personnel is actively engaged in inspections requiring said Contractor Personnel to be free of such restraint, and then only when the vehicle is operating at less than 15 mph.

14.6 Loads

14.6.1 Contractor Personnel shall ensure vehicles are loaded according to weight and dimensional requirements as authorized by state regulations and permits, and properly load and secure tools, material, equipment and freight to avoid shifting, falling, leaking or otherwise escaping from vehicles during operation.

14.7 Riding in CP Vehicles

14.7.1 Contractor Personnel are prohibited from operating or riding in any CP vehicles unless authorized to do so, or in case of emergency.

15 Tools, Equipment and Machinery

15.1 General Safety Requirements Respecting All Tools, Equipment and Machinery

15.1.1 Contractor Personnel shall ensure that all tools, equipment, and machinery used be:

- (a) in compliance with all Applicable Legislation;
- (b) in good working order, properly serviced and maintained;
- (c) safe for their proposed use and used only for purposes specified by the manufacturer;
- (d) operated and maintained only by persons properly trained and qualified for that duty;
- (e) seat belts (if present on equipment) must be worn while operating or riding any such equipped mobile equipment;
- (f) if mobile, equipped with appropriate safety devices (e.g. lights, horns, back-up alarms, safety beacons); and prevented from moving, through use of the hand brake, wheel blocking, wheel chocking and/or a derail, where applicable.

15.1.2 The Contractor shall provide adequate lighting when performing work between sunset and sunrise.

15.1.3 Use of CP tools, equipment and machinery by Contractor Personnel is prohibited unless specifically authorized by local CP management.

15.2 Hazardous Energy Control- Lockout

15.2.1 Contractor Personnel shall employ lockout/tagout procedures as required to eliminate the accidental or unexpected start-up, energizing, or release of stored (residual) energy during maintenance, repair and/or servicing activities.

15.2.2 All tools, equipment and machinery must be made safe and isolated from all energy sources rendering the machine, equipment, or process inoperative prior to performing maintenance, repair or servicing related tasks.

15.2.3 No Contractor Personnel can remove any CP applied lock or tag, including bad-order tag.

15.2.4 Notwithstanding the foregoing, if Contractor's Work may create an energy hazard to any CP Personnel, then all affected parties must follow the requirements set forth in CP's Lockout – Hazardous Energy Control Policy and Code of Practice.

15.2.5 If CP Personnel and Contractors are jointly performing maintenance, repair or servicing activities on the same machine, equipment or using the same energy source, then a multi-lock hasp must be applied with individual locks and tags affixed (as per CP's Lockout – Hazardous Energy Control Policy and Code of Practice).

15.3 Electrical Safety Requirements

15.3.1 In addition to the hazardous energy control lockout requirements above, all electrical Work must comply with Applicable Legislation, National Electrical Code (NEC), and National Fire Protection Association (NFPA) requirements.

15.3.2 Contractor Personnel Working on electrical systems must:

- (a) if in proximity to CP Personnel, inform them of:
 - (i) existing or potential electrical hazards;
 - (ii) any specific additional personal protective equipment that may be required;
 - (iii) applicable safe work practices;
 - (iv) applicable emergency and evacuation procedures; and
 - (v) apply lock out procedures as per section above on Hazardous Energy Control-Lockout
- (b) have practices, procedures and training that comply with:
 - (i) Applicable sections of the NEC and NFPA electrical safety standards;
 - (ii) Any other Applicable Legislation; and
- (c) not operate or allow cranes or other mobile equipment to approach closer to any live electrical power line than is permitted by OSHA regulations (29 CFR 1910.333).

15.4 Lifting Devices

15.4.1 All lifting devices, including but not limited to jacks, cranes, cables, slings, chains and hooks shall:

- (a) meet Applicable Legislation governing design, inspection, maintenance and operation;
- (b) be safety certified and labeled or tagged with load capacity limits where required;

- (c) have sufficient capacity for the planned lift;
- (d) have sufficient footing or support area to properly distribute the load during a lift.

15.5 Welding and Torch Cutting

15.5.1 When welding or torch cutting, Contractor Personnel shall:

- (a) be properly trained and qualified;
- (b) ensure that all closed containers have been properly purged;
- (c) direct flame or sparks away from other Workers, equipment and flammable material;
- (d) have a fire extinguisher readily available;
- (e) keep compressed gas and oxygen cylinders stored in a secure, vertical position, with regulators removed and caps applied, labeled properly and located in vented cabinets or other designated locations.

15.6 Explosive Actuated Tools

15.6.1 Only Contractor Personnel who are qualified and licensed in accordance with Applicable Legislation, and authorized by CP, may use explosives or explosive actuated tools.

15.7 Unattended Equipment or Machinery

15.7.1 Tools, Equipment and Machinery shall not be left unattended at any time and shall not be stored on CP Property, unless expressly permitted pursuant to a written agreement with CP or by the Manager-in-Charge in writing, and where so permitted, Contractor shall ensure that:

- (a) storage shall be restricted to the designated area, or as otherwise specified by CP.
- (b) all such tools, equipment and machinery shall be secured in a safe position well clear of all tracks to prevent accidental contact with trains and moving equipment and to not restrict train crew sightlines;
- (c) as much as possible, tools, equipment and machinery shall be stored in locations out of public view.
- (d) Machines must be secured in accordance with on-track machinery rules.

16 Emergency Response

16.1 Emergency Response Plan

16.1.1 The Contractor must maintain a current emergency response plan and make it available to CP on request. Emergency response plans must include at a minimum:

- (a) contractor reporting procedures in the event of an incident or spill;
- (b) emergency response contacts and phone numbers, including phone numbers for CP incident reporting and local CP managers (See Attachment A); and
- (c) containment measures to be taken in the event of an incident or spill.

16.2 Initial Response

16.2.1 Initial response to any emergency condition must follow the following sequence:

- (a) Protect the safety and security of all individuals and communities
- (b) Provide environmental protection and mitigation
- (c) Conduct incident investigation and evidence preservation
- (d) Restore railroad operations

16.3 First Aid

16.3.1 Contractor Personnel must have sufficient First Aid qualified personnel and the required First Aid kit and any other required First Aid equipment at the Work Site, suitable for the crew size, nature of Work being performed and location, all of which shall, at a minimum, comply with OSHA regulations (29 CFR 1910.266).

16.4 Fire Protection

16.4.1 The Contractor must have appropriate fire extinguishers suitable (i.e., type, size and quantity) for nature of the work being done, in compliance with applicable legislation, and be readily available at all times on:

- (a) the work site; and
- (b) all Contractor equipment, machinery and highway vehicles.

16.4.2 Contractor Personnel shall ensure that all necessary precautions are taken to prevent fires, including the following:

- (a) storing flammable material (e.g., paper, rubbish, sawdust, oily or greasy rags, etc.) in proper containers;
- (b) storing and transporting fuel, gasoline or other flammable liquids in approved containers. Use of unapproved containers is prohibited;
- (c) proper disposal of flammable material daily;
- (d) preventing static electricity when dispensing or transferring flammable liquids by using proper grounding and bonding techniques;
- (e) avoid using cutting or welding torches during the last one-half hour of shifts, if possible;
- (f) taking special precautions with fusees, including:
 - (i) store and transport in approved containers;
 - (ii) do not allow fusees to come in contact with any combustible material, including railroad ties or wooden timbers; and
 - (iii) fully extinguish fusees before leaving the location where used;
- (g) promptly advise CP management of any fire on CP Property; and
- (h) fully extinguish or provide protection for any fire prior to leaving the Work Site.

16.4.3 Contractors Working on the CP right-of-way where a high risk of fire exists (e.g., during rail grinding, rail welding) must have:

- (a) appropriate fire prevention and suppression plans (including emergency numbers for CP, local firefighters and fire control districts); and
- (b) additional firefighting equipment and trained Contractor Personnel on site, as required by Applicable Legislation or the Manage In Charge.

17 Confined Space

17.1 Confined Space

- 17.1.1 Qualified and authorized Contractor Personnel must follow all required confined space entry procedures in accordance with applicable legislation and standards prior to entering into a confined space.
- 17.1.2 Rescue procedures and equipment must readily available when required to enter a confined space.

18 Reportable Accidents, Incidents and Injuries

18.1 Reportable Injuries

18.1.1 Reportable injuries include any personal injury to:

- (a) Contractor Personnel;
- (b) any CP Personnel; or
- (c) to any third party on CP Property.

18.2 Reportable Accidents

18.2.1 Reportable accidents include any occurrence that results in:

- (a) damage to railroad tracks, right of way, buildings or other CP Property;
- (b) damage to railroad equipment;
- (c) damage to CP highway vehicles;
- (d) release of hazardous material;
- (e) spill or loss of transported commodities; and
- (f) any threat to the environment.

18.3 Reportable Incidents

18.3.1 Reportable incidents include:

- (a) unintended movement of railroad equipment;
- (b) failure to provide track protection for Workers when required;
- (c) movement of railroad equipment beyond authorized limits;
- (d) operation of railroad equipment by an unqualified person;
- (e) unauthorized handling of a track switch;
- (f) damage, vandalism or tampering with any railroad signals, structures or railroad safety device;

- (g) seepage, leakage, spills of, or other contamination from, Hazardous Materials;
- (h) actual, threaten or suspected security related incidents;
- (i) slides, washouts or other on-track obstructions; or
- (j) any occurrence that may disrupt the movement of trains or affect safe rail operations.

19 Reporting

19.1 Emergency Reporting

19.1.1 In the case of an emergency, Contractor Personnel must call:

- (a) 911, where this emergency response system exists, or
- (b) the local police, fire or emergency department in all cases; and
- (c) CP Police Services Communication Center- 1-800-716-9132.

19.2 Accident, Incident, Injury Reporting

19.2.1 When an accident, incident or injury occurs on CP Property, the Contractor must:

- (a) immediately report it to the
 - (i) CP Police Services Communication Center 1-800-716-9132; and
 - (ii) CP Manager-in-Charge
- (b) follow all instructions given to protect the scene.

19.2.2 CP is obligated to report Contractor Personnel injuries occurring on CP property to the Federal Railroad Administration (FRA). Any state or required regulatory reporting remains the Contractor's responsibility.

19.3 Information to Report

19.3.1 Information required with the initial report includes:

- (a) type of incident;
- (b) date and time of occurrence;
- (c) location (mileage, subdivision, building, yard or other physical description);
- (d) identity of person(s) involved or injured (company & name);
- (e) description of any hazardous materials involved;
- (f) type & unit number of any railroad equipment or vehicle involved;
- (g) description of occurrence, damage and/or injury, and cause if known;
- (h) description of any emergency response;
- (i) name and contact information of person making the report; and
- (j) any such other information that CP may require.

19.4 Environmental Incidents and Spills

19.4.1 In the event of an environmental incident or spill that could have a negative impact on the environment, the Contractor must immediately:

- (a) report the incident to the Operations Center, the Manager-in-Charge, and the designated CP Contact as per the governing agreement relating to the Work;
- (b) take all reasonable actions to contain the spill;
- (c) respond in accordance with its emergency response plan; and

- (d) provide CP with the following information;
 - (i) description of location and surrounding area, including any sensitive environmental areas nearby (e.g., rivers, parks, sewers);
 - (ii) type and quantity of substance released;
 - (iii) cause of spill or deposit, if known; and
 - (iv) details of any immediate action taken or action proposed to be taken to contain spill and recover substance.

19.5 Additional Contractor Requirements

19.5.1 Contractor and Contractor Personnel must:

- (a) ensure an appropriate emergency response is initiated;
- (b) protect any evidence until released by the CP Manager-in-Charge;
- (c) cooperate fully with any CP investigation;
- (d) cooperate fully with any investigating government agency; and
- (e) notify CP if information is requested by any investigating government agency.

20 Contractor & Contractor Personnel Acknowledgement

Acknowledgement

- 20.1.1 Contractor and Contractor Personnel who Work on CP Property shall be deemed to have read and understood the content of these Minimum Safety Requirements for Contractors While Working on CP Property in the United States, as amended from time to time, and to agree to be bound by them.
- 20.1.2 These Minimum Safety Requirements for Contractors While Working on CP Property in the United States are subject to change without prior notice. The most current version of these Minimum Safety Requirements can be viewed at www.cpr.ca or by contacting the Manager-in-Charge.



***Home Safe™ is a commitment to be vigilant about personal safety
and the safety of co-workers.***

21 Attachment A – Emergency Information Sheet

EMERGENCY CONTACT INFORMATION		
EMERGENCY CONTACTS	PHONE	LOCATION
CP Minneapolis Operations Center	1-800-766-4357	.
CP Police Services	1-800-716-9132	
CP Railroad Traffic Controller Radio Channel		
Manager-in-Charge		
Local Police Services		
Local Fire Services:		
Local EMS		
Hospital		
Physician		
Aircraft Service, (if applicable):		
Watercraft Service, (if applicable):		
Other Emergency Services		
Emergency Evacuation Route (Describe nearest evacuation assembly location OR Provide sketch on back)		

WORK SITE INFORMATION		
	PHONE	LOCATION
Work Site Location Name		
Railroad Subdivision & Mileage		
Address, Number and Street		
Nearest Town		
CP Manager-in-Charge		
Emergency Site Access Route (Describe route from nearest emergency services location in detail including access roads & physical landmarks OR provide sketch on back.)		
Contractor Supervisor		
Site Telephone		
Certified First Aid Attendant		
Location of First Aid Supplies at Site		
Location of Fire Extinguishing Equipment:		
Location of WHIMS data sheets		
UTILITY INFORMATION		
UTILITIES CONTACT	PHONE	LOCATION
Natural Gas:	()	
Electrical:	()	
Fiber Optic Line:	()	
Water & Sewer:	()	
Telephone:	()	
Cable System:	()	
Qualified employee(s) in:	()	
Confined Space Entry, (if applicable):	()	
Equipment requirements for Confined Space Entry, (if applicable):	()	
Other:		

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION (SP)

TEMPORARY WATER DIVERSION

AC-NHU-CVD-1-981(123) – PCN 22929



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 4x8 box culvert at Station 12+87.62 and a quadruple 12x8 box culvert at Station 98+69.

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 E.3, "Compaction Control, Type B". When backfilling roadway embankment areas, benching of slopes will be required as specified in Section 203.04 E.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 the 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		
Structure Number	Existing Structure Type	Min Discharge (cfs)
Single 4x8 box culvert	48" CSP	118.1
Quadruple 12x8 box culvert	Triple 8x10 box culvert	476.3

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

WATER QUALITY UNIT

PROJECT AC-NHU-CVD-1-981(123) – PCN 22929



DESCRIPTION

This work consists of, furnishing and installing hydrodynamic separators as designated in Section 060 of the plans and as specified herein or established by the Engineer.

MATERIALS

A. General.

Provide four different SciCLONE structures manufactured by BioClean as detailed in the attached sheets.

BioClean (A Forterra Company)
5796 Armada Drive Suite 250
Carlsbad, CA 92008
(855) 566-3938
stormwater@forterrabp.com
www.biocleanenvironmental.com

SUBMITTAL

Submit work drawings and design computations of the proposed hydrodynamic separators to the Engineer for final approval a minimum of 21 calendar days prior to ordering hydrodynamic separator materials. Sign and Seal all drawings with a North Dakota licensed professional engineer.

Include the following information in the work drawings:

- (A) Site specific and performance data containing the following:
- (1) Structure ID, Water quality flow rate, peak flow rate, peak storm duration, inlet and outlet pipe information and invert, rim elevation, sump elevation, surface loading requirement, frame and cover, treatment flow rate, TSS removal efficiency and sump chamber capacity.

CONSTRUCTION REQUIREMENTS

A. General

- The system shall be installed in strict accordance with the plans, specifications, and the manufacturer's general arrangement drawings and Handling, Storage and Installation Instructions.
- The precast concrete structure shall be set on 24 inches of 1-1/4" crushed rock base over Type G Geogrid over Type RR Geosynthetic Filter Fabric.

- The precast concrete structure shall be set level and plumb to within 0.5%.
- Non-shrink grout or hydraulic cement conforming to ASTM C 595 shall be used to provide a water tight seal in the lift holts, any drain holes, and around the concrete knock-outs for the inlet and outlet pipes.
- The Contractor shall test the concrete structure for water tightness before backfilling.
- Compact the backfill according to 203.04 E.2.b and slope the backfill away from the hydrodynamic separator.
- Provide Neenah Foundry Company R-1753-A or East Jordan Iron Works Number 1233 with concealed pick holes and self-sealing platen lid, or approved equivalent for all Water Quality Unit castings. Provide Casting to fit 30" diameter access hole on Water Quality Unit lid.
- Provide concrete adjusting rings for all Water Quality Unit castings. See plan note 722-P03.
- Provide infiltration and inflow (I&I) barrier for all Water Quality Unit castings. See plan note 722-P04.

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Payment for Water Quality Unit will be made at the Contract Unit Price for the following

Bid Item	Unit
Water Quality Unit	EA

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

Casting, concrete adjusting rings, I&I barrier, Type G Geogrid, Type RR Geosynthetic Filter Fabric, and 1-1/4" crushed rock are incidental to the bid item. Extra materials and all associated work are to be included in the price bid for this item.

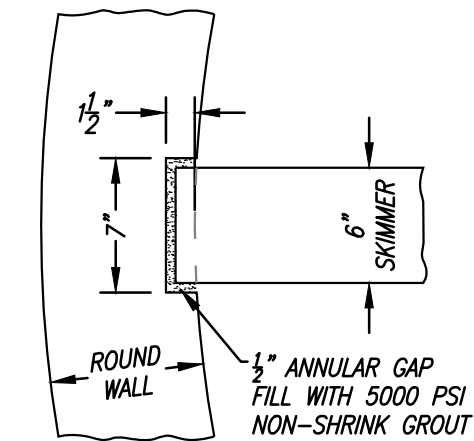
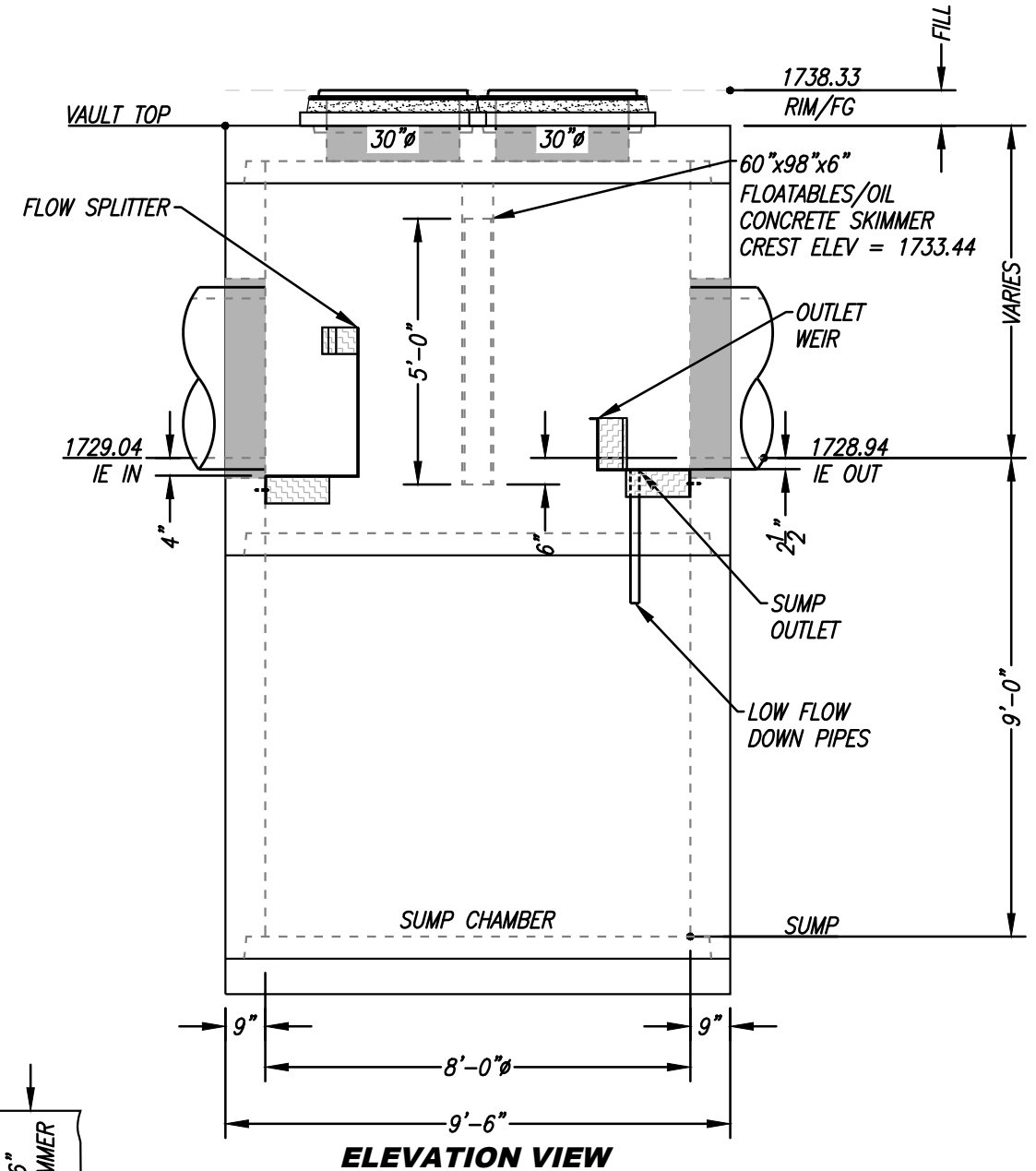
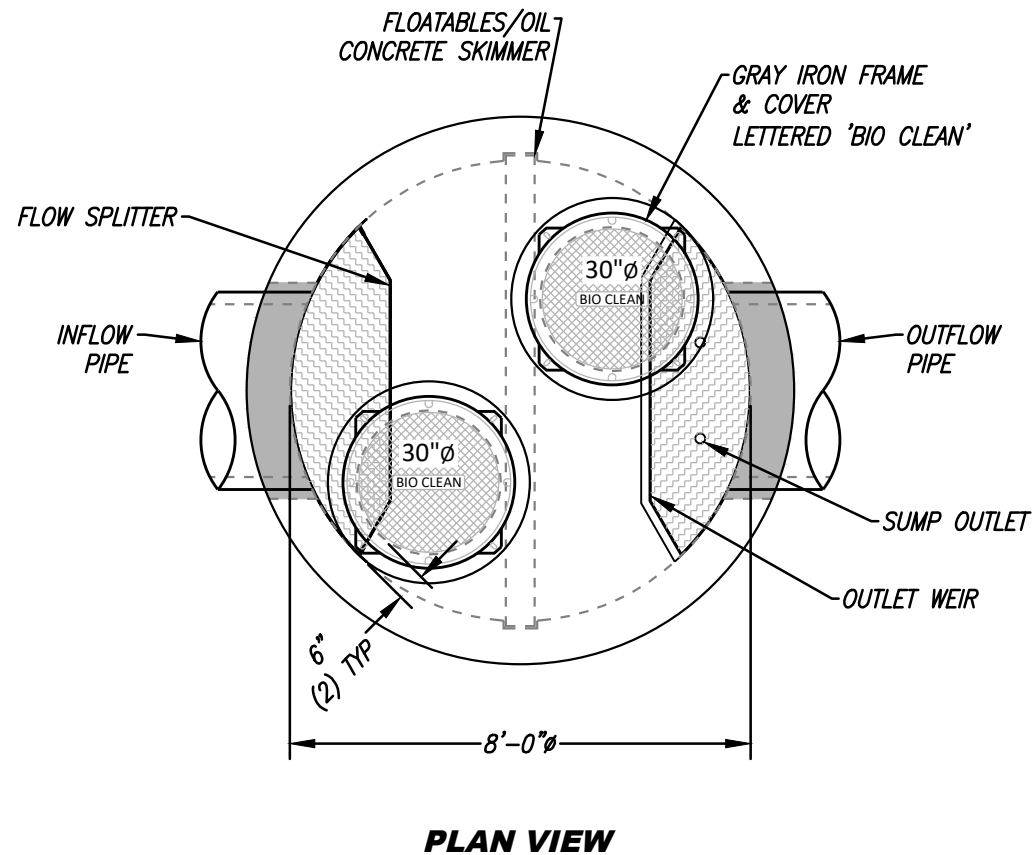
SITE SPECIFIC DATA*

PROJECT NUMBER	13869		
PROJECT NAME	43RD AVENUE NE		
PROJECT LOCATION	BISMARK, ND		
STRUCTURE ID	HDS 110		
WATER QUALITY FLOW RATE (CFS)	5.06		
PEAK FLOW RATE (CFS)	54.83		
PEAK STORM DURATION (YEARS)	100		
PIPE DATA	I.E.	MATERIAL	DIAMETER
INFLOW PIPE 1	1729.04	RCP	36"
OUTFLOW PIPE 1	1728.94	RCP	36"
RIM ELEVATION	1738.33		
SUMP ELEVATION	1719.94		
SURFACE LOADING REQUIREMENT	HS20		
FRAME AND COVER	(2) ϕ 30"		
SKIMMER WALL HEIGHT	STANDARD		
KNOWN GROUNDWATER ELEVATION	NA		
NOTES: CONCEPT ONLY. NOT FOR CONSTRUCTION.			
*PER ENGINEER OF RECORD			
PERFORMANCE DATA			
TREATMENT FLOW RATE (CFS)	6.65		
TSS REMOVAL EFFICIENCY	80%		
SUMP CHAMBER CAPACITY			
DIAMETER (FT)	AREA (SF)	HEIGHT (FT)	TOTAL (CF)
8	50.24	9.00	452.2

INSTALLATION NOTES

- CONTRACTOR TO PROVIDE ALL LABOR, EQUIPMENT, MATERIALS, AND INCIDENTALS REQUIRED TO OFFLOAD AND INSTALL THE SCICLONEX UNIT AND APPURTENANCES IN ACCORDANCE WITH THIS DRAWING AND THE MANUFACTURER'S SPECIFICATIONS, UNLESS OTHERWISE STATED IN MANUFACTURER'S CONTRACT.
- MANUFACTURER RECOMMENDS A 6" LEVEL ROCK BASE UNLESS SPECIFIED BY THE PROJECT ENGINEER. CONTRACTOR IS RESPONSIBLE FOR VERIFYING PROJECT ENGINEER'S RECOMMENDED BASE SPECIFICATIONS.
- ALL PIPES MUST BE FLUSH WITH INSIDE SURFACE OF CONCRETE (PIPES CANNOT INTRUDE BEYOND FLUSH).
- ALL GAPS AROUND PIPES SHALL BE SEALED WATERTIGHT WITH A NON-SHRINK GROUT PER MANUFACTURER'S STANDARD CONNECTION DETAIL AND SHALL MEET OR EXCEED REGIONAL PIPE CONNECTION STANDARDS.
- CONTRACTOR RESPONSIBLE FOR INSTALLATION OF ALL RISERS AND MANHOLES. ALL COVERS SHALL BE SHIPPED LOOSE. CONTRACTOR TO GROUT ALL MANHOLES TO MATCH FINISHED SURFACE UNLESS SPECIFIED OTHERWISE.

1:40 SCALE



CONCRETE SKIMMER TO ROUND WALL CONNECTION
1:10 SCALE

GENERAL NOTES

- BIO CLEAN TO PROVIDE ALL MATERIALS UNLESS OTHERWISE NOTED.
- ALL DIMENSIONS, ELEVATIONS, SPECIFICATIONS, AND CAPACITIES ARE SUBJECT TO CHANGE. FOR PROJECT SPECIFIC DRAWINGS DETAILING EXACT DIMENSIONS, WEIGHTS, AND ACCESSORIES PLEASE CONTACT BIO CLEAN.

THIS PRODUCT MAY BE PROTECTED BY ONE OR MORE OF THE FOLLOWING US PATENTS: 15/700,149; 10,344,466; B-00320. RELATED FOREIGN PATENTS OR OTHER PATENTS PENDING.

PROPRIETARY AND CONFIDENTIAL:

THE INFORMATION CONTAINED IN THIS DOCUMENT IS THE SOLE PROPERTY OF FORTERRA AND ITS COMPANIES. THIS DOCUMENT, NOR ANY PART THEREOF, MAY BE USED, REPRODUCED OR MODIFIED IN ANY MANNER WITHOUT THE WRITTEN CONSENT OF FORTERRA.



SCICLONE SCX-08
HYDRODYNAMIC SEPARATOR
STANDARD DETAIL

11/18/21QSC011

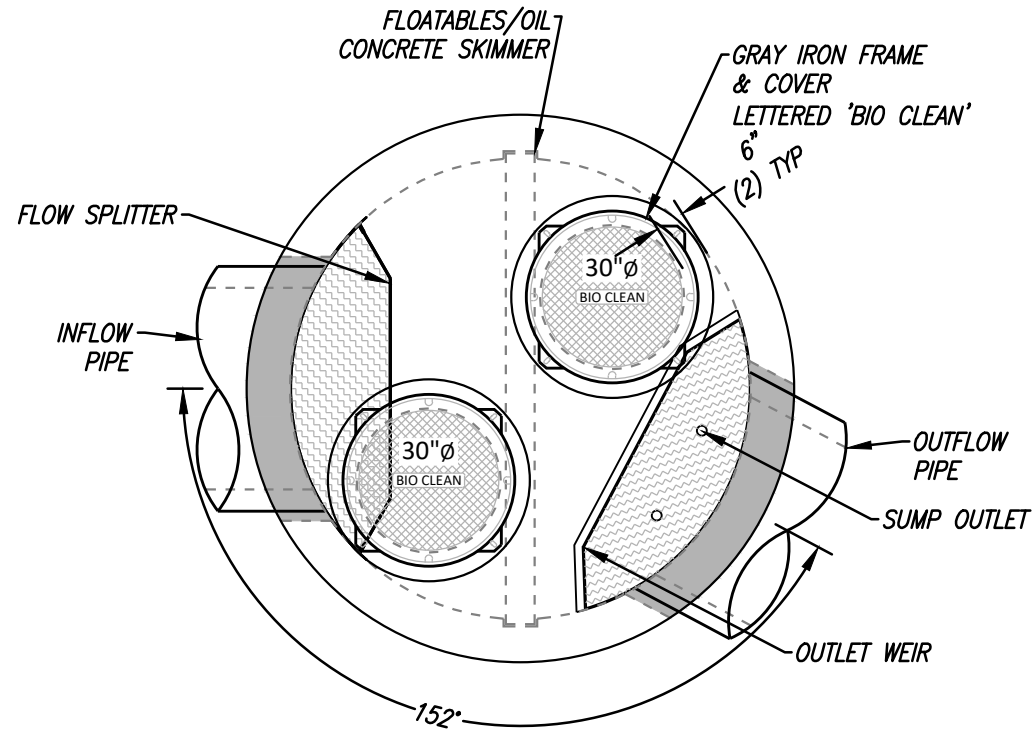
SITE SPECIFIC DATA*

PROJECT NUMBER	13869		
PROJECT NAME	43RD AVENUE NE		
PROJECT LOCATION	BISMARK, ND		
STRUCTURE ID	HDS 110		
WATER QUALITY FLOW RATE (CFS)	5.31		
PEAK FLOW RATE (CFS)	55.78		
PEAK STORM DURATION (YEARS)	100		
PIPE DATA	I.E.	MATERIAL	DIAMETER
INFLOW PIPE 1	1727.59	RCP	42"
OUTFLOW PIPE 1	1727.59	RCP	42"
RIM ELEVATION	1741.31		
SUMP ELEVATION	1718.59		
SURFACE LOADING REQUIREMENT	HS20		
FRAME AND COVER	(2) ϕ 30"		
SKIMMER WALL HEIGHT	STANDARD		
KNOWN GROUNDWATER ELEVATION	NA		
NOTES: CONCEPT ONLY. NOT FOR CONSTRUCTION.			
*PER ENGINEER OF RECORD			
PERFORMANCE DATA			
TREATMENT FLOW RATE (CFS)	6.65		
TSS REMOVAL EFFICIENCY	80%		
SUMP CHAMBER CAPACITY			
DIAMETER (FT)	AREA (SF)	HEIGHT (FT)	TOTAL (CF)
8	50.24	9.00	452.2

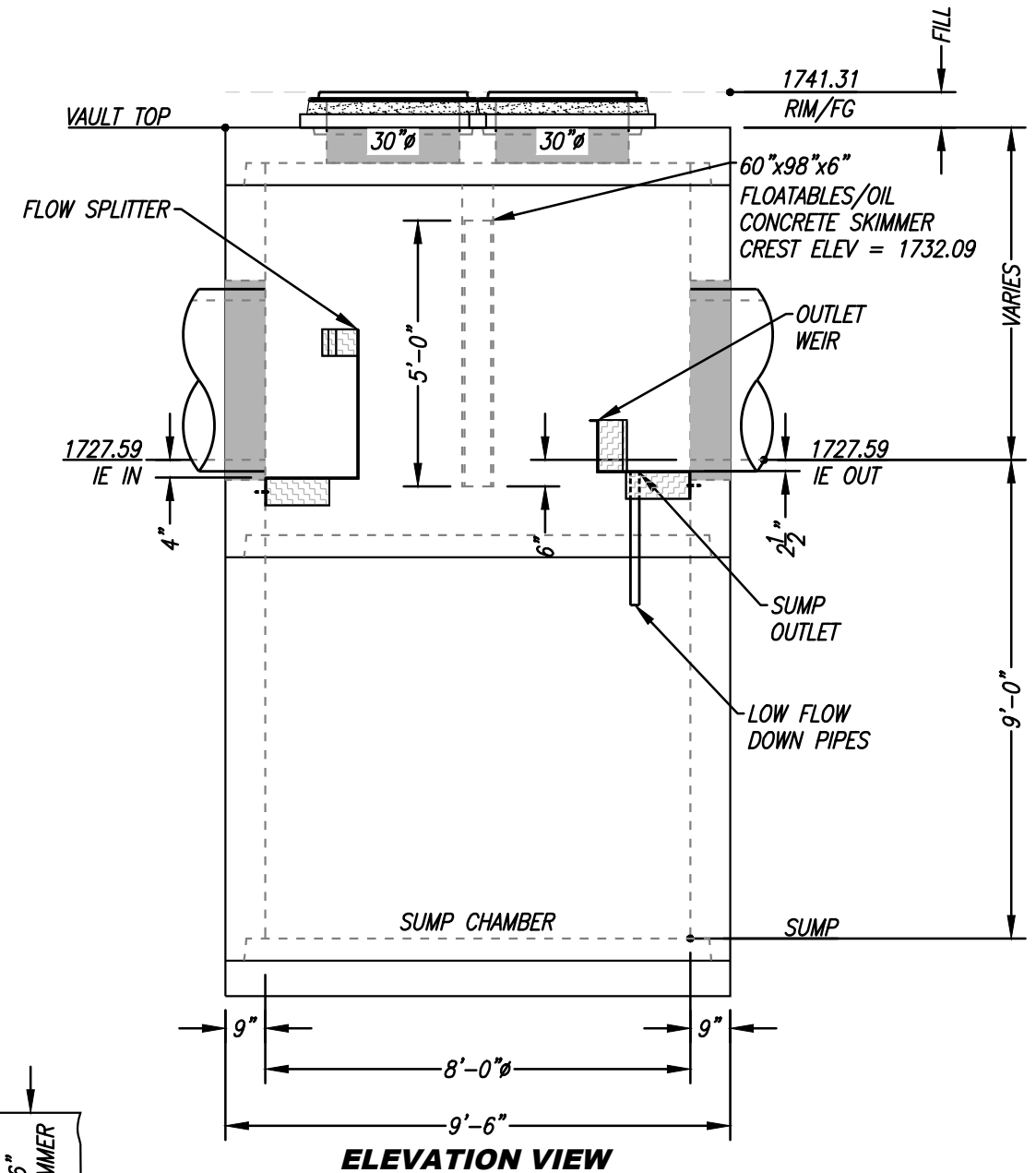
INSTALLATION NOTES

- CONTRACTOR TO PROVIDE ALL LABOR, EQUIPMENT, MATERIALS, AND INCIDENTALS REQUIRED TO OFFLOAD AND INSTALL THE SCICLONEX UNIT AND APPURTENANCES IN ACCORDANCE WITH THIS DRAWING AND THE MANUFACTURER'S SPECIFICATIONS, UNLESS OTHERWISE STATED IN MANUFACTURER'S CONTRACT.
- MANUFACTURER RECOMMENDS A 6" LEVEL ROCK BASE UNLESS SPECIFIED BY THE PROJECT ENGINEER. CONTRACTOR IS RESPONSIBLE FOR VERIFYING PROJECT ENGINEER'S RECOMMENDED BASE SPECIFICATIONS.
- ALL PIPES MUST BE FLUSH WITH INSIDE SURFACE OF CONCRETE (PIPES CANNOT INTRUDE BEYOND FLUSH).
- ALL GAPS AROUND PIPES SHALL BE SEALED WATERTIGHT WITH A NON-SHRINK GROUT PER MANUFACTURER'S STANDARD CONNECTION DETAIL AND SHALL MEET OR EXCEED REGIONAL PIPE CONNECTION STANDARDS.
- CONTRACTOR RESPONSIBLE FOR INSTALLATION OF ALL RISERS AND MANHOLES. ALL COVERS SHALL BE SHIPPED LOOSE. CONTRACTOR TO GROUT ALL MANHOLES TO MATCH FINISHED SURFACE UNLESS SPECIFIED OTHERWISE.

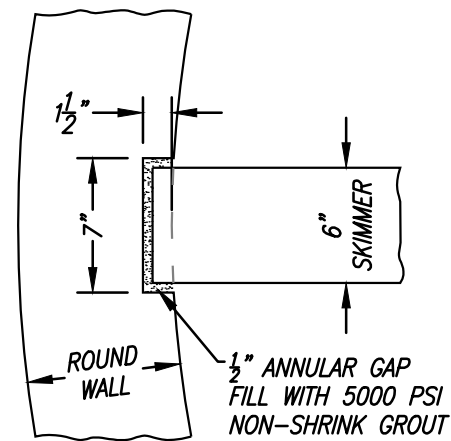
1:40 SCALE



PLAN VIEW



ELEVATION VIEW



**CONCRETE SKIMMER TO ROUND WALL CONNECTION
1:10 SCALE**

GENERAL NOTES

- BIO CLEAN TO PROVIDE ALL MATERIALS UNLESS OTHERWISE NOTED.
- ALL DIMENSIONS, ELEVATIONS, SPECIFICATIONS, AND CAPACITIES ARE SUBJECT TO CHANGE. FOR PROJECT SPECIFIC DRAWINGS DETAILING EXACT DIMENSIONS, WEIGHTS, AND ACCESSORIES PLEASE CONTACT BIO CLEAN.

THIS PRODUCT MAY BE PROTECTED BY ONE OR MORE OF THE FOLLOWING US PATENTS: 15/700,149; 10,344,466; B-00320. RELATED FOREIGN PATENTS OR OTHER PATENTS PENDING.

PROPRIETARY AND CONFIDENTIAL:

THE INFORMATION CONTAINED IN THIS DOCUMENT IS THE SOLE PROPERTY OF FORTERRA AND ITS COMPANIES. THIS DOCUMENT, NOR ANY PART THEREOF, MAY BE USED, REPRODUCED OR MODIFIED IN ANY MANNER WITH OUT THE WRITTEN CONSENT OF FORTERRA.



**SCICLONE SCX-08
HYDRODYNAMIC SEPARATOR
STANDARD DETAIL**

11/18/21QSC011

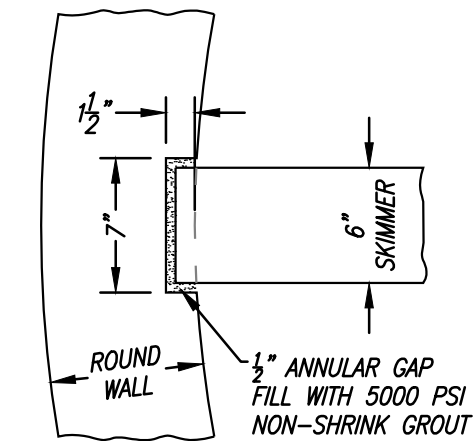
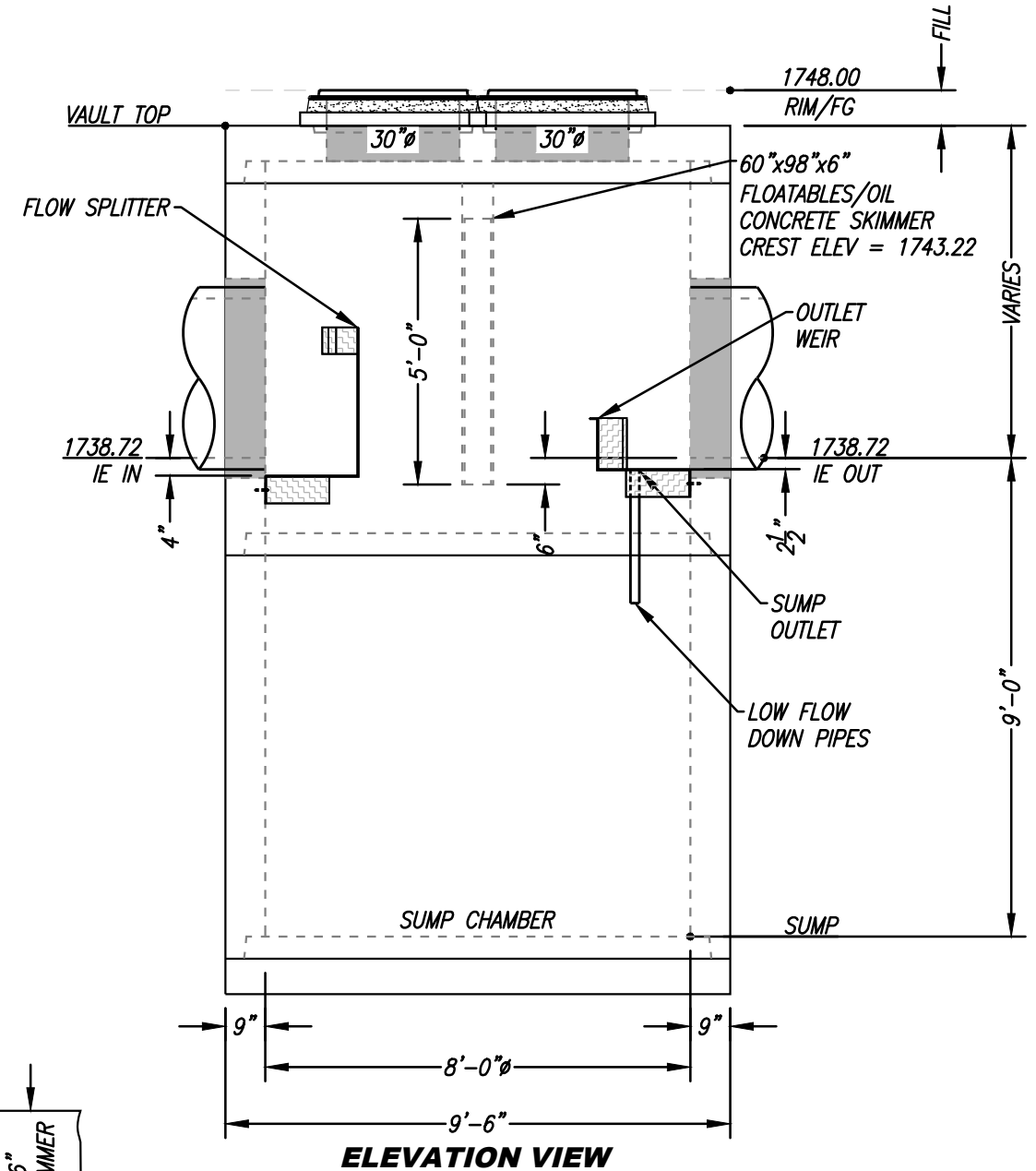
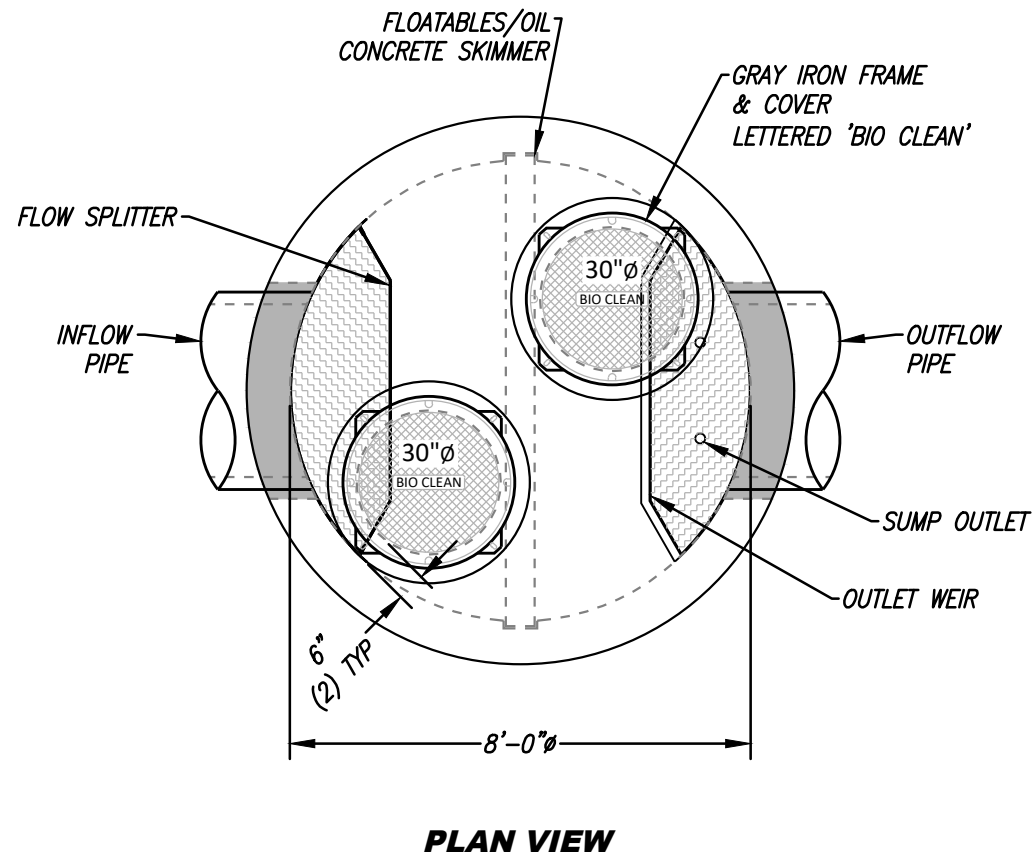
SITE SPECIFIC DATA*

PROJECT NUMBER	13869		
PROJECT NAME	43RD AVENUE NE		
PROJECT LOCATION	BISMARK, ND		
STRUCTURE ID	HDS 116		
WATER QUALITY FLOW RATE (CFS)	4.38		
PEAK FLOW RATE (CFS)	66.29		
PEAK STORM DURATION (YEARS)	100		
PIPE DATA	I.E.	MATERIAL	DIAMETER
INFLOW PIPE 1	1738.72	RCP	36"
OUTFLOW PIPE 1	1738.72	RCP	36"
RIM ELEVATION	1748.00		
SUMP ELEVATION	1729.72		
SURFACE LOADING REQUIREMENT	HS20		
FRAME AND COVER	(2) ϕ 30"		
SKIMMER WALL HEIGHT	STANDARD		
KNOWN GROUNDWATER ELEVATION	NA		
NOTES: CONCEPT ONLY. NOT FOR CONSTRUCTION.			
*PER ENGINEER OF RECORD			
PERFORMANCE DATA			
TREATMENT FLOW RATE (CFS)	6.65		
TSS REMOVAL EFFICIENCY	80%		
SUMP CHAMBER CAPACITY			
DIAMETER (FT)	AREA (SF)	HEIGHT (FT)	TOTAL (CF)
8	50.24	9.00	452.2

INSTALLATION NOTES

1. CONTRACTOR TO PROVIDE ALL LABOR, EQUIPMENT, MATERIALS, AND INCIDENTALS REQUIRED TO OFFLOAD AND INSTALL THE SCICLONEX UNIT AND APPURTENANCES IN ACCORDANCE WITH THIS DRAWING AND THE MANUFACTURER'S SPECIFICATIONS, UNLESS OTHERWISE STATED IN MANUFACTURER'S CONTRACT.
2. MANUFACTURER RECOMMENDS A 6" LEVEL ROCK BASE UNLESS SPECIFIED BY THE PROJECT ENGINEER. CONTRACTOR IS RESPONSIBLE FOR VERIFYING PROJECT ENGINEER'S RECOMMENDED BASE SPECIFICATIONS.
3. ALL PIPES MUST BE FLUSH WITH INSIDE SURFACE OF CONCRETE (PIPES CANNOT INTRUDE BEYOND FLUSH).
4. ALL GAPS AROUND PIPES SHALL BE SEALED WATERTIGHT WITH A NON-SHRINK GROUT PER MANUFACTURER'S STANDARD CONNECTION DETAIL AND SHALL MEET OR EXCEED REGIONAL PIPE CONNECTION STANDARDS.
5. CONTRACTOR RESPONSIBLE FOR INSTALLATION OF ALL RISERS AND MANHOLES. ALL COVERS SHALL BE SHIPPED LOOSE. CONTRACTOR TO GROUT ALL MANHOLES TO MATCH FINISHED SURFACE UNLESS SPECIFIED OTHERWISE.

1:40 SCALE



CONCRETE SKIMMER TO ROUND WALL CONNECTION
1:10 SCALE

GENERAL NOTES

1. BIO CLEAN TO PROVIDE ALL MATERIALS UNLESS OTHERWISE NOTED.
2. ALL DIMENSIONS, ELEVATIONS, SPECIFICATIONS, AND CAPACITIES ARE SUBJECT TO CHANGE. FOR PROJECT SPECIFIC DRAWINGS DETAILING EXACT DIMENSIONS, WEIGHTS, AND ACCESSORIES PLEASE CONTACT BIO CLEAN.

THIS PRODUCT MAY BE PROTECTED BY ONE OR MORE OF THE FOLLOWING US PATENTS: 15/700,149; 10,344,466; B-00320. RELATED FOREIGN PATENTS OR OTHER PATENTS PENDING.

PROPRIETARY AND CONFIDENTIAL:

THE INFORMATION CONTAINED IN THIS DOCUMENT IS THE SOLE PROPERTY OF FORTERRA AND ITS COMPANIES. THIS DOCUMENT, NOR ANY PART THEREOF, MAY BE USED, REPRODUCED OR MODIFIED IN ANY MANNER WITHOUT THE WRITTEN CONSENT OF FORTERRA.



SCICLONE SCX-08
HYDRODYNAMIC SEPARATOR
STANDARD DETAIL

11/18/21QSC011

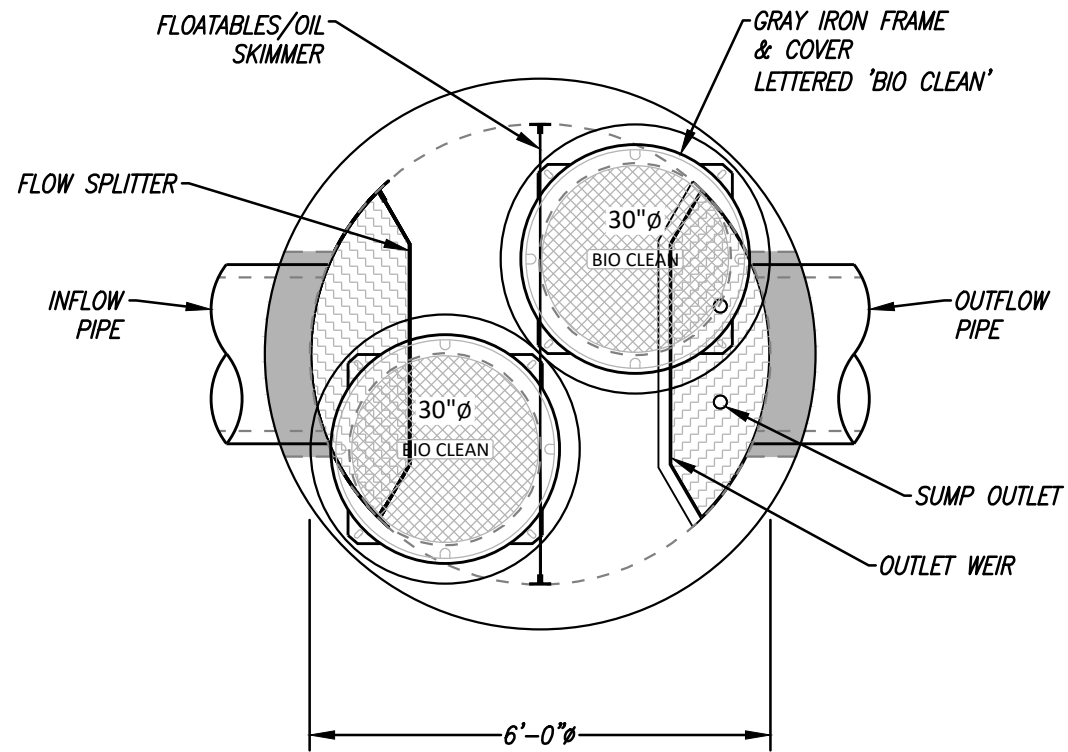
SITE SPECIFIC DATA*

PROJECT NUMBER	13869		
PROJECT NAME	43RD AVENUE		
PROJECT LOCATION	BISMARK, ND		
STRUCTURE ID	HDS 300		
WATER QUALITY FLOW RATE (CFS)	1.81		
PEAK FLOW RATE (CFS)	26.04		
PEAK STORM DURATION (YEARS)	100		
PIPE DATA	I.E.	MATERIAL	DIAMETER
INFLOW PIPE 1	1744.25	RCP	30"
OUTFLOW PIPE 1	1744.24	RCP	30"
RIM ELEVATION	1751.62		
SUMP ELEVATION	1739.49		
SURFACE LOADING REQUIREMENT	HS20		
FRAME AND COVER	(2) ϕ 30"		
SKIMMER WALL HEIGHT	STANDARD		
KNOWN GROUNDWATER ELEVATION	NA		
NOTES: CONCEPT ONLY. NOT FOR CONSTRUCTION.			
*PER ENGINEER OF RECORD			
PERFORMANCE DATA			
TREATMENT FLOW RATE (CFS)	3.74		
TSS REMOVAL EFFICIENCY	80%		
SUMP CHAMBER CAPACITY			
DIAMETER (FT)	AREA (SF)	HEIGHT (FT)	TOTAL (CF)
6	28.26	4.75	134.2

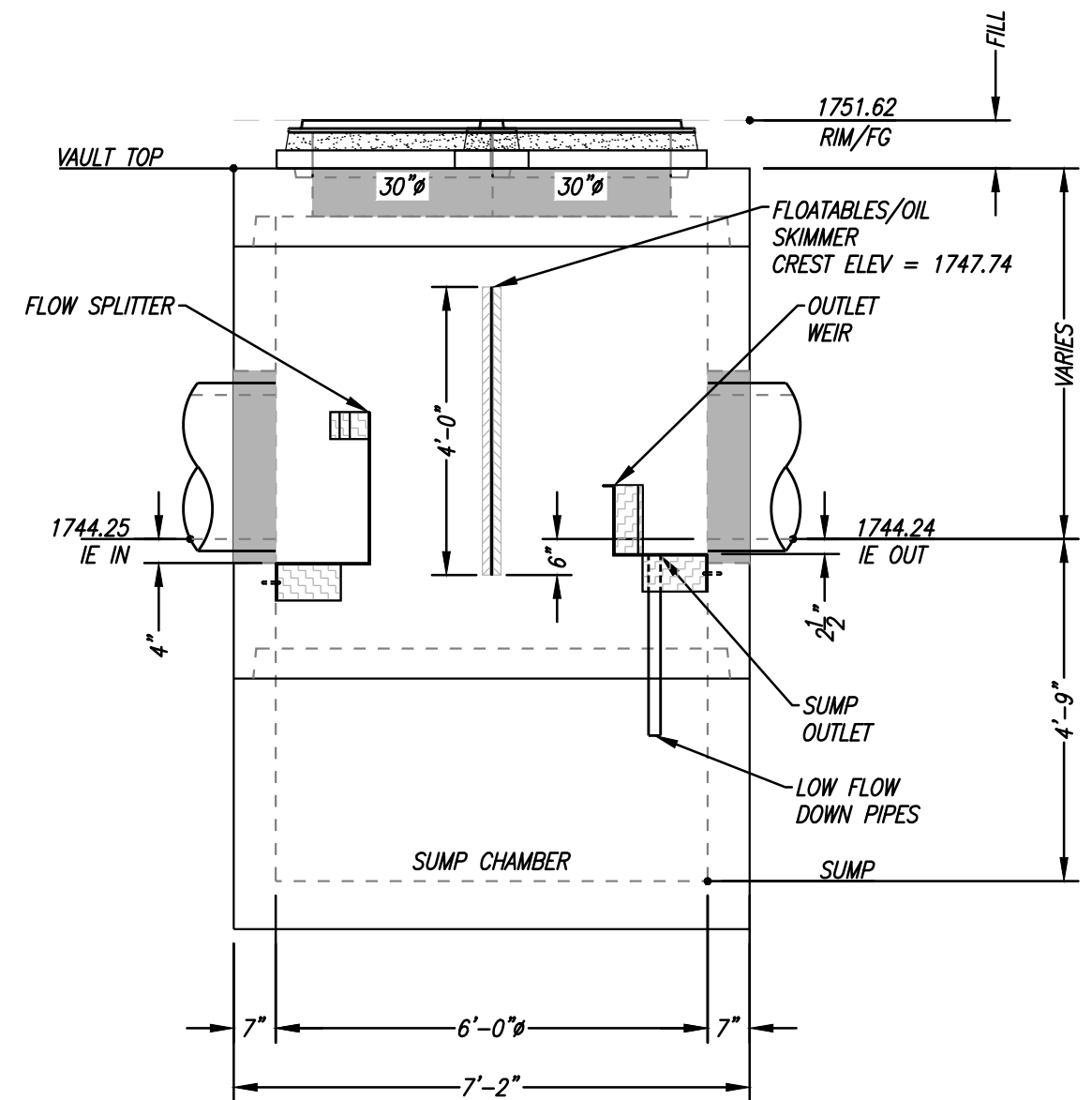
INSTALLATION NOTES

- CONTRACTOR TO PROVIDE ALL LABOR, EQUIPMENT, MATERIALS, AND INCIDENTALS REQUIRED TO OFFLOAD AND INSTALL THE SCICLONEX UNIT AND APPURTENANCES IN ACCORDANCE WITH THIS DRAWING AND THE MANUFACTURER'S SPECIFICATIONS, UNLESS OTHERWISE STATED IN MANUFACTURER'S CONTRACT.
- MANUFACTURER RECOMMENDS A 6" LEVEL ROCK BASE UNLESS SPECIFIED BY THE PROJECT ENGINEER. CONTRACTOR IS RESPONSIBLE FOR VERIFYING PROJECT ENGINEER'S RECOMMENDED BASE SPECIFICATIONS.
- ALL PIPES MUST BE FLUSH WITH INSIDE SURFACE OF CONCRETE (PIPES CANNOT INTRUDE BEYOND FLUSH).
- ALL GAPS AROUND PIPES SHALL BE SEALED WATERTIGHT WITH A NON-SHRINK GROUT PER MANUFACTURER'S STANDARD CONNECTION DETAIL AND SHALL MEET OR EXCEED REGIONAL PIPE CONNECTION STANDARDS.
- CONTRACTOR RESPONSIBLE FOR INSTALLATION OF ALL RISERS AND MANHOLES. ALL COVERS SHALL BE SHIPPED LOOSE. CONTRACTOR TO GROUT ALL MANHOLES TO MATCH FINISHED SURFACE UNLESS SPECIFIED OTHERWISE.

11/18/21 QSCOTT
1:30 SCALE



PLAN VIEW



ELEVATION VIEW

GENERAL NOTES

- BIO CLEAN TO PROVIDE ALL MATERIALS UNLESS OTHERWISE NOTED.
- ALL DIMENSIONS, ELEVATIONS, SPECIFICATIONS, AND CAPACITIES ARE SUBJECT TO CHANGE. FOR PROJECT SPECIFIC DRAWINGS DETAILING EXACT DIMENSIONS, WEIGHTS, AND ACCESSORIES PLEASE CONTACT BIO CLEAN.

THIS PRODUCT MAY BE PROTECTED BY ONE OR MORE OF THE FOLLOWING US PATENTS: 15/700,149; 10,344,466; B-00320. RELATED FOREIGN PATENTS OR OTHER PATENTS PENDING.

PROPRIETARY AND CONFIDENTIAL:

THE INFORMATION CONTAINED IN THIS DOCUMENT IS THE SOLE PROPERTY OF FORTERRA AND ITS COMPANIES. THIS DOCUMENT, NOR ANY PART THEREOF, MAY BE USED, REPRODUCED OR MODIFIED IN ANY MANNER WITH OUT THE WRITTEN CONSENT OF FORTERRA.



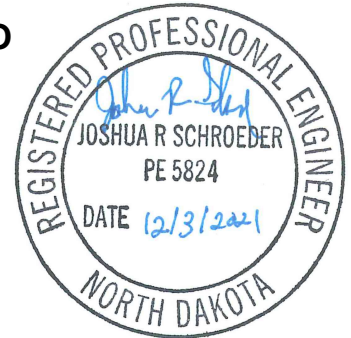
SCICLONE SCX-06
HYDRODYNAMIC SEPARATOR
STANDARD DETAIL

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

Modular Block Retaining Wall

PROJECT # AV-NHU-CVD-1-981(123) – PCN 22929



DESCRIPTION

This work consists of designing, furnishing and installing a prefabricated modular gravity wall as designated in Section 171 of the plans and as specified herein or established by the Engineer

EQUIPMENT

Item	Section
P.C.C. Equipment	155

MATERIALS

A. General.

Provide the Engineer with a copy of the block manufacturers quality control plan and procedures, including the testing rates, material sources and mix designs. Supply test reports and documentation to verify compliance with the specified requirements.

B. Large Block Units (LBUs).

a) General

- 1) Obtain all units for the project from the same manufacturer. The manufacturer must be licensed and authorized to produce the retaining wall units by the large block system patent holder/licensor.
- 2) Identify LBUs by the production lot number and date of manufacturing.
- 3) Cast each concrete block in a single continuous pour without cold joints.
- 4) Blocks are required to have a minimum size of 6-inches high x 10-inches deep x 14 inches wide.
- 5) Top course blocks will be a cap block with all edges formed or mitered to make near edges against adjacent blocks.
- 6) Identify LBUs by the production lot number and date of manufacturing.
- 7) Block pigment is required to be Light Tan. Color matching or similar to color number 30219 meeting Federal Standard 595. The engineer will approve the block pigment/color
- 8) If pins are required in the wall system, use pins that consist of a non-degrading polymer or galvanized steel and are made to be used with the particular LBUs supplied.
- 9) Cast or attach cap units in accordance with the manufacturer's requirements and use an adhesive that the manufacturer recommends.
- 10) Do not use LBU's that:
 - i. Use returned, reconstituted, surplus or waste concrete in the production of the LBUs
 - ii. That are not sound or have cracks or other defects that would interfere with the proper installation

- iii. Impair the strength or performance of the wall
 - iv. Will create an unsatisfactory appearance as determined by the engineer
- 11) Units shall be capable of near vertical wall where batter is equal to or less than 1 degree
- 12) Units must be able to be positively interlocked by shear connections beyond molded feature of the block (pins, bars, clips)
- 13) Either dry-cast or wet-cast blocks may be used.
- b) Wet-cast precast LBU Units
- 1) Wet-cast precast LBU units to conform to ASTM C1776 and meet the following requirements:
 - i. Minimum 28-day compressive strength of 5,500 psi on any individual unit.
 - ii. Maximum water cement ratio of 0.45
 - iii. Air content of 6.0% +/- 1.5%
 - iv. Maximum water-soluble chloride ion (CL) concentration, percent by weight of cement, of 0.15
 - v. Maximum chloride as Cl concentration in mixing water of 500ppm.
 - 2) Dimensions of any block cannot vary more than $\pm 3/16$ inch in any direction.
 - 3) The face of the LBU unit must be similar in appearance to a Redi-Rock LedgeStone texture or a ReCon Rustic texture. The face of the completed wall will appear natural and non-repeating. If using stain for the wall it will include multiple colors, flecking, and shades to simulate the appearance of real stone. An anti-graffiti coating will be required on the finished surface of the wall.
- c) Dry-cast precast LBU Units
- 1) Dry-cast precast LBU Units to conform to ASTM C1372 and meet the following requirements:
 - i. A minimum 28-day compressive strength of 5,500 psi on any individual unit.
 - ii. Use ASTM C150 Type V cement
 - iii. Maximum water absorption of 6% after 24 hours
 - 2) Have adequate freeze thaw resistance in accordance with ASTM C1262 in a 3% saline solution or water, modified as follows:
 - i. Wall Units-Minimum of the following:
 - 1. Less than 1% mean weight loss of its initial weight of five test specimens at the conclusion of 90 cycles
 - 2. Less than 1.5% mean weight loss of its initial weight of the four lowest out of five test specimens at the conclusion of 100 cycles
 - ii. Cap Units-Minimum of the following:
 - 1. Less than 1% mean weight loss of its initial weight of five test specimens at the conclusion of 40 cycles
 - 2. Less than 1.5% mean weight loss of its initial weight of the four lowest out of five test specimens at the conclusion of 50 cycles
 - 3) Minimum wall thickness of 1-1/4 inches for hollow LBUs.
 - 4) Straight face geometry
 - 5) Split rock face texture
 - 6) Provide LBU's within the following tolerances of the design size:
 - i. Length and width within $\pm 1/8$ inch
 - ii. Height within $\pm 1/16$ inch.

C. Drainage Aggregate

Supply aggregate meeting the following gradation determined per AASHTO T-27:

Item	Section
CL 7 Aggregate	816

The Engineer will sample and test drainage aggregate according to Section 816.04 of the Field Sampling and Testing Manual.

D. Reinforcement Aggregate

Supply virgin aggregate free of shale, organic matter, mica, gypsum, smectite, montmorillonite, or other soft poor durability particles.

Meet the following standards:

Gradation (AASHTO T-27)

<u>Sieve Size</u>	<u>Percent Passing</u>
1 inch	100
No. 40	0-60
No. 200	0-15

Plasticity Index (P.I.) (AASHTO T-90)

P.I. < 6

Soundness (AASHTO T-104)

Less than 30% magnesium sulfate soundness loss after 4 cycles or a sodium sulfate value less than 15% after 5 cycles

The Engineer will sample and test reinforcement aggregate according to Section 816.04 of the Field Sampling and Testing Manual.

E. Retaining Wall Base

Item	Section
CL 5 Aggregate	816

F. Retaining Wall Leveling Pad

Item	Section
AAE3	802

G. Drainage Pipe

Use a 4 inch perforated corrugated polyethylene (PE) pipe meeting the requirements of Section 830.03 A.4.

Wrap the PE pipe with a geosynthetic sock meeting the requirements of Section 858.01, Type D3 or D4.

H. Discharge Pipe

Use a non-perforated rigid polyvinyl chloride (PVC) pipe meeting the requirements of Section 830.03 A.3. Use a solvent cement on the joints in accordance with the manufacturer's recommendations. Provide a headwall with rodent protection at the outlet.

I. Backfill.

Use on-site excavation material or Select Aggregate Backfill (CL 5 Aggregate Section 816.02) depending on the submitted design requirements.

Item	Section
CL 5 Aggregate	816.02

J. Acceptance of Materials

Acceptance of materials will be in accordance to Section 106 of the Standard Specifications. In addition to the "Certificate of Compliance", furnish copies to the Engineer of all LBU test results performed by the manufacturer, necessary to assure contract compliance.

Acceptance will be based on the Certificate of Compliance, accompanying test reports, and visual inspection by the Engineer.

SUBMITTAL

Submit work drawings and design computations of the proposed modular wall system per section 105.08 Work Drawings. If design software is used to design the retaining wall system, the following design computations are required to be submitted:

- Hand calculations verifying the design software results
- A copy of the software used to design the wall system along with instructions and the inputs used

Provide drawings that are signed and sealed by a Professional Engineer licensed in North Dakota.

Submit a proposal for a modular retaining wall system to be built to the lines and grades shown in the plans and as described herein. Design the wall to the following requirements:

1. Design the wall according to the procedures in the current version of AASHTO "LRFD Bridge Design Specifications," Article 11.11 – Prefabricated Modular Walls.
2. Design a leveling pad for the retaining wall system that will provide sufficient support for the system. Provide a mix design for the leveling pad that meets the requirements of Section 802.
3. Use the following design criteria:

Structure Criticality	Non-Critical
Design Life	75 years
Slope of ground at base of wall	3:1
Frost Depth	4 feet*
Foundation Soil/On-site excavation material	$\phi = 0, \gamma = 125 \text{ lb/ft}^3$

Retaining Wall Base	$\phi = 32, \gamma = 120 \text{ lb/ft}^3$
Select Aggregate Backfill	$\phi = 32, \gamma = 120 \text{ lb/ft}^3$

*Frost Depth is to be considered from the proposed ground in front of the wall

ϕ = Friction Angle

γ = Unit Weight

Include the following information in the work drawings:

- (A) Plan and elevation drawings for each wall containing the following:
 - (1) A plan view of the wall identifying the offset from the construction centerline to the face of the wall at its base and at all changes in horizontal alignment.
 - (2) An elevation view of the wall identifying:
 - (a) The elevation at the top of the wall, at all horizontal and vertical break points, and at least every 25 feet along the wall.
 - (b) Elevations at the top of the leveling pads.
 - (c) The distance along the face of the wall to all steps in the leveling pads.
- (B) Cross section showing backfill section and wall batter.
- (C) Details regarding the drainage system.
- (D) General notes for constructing the wall.
- (E) Details and dimensions for the leveling pad including steps in the leveling pad.
- (F) Details for terminating walls.
- (G) Design notes including an explanation of any symbols and computer programs used in the design of the walls.
- (H) Provide details to confirm how the layout of the stone pattern will appear on the wall.

CONSTRUCTION REQUIREMENTS

A. General

Check the LBUs upon delivery to assure that the proper materials have been received. Remove damaged or other unsuitable materials from the site.

Ensure the faces of the LBUs are free of chips, cracks and stains. Prevent excessive mud, wet cement, epoxy, and like material from coming in contact with the faces of the LBU's.

Store the LBUs above ground on wood pallets or blocking.

B. Retaining Wall Excavation

Do not disturb the base beyond what is required to install the retaining wall base and

leveling pad. Over-excavation will not be paid for.

If required, dewater the area prior to placement of the retaining wall base.

C. Foundation Preparation

The foundation soil shall be examined by a qualified geotechnical engineer, to ensure that the actual foundation soil strength meets or exceeds the assumed design strength. Soil not meeting the required strength shall be removed and replaced with Aggregate Base Course (CL 5). Foundation soils within the limits of the retaining wall excavation shall be smooth and free of stones, sticks, and other debris.

D. Retaining Wall Base

Retaining wall base must extend 2' wider than the width of the leveling pad. Maximum lifts of compacted base material is 6 inches. Compact the retaining wall base to at least 90 percent of the maximum dry density with moisture content not less than 2.0 percentage points below, nor more than 3.0 percentage points above the optimum moisture content as determined by ND T 180.

E. Retaining Wall Leveling Pad

Construct leveling pad of non-reinforced concrete within 1/8 inch from the design elevation when measured by a straightedge over a 10-foot run.

Construct leveling pad 8 inches wider than the width of the facing unit.

Allow the leveling pad to cure a minimum of 24 hours prior to placement of the LBUs.

F. Retaining Wall Erection

Erect the LBUs according to the selected manufacturer's recommendations. Arrange for a field representative from the manufacturer to instruct the Contractor and the Engineer in the proper installation procedures. Keep the field representative available during construction of the retaining wall until the Engineer is satisfied the Contractor can perform the work.

Place the first course of LBUs. Check the LBUs levelness and alignment. Place each row so top of all LBUs in the row are at the same elevation. Place the LBUs in full contact with the leveling pad. Place the LBUs end to end for the full length of the wall section.

Place and compact the Drainage Aggregate and Reinforcement Aggregate behind the first course of LBUs. Fill all voids completely. Sweep all excess material from the top of the LBUs before placement of the next course. Repeat this procedure for each level of LBU's.

Control alignment by using a string line or offset from a base line.

G. Aggregate Placement

Place Reinforcement and Drainage Aggregate closely following erection of each course of LBUs. Place fill in such a manner as to avoid any damage or disturbance of the wall materials or misalignment of the LBUs.

Remove and replace any wall materials damaged during fill placement operations. Correct any misalignment or distortion of the wall due to placement of fill outside the limits of this specification.

Prohibit all vehicles from being within 3 feet of the face of the wall until the retaining wall is complete.

Do not exceed a maximum six-inch compacted lift.

Compact the aggregate simultaneously with lay-down operations. Operate all equipment to produce uniform density throughout the entire section. The desired degree of compaction will be considered obtained when the compaction requirements are satisfied, and the surface is tightly bound and shows no rutting or displacement.

Slope the last level of aggregate fill away from the wall to rapidly direct runoff away from the wall at the end of each day's operation. Prevent surface runoff from adjacent areas to enter the wall construction site.

H. Backfill

Ensure that any backfill required in front of the retaining wall be backfilled before the wall height reaches five feet. Compact the backfill according to 203.04 E.2.b and slope the backfill away from the wall.

I. Surface Sealing

Prior to sealing and placement of the anti-graffiti coating clean the surface of the wall. Apply the sealant and anti-graffiti coating as per the manufacturer's recommendations. Protect adjacent surfaces to prevent damage from the surface sealer.

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Payment for Modular Block Retaining Wall will be made at the Contract Unit Price for the following

Bid Item	Unit
Modular Block Retaining Wall	Square Foot

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

The plan quantity of Modular Block Retaining Wall is shown in the plans and is based on the vertical height (measured from the bottom of the wall/top of leveling pad) and the length of the wall.

Measure the retaining wall as the front vertical face of the wall from the top of the leveling pad to the top of the wall. Do not include the top, side, or back in the measurement.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

HOT MIX ASPHALT (HMA) – NON QC/QA

Project # 1-981(123) – PCN 22929

GENERAL

In addition to the requirements of Section 430, “Hot Mix Asphalt (HMA)”, the following provisions apply.

The Engineer will be responsible for acceptance testing.

CONSTRUCTION REQUIREMENTS

A. Contractor Personnel.

Replace Section 430.04 A, “Contractor Quality Control (QC)” with the following:

Provide personnel meeting the requirements of the NDDOT Technician Certification Program for the following tests:

- T 2 – Sampling of Aggregates
- T 248 – Reducing Samples of Aggregate to Testing Size
- NDDOT 5 – Sampling and Splitting Field Verification of HMA Samples
- NDDOT 2 – Contractor Coring

B. Determination of Specific Gravity.

Provide the Engineer with the results of the specific gravity determination made under Section 430.02 of the Field Sampling and Testing Manual.

Section 430.04 C.2, “Determination of Specific Gravity” is optional. The Engineer will determine if specific gravity correlations will be required.

If the Engineer determines that the correlation of specific gravity is not necessary, the Contractor will be notified and the Contractor may then proceed with the development of a mix design.

C. Mix Design Verification.

The Engineer will have the option of verifying the mix design specified in Section 430.04 D.1, “General”. If the Engineer determines that mix design verification is necessary, verification will be conducted in accordance with the standard specifications and the Field Sampling and Testing Manual.

D. Control Limits.

Replace Section 430.04 E, “QC Testing” with the following:

Under the observation of the Engineer, determine the asphalt content each time a gradation test is taken. Base the asphalt content on readings from the totalizers for the aggregate and the asphalt as outlined in SFN 18674, “Asphalt Content & Virgin Aggregate Determination”.

The field test results may vary from the mix design target values as shown in Table 1.

Table 1

Test/Assessment		Single Test Target Value Control Limit
Asphalt Content (based on totalizer reading)		+ 0.30
ND T 27	Control Sieves	
	1/2"	+ 6.0
	#4	+ 6.0
	#30	+ 5.0
	#200 ¹	+ 2.0
SFN 50289	% Air Voids	2.0 – 6.0
ND T 113	Lightweight Pieces in Aggregate	Not more than maximum specified
NDDOT 4	Course Aggregate Angularity	Not less than the minimum specified
ND T 304	Fine Aggregate Angularity	Not less than the minimum specified
ND D 4791	Flat and Elongated Particles	Not more than maximum specified
ND T 176	Clay Content/Sand Equivalent	Not less than the minimum specified

¹Not to exceed maximum specified

If an individual test falls outside the single test target value control limits, take immediate corrective action. After implementation of the corrective action, collect a sample and conduct the test that fell outside the control limits. If the test following the corrective action falls outside of the control limits discontinue paving operations until the cause is found and corrected. Resume paving operations only after obtaining approval from the Engineer.

The test following the corrective action is used to determine the effectiveness of the corrective action. It is not used for acceptance of material and will not be factored into the moving average.

If an individual gradation test a single control sieve falls outside the single test target value control limits, continued production is allowed only if the air voids are within the control limits and the material passing the #200 sieve does not exceed the maximum specified in Table 430-01.

Discontinue paving operations if 2 consecutive tests exceed the single test target value control limit for any of the following:

- ND T 113, Lightweight Pieces in Aggregate;
- ND T 304, Fine Aggregate Angularity;
- NDDOT 4, Percentage of Fracture Particles in Coarse Aggregate; or
- ND T 176, Plastic Fines in Graded Aggregates and Soils by Use of the Sand Equivalent Test.

Resume paving operations only after taking corrective action and obtaining approval from the Engineer.

E. Aggregate Acceptance.

Replace Section 430.04 M.1, "Aggregate" with the following:

The Engineer will accept aggregate used in the mix based on tests performed specified in section F "Aggregate Testing" and section D, "Control Limits" of this provision.

If the results for an aggregate gradation test fall outside the single test target value control limits, the Engineer will apply a contract price adjustment as specified in Section 430.06 C, "Contract Price Adjustments".

F. Aggregate Testing

The Engineer will perform tests at the frequencies shown in Table 2. At times directed by the Engineer, obtain aggregate samples from the cold feed belt according to ND T 2.

Obtain a mix sample from behind the paver each time an aggregate sample is obtained for sieve analysis.

**Table 2
Testing Frequencies**

Test/Assessment	Minimum Testing Rate
ND T 11 Materials Finer than No. 200 Sieve	1 per 1500 tons of material produces and Minimum of 1 per production day
ND T 27 Sieve Analysis of Fine and Coarse Aggregate	1 per 1500 tons of material produces and Minimum of 1 per production day
% Air Voids	1 per 1500 tons of material produces and Minimum of 1 per production day
ND T 113 Lightweight Pieces in Aggregate	Once per project
ND T 166 Bulk Specific Gravity of Compacted Hot Mix Asphalt Using Saturated Surface-Dry Specimens and Maximum Theoretical Density	Each time ND T 11 and ND T 27 are performed
ND T 176 Clay Content/Sand Equivalent	Once per project
ND T 209 Theoretical Maximum Specific Gravity and Density of Bituminous Paving Mixtures	Each time ND T 11 and ND T 27 are performed
ND T 304 Fine Aggregate Angularity	Each time ND T 11 is performed
ND T 312 Preparing and Determining the Density of Hot Mix Asphalt Specimens by Means of Superpave Gyratory Compactor	Each time ND T 11 and ND T 27 are performed
ND D 4791 Flat and Elongated Particles	Once per project
NDDOT 4 Course Aggregate Angularity	Once per project

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION (SP)

PERMITS AND ENVIRONMENTAL CONSIDERATIONS

AC-NHU-CVD-1-981(123) – PCN 22929

This Special Provision incorporates the US Army Corps of Engineers (USACE) Section 404 Permit and the Floodplain Development Permit obtained by the City of Bismarck into the bidder's proposal.

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

- **Section 404 Permit**

The Section 404 Permit number NOW-2020-00324-BIS authorizes fill within USACE jurisdictional waters. The 404 Permit authorizes 0.561 acres of temporary and 1.44 acres of permanent jurisdictional wetland impacts resulting from construction activities that require mitigation. Temporary impacts were assumed by the designer and will be restored to preconstruction contours.

See Section 75 of the plans for the permitted impact areas. The Section 404 Permit is attached.

- **Floodplain Permit**

The Floodplain Development Permit authorizes work within the mapped 100-year floodplain. The Floodplain Development Permit is attached.

The Contractor is responsible for impacts not authorized by the attached Permits obtained by the City of Bismarck.



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

December 1, 2021

NWO-2020-00324-BIS

City of Bismarck
Attn: Mr. Gabe Schell
PO Box 5503
Bismarck, North Dakota 58506-5503

Dear Mr. Schell:

We are responding to your September 22, 2021 request for a Department of the Army permit for the 43rd Street NE Improvements from State Street to N 26th Street, AC-NHU-CVD-1-981(123), PCN 22929 project. The project site is located in Sections 14-16 and 21-23, Township 139 North, Range 80 West, starting near Latitude 46.852582° North, Longitude -100.775783° West, and ending near Latitude 46.852443° North, Longitude -100.748617° West, Bismarck, Burleigh County, North Dakota.

Based on the submitted application and KLJ preliminary engineering plan sheets, dated September 21, 2021, that you provided to this office, the project involves reconstruction of 43rd Avenue, from State Street to 26th Street; and 19th Street from North Valley Loop to 43rd Avenue to include shared use paths, sidewalks, boulevards, and other incidentals. The reconstruction on 43rd Avenue includes road widening to a 4-lane from 15th Street to 19th Street and to a 3-lane from 19th Street to 26th Street. The reconstructed road will have a footprint width of 112 feet, including pedestrian facilities and boulevard. Near station 99+00, the existing triple 8' by 10' by 65' box culvert will be replaced with a quad 12' by 8' by 135' box culvert with riprap at the inlet and outlet. Channel grading to the stream will occur on the south side of the road for improved drainage and reduced sediment build up. A 10' wide shared use path will be incorporated on the south side of 43rd Avenue and a 6' wide sidewalk on the north side. A roundabout will also be constructed at the intersection of 19th Street and 43rd Avenue. The reconstruction of 19th Street includes road widening to 37' with a 6' wide sidewalk on the west side of the road and a 6' wide boulevard on the east side of the road. The reconstructed road will have a footprint width of 56', including the pedestrian facilities and boulevard. Near station 13+00 on 19th Street, the existing 48" by 50' CSP will be replaced with an 8' by 4' by 115' box culvert with riprap at the inlet and outlet; Excavation of the channel will occur downstream to improve drainage. These activities will result in the permanent loss of approximately 1.44 acres of waters of the United States and temporary impacts to approximately 0.561 acres will be restored upon project completion.

We have determined activities in waters of the U.S. associated with the project are authorized by Nationwide Permit Number (NWP) 23 Approved Categorical Exclusions, found in the January 6, 2017 Federal Register (82 FR 1860), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General, Regional and Water Quality 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.

In addition, your work must comply with the following special conditions:

1. BORROW SITE

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

2. AS-BUILTS FOR IMPACTS

This permit verification is based on the plan sheets submitted with the application entitled City of Bismarck 43rd Avenue NE, AC-NHU-CVD-1-981(123) State St to Hay Creek Drive and N 19th Street from N Valley Loop to 43rd Ave NE dated 9/02/2021, 9/16/2021, and 9/21/2021. Any deviations from these preliminary plan sheets shall be submitted to the North Dakota Regulatory Office prior to construction and approved in writing.

Within 60 days following completion of the authorized work or at the expiration of the construction window of this permit, you shall submit as-built drawings or stamped final construction plans showing any changes that occurred during construction and a description of the work changed during construction on the project site AND/OR avoidance areas to this office for review. The drawings shall include the following:

- a. The Department of the Army Permit number
- b. A plan view drawing of the location of the authorized work footprint (as shown on the permit drawings) with an overlay of the work as constructed in the same

scale as the attached permit drawings. The drawing should show all "earth disturbance," wetland impacts, structures, and avoidance areas. The drawings shall contain, at a minimum, scaled cross-sections or 1-foot topographic contours of the entire site.

c. Ground photographs of the completed work. The camera positions and view-angles of the ground photographs shall be identified on a map, aerial photograph, or project drawing.

d. A description and list of all minor deviations between the work as authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings or change orders the location of any deviations that have been listed.

3. PHOTOGRAPHS

At least 10 days prior to initiation of construction activities in waters of the United States authorized by this permit/verification, you shall submit to this office pre-construction site and aerial photographs of the project site, which have been taken no more than one year or previously provided for the purposes of a delineation and jurisdictional determination, prior to initiation of construction activities in waters of the U.S. authorized by this permit/verification. Following completion of construction activities in waters of the U.S. authorized by this permit/verification, you shall submit post-construction site ground photographs or post construction aerial photographs/satellite imagery of the project site, showing the work conducted, to this office. The post construction site and aerial photography may be obtained with the initial mitigation monitoring normally submitted by December 31 following the first growing season or at the expiration of the construction window. The camera positions and view angles of post-construction photographs shall be identified on a map, aerial photo, or project drawing. Construction locations shall include all major project features and waters of the U.S. including avoidance and compensatory mitigation areas.

4. NOTIFICATION OF START/COMPLETION DATE

At least 10 days prior to initiation of construction activities in waters of the U.S. authorized by this permit verification, you shall notify this office in writing of the anticipated start date for the work. No later than 30 calendar days following completion of construction activities in waters of the U.S. authorized by this permit verification, you shall notify this office in writing that construction activities have been completed.

5. CORPS INSPECTION

You and your authorized contractor shall allow representatives from this office to inspect the activity authorized by this verification at any time deemed necessary to ensure that work is being or has been accomplished in accordance with the terms and conditions of this verification.

6. CONTRACTOR COMPLIANCE

You are responsible for all work authorized herein and ensuring that all contractors and workers are made aware and adhere to the terms and conditions of this verification. You shall ensure that a copy of the verification and associated drawings

are available for quick reference at the project site until all construction activities in waters of the U.S. authorized by this verification are completed.

7. MITIGATION BANK

To compensate for the loss of 1.44 acres of waters of the United States, you shall purchase 2.60 credits from Ducks Unlimited for the Missouri River Basin Southern Zone Service Area. Evidence of this purchase shall be provided to this office prior to initiation of construction activities in waters of the U.S. authorized by this permit.

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 18, 2022**. 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. All of the existing nationwide permits are scheduled to be modified, reissued, or revoked prior to **March 18, 2022**. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice when the nationwide permits are reissued. Furthermore, if you commence or are under contract to commence this activity 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 http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

Please refer to identification number NWO-2020-00324-BIS in any correspondence concerning this project. If you have any questions, please contact Amber Inman by email at Amber.L.Inman@usace.army.mil, or telephone at (701) 255-0015, extension 2009.

Sincerely,



Toni R. Erhardt
Senior Project Manager
North Dakota Regulatory Office

Enclosures

COMPLIANCE CERTIFICATION

Permit File Name: NDDOT; 43rd St NE Improvements; State St to N 26th St, AC-NHU-CVD-1-981(123), PCN 22929; City of Bismarck

Action ID: NWO-2020-00324-BIS

Nationwide Permit Number: 23 Approved Categorical Exclusions

Permittee: City of Bismarck
Attn: Mr. Gabe Schell
PO Box 5503
Bismarck, North Dakota 58506-5503

County: Burleigh County

Date of Verification: December 1, 2021

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

**FACT SHEET
NATIONWIDE PERMIT 23
(2017)**

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 Letters. (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, which is available at: <http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-07.pdf>. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same Web site.

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. 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 NWP, or who is currently relying on an existing or prior permit authorization under one or more NWP, 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 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 NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material.

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

7. Water Supply Intakes.

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

8. Adverse Effects from Impoundments.

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

9. Management of Water Flows.

To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, 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 Fills.

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

14. Proper Maintenance.

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

15. Single and Complete Project.

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

16. Wild and Scenic Rivers.

(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. The permittee 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 NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. Endangered Species.

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. 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 designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat 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. In cases where the non- Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the 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 critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

(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 their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts 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) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. 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, which may include background research, consultation, oral history interviews, sample field investigation, and 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. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) 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.

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

22. 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 NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

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

23. Mitigation.

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that 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) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than 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. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns.

Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to 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 NWPs, 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)).

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

(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 dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality.

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

result in more than minimal degradation of water quality. *Specifically for North Dakota, the North Dakota Department of Health has denied water quality certification for all projects proposed to affect Class I and IA rivers and streams, and classified lakes in Appendix I and II of the standards, and individual certification must be obtained. For projects proposed to affect any other waters, the North Dakota Department of Health has issued water quality certification provided the attached Construction and Environmental Disturbance Requirements are followed. The Standards may be found at <http://www.legis.nd.gov/information/acdata/pdf/33-16-02.1.pdf?2016031115632>*

On Tribal Lands, Water Quality Certification is denied for all Nationwide Permits. Applicants must work with EPA to obtain individual water quality certification. Contact: USEPA, Region 8, 401 Certification Program – 8WP-AAP, 1595 Wynkoop Street, Denver, Colorado 80202-1129. (303-312-6909)

26. Coastal Zone Management.

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

27. Regional and Case-By-Case Conditions.

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

28. Use of Multiple Nationwide Permits.

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

29. Transfer of Nationwide Permit Verifications.

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

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

_____ (Transferee) _____ (Date)

30. Compliance Certification.

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and 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 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 is not authorized by NWP until the appropriate Corps office issues the section 408 permission 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. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) 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. For single and complete linear projects, 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. 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, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate 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 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 designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat 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 activity that requires 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 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 the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it

is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. 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 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) 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 (iv) 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 fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects 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).

**2017 NATIONWIDE PERMITS
REGIONAL CONDITIONS
OMAHA DISTRICT
STATE OF NORTH DAKOTA**

The following Nationwide Permit Regional Conditions will be used in the State of North Dakota. Regional conditions are placed on Nationwide Permits to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resource concerns.

1. **Wetlands Classified as Peatlands – Revoked for use**

All Nationwide Permits, with the exception of 3, 5, 20, 32, 38 and 45, are revoked for use in peatlands. Peatlands are permanently or seasonally saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay.

2. **Wetlands Classified as Peatlands – Preconstruction Notification Requirement**

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

3. **Waters Adjacent to Natural Springs – Preconstruction Notification Requirement**

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 32 (Pre-Construction Notification) for regulated activities 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.

4. **Missouri River, including Lake Sakakawea and Lake Oahe – Pre-construction Notification Requirement**

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity occurring in or under the Missouri River, including Lake Sakakawea and Lake Oahe. In addition, any activity occurring in an off channel area (marinas, bays, etc.) of any of these waterbodies, a preconstruction notification is required.

5. **Spawning Areas**

Spawning restrictions and important fish habitat areas, if applicable, can be accessed on the North Dakota Game & Fish Department's website at:

<http://gf.nd.gov/gnf/conservation/docs/spawning-restriction-exclusions.pdf>

No regulated activity within the Red River of the North shall occur between 15 April and 1 July. Spawning season restrictions do not apply to projects involving dredging or other discharges of less than 25 cubic yards of material in any jurisdictional water.

6. **Counter-Sinking Culverts and Associated Riprap – All Nationwide Permits**

In streams with intermittent or perennial flow and a stable stream bed, culvert stream crossings shall be installed with the culvert invert set below the natural streambed 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.

Riprap inlet and outlet protection shall be placed to match the height of the culvert invert.

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	0.5 ft
Pipe diameter <8.0 ft	>640 acres	1.0 ft
Pipe diameter ≥ 8.0 ft	All drainage sizes	1.0 ft
Box culvert	All drainage sizes	1.0 ft

REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS

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

Intake Structures – Intake screens with a maximum mesh opening of ¼-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed ½-foot per second.

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

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

- The intakes shall be floating.
- At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
- If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.

- If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to ¼ foot per second.

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

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

Intakes and associated utility lines that are proposed to cross sandbars in areas designated as piping plover critical habitat are prohibited.

Utility Lines

- 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.

Nationwide Permit 11 – Temporary Recreational Structures – 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:

- 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 watermark. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer’s Office.
- Any boat dock shall be anchored to the top of the high bank.
- 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.

Section 10 Waters located in the State of North Dakota are:

Bois de Sioux River
 James River
 Missouri River
 Red River of the North
 Upper Des Lacs Lake
 Yellowstone River

Nationwide Permit 13 – Bank Stabilization

Permittees must notify the Corps in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity. The notification must also include photo evidence of erosion in the area. Prohibited materials found at

<http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/487696/prohibited-restricted-materials.aspx> cannot be used in waters of the United States.

Nationwide Permit 23 – Approved Categorical Exclusions

Permittees must notify the Corps in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity. In addition to information required by General Condition 32 (Pre-Construction Notification), permittees must identify the approved categorical exclusion that applies and provide documentation that the project fits the categorical exclusion.

GENERAL CONDITIONS (REGIONAL ADDITIONS)

General Condition 32 Notification– Pre-construction Notification

Prospective permittees should be aware that a field aquatic resources delineation may be required for applications where notification is required in accordance with General Condition 32 (Pre-Construction Notification) and/or mitigation may be required. Specific guidelines outlining the aquatic resources delineation process in the State of North Dakota and the Corps 1987 Wetland Delineation Manual and applicable Regional supplements to the Manual can be accessed on the North Dakota Regulatory Office's website at:

<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/NorthDakota.aspx>



NORTH DAKOTA
DEPARTMENT of HEALTH

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



Construction and Environmental Disturbance Requirements

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

Soils

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

Surface Waters

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

Fill Material

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

Environmental Health
Section Chief's Office
701.328.5150

Division of
Air Quality
701.328.5188

Division of
Municipal Facilities
701.328.5211

Division of
Waste Management
701.328.5166

Division of
Water Quality
701.328.5210



December 14, 2021

Gabe Schell, PE, City Engineer
City of Bismarck Engineering Department
221 N 5th St
PO Box 5503
Bismarck ND, 58501

Re: FLOODPLAIN DEVELOPMENT APPROVAL, 43rd Avenue reconstruction project from
State Street to 26th Street

Dear Mr. Schell:

This letter is to inform you that the City of Bismarck's Community Development Department-Building Inspections Division has reviewed the information provided with the floodplain development application you submitted on November 3rd, 2021.

This approval is for the reconstruction of stream crossings for Hay Creek under 43rd Avenue NE and for the 4th Street Drainage under 19th St. Should the project scope of work change, you are required to submit a revised floodplain development application and scope of work to the City of Bismarck Building Inspections Division for review.

Receipt of this letter does not constitute approval to begin construction until such time as all required State and Federal permits necessary for the construction of the proposed project have been obtained.

If you have any questions, please contact me at 701-355-1467.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brady Blaskowski".

Brady Blaskowski, CBCO, CFM
Building Official

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

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

$FCA_{(x, y, z)} = \text{Fuel Ratio}_{(x, y, z)} \times \text{Estimate}_{(x, y, z)} \times (\text{Cost Change}_{(x, y, z)} + 0.10)$		
(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.			
<input type="checkbox"/> Diesel <input type="checkbox"/> Unleaded <input type="checkbox"/> 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 .			
<input type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, provide the total dollars for each of the applicable fuels:			
Diesel (D)		% of Original Contract Amount *	
Unleaded (U)			
Burner Fuel (B)			
Sum (D+U+B)			
*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)	

North Dakota Income Tax Clearance Number _____

Expiration Date of Certification _____

City of Bismarck Construction Agreement

THIS CITY OF BISMARCK CONSTRUCTION AGREEMENT (the Agreement), made and entered into this « » day of « », 20XX, by and between the City of Bismarck, a municipal corporation, hereinafter called the "CITY," and «company», with its office at «city», North Dakota, hereinafter called the "CONTRACTOR."

The parties hereto, in consideration of the mutual agreement contained, mutually undertake, promise, and agree for themselves, their respective representatives, successors, and assigns, as follows:

ARTICLE I

The Contractor shall furnish the materials and perform the work for the 43rd Avenue Reconstruction Project, AC-NHU-CVD-1-981(123) PCN 22929, City Project HC-131, for the City of Bismarck, Burleigh County, North Dakota, in strict accord with the agreement as herein defined.

ARTICLE II

The following shall be deemed a part of this agreement:

1. The proposal for bids, instructions to bidders, and requirements for bidders;
2. The bid of the Contractor;
3. The Agreement;
4. The general provisions;
5. The specifications;
6. The contract drawings;
7. The bid bond, performance, and payment bonds and maintenance bond, if any;
8. Certificate of Insurance;
9. All addenda issued by the engineers prior to receipt of bids;
10. Notice of award;
11. Resolution of City awarding the bid;
12. All provisions required by law to be inserted in this contract whether actually inserted or not.

All of the above taken as a whole shall constitute the agreement documents.

ARTICLE III

The City agrees to pay the Contractor for the performance of this Agreement according to the schedule of approximate quantities, the aggregate of which is estimated to be

approximately \$«amount». Payments are to be made as per specifications upon presentation of the proper certification of the Engineer or his representative and by the terms of this agreement.

ARTICLE IV

All provisions of the contract relating to time of performance and completion of the work are of the essence of this contract. Accordingly the Contractor shall begin work on a date to be specified in a written order from the Board of City Commissioners and shall fully and entirely perform this contract, and all work incidental thereto, as stated below:

Interim Completion Date 1

If the N 19th St box culvert is constructed outside of Phase 3, construct the box culvert as stated in note 704-P01. At least 14 days prior to closing the roadway, notify the Engineer in writing of the start date of the work.

The N 19th St Box Culvert completion date is 21 calendar days from the roadway closure date. Liquidated damages will be assessed at a rate of \$900 for each calendar day that expires after 21 calendar days.

Interim Completion Date 2

Construct the retaining wall from station 69+35 to 71+40 along with all backfilling, grading, and concrete parking lot behind the wall. At least 14 days prior to work beginning on the wall, notify the Engineer in writing of the start date of the work. Access to the storage units at 1444 43rd Ave NE must be maintained until the intended start date.

Interim Completion Date 2 is 28 calendar days after the intended start date of the wall. Liquidated damages will be assessed at a rate of \$1,100 for each calendar day that expires after 28 calendar days.

Substantial Completion

Complete all work required in the contract except for chip sealing, permanent pavement markings, landscape appurtenances, and tree plantings. Apply temporary pavement markings per Note 762-P01.

Substantial Completion is November 12, 2022. Liquidated damages will be assessed per Section 108.07 B for each calendar day that expires after November 12, 2022.

Final Completion

Complete all chip sealing, permanent pavement markings, landscape appurtenances, and tree plantings.

Final Completion is July 29, 2023. Liquidated damages will be assessed at a rate of \$900 for each calendar day that expires after July 29, 2023.

ARTICLE V

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

1. **Compliance with Regulations:** The Contractor will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the US Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers a program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts and the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take such action with respect to any subcontractor or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

ARTICLE VI

During the performance and up to the date of final acceptance, the Contractor shall be under an absolute obligation to protect any damage, loss or injury; and, in the event of such damage, loss or injury, he shall promptly replace or repair such work, whichever the (Engineer) shall determine to be preferable. The obligation to deliver finished work in strict accordance with the contract prior to final acceptance shall be absolute and shall not be affected by the (Engineer's) approval of or failure to prohibit means and methods of construction used by the Contractor.

The Contractor must take all reasonable precautions to protect the persons and property of others on or adjacent to the site from damage, loss, or injury resulting from his operations under this contract.

Within three days after notice to him of the happening of any such loss, damage, or injury, the Contractor shall make a full and complete report thereof in writing to the Engineer.

If the persons or property of others on or adjacent to the site sustain loss, damage or injury resulting directly or indirectly from the work of the Contractor, or his subcontractors, in their performance of this contract, or from his or their failure to comply with any of the provisions of this contract or of law, the Contractor shall indemnify and hold the City and the NDDOT harmless from any and all claims and judgments for damage and from costs and expenses to which the City or the NDDOT may be subjected or which it may suffer or incur by reason thereof.

The Contractor agrees to indemnify and save harmless the City of Bismarck, its appointed and elective officers and employees, and the North Dakota Department of Transportation, its appointed and elective officers and employees, from and against all loss or expense, including attorney's fees and costs by reason of liability imposed by law upon the City, its elected or appointed officials or employees, or the North Dakota Department of Transportation, its appointed and elected officers and employees, for damages because of bodily injury including death at any time resulting therefrom sustained by any person or persons and on account of damage to property including loss of use thereof, arising

out of or in consequence of the performance of this work, whether such injuries to persons or damage to property is due to the negligence of the Contractor, his agents or employees, his subcontractors, his employees, the City of Bismarck, its appointed or elected officers, and employees, the North Dakota Department of Transportation, its appointed and elected officers and employees, or their agents, except only such injury or damage as shall have been occasioned by sole negligence of the City, its appointed or elected officials or employees, or the North Dakota Department of Transportation, its appointed and elected officers and employees.

The City may suspend or terminate the Agreement, in whole or in part, and suspend work at any time, re-let work to be completed, or order the reconstruction of any part or all of the work improperly done for improper construction or non-compliance with the terms of the agreement. The decision of the City upon any questions connected with the execution of this Agreement or any failure or delay in the prosecution of the work by the Contractor shall be final and conclusive.

Whenever the City determines to suspend or terminate any of the provisions of the Agreement or to suspend work, re-let work, or order the reconstruction of any part or all of the work, the City shall promptly notify the Contractor in writing of the determination and the reasons for the action, together with the effective date.

The Contractor shall give preference, pursuant to North Dakota Century Code Subsection 43-07-20, to the employment of bona fide North Dakota residents with preference given first to honorably discharged disabled veterans of the armed forces of the United States, who are deemed to be qualified in the performance of said work. Such preference shall not apply to engineering, superintendence, management, or office or clerical work. Contracts which involve federal aid funds and where a preference or discrimination would be contrary to federal law or regulations shall be exempt from the requirements of this paragraph.

The Contractor, in employing and maintaining labor, shall do so in conformity with state and federal law and this Agreement.

The Contractor shall also obtain and furnish general liability insurance covering itself; and naming the CITY, its representatives, successors, and assigns, and the North Dakota Department of Transportation, its representatives, successors, and assigns, as an additional insured with an insurer licensed to do business in North Dakota; with policy limits of not less than \$1,000,000.00 for property damage; and not less than \$1,000,000.00 for personal injuries including accidental death to any person; and not less than \$2,000,000.00 for one accident, against and from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property on account of any negligent act or fault of the Contractor, the City or its officers, agents or employees, the North Dakota Department of Transportation, its officers, agents, or employees, in the execution of the Agreement, or on account of Contractor's failure to provide necessary barricades, warning lights, or signs, and as will protect the City and the NDDOT from any contingent

liability or any other liability under this Agreement and based on any other legal grounds. The Contractor shall provide the City with an insurance certificate naming the City and the NDDOT as additional insureds. In no case shall the liability insurance be less than that specified in the City of Bismarck Construction Specifications for Municipal Improvements or the Risk Management Appendix which is an exhibit to the attached Cost Participation and Management Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date and year first above written.

CITY OF BISMARCK
A Municipal Corporation

(SEAL)

President, Board of City Commissioners

Attest: _____
City Administrator

Date Signed

* * * * *

« COMPANY NAME »

(SEAL)

TITLE:

Attest: _____
TITLE:

Date Signed

CITY OF BISMARCK, NORTH DAKOTA
CONTRACT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, _____

as principal, and _____

as surety, are held and firmly bound unto the City of Bismarck, North Dakota, in the
penal sum of _____ Dollars (\$_____)

for the use of the City of Bismarck, North Dakota, and also for the use of any person
having any lawful claim against the principal or any subcontractor on account of labor or
supplies or materials as set forth in the conditions hereof; for the payment of which well
and truly to be made we jointly and severally bind ourselves, and each of our heirs,
executors, administrators, and successors, firmly by these presents.

WHEREAS, said principal has entered into a written contract with the City of Bismarck,
North Dakota, for: _____

in Burleigh County, North Dakota, which contract and incorporated plans and
specifications are by this reference a part hereof, and are hereinafter referred to as the
contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS THAT if the principal
shall: (1) perform all the terms, covenants, and conditions of said contract; (2) protect
the City of Bismarck, North Dakota, against any loss or damage from any cause arising
out of said contract; (3) pay or cause to be paid all bills and claims against the principal
or any subcontractor on account of labor or services performed and all materials,
equipment, or supplies furnished, whether directly or indirectly arising out of the
performance of said contract; (4) pay all insurance premiums and all items for which
payment under the terms of the contract is to be made or guaranteed by the principal;
(5) have made or will make, prior to the commencement of any work by the principal or
any subcontractor under such contract, full and true report to the Workers
Compensation Bureau of the payroll expenditures for the employees to be engaged in
such work, and that the principal has paid, or will pay, the premium thereon prior to the
commencement of such work; (6) pay or cause to be paid all contributions due to the
Unemployment Compensation Division; and (7) pay or cause to be paid any and all
taxes that may be assessed or levied or to be a charge against such contractor or any
subcontractor under such contract by the State of North Dakota or any of its
subdivisions; then this obligation shall be null and void, otherwise it will remain in full
force and effect.

And the said surety hereby stipulates and agrees that any change, extension, alteration,
deduction, or addition, with or without notice to the surety, in or to the terms of said

contract or the plans or the specifications accompanying the same as provided for therein, shall not in anywise affect the obligation and liability of said surety on this bond.

SIGNED and SEALED this _____ day of _____, _____.

(Seal of
Principal)

(Seal of
Surety)

Principal

By: _____

Title: _____

Surety

Complete Mailing Address

By: _____

Title: _____

Complete Mailing Address

IMPORTANT NOTICE

An individual doing business under a firm name must give both names, and the individual shall designate himself as sole owner.

If a partnership, so state, and at least one member of such partnership must sign.

If a corporation, the full corporate names must be used and the execution must be by an officer of the corporation.

Any other person executing for the principal or surety must attached a power of attorney.

NOTICE TO SURETY
Section 25.1-03-01, N.D.C.C. Provides:

"Limitation on risks acceptable to company. An insurance company transacting an insurance business in this state may not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess is reinsured."

If excess reinsurance agreements are required on this bond, an affidavit executed by an officer of the surety shall be attached, stating that such reinsurance agreements have been entered into and are in effect at the time the bond is executed, giving the name and address of all companies with whom such agreements have been entered, and that copies of such reinsurance agreements will be furnished to the North Dakota Commissioner of Insurance.

ACKNOWLEDGEMENT OF PRINCIPAL

State of _____

ss.

County of _____

On this _____ day of _____, 202____, before me, a notary public in and for the State of _____, personally appeared _____, known to me to be the _____ (title) of the principal described in the within instrument and who executed the same and acknowledged to me that the same was executed for and on behalf of said principal.

Notary Public, State of _____

(Notary Public must print or type name here)

My commission expires: _____

ACKNOWLEDGEMENT OF SURETY

State of _____ ss.

County of _____

On this _____ day of _____, 202____, before me, a notary public in and for the State of _____, personally appeared _____, known to me to be the _____ (title) of the surety described in the within instrument and who executed the same and acknowledged to me that the same was executed for and on behalf of said surety.

Notary Public, State of _____

(Notary Public must print or type name here)

My commission expires: _____