

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION  
**REQUEST FOR PROPOSAL**  
STATE FEDERAL AID PROJECT NO. NH-1-003(050)113 (PCN-18811)

20.354 Miles

GRADING, MILLING, RAP OVERLAY, CULVERT EXTENSIONS  
ND 3, JCT ND 36 (TUTTLE) N TO W JCT ND 200 (HURDSFIELD)

KIDDER and WELLS COUNTIES

DBE Race Neutral Goal - 0%

**BID OPENING:** The bidder's proposal will be accepted via the Bid Express on-line bidding exchange at [www.bidx.com](http://www.bidx.com) until **09:30AM Central Time on May 13, 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)

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**Project:** NH-1-003(050)113 (PCN-18811)

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

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

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

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

#### **NON-COLLUSION AND DEBARMENT CERTIFICATION**

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

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

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

**Project:** NH-1-003(050)113 (PCN-18811)

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

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

Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

**BID LIMITATION (Optional)**

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

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

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

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

OR

that exceed a total number of \_\_\_\_\_ projects.

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



**Project:** NH-1-003(050)113 (PCN-18811)

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**PERMISSIBLE DISCOUNT (optional)**

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

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

Space for Offering Discounts:

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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:** NH-1-003(050)113 (PCN-18811)

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**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: NH-1-003(050)113 (PCN-18811)**

**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	201	0330	CLEARING & GRUBBING	L SUM	1.				
003	201	0370	REMOVAL OF TREES 10IN	EA	5.				
004	201	0380	REMOVAL OF TREES 18IN	EA	3.				
005	202	0132	REMOVAL OF BITUMINOUS SURFACING	SY	11,360.				
006	202	0169	REMOVAL OF END SECTION-ALL TYPES & SIZES	EA	66.				
007	202	0174	REMOVAL OF PIPE ALL TYPES AND SIZES	LF	438.				
008	202	0312	REMOVE EXISTING FENCE	LF	443.				
009	203	0102	COMMON EXCAVATION-TYPE B	CY	271,698.				
010	203	0109	TOPSOIL	CY	147,515.				
011	203	0113	COMMON EXCAVATION-WASTE	CY	13,832.				
012	203	0138	COMMON EXCAVATION-SUBCUT	CY	4,074.				
013	216	0100	WATER	M GAL	3,861.				
014	230	0125	SHOULDER PREPARATION	MILE	5.080				
015	251	0200	SEEDING CLASS II	ACRE	218.750				
016	251	1000	WETLAND SEED	ACRE	.120				

**BID ITEMS**

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
017	251	2000	TEMPORARY COVER CROP	ACRE	218.710				
018	253	0101	STRAW MULCH	ACRE	418.170				
019	255	0101	ECB TYPE 1	SY	93,944.				
020	255	0102	ECB TYPE 2	SY	3,620.				
021	256	0701	REMOVE AND REPLACE RIPRAP	CY	795.				
022	260	0200	SILT FENCE SUPPORTED	LF	15,938.				
023	260	0201	REMOVE SILT FENCE SUPPORTED	LF	15,938.				
024	261	0112	FIBER ROLLS 12IN	LF	100,141.				
025	261	0113	REMOVE FIBER ROLLS 12IN	LF	24,160.				
026	261	0120	FIBER ROLLS 20IN	LF	160.				
027	261	0121	REMOVE FIBER ROLLS 20IN	LF	80.				
028	262	0100	FLOTATION SILT CURTAIN	LF	6,200.				
029	262	0101	REMOVE FLOTATION SILT CURTAIN	LF	6,200.				
030	302	0120	AGGREGATE BASE COURSE CL 5	TON	61,589.				
031	401	0050	TACK COAT	GAL	33,996.				
032	401	0060	PRIME COAT	GAL	25,422.				

**BID ITEMS**

**Project: NH-1-003(050)113 (PCN-18811)**

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
033	401	0160	BLOTTER MATERIAL CL 44	TON	545.				
034	411	0105	MILLING PAVEMENT SURFACE	SY	303,101.				
035	430	0143	RAP - SUPERPAVE FAA 43	TON	60,711.				
036	430	1000	CORED SAMPLE	EA	663.				
037	430	5803	PG 58S-28 ASPHALT CEMENT	TON	2,673.				
038	702	0100	MOBILIZATION	L SUM	1.				
039	704	0100	FLAGGING	MHR	4,000.				
040	704	1000	TRAFFIC CONTROL SIGNS	UNIT	4,051.				
041	704	1048	PORTABLE RUMBLE STRIPS	EA	4.				
042	704	1052	TYPE III BARRICADE	EA	20.				
043	704	1060	DELINEATOR DRUMS	EA	107.				
044	704	1067	TUBULAR MARKERS	EA	396.				
045	704	1080	STACKABLE VERTICAL PANELS	EA	20.				
046	704	1185	PILOT CAR	HR	2,000.				
047	706	0500	AGGREGATE LABORATORY	EA	1.				
048	706	0550	BITUMINOUS LABORATORY	EA	1.				

**BID ITEMS**

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
049	706	0600	CONTRACTOR'S LABORATORY	EA	1.				
050	709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	6,681.				
051	709	0155	GEOSYNTHETIC MATERIAL TYPE RR	SY	1,279.				
052	714	0615	PIPE CONC REINF 24IN CL III	LF	192.				
053	714	0820	PIPE CONC REINF 30IN CL III	LF	228.				
054	714	0905	PIPE CONC REINF 36IN CL III	LF	2.				
055	714	2518	CURED-IN-PLACE PIPE-18IN	LF	347.				
056	714	2524	CURED-IN-PLACE PIPE-24IN	LF	156.				
057	714	2530	CURED-IN-PLACE PIPE-30IN	LF	290.				
058	714	3020	END SECT-CONC REINF 24IN	EA	6.				
059	714	3030	END SECT-CONC REINF 30IN	EA	3.				
060	714	4106	PIPE CONDUIT 24IN-APPROACH	LF	398.				
061	714	4113	PIPE CONDUIT 30IN-APPROACH	LF	110.				
062	714	5010	PIPE CORR STEEL .064IN 15IN	LF	60.				
063	714	5015	PIPE CORR STEEL .064IN 18IN	LF	825.				
064	714	5035	PIPE CORR STEEL .064IN 24IN	LF	187.				

**BID ITEMS**

**Project: NH-1-003(050)113 (PCN-18811)**

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
065	714	5210	PIPE CORR STEEL .079IN 30IN	LF	6.				
066	714	5805	END SECT CORR STEEL .064IN 15IN	EA	2.				
067	714	5810	END SECT CORR STEEL .064IN 18IN	EA	17.				
068	714	5825	END SECT CORR STEEL .079IN 30IN	EA	2.				
069	714	6501	END SECT-TRAVERSABLE METAL 18IN	EA	46.				
070	714	6506	END SECT-TRAVERSABLE METAL 24IN	EA	12.				
071	714	9200	CATTLE PASS CONC INTERMED SECTION	LF	74.				
072	714	9602	REMOVAL OF CATTLE PASS	LF	36.				
073	714	9611	REMOVE & RELAY CONC CATTLE PASS END SECTION	EA	4.				
074	714	9660	REMOVE & RELAY END SECTION-ALL TYPE & SIZES	EA	58.				
075	720	0110	RIGHT OF WAY MARKERS	EA	126.				
076	720	0125	ALIGNMENT MONUMENTS	EA	74.				
077	720	0130	IRON PIN R/W MONUMENTS	EA	71.				
078	720	0135	IRON PIN REFERENCE MONUMENTS	EA	57.				
079	752	0110	FENCE BARBED WIRE 3 STRAND-STEEL POST	LF	50.				
080	752	0320	FENCE BARBED WIRE 4 STRAND-STEEL POST	LF	288.				

**BID ITEMS**

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
081	752	0905	TEMPORARY FENCE	LF	229.				
082	752	0911	TEMPORARY SAFETY FENCE	LF	350.				
083	752	0930	FENCE RESET EXISTING	LF	52.				
084	752	0993	FENCE TERMINAL	EA	14.				
085	752	2110	RESET VEHICLE GATE	EA	2.				
086	752	2120	REMOVE VEHICLE GATE	EA	2.				
087	752	3150	CORNER ASSEMBLY BARBED WIRE-WOOD POST	EA	2.				
088	752	4140	DOUBLE BRACE ASSEMBLY BARBED WIRE-WOOD POST	EA	4.				
089	754	0110	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	273.				
090	754	0112	FLAT SHEET FOR SIGNS-TYPE IV REFL SHEETING	SF	172.				
091	754	0150	DELINEATORS-TYPE A	EA	25.				
092	754	0206	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	1,022.				
093	754	0563	REFERENCE MARKER-TYPE C	EA	19.				
094	754	0592	RESET SIGN PANEL	EA	21.				
095	754	0805	OBJECT MARKERS - CULVERTS	EA	166.				
096	760	0005	RUMBLE STRIPS - ASPHALT SHOULDER	MILE	40.708				



**BID ITEMS**

Project: NH-1-003(050)113 (PCN-18811)									
<p><b>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.</b></p>									
Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$\$	000	\$\$\$\$\$	00
097	760	0007	RUMBLE STRIPS - ASPHALT CENTERLINE	MILE	20.354				
098	760	0010	RUMBLE STRIPS - INTERSECTION	SET	1.				
099	762	0430	SHORT TERM 4IN LINE-TYPE NR	LF	255,816.				
100	762	1104	PVMT MK PAINTED 4IN LINE	LF	278,893.				
101	766	0100	MAILBOX-ALL TYPES	EA	11.				
102	910	0800	PIPE JOINT REPAIR	EA	2.				
103	990	0400	PIPE CLEANOUT	EA	41.				
			TOTAL SUM BID						

**Project:** NH-1-003(050)113 (PCN-18811)

**Type of Work:** GRADING, MILLING, RAP OVERLAY, CULVERT EXTENSIONS

**Counties:** KIDDER and WELLS

**Length:** 20.3540 Miles

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**TIME FOR COMPLETION:**

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

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

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

**COMPLETION DATE CONTRACT** The project completion date is 10/15/2022. 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.

**PROPOSAL FORM**

North Dakota Department of Transportation

**BID OPENING: May 13, 2022****Job 18811**

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**Project:** NH-1-003(050)113 (PCN-18811)**Type of Work:** GRADING, MILLING, RAP OVERLAY, CULVERT EXTENSIONS**Counties:** KIDDER and WELLS**Length:** 20.3540 Miles**CONTRACT EXECUTION:**

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

**AFFIDAVIT:**

**STATE OF** \_\_\_\_\_ )  
 ) **ss.**  
**COUNTY OF** \_\_\_\_\_ )

The undersigned bidder, being duly sworn, does depose and say that they are an authorized representative of \_\_\_\_\_

CONTRACTOR NAME

of \_\_\_\_\_, a

MAILING ADDRESS

☐ Individual      ☐ Partnership      ☐ Joint Venture      ☐ Corporation

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

\_\_\_\_\_  
BIDDER MUST SIGN ON THIS LINE

\_\_\_\_\_, TITLE \_\_\_\_\_

\_\_\_\_\_  
TYPE OR PRINT SIGNATURE ON THIS LINE

Subscribed and sworn to before me this day.

\_\_\_\_\_  
COUNTY

(Seal)

\_\_\_\_\_  
STATE\_\_\_\_\_  
DATE\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_

# **NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

Job 18811, NH-1-003(050)113

Grading, Milling, RAP Overlay, Culvert Extensions

## **INDEX OF PROVISIONS**

Road Restriction Permits

Hot Line Notice

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

SP DBE Program - Race Neutral dated March 1, 2022

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

Labor Rates from U.S. Department of Labor dated February 25, 2022 (Mod. No. 4)

On-The-Job Training Program 2022

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SSP 4 Longitudinal Joint Density

SSP 5 Limitations of Operations

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SSP 8 Federal Prohibition on Certain Technological Hardware

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SSP 9 HMA Acceptance

SSP 10 E-Ticketing

SP 55(20) Flexible Pavement Surface Tolerance

SP 56(20) Cured-In-Place Pipe (CIPP)

PSP 9(20) Permits and Environmental Considerations

Materials Pit List & Material Source Certificate

SP Fuel Cost Adjustment Clause dated September 8, 2006

# NOTICE

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

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

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

# NDDOT ROAD AND VEHICLE RESTRICTIONS

Date Revised 05-22-10

## ROAD RESTRICTION PERMITS

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

RESTRUCTION CLASSIFICATIONS WITH ALLOWABLE AXLE WEIGHTS AND GROSS VEHICLE WEIGHTS	PERMIT AND TON/MILE FEES
<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 <b>plus</b> \$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 <b>plus</b> \$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 <b>plus</b> \$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](mailto: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 <sup>1</sup> + 10%
107.08	Haul Roads	Bituminous Mix	\$42 per Ton <sup>2</sup>
107.08	Haul Roads	Aggregate Base	\$17 per Ton <sup>2</sup>
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 <sup>3</sup>	\$4.25 per LF
261	Fiber Rolls	Mucking of Fiber Rolls	\$3.90 per LF
261	Fiber Rolls	Removal of Fiber Rolls <sup>3</sup>	\$4.25 per LF
420.04 E	Bituminous Seal Coat	Blotter Sand	\$27 per Ton <sup>2</sup>
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

<sup>1</sup>Price paid for bituminous material will be invoice price plus freight costs.

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

<sup>3</sup>This 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 NH-1-003(050)113 (PCN-18811)

RACE/GENDER NEUTRAL GOAL: 0%

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

### 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.

### QUOTES:

All bidders (regardless of whether they are apparent low bidder in this bid opening) should submit a completed [SFN 52013-List of Businesses Submitting Quotes](#) (Form B) by 4:00 pm CST, within 5 business days after the bid opening. Copies of quotes are no longer accepted, however, submitting a list in another format (Excel or other) is acceptable if all the information is clearly provided. 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 email quotes to the Department no later than 9 PM the day before each bid opening.**

**All DBEs quoting on this project should 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 (DBE utilization identification) with bid package at the time of bid opening.
- Must submit [SFN 52160 – Notification of Intent to Use](#) (Form C) for DBE(s) used by 4:00 pm CST, within 2 business days after the bid opening. If no DBE's are used, Form C is not required.
- 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.
- If required documents are not submitted by the deadline or submitted incorrectly, 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.

To maximize subcontracting opportunities the following actions are encouraged.

## ADVERTISE

All DBE and Non-DBE prime contractors and all subcontractors (over/under \$500,000), vendors, regular dealers/suppliers, and manufacturers, are encouraged to advertise using one of the two options:

**OPTION 1:** Place an advertisement soliciting DBE participation using the electronic DBE Advertisement System.

- 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.

- Make contact with DBEs no later than 5 PM 7 calendar days before the bid opening.
- Use the DBE Directory to determine the DBE firms certified in the work to be subcontracted.

Either method of advertisement should:

- Provide the name, email address, telephone, and fax number of the company contact who will be available to discuss and/or receive quotes.
- 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.

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

- 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>

## RECEIVE & EVALUATE ALL QUOTES GIVEN

All prime contractors and all subcontractors over \$500,000 should receive and evaluate all quotes offered.

All quotes given for each job should be faxed or emailed to prime contractors or subcontractors no later than the day before the bid opening. DBE subcontractors interested in work on the advertised jobs are encouraged to quote all contractors on the Sign-In report.

## **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 contractor 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.

### **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 contractor is responsible to:

- Report payments to DBEs used to meet the project goal.
  - Monthly audits are required through the Certification and Compliance System (CCS) on all federally funded projects, regardless of DBE goal. Once the prime receives progress payments from NDDOT they will be required to report DBE payments every month for the life of the project, including reporting zeros on months when no payments are made. The DBE will either confirm the payment amount and date paid is correct or they will open a discrepancy if the information the prime submitted differs from their records. The prime and DBE are encouraged to find resolution to the discrepancy on their own. If resolution cannot be attained, the project engineer and CRD will become involved in the process.
  - See DBE Program Manual for further information about CCS and prompt pay requirements
- 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.
- 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 any requirements are not met, progress payments will be withheld from the prime until completed.**

### **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 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.

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 NEUTRAL 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 noted below.

**Manufacturer:** Manufacturer credit is appropriate when the DBE 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. Alterations or customization of a "stock" product would be eligible for manufacturer credit. DBE credit is awarded at 100% for this type of work. Delivery type is not relevant in this type of credit.

**Broker Credit (Manufacture Representative, Procurement Specialist, Leasing):** Broker credit is appropriate when the DBE arranges or expedites the transaction of materials or supplies that it does not manufacture or deliver and is never in possession of the products. In this type of transaction, a DBE would serve as a third-party intermediary between the manufacturer and the contractor providing project driven sales. The DBE assumes little to no risk in this transaction and is awarded DBE credit for the "mark-up" of the product only. Drop ship transactions would only be eligible for broker credit. There is no maintained facility where inventory is kept on a regular basis for sale.

For direction on how a specialty item can be eligible for supplier credit, see the information provide below. A specialty item that does not fully meet these requirements can only be credited at brokerage rates.

**Regular Dealers/Suppliers:** Supplier credit is appropriate when the DBE 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 sells to the general public with inventory on hand. If a legitimate public warehouse exists, that regularly stocks, deals and sells to the walk-in public, then the method of delivery of the goods is not examined. Supplier credit would be awarded at 60% of the cost of the materials. 49 CFR 26.55 (e)(ii).

### **Bulk Items 49 CFR 26.55 (e)(ii)**

A DBE may be eligible for supplier credit in regard to non-specialty bulk items (i.e. petroleum, steel, asphalt, aggregate) without a warehouse or storefront. If bulk items are purchased directly from the manufacturer the DBE must both own and operate its own distribution equipment. The DBE may supplement its own distribution equipment through a long-term lease (defined as more than one year) but the DBE must demonstrate unimpeded access to the leased equipment and operate the equipment with the DBE's own employees. If all these circumstances do not exist, the DBE is only eligible for broker credit.

### **Specialty Products**

Specialty products are those products that are ordered contract-specific for a job. Examples may include, but are not limited to, steel beams, concrete beams, box culverts or piping. Supplier credit is available in two different scenarios:

- Supplier credit would be available if the DBE owns its own facility and is in the business of selling products and materials to the public and sells products of similar nature to the specialty item and the DBE must take possession of the specialty item to determine quality and quantity of the specialty item(s). To be eligible for supplier credit, the DBE must deliver the specialty item with its own distribution equipment and employees.
- Supplier credit would be available if the DBE does not own its own facility but does own its own distribution equipment which it uses to pick up the specialty item(s) and deliver to the job site with the DBE's own employees

Any other scenario dealing with specialty products would only be eligible for broker credit.

**Regular Dealers vs. Brokers/Expeditors/Facilitators:** On a case-by-case basis, DBE regular dealers may count only the fees/commissions charged for providing procurement assistance as a manufacturers' representative or expeditor of transactions. The key factor in this determination is whether the prime and/or its subcontractors could have ordered the materials without the DBE's assistance. If a non-DBE contractor could have procured the materials or supplies without the intervention of the DBE, the DBE is not performing a regular dealer capacity. To assist in determining the difference, the Department may poll each regular dealer to request their ordering and delivery process.

**Trucking:** The Department counts DBE trucking on a one-for-one basis. A DBE, on each of its contracts, must first own and operate at least one fully licensed, insured, and operational truck. A DBE may then supplement its fleet using lease/broker agreements. Only trucks leased from a reputable dealer count towards the firm's DBE participation. Full credit is given for the transportation value of leased/brokered trucks owned, operated and insured by other DBEs.

- Example: DBE A owns/operates 2 trucks and subcontracts to DBE B who owns/operates 3 DBE trucks. All 5 DBE owned/operated trucks count towards the DBE participation on the project.

A DBE trucking firm may subcontract to non-DBE trucking firms. If a DBE subcontracts trucks from non-DBEs, the total value of trucking services provided by non-DBEs cannot exceed the value of trucking services provided by DBEs. This is referred to as the 1:1 DBE Trucking Ratio (Ratio).

- Example: DBE owns 2 trucks and subcontracts 2 non-DBE match trucks. The total number of trucks that may be counted towards DBE participation is the amount paid for all 4 trucks (100%)
- Example: DBE owns 5 trucks and subcontracts 5 trucks from non-DBE(s). The total number of trucks that may be counted towards DBE participation is the amount paid for 5 of the 10 trucks (100%)
- Example: DBE owns 1 truck and subcontracts 4 non-DBE trucks. 1 of the non-DBE trucks acts as a match truck and the other 3 are non-DBE non-match trucks. The amount of the total subcontract with the DBE that may be counted is 40%.

When a DBE leases more non-DBE than DBE trucks, only the fee or commission the DBE trucker receives is credited for the extra non-DBE trucks.

- Example: DBE owns 2 trucks and subcontracts 4 trucks from non-DBE(s). Total DBE participation is amount paid for 4 of the 6 trucks plus the brokerage or other fee may also be counted toward DBE participation for the 2 non-DBE non-match trucks.

No DBE participation is given for the use of DBE trailers without DBE trucks and DBE employed drivers. A DBE trucking firm cannot count the materials they are hauling unless they are a legitimate DBE supplier or manufacturer of the materials (see Regular Dealer/Supplier and Manufacturer sections).

A legitimate subcontract must be in place between the DBE and non-DBE trucking firm to count participation. The non-DBE trucking firm must be added to the Utilization Plan/Contract in CCS under the DBE and the DBE is required to report

payments to the non-DBE trucking firm for the participation to be counted. Additional reporting lines under the DBE on the contract within CCS may also be necessary to report non-DBE non-match payments and/or brokerage/fees for non-DBE non-match trucks if applicable. Certified payroll requirements also apply.

A DBE trucker is responsible for identifying the number of trucks to be used on a project for DBE participation credit. If a DBE trucking firm utilizes the Ratio and is used by a Prime contractor that was the apparent low bidder, the number of trucks (DBE, non-DBE Match & non-DBE non-Match) must be identified on the Form C as well as the total dollar amount allocated to each and the non-DBE firm(s) the DBE intends to use. SFN 60781 DBE Weekly Trucking Report is required to be completed and submitted to the project engineer weekly when the Ratio is being utilized, which will indicate the number of DBE-owned trucks and the number of non-DBE trucks the DBE has provided for use on the contract. DBE trucking firms that are utilizing the 1:1 DBE Trucking Ratio must also display signage in the non-DBE match trucks on the job site that identify them as subcontracting to the DBE as part of the overall project DBE participation. The signage must be clear enough for project personnel to easily identify them while on site.

The CUF form includes a section for 1:1 DBE Trucking that must also be completed by the project engineer.

If you have any further questions about counting DBE participation, please contact the DBE Program Administrator.

## **DEFINITIONS**

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

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

**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** means a contractor intending to serve as the prime contractor for highway construction projects.

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

**Contractor** means all DBE and non-DBE firms, including prime contractors, 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.

**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.

**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. See Counting DBE Participation section.

**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.

**Prime contractor** means bidders who are submitting proposals on this project, regardless of the size of the project.

**Quoter** means DBE or a non-DBE subcontractors, brokers, vendors, regular dealers/suppliers, and manufacturers at any tier who submits quotes to another contractor.

**Race/Gender Neutral (RGN)** means a zero (0) percent goal that is used to assist all small businesses.



**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 timely.

**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.

**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/Supplier** 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 – Statewide . . . . .6.9%
  - b. Goals for Minority Participation in Each Trade by County:  
Barnes, Cass, Dickey, Eddy, Foster, Griggs, LaMoure, Logan,  
McIntosh, Ransom, Richland, Sargent, Steele, Stutsman, Traill . . . . .0.7%  
  
Grand Forks . . . . .1.2%  
  
Benson, Cavalier, Nelson, Pembina, Ramsey, Towner, Walsh . . . . .2.0%  
  
Burleigh, Morton . . . . .0.4%  
  
Adams, Billings, Bowman, Dunn, Emmons, Golden Valley, Grant,  
Hettinger, Kidder, Mercer, Oliver, Sheridan, Sioux, Slope, Stark, Wells . . .1.3%  
  
Bottineau, Burke, Divide, McHenry, McKenzie, McLean, Mountrail,  
Pierce, Renville, Rolette, Ward, Williams . . . . .4.4%

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

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

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

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

Notification should be sent to:

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

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

## **APPENDIX B**

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

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the proposal from which this contract resulted.
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:

- (1) Black (all persons having origins in any of the Black African racial groups, not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish Culture or origin, regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation of community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the proposal from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted

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

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all Foremen, Superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources; provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.
  - c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
  - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to

the sources compiled under 7b above.

- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the Company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the Company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the Company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing it with the Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minorities and women, and where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring

- all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and Company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and Suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all Supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligation.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor- union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. Goals for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minorities, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termina-



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

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the Company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).



**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 on 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](mailto:civilrights@nd.gov)

10/3/2017

NDDOT's *Davis-Bacon Wage and Payroll Requirements Handbook* is available at:

[www.dot.nd.gov/manuals/civilrights/davisbacon.pdf](http://www.dot.nd.gov/manuals/civilrights/davisbacon.pdf)

## U.S. DEPARTMENT OF LABOR

STATE	COUNTY	
NORTH DAKOTA	STATEWIDE	ND20220054 Page 1
		DATE OF DECISION 01-07-22 Revised 01/14/2022 (Mod No. 1) Revised 01/28/2022 (Mod No. 2) Revised 02/11/2022 (Mod No. 3) Revised 02/25/2022 (Mod No. 4)

**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
48.00	7.80 + 29.5%
48.00	7.80 + 29.5%
40.75	7.80 + 29.5%
27.17	7.80 + 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

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01-07-2022

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

Revised 01/28/2022 (Mod No. 2)

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### LABORERS:

#### Group 1

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

#### Group 2

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

#### Group 3

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

#### Group 4

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

### POWER EQUIPMENT OPERATORS:

#### Group 1

All Cranes 60 tons and over; Cranes doing piling, sheeting, dragline/clam work; Derrick (Guy and Stiff); Gentry Crane Operator; Helicopter Operator; Mole Operator or Tunnel Mucking Machine; Power Shovel; 3-1/2 CY. and over; Traveling Tower Crane.

#### Group 2

All Cranes 40 tons and up to 59 tons; Backhoe Operator 3 CY. and over; Creter Crane; Dredge Operator 12" and over; Equipment Dispatcher; Equipment Foreman; Finish Dozer; Finish Motor Grader; Front End Loader Operator 8 CY. and over; Master Mechanic (when supervising 5 or more Mechanics); Mon-O-Rail Hoist Operator; Power Shovel up to and including 3 CY; Tugboat.

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

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01-07-2022

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

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Revised 02/11/2022 (Mod No. 3)

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## 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(Controls the spread of asphalt); 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; Fuel/ Lube Truck Operator; Grade Person(Responsible for establishing and determining grade through instrumentation); Gravel Screening Plant Operator (not Crushing or Washing); Greaser; Lazar Screed Operator; Longitudinal Float and Spray Operator; Micro Surfacer Machine; Motor Grader Operator (Haul Roads); Paving Breaker HydroHammer Type; Pugmill Operator; Push Tractor; Roller, Steel and Rubber on Hot Mix Asphalt Paving; Rotomilling Machine (Surface Planer), up to and including 42"; Rumble Strip Machine; Sand and Chip Spreader; Self-Propelled Sheepsfoot Packer with or without Blade Attachment; Self Propelled Traveling Soil Stabilizer; Sheepsfoot Packer with Dozer Attachment 100 H.P. and over; Shouldering Machine; Slip Form, Curb and Gutter Operator; Slurry Seal Machine; Tamping Machine Operator; Tie Tamper and Ballast Machine; Trenching Machine Operator, 46 H.P. up to and including 99 H.P.; Truck Mechanic; Tub Grinder; Well Points.

### Group 5

Boom Truck, A-Frame or Hydraulic 2 tons up to and including 7 tons; Broom Self-Propelled; Concrete Saw (power operated); Cure Bridge Operator; Front End Loader Operator, less than 1-1/2 CY; Mobile Cement Mixer; 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

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

Revised 01/28/2022 (Mod No. 2)

Revised 02/11/2022 (Mod No. 3)

Revised 02/25/2022 (Mod No. 4)

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### POWER EQUIP. OPERATORS: (CONT.)

#### Group 5 (CONT.)

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

#### Group 6

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

### TRUCK DRIVERS:

Single-Axle Truck

Tandem- and Tri-Axle Truck

Tandem- and Tri-Axle Semi, Lowboy

Off Road Heavy Duty End Dumps 20 Yards and Under

Euclid, Over 20 Yards

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)].

## LABOR RATES

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

Revised 01/28/2022 (Mod No. 2)

Revised 02/11/2022 (Mod No. 3)

Revised 02/25/2022 (Mod No. 4)

### HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022: Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing the contract in 2022.

If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022: Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

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

Additional information on contractor requirements and work protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

## **NORTH DAKOTA DEPARTMENT OF TRANSPORTATION (NDDOT)**

### **2022 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, 2021 to March 31, 2022. Trainee assignments are not project specific; that means the contractor may train program participants on any project where training opportunities exist within the state of North Dakota.

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

location, past assignments, etc.

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

- County-only or state-only funded projects
  - Emergency relief, concrete pavement repair (CPR), electrical, rest area, signing, striping projects
  - Projects subject to Tribal Employment Rights Ordinances (TERO)
  - Projects not let as part of NDDOT bid openings
- B. Contractors will receive the number of positions assigned and links to resources necessary for completion of program requirements via email.
- C. The number of trainee positions assigned to each contractor will increase proportionately, as shown below, for any applicable federally funded projects awarded to them.

For all federal highway dollars awarded from April 1, 2021 to March 31, 2022:

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

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

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>

Daycare Reimbursement Form not available at time of publication. Please see NDDOT Forms.



## 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.

- G. Trainees must reside in North Dakota during the period they are training in an approved program. Requests for trainees that live just across ND state lines will be reviewed on a case-by-case basis and are not guaranteed to be approved.

## VII. NDDOT'S RESPONSIBILITIES

- A. The NDDOT OJT supportive services (OJTSS) consultant will monitor excerpts from the weekly certified payrolls or LCP Tracker for NDDOT projects submitted with the monthly vouchers for reimbursement. On contracts where certified payrolls are not required and not available for supporting documentation, contractors may enter trainee wages, hours in training, and the project control number(s) (PCN) in a spreadsheet to support their reimbursement vouchers. In this case, contractors should work with OJTSS to assure that all information required for payment is provided.
- B. The OJTSS will do a preliminary review of any Daycare Reimbursement Forms and make recommendations to CRD on approvals. CRD approves any reimbursements and the OJTSS will process any payments. OJTSS tracks funds available/expended in order to stay within the limit of available funds that season/year. OJTSS Daycare reimbursements are made using OJTSS funding, which may be limited or unavailable year to year.
- C. The OJTSS consultant will assess when the trainees have completed the specified number of hours and their wages are increased accordingly. The OJTSS consultant will also assure that applicable fringe benefits are paid either directly to the trainees or for the trainee into approved plans, funds, or programs.
- D. The OJTSS consultant is charged with visiting trainees and monitoring their progress under the OJT Program. To facilitate the on-site visits, the OJTSS consultant will contact contractors for the location of the trainees weekly.

## VIII. CONTRACTOR'S RESPONSIBILITIES

- A. Consistently demonstrate efforts to recruit, hire, and train candidates for the OJT Program.
- B. Assign each trainee to a particular person—either a supervisor or an employee proficient in the skills to be trained—who shall see that the trainee is given timely, instructional experience. This person must be familiar with the OJT Program, keep proper records, and ensure completion of the required training hours in accordance with the training curriculum.
- C. Appoint a company employee who will be available and responsive to weekly contacts by the OJTSS consultant. OJTSS monitors the status of assigned trainee positions (e.g., program and trainee approvals, trainees' progress, etc.). The OJTSS consultant will contact the individual listed on the company's approved SFN 60226 Request for OJT Trainee Approval. This person must reply to communications from the Department and the OJTSS consultant in a timely manner.
- D. 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. Inform trainees on availability of Daycare Reimbursement Program while in an approved training curriculum and assist them with completing the required paperwork, if applicable.
- H. Identify trainees on the payroll excerpts, for example: "grp. 4 roller operator trainee." This includes trainees in job classifications not covered by DBRA. Handwritten notes are appropriate for identification.
- I. Notify the Department when a trainee completes the number of hours required to graduate from the OJT Program. The Department will issue the trainee a confirmation letter as proof of the graduate's successful training program completion.
- J. Notify the Department to "propose graduation" or discontinue the training period of a trainee who has completed 90% or more of their hours and thereafter advance the trainee to journey-worker status.
- K. Elect to upgrade proficient trainees from one power equipment operator group or truck driver group to another, with the approval of CRD. Fewer hours are required to complete the upgraded position.

Minimum number of hours required:

Power Equipment Operator Groups 4-6 to Groups 1-3 = 400 hrs.

Class C Truck Driver to Class B = 200 hrs.

Class B Truck Driver to Class A = 200 hrs.

Depending on the variety of experience the trainee has gained under the previous curriculum, the difference in the hours may be deducted from the actual operation of the piece of equipment or truck. The contractor will need to review the trainee's past performance 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, 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. Trainees must be a North Dakota resident during their training program.

##### B. Licenses:

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

1. Holds a license corresponding to the vehicle being operated;
2. Has had at least one year of driving experience; and
3. Is occupying the seat next to the driver.

##### C. Recruitment:

1. Place notices and posters setting forth the contractor's Equal Employment Opportunity (EEO) Policy and the availability of the OJT Program in areas readily accessible to employees, applicants for employment, and potential employees.
2. Employ members of the targeted group (minority, female, or economically disadvantaged individuals) for all trainee positions assigned in accordance with the OJT Program. Additional positions requested by the contractor may be filled by individuals outside of the targeted groups.
3. Conduct systematic and direct recruitment through public and private employee referral sources.
4. Screen present employees for upgrading to higher skilled crafts. A present employee may qualify as a trainee; however, no work hours will be reimbursed or counted toward program completion prior to training program and trainee approval by CRD.

D. Selection:

1. Hire and enroll OJT trainee candidates who qualify as an individual in the targeted group.
2. Select a training program(s) based on their company's employment/staffing needs.
3. Individuals in the targeted group having experience in the selected curriculum may be eligible to participate in the OJT Program providing they:
  - are not or have not been journey-workers in the selected curriculum, and/or
  - have not been previously trained in the selected curriculum.
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>

E. Daycare Reimbursement Program:

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

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

## XII. BASIS OF PAYMENT

- E. Contractors will be paid \$4.00 for each hour of training in accordance with the OJT Program Manual.
- F. 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>
- G. 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.
- H. Submit completed vouchers to CRD for approval and processing by the fifteenth (15<sup>th</sup>) 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.

Civil Rights Division (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****LONGITUDINAL JOINT DENSITY FOR HOT MIX ASPHALT PAVEMENTS****DESCRIPTION**

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

**ATTACHMENTS**

Appendix A – Notched Wedge

**CONSTRUCTION REQUIREMENTS****A. General**

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

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

**B. Longitudinal Joint Placement.**

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

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

**C. Notched Wedge Construction Option.**

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

**D. Coring.**

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

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

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

**E. Longitudinal Joint Field Density.**

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

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

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

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

#### **F. Low Density Requirements.**

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

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

#### **METHOD OF MEASUREMENT**

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

#### **BASIS OF PAYMENT**

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

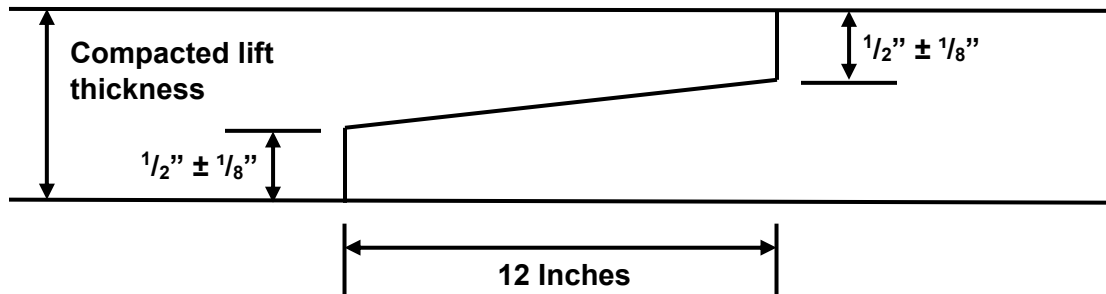
The Engineer will apply the appropriate pay adjustment specified in Table 1 for each lot.

**Table 1**

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



## Appendix A Notched Wedge



## **NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

### **SPECIAL PROVISION**

### **LIMITATIONS OF OPERATIONS**

#### **DESCRIPTION**

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

#### **108.05 LIMITATION OF OPERATIONS**

##### **A. General.**

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

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

##### **B. Holidays.**

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

##### **C. 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	$\geq 1.00$	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 <sup>-1</sup>	$\leq 4.5$	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 <sup>-1</sup>	$\leq 2.0$	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 <sup>-1</sup>	$\leq 1.0$	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 <sup>-1</sup>	$\leq 0.5$	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**

<b>Specification</b>	<b>Test Result</b>	<b>Pay Factor (Percent)</b>
Standard Traffic "S" AASHTO T 315 DSR, $G^*(\sin \delta)$ Max. 5000 kPa	$\leq 5000$	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	$\leq 6000$	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	$\leq 300$	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	$\geq 0.300$	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**

<b>Superpave FAA 40, 41, 42, and 43</b>	<b>Superpave FAA 44 and 45</b>
88.0%	89.0% <sup>1</sup>

<sup>1</sup> 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**

#### **E-Ticketing**

##### **DESCRIPTION**

This Special Provision modifies the NDDOT Standard Specifications to allow for the use of electronic haul tickets (E-Tickets) when delivering material. If E-Tickets are utilized the Engineer and Contractor each have the right to revert to the use of paper tickets upon providing a written notice to the other party.

##### **CONTRACT REQUIREMENTS**

###### **A. Material Accepted by Weight.**

In addition to the paper documents described in Section 109.01 J.6, "Documentation", the Engineer will accept E-Tickets as haul documentation.

Provide the Engineer with access, instruction, and assistance in obtaining E-Tickets.

Produce both paper and E-Tickets. The Engineer may waive the requirement for dual production if the E-Tickets prove to be reliable.

###### **B. Concrete Batch Plants.**

Batch tickets generated for concrete as specified in Section 155.02 B.2, "Batch Tickets" may be either paper or E-Tickets.

Provide the Engineer with access, instruction, and assistance in obtaining E-Tickets.

Produce both paper and E-Tickets. The Engineer may waive the requirement for dual production if the E-Tickets prove to be reliable.

##### **BASIS OF PAYMENT**

Include the cost of producing material documentation and batch tickets in the contract unit price for applicable items.

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION**

**FLEXIBLE PAVEMENT SURFACE TOLERANCE**

**Project # 1-003(050)113 – PCN 18811**

**DESCRIPTION**

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

**ATTACHMENTS**

Appendix A – Existing IRI Data

**CONSTRUCTION REQUIREMENTS**

**A. Applicable Areas and Exceptions.**

The pavement smoothness will be determined by profiling the finished surface of the mainline pavement. All finished bituminous surfaces will be profiled with the following exceptions:

1. Bridge decks and/or approach slabs and 150 feet on either side.
2. Side roads and approaches.
3. Shoulders, ramps and gore areas.
4. At-grade railroad crossings and 150 feet on either side.
5. Beginning and end of the project and 50 feet on either side of these boundaries.
6. 50 feet from areas that are not receiving surfacing.
7. Where safety and roadway geometrics do not allow the proper operating speed for the profiler to collect data. These areas will be determined by the Engineer.

On surfaces exempt from the profile testing, the Engineer will determine the pavement smoothness in accordance with Section 430.04 K, "Tolerances".

**B. Profiler.**

The Engineer will furnish and operate the data collection equipment. The smoothness of the final roadway surface profile will be measured and analyzed using the International Roughness Index (IRI) to the nearest 0.1 inch. The Engineer will use a Class 1 profiler meeting ASTM E 950.

**C. Operation.**

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

The Engineer will trace the profile at approximately 31 and 97 inches, measured from the left edge of the lane, as determined by the direction of traffic. Provide traffic control for 500 feet beyond the ends of the project to facilitate the collection of profile data.

The data will be marked and labeled at the beginning and end of each trace, and event markers as identified by the Engineer.

Each trace will be labeled showing:

- Project;
- Location;
- Lane;
- Date tested; and
- Operator's name.

The Engineer will not test the roadway between November 30 and May 15. The Engineer will not test when the ambient temperature is below 32°F, or while it is raining or under inclement weather conditions. The Engineer will test when the pavement is dry and at an agreed upon time between the Engineer and the Contractor.

Prepare the surface for profile collection to ensure a clean surface for accurate testing. The Engineer will collect the profile at the agreed upon time, regardless of the condition of the final surface.

After the final lift of pavement is complete, schedule a time for the profile to be collected. The Engineer will collect the profile within 5 working days after notification. Data will be collected and the results submitted to the contractor a maximum of 5 working days after the testing date.

If the final lift of pavement cannot be completed before November 30, the Engineer will collect data for all portions of the roadway that have the final lift in place. Profile data for the unfinished portion of the roadway will be collected after May 15 of the following year.

#### **D. Evaluation.**

A lot is defined as a 528 foot road segment, one lane wide. The Engineer will include a partial lot less than or equal to 370.0 feet in the previous lot. The Engineer will treat a lot greater than 370.0 feet as an independent lot. The MRI will be determined by averaging the IRI values from the right and left wheel paths to the nearest 0.1 inch.

The Engineer will evaluate the data and the data will remain the property of the Department. The MRI data will be used to determine performance incentives, contract price adjustments, and the need for corrective action.

#### **E. Corrective Actions.**

Areas that would result in a contract price adjustment may be ground to a lower lot MRI. If grinding occurs and results in an MRI of less than 56.0, the Engineer will not apply a performance incentive to that lot. Lots with an initial MRI of 48.1 or less will receive a performance incentive based on the initial readings, before grinding.

Submit a detailed corrective action plan. Corrective action can include a mill and overlay or diamond grinding. Perform corrective action in accordance with the relevant specifications. If the corrective action includes diamond grinding, apply a fog coat to the ground areas.

Do not perform corrective actions until the Engineer has approved the corrective action plan.

Grind lots to a maximum MRI of 75.0 in /mile.

The Engineer will collect a second profile a maximum of 5 working days after the completion of corrective action. If additional corrective action is necessary, the Engineer will apply a liquidated damage of \$1,500 per trip for each profile collected after the second profile.

Perform corrective action on surface irregularities that exceed the requirements of Section 430.04 K, "Tolerances".

#### **F. Grinding.**

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

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

Grind high shoulders to provide drainage and safety.

Grind the full width of the lane and daylight grinding on the shoulder by performing a feather pass.

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

When grinding in areas with speeds less than 45 MPH, areas with curb and gutter, and areas adjacent to waterways continuously collect all slurry or residue resulting from the grinding operation. Dispose of the slurry or residue as specified in Section 107.17, "Removed Material".

### **BASIS OF PAYMENT**

#### **A. Liquidated Damages.**

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

**B. Ride Quality.**

The Engineer will pay a performance incentive for ride quality based on Table 1.

**Table 1**  
**Ride Quality Performance**  
**Incentives**

<b>MRI Range</b>	<b>Performance Incentive per Lot</b>
$\leq 34.0$	\$300
34.1 to 39.0	\$225
39.1 to 44.0	\$150
44.1 to 48.0	\$75
48.1 to 56.0	\$0

The Engineer will process contract price adjustments for ride quality based on Table 2.

**Table 2**  
**Ride Quality Contract Price**  
**Adjustments**

<b>MRI Range</b>	<b>Contract Price Adjustment per Lot</b>
48.1 to 56.0	\$0
56.1 to 62.0	(\$100)
62.1 to 69.0	(\$200)
69.1 to 75.0	(\$400)
75.1 $\geq$	Corrective Action

**C. MISCELLANEOUS**

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

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



## Appendix A

IRI DATA FOR PCN 18811 - PROJECT NO. NH-1-003(050)113							
Hwy 3, Southbound Survey Data Collection Date = 07/14/2021							
HWY	Start-Mi	End-Mi	IRI_ Left Wheel Path	Standard Deviation	IRI_ Right Wheel Path	Standard Deviation	IRI_ Average
3	113.2	113.3	71.2	49.8	73	60.4	72.1
3	113.3	113.4	133.9	105.8	156.1	120	145
3	113.4	113.5	78.4	77.3	122.8	103.9	100.6
3	113.5	113.6	86	90.7	102.6	104.2	94.3
3	113.6	113.7	67.8	54.7	100.9	100	84.4
3	113.7	113.8	80.5	80.3	112.2	115.4	96.3
3	113.8	113.9	80.5	68.9	104.4	109	92.4
3	113.9	114	92.6	88.7	110.4	101.2	101.5
3	114	114.1	83.1	68.1	123	96.7	103.1
3	114.1	114.2	74.2	68.6	100.6	72.5	87.4
3	114.2	114.3	105.4	111.5	109.5	110.7	107.5
3	114.3	114.4	128.4	148.4	139.8	151.6	134.1
3	114.4	114.5	82.8	88.2	104.4	97.3	93.6
3	114.5	114.6	85.3	78.7	130.8	114.5	108
3	114.6	114.7	99.2	85.1	117.4	78.6	108.3
3	114.7	114.8	74.8	66	110.7	96.6	92.8
3	114.8	114.9	76	64.3	117.3	108	96.6
3	114.9	115	98.7	85.8	111.7	85.2	105.2
3	115	115.1	129	142.4	136.1	147.3	132.5
3	115.1	115.2	101.6	114.4	141.3	125.9	121.5
3	115.2	115.3	151	147.4	170.2	159.7	160.6
3	115.3	115.4	122.4	111.7	164.8	145	143.6
3	115.4	115.5	71.8	42.6	83.5	50.9	77.7
3	115.5	115.6	74.6	43.8	93.3	68.7	83.9
3	115.6	115.7	75.5	49.9	113.6	93.7	94.6
3	115.7	115.8	95.6	74.9	133.7	96.3	114.7
3	115.8	115.9	160.4	165.3	171.3	172.2	165.9
3	115.9	116	117.5	117.6	145.6	122.6	131.5
3	116	116.1	86.9	91.7	97	95.5	91.9
3	116.1	116.2	98.3	98.3	144.2	130.3	121.2
3	116.2	116.3	109.9	80.6	162.5	107.7	136.2
3	116.3	116.4	100.6	104.2	103.8	101.5	102.2
3	116.4	116.5	117.8	123.6	106.3	108.2	112
3	116.5	116.6	110.6	94.5	95.3	83.1	103
3	116.6	116.7	98	84.1	111.8	93.1	104.9

IRI DATA FOR PCN 18811 - PROJECT NO. NH-1-003(050)113							
Hwy 3, Southbound Survey Data Collection Date = 07/14/2021							
HWY	Start-Mi	End-Mi	IRI_ Left Wheel Path	Standard Deviation	IRI_ Right Wheel Path	Standard Deviation	IRI_ Average
3	116.7	116.8	96.7	92.6	123.7	129.4	110.2
3	116.8	116.9	89.1	79.6	132	132.6	110.5
3	116.9	117	131.2	216	137.3	130.5	134.3
3	117	117.1	98.2	108.1	95.6	111.6	96.9
3	117.1	117.2	99.5	80.8	100.5	82.6	100
3	117.2	117.3	99.7	86.5	109.3	97.7	104.5
3	117.3	117.4	133.5	90.9	157.1	131.5	145.3
3	117.4	117.5	115.3	115.2	116.8	114.3	116
3	117.5	117.6	104.8	87.2	113.7	89.7	109.3
3	117.6	117.7	101.6	97.6	139	154	120.3
3	117.7	117.8	93.9	76.2	133	119.2	113.4
3	117.8	117.9	92.7	71.4	146.8	126.4	119.7
3	117.9	118	155.1	146.1	159.8	145.1	157.5
3	118	118.1	131.3	144.1	168.3	163.3	149.8
3	118.1	118.2	146.1	154.7	163.5	153.1	154.8
3	118.2	118.3	90.5	60.2	96	74.8	93.3
3	118.3	118.4	75.6	58	83.2	68.1	79.4
3	118.4	118.5	73.3	42.6	69.8	51.8	71.5
3	118.5	118.6	101.2	66.1	101.5	71.7	101.3
3	118.6	118.7	65.2	42.3	100.9	79.8	83
3	118.7	118.8	89.8	65.3	108.3	99.4	99
3	118.8	118.9	111.2	88.6	136.6	135.3	123.9
3	118.9	119	81.8	73.2	121.7	127.3	101.8
3	119	119.1	99.8	84.6	131.4	137	115.6
3	119.1	119.2	73	56.4	98.7	80.9	85.8
3	119.2	119.3	77.4	64	115.3	100.1	96.4
3	119.3	119.4	93.2	91.2	101.1	91.4	97.2
3	119.4	119.5	76.4	41.9	69.6	35.9	73
3	119.5	119.6	113.9	73.3	137.9	110.7	125.9
3	119.6	119.7	99.7	54.1	115.8	61.8	107.8
3	119.7	119.8	113.2	67.6	114	59.9	113.6
3	119.8	119.9	117	59.9	93.1	47.1	105
3	119.9	120	109.9	66.3	120.8	66	115.3
3	120	120.1	128.9	66	128.8	67.2	128.9
3	120.1	120.2	112.8	71.1	111.9	64.5	112.3
3	120.2	120.3	78.6	73.3	110.1	101.4	94.3
3	120.3	120.4	77.4	41.8	124.6	99.9	101

IRI DATA FOR PCN 18811 - PROJECT NO. NH-1-003(050)113							
Hwy 3, Southbound Survey Data Collection Date = 07/14/2021							
HWY	Start-Mi	End-Mi	IRI_ Left Wheel Path	Standard Deviation	IRI_ Right Wheel Path	Standard Deviation	IRI_ Average
3	120.4	120.5	76.8	42.9	124.5	75.4	100.7
3	120.5	120.6	95.9	76.1	128.9	95.4	112.4
3	120.6	120.7	98.8	65.7	143	98.4	120.9
3	120.7	120.8	114	93	120.5	96.9	117.3
3	120.8	120.9	138.4	162.3	137.2	170.8	137.8
3	120.9	121	142.4	157.1	206.7	215.8	174.5
3	121	121.1	140	152.6	202.4	183.7	171.2
3	121.1	121.2	106.2	101.4	164.2	166.6	135.2
3	121.2	121.3	120.3	112.2	146.1	134.9	133.2
3	121.3	121.4	118.6	113.7	158.7	164.9	138.7
3	121.4	121.5	130.4	126.1	151.7	151.9	141.1
3	121.5	121.6	86.5	69.7	92.8	71.5	89.7
3	121.6	121.7	129.4	116.1	152.3	139.8	140.8
3	121.7	121.8	145.8	134.7	175.1	173	160.5
3	121.8	121.9	95.9	86.5	134.1	132.9	115
3	121.9	122	94.6	100.8	111.5	115.1	103
3	122	122.1	96.9	97.9	118.3	136.9	107.6
3	122.1	122.2	128.4	117.1	142.3	139.8	135.3
3	122.2	122.3	124.3	102.9	147.6	136.1	135.9
3	122.3	122.4	109.8	90.5	133.6	120.2	121.7
3	122.4	122.5	108.1	60	115.7	88.3	111.9
3	122.5	122.6	95.7	85.1	107.9	107.2	101.8
3	122.6	122.7	96	87.7	121.1	116	108.5
3	122.7	122.8	87.2	100.4	132.3	150	109.7
3	122.8	122.9	94.6	86.1	117.6	109	106.1
3	122.9	123	80.4	64.8	138.1	113.8	109.2
3	123	123.1	120.2	167.9	140.2	137.2	130.2
3	123.1	123.2	59.8	38.3	104	84.8	81.9
3	123.2	123.3	85.5	76.3	114.3	88.8	99.9
3	123.3	123.4	80.9	63	104.1	97	92.5
3	123.4	123.5	83.4	80.9	101.8	100.8	92.6
3	123.5	123.6	88.6	70.4	125.1	109	106.8
3	123.6	123.7	80.8	80.4	91.8	90.2	86.3
3	123.7	123.8	103.7	100.5	122.4	130.5	113.1
3	123.8	123.9	102.2	91.6	157	147.1	129.6
3	123.9	124	87.3	77.8	135.4	116.5	111.4
3	124	124.1	98.8	77.9	175.4	164.5	137.1

IRI DATA FOR PCN 18811 - PROJECT NO. NH-1-003(050)113							
Hwy 3, Southbound Survey Data Collection Date = 07/14/2021							
HWY	Start-Mi	End-Mi	IRI_ Left Wheel Path	Standard Deviation	IRI_ Right Wheel Path	Standard Deviation	IRI_ Average
3	124.1	124.2	80.2	66.5	128.4	95.9	104.3
3	124.2	124.3	96.5	66.9	123.6	106	110
3	124.3	124.4	78.8	63.1	104.3	87.3	91.5
3	124.4	124.5	64.6	53.6	93.1	89.4	78.9
3	124.5	124.6	63.8	53.9	96.1	67.6	80
3	124.6	124.7	64.2	43.2	88.7	69.4	76.5
3	124.7	124.8	61.9	31.8	68.7	46.7	65.3
3	124.8	124.9	64.2	38.1	94	105.5	79.1
3	124.9	125	65.1	44.1	68.2	37.4	66.6
3	125	125.1	71	42.2	86.9	55.4	79
3	125.1	125.2	75.7	51.9	92.1	65.1	83.9
3	125.2	125.3	96.2	68	73.2	42.7	84.7
3	125.3	125.4	97.6	60.2	92.4	49.6	95
3	125.4	125.5	101.6	84.7	95.3	69.5	98.5
3	125.5	125.6	79.7	67.9	104.7	105.8	92.2
3	125.6	125.7	78.7	53.9	89.2	80.1	84
3	125.7	125.8	88.1	78.7	88.6	74.1	88.3
3	125.8	125.9	96.4	95	108.4	93.8	102.4
3	125.9	126	107.1	128	139	144.4	123.1
3	126	126.1	170.5	195	169.7	172.7	170.1
3	126.1	126.2	113.4	106.8	133.5	121	123.5
3	126.2	126.3	95.4	98	149.3	161.3	122.4
3	126.3	126.4	108	102	145.7	180.4	126.8
3	126.4	126.5	93.9	75.1	118.8	99.2	106.4
3	126.5	126.6	103.9	113.8	128.7	129.7	116.3
3	126.6	126.7	90.7	97.1	122.9	154.7	106.8
3	126.7	126.8	98.1	93.4	121.5	128.2	109.8
3	126.8	126.9	132.4	112.1	158.5	143.9	145.4
3	126.9	127	117	130.1	177	186.8	147
3	127	127.1	125.5	131.7	138.2	140.9	131.8
3	127.1	127.2	105.2	111.6	137.4	177.5	121.3
3	127.2	127.3	106.2	82.5	147.9	141.4	127
3	127.3	127.4	101.6	91.2	145.2	157.6	123.4
3	127.4	127.5	116.5	117.4	126.1	139.4	121.3
3	127.5	127.6	139.7	117.6	155.3	135.4	147.5
3	127.6	127.7	125.1	108.9	149.5	130.4	137.3
3	127.7	127.8	151.3	170.2	173.2	208.6	162.3

IRI DATA FOR PCN 18811 - PROJECT NO. NH-1-003(050)113							
Hwy 3, Southbound Survey Data Collection Date = 07/14/2021							
HWY	Start-Mi	End-Mi	IRI_ Left Wheel Path	Standard Deviation	IRI_ Right Wheel Path	Standard Deviation	IRI_ Average
3	127.8	127.9	107.5	118	94.9	119.5	101.2
3	127.9	128	117.2	127	133.9	131.9	125.5
3	128	128.1	92.5	90	87	84.5	89.8
3	128.1	128.2	96.7	68.3	92	75	94.4
3	128.2	128.3	82.4	61.3	71.6	57.1	77
3	128.3	128.4	90.3	62.6	76.9	58.8	83.6
3	128.4	128.5	88.7	58.7	97	89.4	92.8
3	128.5	128.6	99.2	91.1	111	131.5	105.1
3	128.6	128.7	103.3	122.6	122.1	147.8	112.7
3	128.7	128.8	110.4	118.2	123.7	137.3	117.1
3	128.8	128.9	109.4	99.1	128.7	129.4	119.1
3	128.9	129	96.3	76.3	188.1	168.5	142.2
3	129	129.1	76	43.9	120.6	115.1	98.3
3	129.1	129.2	79.4	51.8	113.1	91	96.2
3	129.2	129.3	77.6	71.6	107.7	111.6	92.6
3	129.3	129.4	87.9	64.3	118.6	90.3	103.3
3	129.4	129.5	85.7	70.7	118	120.1	101.8
3	129.5	129.6	92.8	88.6	136.5	140.7	114.7
3	129.6	129.7	99.6	81.1	132.2	124.7	115.9
3	129.7	129.8	126.2	107.1	145	120.9	135.6
3	129.8	129.9	88.9	77.9	106.9	107.1	97.9
3	129.9	130	102.8	114.8	132.4	161.7	117.6
3	130	130.1	92.2	81.9	128	116	110.1
3	130.1	130.2	100.8	76.6	102.1	69.4	101.5
3	130.2	130.3	72.3	39.6	113.7	79.9	93
3	130.3	130.4	69.6	39.4	62.2	31.9	65.9
3	130.4	130.5	105.5	86.6	104.6	88.8	105
3	130.5	130.6	87.9	84.5	94.8	93.6	91.3
3	130.6	130.7	115.3	129.7	142.6	158.6	129
3	130.7	130.8	105.6	106	129.8	144.8	117.7
3	130.8	130.9	103.5	93.4	144.5	159.9	124
3	130.9	131	91.3	83.3	124.8	129.7	108.1
3	131	131.1	124.7	122.8	120.7	108.5	122.7
3	131.1	131.2	139.3	172.6	125.6	136.7	132.5
3	131.2	131.3	109.8	131.9	110.8	118.8	110.3
3	131.3	131.4	89.5	73.7	121.9	104.2	105.7
3	131.4	131.5	75.7	57.9	99	67	87.4

IRI DATA FOR PCN 18811 - PROJECT NO. NH-1-003(050)113							
Hwy 3, Southbound Survey Data Collection Date = 07/14/2021							
HWY	Start-Mi	End-Mi	IRI_ Left Wheel Path	Standard Deviation	IRI_ Right Wheel Path	Standard Deviation	IRI_ Average
3	131.5	131.6	82.1	74.8	94.9	80.4	88.5
3	131.6	131.7	86.6	82.1	97.4	81.4	92
3	131.7	131.8	106.4	126.7	153.3	155.1	129.9
3	131.8	131.9	103.2	121.1	136.2	165.7	119.7
3	131.9	132	125.5	137.2	170.1	170.8	147.8
3	132	132.1	67.6	44.2	82.4	52.3	75
3	132.1	132.2	91.9	53.7	105.9	66.3	98.9
3	132.2	132.3	145.3	123.3	164.4	115.1	154.8
3	132.3	132.4	145.6	134.8	145.7	129.4	145.6
3	132.4	132.5	80.1	44	94.2	46.6	87.2
3	132.5	132.6	99.6	63.5	102.7	69.2	101.2
3	132.6	132.7	103.2	70.1	102.2	62.8	102.7
3	132.7	132.8	65.8	38.7	78	43.2	71.9
3	132.8	132.9	81.7	42.7	90.7	51	86.2
3	132.9	133	127.1	82.1	159.6	117	143.4
3	133	133.1	106	65.1	127.5	73	116.8
3	133.1	133.2	172.8	196.1	178.9	155.9	175.8
3	133.2	133.3	157.6	120.7	135.3	104.8	146.5
3	133.3	133.4	193.2	151.2	189.4	161.2	191.3
3	133.4	133.5	153.6	100.8	150.7	106.7	152.2
3	133.5	133.6	178.8	125.4	167.3	129.1	173
3	133.6	133.7	190.2	129	224.5	175.3	207.3
3	133.7	133.8	126.9	99.5	126.2	102.3	126.6
3	133.8	133.9	89.5	57.3	112.1	77	100.8
3	133.9	134	93.2	93.7	154.6	171.1	123.9
3	134	134.1	88.3	78.5	194.3	195.3	141.3
3	134.1	134.2	138.5	170.3	186.7	238.8	162.6

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**  
**SPECIAL PROVISION**

**CURED-IN-PLACE PIPE (CIPP)**

**PROJECT # 1-003(050)113 – PCN 18811**

**DESCRIPTION**

This work consists of cleaning pipes and installing cured-in-place pipe (CIPP) liner after pipe extension.

**MATERIALS**

Provide a CIPP liner manufactured according to ASTM F 2019.

Provide a liner that:

- Fits tightly to the host pipe;
- Has a maximum thickness of 1/2 inch;
- Can continuously line the host pipe;
- UV-light cured; and
- Is nontoxic when cured.

**CONSTRUCTION REQUIREMENTS**

**A. SUBMITTALS**

Provide work drawings, a week before the preconstruction conference. Include detail drawings, calculations and descriptions that the proposed material and procedures meet the requirements listed below.

Include the following information for each host pipe to be lined. Divide information into the sections listed below.

**1. Liner Data.**

Include the following in the liner structural data:

- Pipe liner material type and trade name;
- The nominal inside and outside pipe liner diameters; and
- Manufacturer's installation instructions.

Include the calculations that the liner meets AASHTO HL-93 for a fully deteriorated pipe.

**2. Work Area Plan.**

Provide a work area plan that includes:

- The area required for liner installation;
- Method of preventing water from interfering with the installation; and
- A restoration plan.

**3. Pipe Cleaning.**

Provide a plan that includes the cleaning of the host pipe and disposal of the debris.

**4. Liner Installation.**

Provide a liner installation plan that includes the following:

- Method of liner installation;
- Curing method identifying required curing times, temperatures, and pressures;
- Containment of contaminated water; and
- Control and disposal of any contaminants from materials or installation methods during and after installation.

**B. Host Pipe Cleaning.**

Remove and dispose of all material including sediment, rocks, and miscellaneous debris according to Section 107.17, "Removed Material".

**C. Host Pipe Inspection.**

After cleaning, inspect all pipes identified for lining and record the conditions using a closed-circuit television (CCTV) crawler. Provide an electronic recording to the Engineer.

During inspection determine the following:

- Suitability of the liner for the host pipe;
- Deviations in the horizontal and vertical alignment;
- Location of gaps in joints; and
- Pipe damage.

Notify the Engineer if any pipe sections are impassable or unable to be lined.

**D. Pipe Liner Installation.**

Cut or grind off any intrusions into the pipe flush with the pipe interior wall before installing the liner.

Provide a manufacturer's representative for training the day before the first installation and for the first 5 CIPP Liner installations.

Install liner into host pipes in accordance with ASTM F 2159. Trim the liner to length according to the manufacture recommendations.

Provide a smooth transition taper at each end of the pipe liner.

Do not leave gaps between the liner and the host pipe.

**E. Acceptance.**

Inspect and record the pipe with the CCTV crawler after the pipe has cured. Provide an electronic recording of the final inspection to the Engineer.

Restore and stabilize all disturbed areas.

**METHOD OF MEASUREMENT**

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



**BASIS OF PAYMENT**

<b>Pay Item</b>	<b>Pay Unit</b>
Pipe Cleanout	Each
Cured-In-Place Pipe, ____In.	Linear Foot

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

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION**

**PERMITS AND ENVIRONMENTAL CONSIDERATIONS**

**PROJECT NUMBER: NH-1-003(050)113 – PCN 18811**

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

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

- **Section 404 Permit**

The 404 permit, NWO-2015-0183-BIS, authorizes permanent and temporary impacts to jurisdictional waters as shown in in Section 75 of the plans. The contractor is not responsible for special conditions 1 and 2 listed in the 404 Permit. These conditions will be the responsibility of the NDDOT. The Section 404 Permit is attached.

- **USFWS Special Use Permit**

Special Use Permit CSL-22-005 and Special Use Permit 22-009 authorize work within USFWS easement wetlands as shown in the plans. The USFWS Special Use Permits are attached.

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



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

September 4, 2018

NWO-2015-0183-BIS

North Dakota Department of Transportation  
Attn: Mr. Steve Kessler  
608 East Boulevard Avenue  
Bismarck, North Dakota 58505-0700

Dear Mr. Kessler:

We are responding to your August 16, 2018, request for a Department of the Army permit for a roadway improvement project on ND Highway 3 (PCN 18811). The project sites are located on North Dakota Highway 3 from RP 113.243 to RP 134.249, in Sections 5 and 6, Township 142 North, Range 73 West, Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, Township 143 North, Range 73 West, Section 3, Township 145 North, Range 73 West, Section 34, Township 146 North, Range 73 West, Latitude 47.285036°, Longitude -99.969682°, Kidder and Wells Counties, North Dakota.

Based on the information you provided to this office, the ND Highway 3 roadway improvement project involves sliver grading, subcuts, and surfacing, in accordance with the NH-1-003(050)113 plans dated July 29, 2018. The specific activities that require the discharge of dredged or fill material in waters of the United States are sliver widening and culvert extensions. Sliver grading will re-establish the original driving lane and shoulder widths by providing 12' driving lanes, 2' shoulders, and provide 4:1 or steeper slopes. These activities will result in the permanent loss of approximately 0.30 acres (total) of Palustrine Emergent wetlands and temporary impacts to approximately 0.95 acres (total) of Palustrine emergent wetlands. Temporary impacts will occur as material will be temporarily stockpiled and placed on the new inslopes when grading work is completed. Temporary fills would be removed and the area restored to pre-construction contours.

We have determined activities in waters of the U.S. associated with the project are authorized by Nationwide Permit Number (NWP) 23, 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 on our website at <http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/NorthDakota>. 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. To compensate for the loss of 0.12 acres of Palustrine Emergent wetlands, you shall re-establish 0.12 acres of Palustrine Emergent wetlands within the on-site location as shown and described in the document titled Compensatory Wetland Mitigation Plan; ND 3 Tuttle N to W Jct 200; August 13, 2018. You shall fully comply with the previously stated 12 components wetland mitigation plan, in order for this verification to remain valid. Within 30 days after completion of the authorized work, you must sign the enclosed Compliance Certification and return it to this office.
2. To ensure success of the 0.12 acres of Palustrine Emergent wetlands required in Special Condition 1, you shall monitor the compensatory mitigation site as indicated in the submitted compensatory mitigation plan dated August 13, 2018. This period shall commence upon completion of the construction of the required compensatory mitigation. You shall demonstrate continued success of the compensatory mitigation, without human intervention, for three consecutive years after the final performance standards have been met, which may run concurrent with the minimum 3 year monitoring period. If the compensatory mitigation is not meeting the required performance standards at any time, this office may determine that the compensatory mitigation is not in compliance and require remedial action, including the identification of alternative compensatory mitigation.
  - a. You shall submit annual monitoring reports to this office by December 31st for each year of the 3 year monitoring period and for each additional year, if remediation is required, until the performance standards have been met. You shall submit a monitoring report at the end of the three-year period demonstrating continued success of the compensatory mitigation without human intervention.



b. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition 1 will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from 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](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-2015-0183-BIS** in any correspondence concerning this project. If you have any questions, please contact Mr. Swade Hammond at 3319 University Drive, Bismarck, North Dakota 58504, by email at [swade.d.hammond@usace.army.mil](mailto:swade.d.hammond@usace.army.mil), or telephone at 701-255-0015 ext. 2012.

Sincerely,



Patricia L. McQueary  
State Program Manager  
North Dakota

Enclosures

## COMPLIANCE CERTIFICATION

**Permit File Name:** ND Highway 3 Roadway Improvements (PCN 18811)

**Action ID:** NWO-2015-0183-BIS

**Nationwide Permit Number:** 23

**Permittee:** North Dakota Department of Transportation  
Attn: Mr. Steve Kessler  
608 East Boulevard Avenue  
Bismarck, North Dakota 58505-0700

**County:** Kidder and Wells

**Date of Verification:** September 4, 2018

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](mailto: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.***

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Permittee Signature

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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 NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

### **1. Navigation.**

- (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

### **2. Aquatic Life Movements.**

No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

### **3. Spawning Areas.**

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

### **4. Migratory Bird Breeding Areas.**

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

### **5. Shellfish Beds.**



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

#### **6. Suitable Material.**

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

#### **7. Water Supply Intakes.**

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

#### **8. Adverse Effects from Impoundments.**

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

#### **9. Management of Water Flows.**

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

#### **10. Fills Within 100-Year Floodplains.**

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

#### **11. Equipment.**

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

#### **12. Soil Erosion and Sediment Controls.**

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

### **13. Removal of Temporary 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](http://www.fws.gov/ipac) and [http:// www.nmfs.noaa.gov/pr/species/esa/](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 NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed 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 1 and 1A 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](http://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.



Permit #: CSL-22-005

(Refuge Name)  
**Commercial Activity  
Special Use Permit**  
(For Official Use Only)

**Permit Term:**

From: 3/31/2022 To: 10/30/2023

**Permittee Name/Business:** North Dakota Department of Transportation; PCN 18811

**Permit Activity Type:** Commercial - Access

**Permit Activity Type (Other/Not Listed):** Road Construction Impacting Wetland Easements

**Permit Status:** Approved

*If approved, provide special conditions (if any) in the text box below.*

*If denied, provide justification below.*

The project consists of sliver grading, approach and drive improvements, and surfacing. Construction of the project will take place during the 2020 construction season. Impacts to easement wetland will occur from updating the intersection at 3rd St SE and 1st St SE by widening to meet current design standards. 0.02 acre of permanent impact will result from ROW purchase within the easement wetland. NDDOT proposes to mitigate 0.02 acres to offset impacts from removing the wetland easement from the new ROW parcel at the Vollrath 15/21 wetland mitigation bank in Towner County. Wetlands impacted: Sec15, T145N, R73W (wetland 62a; 0.01 acre) Lat 47.37083, Long -99.985902; Sec3, T145N, R73W (wetland 72c; 0.01 acre) Lat 47.399887, Long -99.965635

1. Are there additional special conditions attached to the permit? ☐ Yes ☐ No ☒ N/A
2. Are other licenses/permits required, and have they been verified? ☐ Yes ☐ No ☒ N/A
3. Are insurance and/or certification(s) required, and have they been verified? ☐ Yes ☐ No ☒ N/A
4. Record of Payments: ☐ Full ☐ Partial ☒ Exempt
5. Is a surety bond or security deposit required? ☐ Yes ☐ No ☒ N/A

This permit is issued by the U.S. Fish and Wildlife Service and accepted by the applicant signed below, subject to the terms, covenants, obligations, and reservations, expressed or implied therein, and to the notice, conditions, and requirements included or attached. A copy of this permit should be kept on-hand so that it may be shown at any time to any refuge staff

Permit approved/issued by: (Signature and title)

JACOB  
HOURT  
Date: \_\_\_\_\_  
Digitally signed by JACOB  
HOURT  
Date: 2022.04.01  
09:05:50 -05'00'

Permit accepted by: (Signature of permittee)

Mark Gaydos  
Date: \_\_\_\_\_  
Digitally signed by Mark  
Gaydos  
Date: 2022.04.04 09:50:14  
-05'00'



## General Conditions and Requirements

1) Responsibility of Permittee: The permittee, by operating on the premises, shall be considered to have accepted these premises with all facilities, fixtures, or Improvements in their existing condition as of the date of this permit. At the end of the period specified or upon earlier termination, the permittee shall give up the premises in as good order and condition as when received except for reasonable wear, tear, or damage occurring without fault or negligence. The permittee will fully repay the Service for any and all damage directly or indirectly resulting from negligence or failure on his/her part, and/or the part of anyone of his/her associates, to use reasonable care.

2) Operating Rules and Laws: The permittee shall keep the premises in a neat and orderly condition at all times, and shall comply with all municipal county, and State laws applicable to the operations under the permit as well as all Federal laws, rules, and regulations governing national wildlife refuges and the area described in this permit. The permittee shall comply with all instructions applicable to this permit issued by the refuge official in charge. The permittee shall take all reasonable precautions to prevent the escape of fires and to suppress fires and shall render all reasonable assistance in the suppression of refuge fires.

3) Use Limitations: The permittee's use of the described premises is limited to the purposes herein specified and does not, unless provided for in this permit, allow him/her to restrict other authorized entry onto his/her area; and allows the U.S. Fish and Wildlife Service to carry on whatever activities are necessary for: (1) protection and maintenance of the premises and adjacent lands administered by the U.S. Fish and Wildlife Service; and (2) the management of wildlife and fish using the premises and other U.S. Fish and Wildlife Service lands.

4) Transfer of Privileges: This permit is not transferable, and no privileges herein mentioned may be sublet or made available to any person or interest not mentioned in this permit. No interest hereunder may accrue through lien or be transferred to a third party without the approval of the Regional Director of the U.S. Fish and Wildlife Service and the permit shall not be used for speculative purposes.

5) Compliance: The U.S. Fish and Wildlife Service's failure to require strict compliance with any of this permit's terms, conditions, and requirements shall not constitute a waiver or be considered as a giving up of the U.S. Fish and Wildlife Service's right to thereafter enforce any of the permit's terms or conditions.

6) Conditions of Permit not Fulfilled: If the permittee fails to fulfill any of the conditions and requirements set forth herein, the U.S. Fish and Wildlife Service shall retain all money paid under this permit to be used to satisfy as much of the permittee's obligation as possible.

7) Payments: All payment shall be made on or before the due date to the local representative of the U.S. Fish and Wildlife Service by a postal money order or check made payable to the U.S. Fish and Wildlife Service.

8) Termination Policy: At the termination of this permit the permittee shall immediately give up possession to the U.S. Fish and Wildlife Service representative, reserving, however, the rights specified in paragraph 11 below. If he/she fails to do so, he/she will pay the U.S. Fish and Wildlife Service, as liquidated damages, an amount double the rate specified in this permit for the entire time possession is withheld. Upon yielding possession, the permittee will still be allowed to reenter as needed to remove his/her property as stated in paragraph 11 below. The acceptance of any fee for the liquidated damages or any other act of administration relating to the continued tenancy is not to be considered as an affirmation of the permittee's action nor shall it operate as a waiver of the U.S. Fish and Wildlife Service's right to terminate or cancel the permit for the breach of any specified condition or requirement.

9) Revocation Policy: The Regional Director of the U.S. Fish and Wildlife Service may revoke this permit without notice for noncompliance with the terms hereof, or for violation of general and/or specific laws or regulations governing national wildlife refuges, or for nonuse. It is at all times subject to discretionary

revocation by the Director of the Service. Upon such revocation the U.S. Fish and Wildlife Service, by and through any authorized representative, may take possession of said premises for its own and sole use, and/or may enter and possess the premises as the agent of the permittee and for his/her account.

10) Damages: The U.S. Fish and Wildlife Service shall not be responsible for: any loss or damage to property including but not limited to crops, animals, and machinery; injury to the permittee or his/her relatives or to the officers, agents, employees, or any other(s) who are on the premises from instructions; the sufferance from wildlife or employees or representatives of the U.S. Fish and Wildlife Service carrying out their official responsibilities. The permittee agrees to hold the U.S. Fish and Wildlife Service harmless from any and all claims for damages or losses that may arise to be incident to the flooding of the premises resulting from any associated government river and harbor, flood control, reclamation, or Tennessee Valley Authority activity.





# General Activities Special Use Permit

OMB Control Number 1018-0102 | 1

Station #: 62531

(For Official Use Only)

Permit #: 22-009

Permit Term: From 3/30/2022 To 10/31/2023

1) Permittee Name/Business: North Dakota Department of Transportation

2) Permit Status: a) Approved: ☒ If approved, provide special conditions (if any) in the text box below.b) Denied: ☐ If denied, provide justification in the text box below.

[Type in additional Special Conditions or Justification for Denied Permit in the space provided]

**Special Conditions:**

1. Issuance of this permit does not preclude the requirements for obtaining necessary permits and or approvals from other County, State, or Federal Agencies and from local landowners.

2. This permit allows the North Dakota Department of Transportation to begin initial construction on ND Hwy 3 road improvement project (PCN 18811) that will minimally impact five (5) USFWS wetland easements, within the Long Lake Wetland Management District, directly adjacent to the road improvement project outside of the existing highway ROW. This project has been identified as an essential need for the safety of motorists. This permit allows for temporary fill in identified wetlands for construction purposes, that will be removed at the end of construction. USFWS will complete a formal wetland easement exchange for permanently impacted wetland easement acres within DOT's newly purchased ROW. Easement protected wetland acres within DOT's newly purchased ROW will be divested in exchange for wetland easement habitat obtained from the NDDOT easement bank. See attached map for acreages and wetland identification.

3) Are there additional special conditions attached to the permit? Yes ☐ No ☒4) Are other licenses/permits required, and have they been verified? Yes ☐ No ☒ N/A ☐5) Are Insurance and/or Certification(s) required, and have they been verified? Yes ☐ No ☒ N/A ☐6) Record of Payments: Full ☐ Partial ☐ Exempt ☒Amount of full payment: Record of partial payments: 7) Is a surety bond or security deposit required? Yes ☐ No ☐ N/A ☒

This permit is issued by the U.S. Fish and Wildlife Service and accepted by the applicant signed below, subject to the terms, covenants, obligations, and reservations, expressed or implied herein, and to the notice, conditions, and requirements included or attached. A copy of this permit should be kept on-hand so that it may be shown at any time to any refuge staff.

8) Permit approved/issued by: (Signature and title)

JARED NEWTON Digitally signed by JARED NEWTON  
Date: 2022.03.30 09:28:45 -05'00'

Date: 3/30/2022

9) Permit accepted by: (Signature of permittee)

Mark Gaydos Digitally signed by Mark Gaydos  
Date: 2022.03.30 13:13:05 -05'00'

Date: \_\_\_\_\_

## **General Conditions and Requirements**

- 1) **Responsibility of Permittee:** The permittee, by operating on the premises, shall be considered to have accepted these premises with all facilities, fixtures, or improvements in their existing condition as of the date of this permit. At the end of the period specified or upon earlier termination, the permittee shall give up the premises in as good order and condition as when received except for reasonable wear, tear, or damage occurring without fault or negligence. The permittee will fully repay the Service for any and all damage directly or indirectly resulting from negligence or failure on his/her part, and/or the part of anyone of his/her associates, to use reasonable care.
- 2) **Operating Rules and Laws:** The permittee shall keep the premises in a neat and orderly condition at all times, and shall comply with all municipal county, and State laws applicable to the operations under the permit as well as all Federal laws, rules, and regulations governing national wildlife refuges and the area described in this permit. The permittee shall comply with all instructions applicable to this permit issued by the refuge official in charge. The permittee shall take all reasonable precautions to prevent the escape of fires and to suppress fires and shall render all reasonable assistance in the suppression of refuge fires.
- 3) **Use Limitations:** The permittee's use of the described premises is limited to the purposes herein specified and does not, unless provided for in this permit, allow him/her to restrict other authorized entry onto his/her area; and allows the U.S. Fish and Wildlife Service to carry on whatever activities are necessary for: (1) protection and maintenance of the premises and adjacent lands administered by the U.S. Fish and Wildlife Service; and (2) the management of wildlife and fish using the premises and other U.S. Fish and Wildlife Service lands.
- 4) **Transfer of Privileges:** This permit is not transferable, and no privileges herein mentioned may be sublet or made available to any person or interest not mentioned in this permit. No interest hereunder may accrue through lien or be transferred to a third party without the approval of the Regional Director of the U.S. Fish and Wildlife Service and the permit shall not be used for speculative purposes.
- 5) **Compliance:** The U.S. Fish and Wildlife Service's failure to require strict compliance with any of this permit's terms, conditions, and requirements shall not constitute a waiver or be considered as a giving up of the U.S. Fish and Wildlife Service's right to thereafter enforce any of the permit's terms or conditions.
- 6) **Conditions of Permit not Fulfilled:** If the permittee fails to fulfill any of the conditions and requirements set forth herein, the U.S. Fish and Wildlife Service shall retain all money paid under this permit to be used to satisfy as much of the permittee's obligation as possible.
- 7) **Payments:** All payment shall be made on or before the due date to the local representative of the U.S. Fish and Wildlife Service by a postal money order or check made payable to the U.S. Fish and Wildlife Service.
- 8) **Termination Policy:** At the termination of this permit the permittee shall immediately give up possession to the U.S. Fish and Wildlife Service representative, reserving, however, the rights specified in paragraph 11 below. If he/she fails to do so, he/she will pay the U.S. Fish and Wildlife Service, as liquidated damages, an amount double the rate specified in this permit for the entire time possession is withheld. Upon yielding possession, the permittee will still be allowed to reenter as needed to remove his/her property as stated in paragraph 11 below. The acceptance of any fee for the liquidated damages or any other act of administration relating to the continued tenancy is not to be considered as an affirmation of the permittee's action nor shall it operate as a waiver of the U.S. Fish and Wildlife Service's right to terminate or cancel the permit for the breach of any specified condition or requirement.
- 9) **Revocation Policy:** The Regional Director of the U.S. Fish and Wildlife Service may revoke this permit without notice for noncompliance with the terms hereof, or for violation of general and/or specific laws or regulations governing national wildlife refuges, or for nonuse. It is at all times subject to discretionary revocation by the Director of the Service. Upon such revocation the U.S. Fish and Wildlife Service, by and through any authorized representative, may take possession of said premises for its own and sole use, and/or may enter and possess the premises as the agent of the permittee and for his/her account.
- 10) **Damages:** The U.S. Fish and Wildlife Service shall not be responsible for: any loss or damage to property including but not limited to crops, animals, and machinery; injury to the permittee or his/her relatives or to the officers, agents, employees, or any other(s) who are on the premises from instructions; the sufferance from wildlife or employees or representatives of the U.S. Fish and Wildlife Service carrying out their official responsibilities. The permittee agrees to hold the U.S. Fish and Wildlife Service harmless from any and all claims for damages or losses that may arise to be incident to the flooding of the premises resulting from any associated government river and harbor, flood control, reclamation, or Tennessee Valley Authority activity.
- 11) **Removal of Permittee's Property:** Upon the expiration or termination of this permit, if all rental charges and/or damage claims due to the U.S. Fish and Wildlife Service have been paid, the permittee may, within a reasonable period as stated in the permit or as determined by the U.S. Fish and Wildlife Service official in charge, but not to exceed 60 days, remove all structures, machinery, and/or equipment, etc., from the premises for which he/she is responsible. Within this period the permittee also must remove any other of his/her property including his/her acknowledged share of products or crops grown, cut, harvested, stored, or stacked on the premises. Upon failure to remove any of the above items within the aforesaid period, they shall become the property of the U.S. Fish and Wildlife Service.



# Kidder County NDDOT Wetland Exchange

## T144N - R73W - Section 19, 20, 29, 30

## T143N - R73W - Section 6

### SUMMARY

Special Use permit:

0.02 acre of temp fill

0.09 acre perm from fill or new ROW

Easement Exchange:

0.09 acre from Vollrath 15/21

Wetland 33  
0.03 Temp Construction Easement  
0.01 Temp from fill  
0.01 Perm from fill

NDDOT non-wetland  
0.02 ROW Purchase  
USFWS Delineated Easement Wetland  
0.02 Perm

Wetland 32a  
0.08 Temp Construction Easement  
0.01 Temp from fill  
0.01 Perm from fill

Wetland 32b  
0.03 ROW Purchase  
0.03 Perm

Wetland 4  
0.02 ROW Purchase  
0.02 Perm

### Legend

- Wetland
- Wetland\_Exchange
- KI Wet Easement Boundary
- Section Lines

### Hwy3\_ROW

#### Layer

- Esmt Temp Line
- ROW Expansion
- ROW Existing
- ROW Township



## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

### MATERIALS PIT LIST

#### GENERAL NOTES

NOTES: All pit data for the **May 13, 2022** bid opening has been carefully prepared and is believed to be correct insofar as reliable preliminary pit information can reasonably be obtained. The contractors are advised to check all pit information before bidding.

It is recommended all bidders discuss pertinent pit data with the Materials and Research Engineer prior to the bid opening. Information such as field notes, field loggings, and comments may not be included in the materials pit list or boring logs. This additional information if present would be in the respective pit file at the Materials and Research Division.

Field logging by prospecting crews may list silt, clay, or silty clay. Our test hole plat will show silt-clay for those listings because the Department does not test to determine what percent is clay and what percent is silt.

Each pit shall be operated to prevent waste and to make the best use of the deposit and to produce a uniform gradation for the item of work under construction. Usually, the material will be removed to the full width and depth of the deposit. The purpose is to exhaust the portion of the pit being worked so the stripping or topsoil can be pushed into this exhausted area and smoothed, thereby eliminating the necessity of covering unused material in the pit unless the owner agrees otherwise.

In the use of pits, the contractor is required to comply with all federal, state, and local laws and regulations.

In the use of department-owned or optioned pits, the contractor shall fulfill all obligations imposed on the Department under the Department's options or agreements.

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**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
MATERIALS PIT LIST**

Material	Location	Approximate Quantity	Price and Ownership
PROJECT NH-1-003(050)113 – ASP OL>2”<OR=3”/SLIVER GRADING – ND 3 FROM TUTTLE N TO W JCT 200 – KIDDER AND WELLS COUNTIES			
Aggregate	S1/2NW1/4 18-142-73	330,000 ton (minus used)	State Optioned until December 31, 2024 for 100.0¢ per cu.yd or 66.7¢ per ton. Darwin & Diane Witt, 105 S. Anderson Street, Tuttle, ND 58488. Telephone: 701-867- 2714 C: 701-316-0004

<b>% Pass</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
<b>1"</b>	97	92	95	91	93	93	94	93
<b>3/4"</b>	93	90	91	85	89	88	89	89
<b>5/8"</b>	90	87	88	83	86	84	85	85
<b>1/2"</b>	86	82	84	76	80	79	79	78
<b>No. 4</b>	71	66	66	57	57	57	60	59
<b>No. 8</b>	59	57	56	45	43	45	50	47
<b>No. 10</b>	57	55	54	43	40	42	47	44
<b>No. 16</b>	49	47	46	35	32	34	40	36
<b>No. 30</b>	38	35	33	22	19	22	27	22
<b>No. 40</b>	31	27	25	15	14	16	19	15
<b>No. 50</b>	21	19	17	10	9	11	13	10
<b>No. 100</b>	9	8	7	5	4	5	5	5
<b>No. 200</b>	4.7	4.0	3.8	2.7	2.3	2.8	3.1	3.4
<b>+No. 4*</b>	0.3	0.4	0.4	0.5	0.6	0.6	0.4	0.3
<b>-No. 4**</b>	1.9	1.8	1.9	1.8	1.7	1.9	1.8	1.3
<b>Total***</b>	2.2	2.2	2.3	2.2	2.3	2.5	2.2	1.6

<b>Wt/cf ls</b>	104.2	108.5	105.3	113.2	110.7	108.6	108.4	105.1
<b>Wt/cf rd</b>	113.3	117.6	115.3	119.9	117.0	116.7	117.7	115.2
<b>P.I.(-40)</b>	NP	NP	NP	NP	NP	NP	NP	NP

**L.A. Abrasion Loss** 20.8% Combined Sample

\*Plus No. 4 fraction - percent by weight of total sample

\*\*Minus No. 4 fraction - Plus No. 30 fraction - percent by percent by weight of total sample

\*\*\*In total sample

<u>Size</u>	<u>Aggregate Type</u>	<u>Sieves</u>	<u>Water Absorption</u>
-5/8" +No. 4	natural rock	+ No. 4	1.9 %
Minus No. 4	natural fines	- No. 4	2.6 %

**NOTE:** The water absorption data is to be used for information purposes. Water absorption numbers may vary throughout the pit. The contractor shall be responsible for verifying the actual absorption prior to using the material in the project. This source is fairly coarse and clean with some oversize crushing rock up to 6". The sands seemed well graded and the deposit becomes deeper as you work east. Small amounts of coal slack were encountered. More material is available in source to the North and West of the drilled area. Also talk with landowner to see if a cattle guard must be installed and maintained prior to use. This deposit was shown for projects ARP-SS-1-036(033)038, IM-1-094(220)193, and NH-SS-1-006(025)022 and they will have priority in use. Previously awarded projects will have priority in use of materials and contractors must contact companies that are awarded these projects for information on availability.

NDDOT Material Source Certificate of Approval is attached at the end of this job pit list.

Interested bidders are advised to investigate all the details concerning these deposits to their own satisfaction before considering them for bidding.

Aggregate                      NE1/4NE1/4 13-145-74                      445,500 ton (minus used)                      State Optioned until December 31, 2024 for 100.0¢ per cu.yd or 66.7¢ per ton. Betty Mertz. John Mertz (Son) 2412 Hwy 200 Hurdsfield, ND 58451 is contact. Phone: 1-701-693-6114

<b>% Pass</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
<b>1"</b>	96	95	97	95	98	93	93	93
<b>3/4"</b>	94	94	94	94	96	90	89	88
<b>5/8"</b>	92	92	92	92	93	88	86	85
<b>1/2"</b>	90	89	89	89	89	84	80	81
<b>No. 4</b>	77	73	76	77	75	66	62	63
<b>No. 8</b>	69	65	68	69	66	57	52	52
<b>No. 10</b>	66	62	65	66	63	54	50	49
<b>No. 16</b>	59	54	58	58	56	47	41	42
<b>No. 30</b>	46	39	45	45	43	34	30	30
<b>No. 40</b>	38	30	37	36	34	26	23	24
<b>No. 50</b>	29	22	27	28	26	19	16	17
<b>No. 100</b>	15	11	12	13	12	9	7	8
<b>No. 200</b>	9.6	6.3	6.2	6.6	6.1	4.7	4.3	5.2
<b>+No. 4*</b>	0.6	0.4	0.3	0.6	0.7	0.4	0.3	0.3
<b>-No. 4**</b>	0.8	0.7	0.8	1.2	1.1	0.6	0.5	0.6
<b>Total***</b>	1.4	1.1	1.1	1.8	1.8	1.0	0.8	0.9
<b>Wt/cf ls</b>	101.7	103.3	104.5	102.4	104.7	104.3	113.5	107.5
<b>Wt/cf rd</b>	109.2	112.0	112.7	110.4	112.2	113.1	122.5	117.9

P.I.(-40) NP NP NP NP NP NP NP

**L.A. Abrasion Loss** 21.8% Combined Sample

\*Plus No. 4 fraction – percent lightweight particles by weight of total sample

\*\*Minus No. 4 fraction - Plus No. 30 fraction – percent lightweight particles by percent by weight of total sample

\*\*\*Lightweight particles in total sample

<u>Size</u>	<u>Aggregate Type</u>	<u>Sieves</u>	<u>Water Absorption</u>
-5/8" +No. 4	natural rock	+ No. 4	2.6 %
Minus No. 4	natural fines	- No. 4	2.6 %

**NOTE:** The water absorption data is to be used for information purposes. Water absorption numbers may vary throughout the pit. The contractor shall be responsible for verifying the actual absorption prior to using the material in the project. This deposit is finer on the north side and gets considerably coarser as you work south. There is a fair amount of oversize rock ranging from 2" to 8" with the occasional over 12". Some shale layers were also encountered. Pit has been used for two projects, a large amount of gravel remains. Also talk with landowner to see if a cattle guard must be installed and maintained prior to use. This deposit was shown for projects CVD-MCH-NH-4-003(016)159, ARP-SS-4-014(042)045 and tied project ARP-SS-4-014(037)114 and they will have priority in use. Previously awarded projects will have priority in use of materials and contractors must contact companies that are awarded these projects for information on availability.

NDDOT Material Source Certificate of Approval is attached at the end of this job pit list.

Interested bidders are advised to investigate all the details concerning these deposits to their own satisfaction before considering them for bidding.

### **Aggregate Clues:**

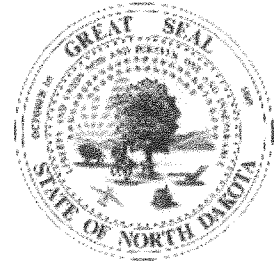
Various Sections – Private – Merrill Flanders 701-368-2028 or Grant Flanders 701-269-0926, owners.

Interested bidders are advised to investigate all the details concerning these deposits to their own satisfaction before considering them for bidding.



# NDDOT Material Source Certificate of Approval

**KD-1053**



Pit Name:  
Witt

NW1/4

S. 18 T. 142 N, R 73 W

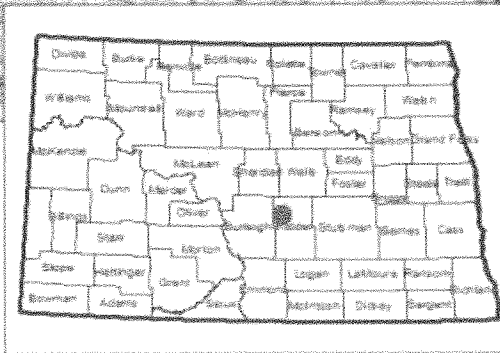
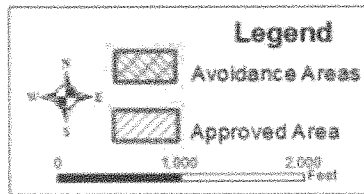
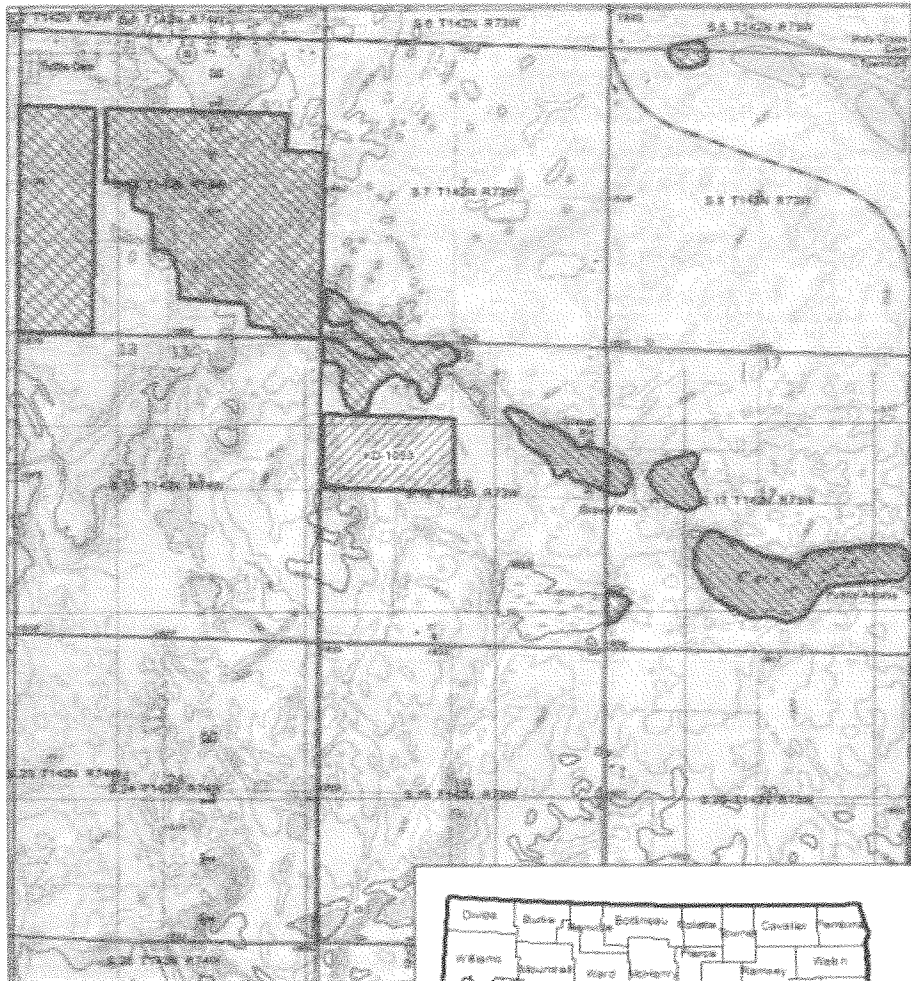
County: Kidder

Conditions:

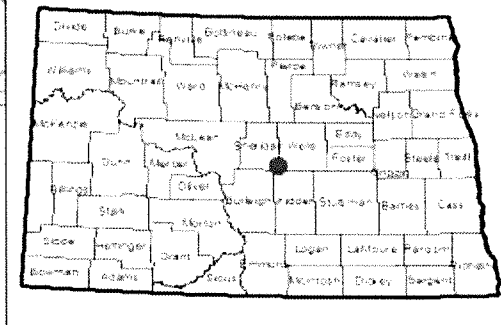
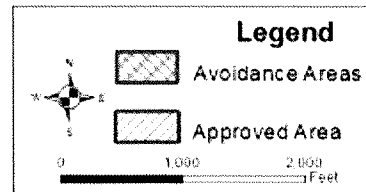
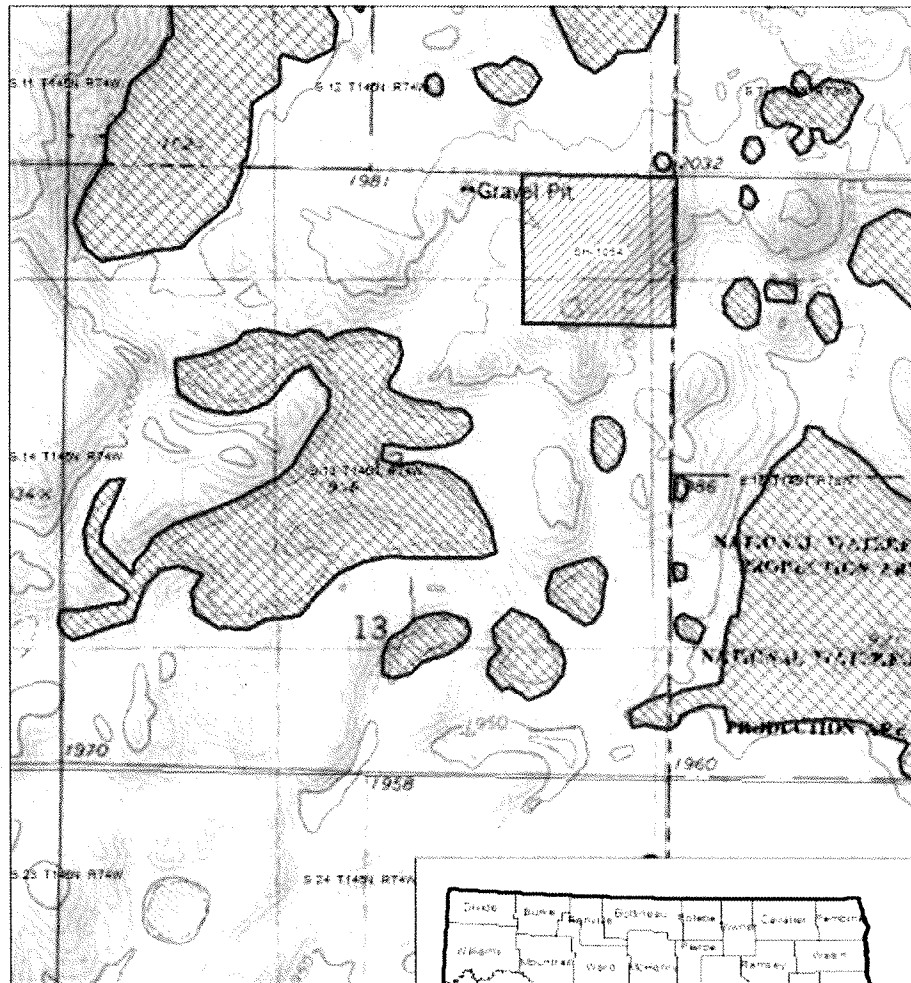
This location is approved for use, provided all avoidance areas shown on the map are avoided and all Conditions listed above and below are complied with.

NDDOT advises that all applicants (contractors or their representatives) may be subject to meeting certain legal responsibilities pursuant to one or more of the following authorities administered by the USFWS: Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.); Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.); and Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250). It is the responsibility of the applicants and/or any individual conducting activities at any approved site to fulfill the requirements of these Acts. The contractor will be responsible obtaining all applicable permits outlined in Section 107 of the Standard Specifications for Road and Bridge Construction (SSRBC). Additionally, contractor will be responsible for any impacts to wetlands, including permitting those impacts and mitigating the loss of the wetlands. As with all projects, if cultural artifacts and/or features (e.g., stone tools, fire hearths, stone circles, burials) are encountered, provisions outlined in Section 107.06 of SSRBC shall be followed.

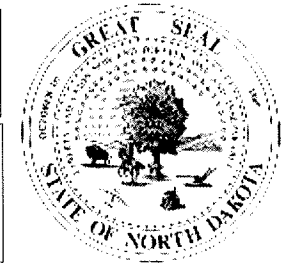
This approval does not imply landowner permission to acquire material at this location. An agreement with the landowner is still necessary. If you have any questions regarding material sources please email [materialsourc@nd.gov](mailto:materialsourc@nd.gov)



# NDDOT Material Source Certificate of Approval



SH-1054



Pit Name:  
Mertz

NE1/4NE1/4

S. 13 T. 145 N, R 74 W

County: Sheridan

Conditions:

This location is approved for use, provided all avoidance areas shown on the map are avoided and all Conditions listed above and below are complied with.

NDDOT advises that all applicants (contractors or their representatives) may be subject to meeting certain legal responsibilities pursuant to one or more of the following authorities administered by the USFWS: Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.); Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.); and Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250). It is the responsibility of the applicants and/or any individual conducting activities at any approved site to fulfill the requirements of these Acts. The contractor will be responsible obtaining all applicable permits outlined in Section 107 of the Standard Specifications for Road and Bridge Construction (SSRBC). Additionally, contractor will be responsible for any impacts to wetlands, including permitting those impacts and mitigating the loss of the wetlands. As with all projects, if cultural artifacts and/or features (e.g., stone tools, fire hearths, stone circles, burials) are encountered, provisions outlined in Section 107.06 of SSRBC shall be followed.

This approval does not imply landowner permission to acquire material at this location. An agreement with the landowner is still necessary. If you have any questions regarding material sources please email [materialsource@nd.gov](mailto:materialsource@nd.gov)



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:

<b>Fuel Ratio<sub>(x, y, z)</sub> = Affidavit Cost<sub>(x, y, z)</sub> / Original Contract Amount<sub>(x, y, z)</sub></b>		
(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel
Fuel Ratio <sub>(x, y, z)</sub>	=	Fuel ratio of the contract for each respective fuel type
Affidavit Cost <sub>(x, y, z)</sub>	=	Fuel costs from Fuel Adjustment Affidavit (SFN 58393)
Original Contract Amount <sub>(x, y)</sub>	=	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 <sub>(z)</sub>	=	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:

<b>Cost Change<sub>(x, y, z)</sub> = ( CFI<sub>(x, y, z)</sub> - BFI<sub>(x, y, z)</sub> ) / BFI<sub>(x, y, z)</sub></b>		
(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel (use diesel prices)
Cost Change <sub>(x, y, z)</sub>	=	The relative change in the current CFI and the BFI for each fuel type
CFI <sub>(x, y, z)</sub>	=	Current Fuel Index for each fuel type
BFI <sub>(x, y, z)</sub>	=	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:

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

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

<b><math>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)</math></b>		
(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  
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**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 <b>No</b> is checked . <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, provide the total dollars for each of the applicable fuels:	
Diesel (D)	
Unleaded (U)	
Burner Fuel (B)	
Sum (D+U+B)	% of Original Contract Amount *
*The sum of the D, U, and B may not exceed 15% of the original contract amount.	
Under the penalty of law for perjury of falsification, the undersigned,	
Name (print or type)	Title (print or type)
Contractor (print or type)	
hereby certifies that the documentation is submitted in good faith, that the information provided is accurate and complete to the best of their knowledge and belief, and that the monetary amount identified accurately reflects the cost for fuel, and that they are duly authorized to certify the above documentation on behalf of the company.	
I hereby agree that the Department or its authorized representative shall have the right to examine and copy all Contractor records, documents, work sheets, bid sheets and other data pertinent to the justification of the fuel costs shown above.	
Signature	Date

**Acknowledgement**

State of	
County of	
Signed and sworn to (or affirmed) before me on this day _____ (month, day, year)	
Name of Notary Public or other Authorized Officer (Type or Print)	Affix Notary Stamp
Signature of Notary Public or other Authorized Officer	
Commission Expiration Date (if not listed on stamp)	