

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION  
**REQUEST FOR PROPOSAL**  
URBAN FEDERAL AID PROJECT NO. SU-CVD-5-983(066) (PCN-23165)

0.323 Miles

EXCAVATION, PCC PAVEMENT, VALLEY GUTTER, CURB & GUTTER, ADA CURB RAMPS, SIDEWALK,  
DRIVEWAY, SIGNING AND LIGHTING

4TH AVE E, 21ST ST E N TO 26TH ST E - DICKINSON

STARK COUNTY

DBE Race Neutral Goal - 0%

**BID OPENING:** The bidder's proposal will be accepted via the Bid Express on-line bidding exchange at [www.bidx.com](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)

PAGE INTENTIONALLY LEFT BLANK

**Project:** SU-CVD-5-983(066) (PCN-23165)

---

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:** SU-CVD-5-983(066) (PCN-23165)

- 
- 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:** SU-CVD-5-983(066) (PCN-23165)

---

**PERMISSIBLE DISCOUNT (optional)**

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

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

Space for Offering Discounts:

---

---

---

Item No: \_\_\_\_\_

Description: \_\_\_\_\_

Unit: \_\_\_\_\_

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

Item No: \_\_\_\_\_

Description: \_\_\_\_\_

Unit: \_\_\_\_\_

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

Item No: \_\_\_\_\_

Description: \_\_\_\_\_

Unit: \_\_\_\_\_

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

TOTAL DISCOUNT \_\_\_\_\_

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

**Project:** SU-CVD-5-983(066) (PCN-23165)

---

**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: SU-CVD-5-983(066) (PCN-23165)**

**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	202	0114	REMOVAL OF CONCRETE PAVEMENT	SY	1,492.				
003	202	0130	REMOVAL OF CURB & GUTTER	LF	1,479.				
004	202	0135	REMOVAL OF BITUMINOUS SURFACING	TON	2,190.				
005	203	0109	TOPSOIL	CY	9.				
006	203	0113	COMMON EXCAVATION-WASTE	CY	763.				
007	216	0100	WATER	M GAL	43.				
008	256	0101	RIPRAP GRADE I	TON	33.				
009	260	0200	SILT FENCE SUPPORTED	LF	50.				
010	260	0201	REMOVE SILT FENCE SUPPORTED	LF	50.				
011	261	0200	WEIGHTED FIBER ROLLS	LF	72.				
012	261	0201	REMOVE WEIGHTED FIBER ROLLS	LF	72.				
013	302	0120	AGGREGATE BASE COURSE CL 5	TON	1,745.				
014	302	0411	SALVAGE & RELAY AGGREGATE BASE COURSE 3IN	MILE	.300				
015	550	0105	6IN NON-REINF CONCRETE PAVEMENT CL AE	SY	7,416.				
016	702	0100	MOBILIZATION	L SUM	1.				

**BID ITEMS**

Project: SU-CVD-5-983(066) (PCN-23165)									
<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>									
Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
017	704	1000	TRAFFIC CONTROL SIGNS	UNIT	896.				
018	704	1052	TYPE III BARRICADE	EA	42.				
019	704	1054	SIDEWALK BARRICADE	EA	13.				
020	704	1058	PEDESTRIAN WALKWAY	LF	681.				
021	704	1060	DELINEATOR DRUMS	EA	6.				
022	704	1067	TUBULAR MARKERS	EA	40.				
023	704	2108	TEMPORARY CURB RAMP	EA	5.				
024	709	0155	GEOSYNTHETIC MATERIAL TYPE RR	SY	33.				
025	722	6140	ADJUST GATE VALVE BOX	EA	6.				
026	722	6200	ADJUST MANHOLE	EA	7.				
027	748	0100	CURB & GUTTER	LF	1,498.				
028	748	0520	CURB-TYPE I	LF	49.				
029	748	1030	VALLEY GUTTER 72IN	SY	192.				
030	750	0100	SIDEWALK CONCRETE	SY	948.				
031	750	1000	DRIVEWAY CONCRETE	SY	293.				
032	750	2115	DETECTABLE WARNING PANELS	SF	90.				



**BID ITEMS**

**Project: SU-CVD-5-983(066) (PCN-23165)**

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

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
033	754	0110	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	46.				
034	754	0206	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	188.				
035	754	0592	RESET SIGN PANEL	EA	3.				
036	754	0593	RESET SIGN SUPPORT	EA	1.				
037	770	0020	CONCRETE FOUNDATION-HIGHWAY LIGHTING	EA	8.				
038	770	0220	CABLE TRENCH-TYPE II	LF	1,239.				
039	770	0330	2IN DIAMETER RIGID CONDUIT	LF	427.				
040	770	0503	UNDERGROUND CONDUCTOR NO2-TYPE RHW	LF	174.				
041	770	0504	UNDERGROUND CONDUCTOR NO4-TYPE RHW	LF	3,455.				
042	770	0505	UNDERGROUND CONDUCTOR NO6-TYPE RHW	LF	1,729.				
043	770	0735	FEED POINT-TYPE II-PAD MOUNTED	EA	1.				
044	770	1120	LT STD 8FT MA 32FT MT HT	EA	8.				
045	770	4210	LED LUMINAIRE	EA	8.				
			<b>TOTAL SUM BID</b>						

**Project:** SU-CVD-5-983(066) (PCN-23165)

**Type of Work:** EXCAVATION, PCC PAVEMENT, VALLEY GUTTER, CURB & GUTTER, ADA CURB RAMPS, SIDEWALK, DRIVEWAY, SIGNING AND LIGHTING

**County:** STARK

**Length:** 0.3230 Miles

---

**TIME FOR COMPLETION:**

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

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

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

**COMPLETION DATE CONTRACT** The project completion date is 11/04/2022 \*. 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.

**\*THIS DATE IS FOR ALL WORK, WITH THE EXCEPTION OF THE LIGHTING SYSTEM. LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE ALL WORK, WITH THE EXCEPTION OF THE LIGHTING SYSTEM, BY NOVEMBER 4, 2022, WILL BE CHARGED ACCORDING TO SECTION 108.07.**

**REFER TO NOTE 108-P01 ORDER OF OPERATIONS FOR ADDITIONAL TIME AND LIQUIDATED DAMAGE REQUIREMENTS.**

**PROPOSAL FORM**

North Dakota Department of Transportation

**BID OPENING: May 13, 2022****Job 23165**

Page 9 of 9

**Project:** SU-CVD-5-983(066) (PCN-23165)**Type of Work:** EXCAVATION, PCC PAVEMENT, VALLEY GUTTER, CURB & GUTTER, ADA CURB RAMPS, SIDEWALK, DRIVEWAY, SIGNING AND LIGHTING**County:** STARK**Length:** 0.3230 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 23165, SU-CVD-5-983(066)

Excavation, Concrete Paving, Valley Gutter, Curb & Gutter, Curb Ramps, Sidewalk,  
Driveway, Signs and Lighting

## **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

NOTICE - Electrician

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

On-The-Job Training Program 2022

SSP 1 Temporary Erosion & Sediment Best Management Practices

SSP 3 Local Agency Contracts

SSP 5 Limitations of Operations

SSP 8 Federal Prohibition on Certain Technological Hardware

## **INDEX OF PROVISIONS**

Page 2 of 2

SP 379(20) Street Lighting

SP 380(20) Internal Manhole Chimney Seals

SP 399(20) Temporary Pedestrian Facilities

SP Fuel Cost Adjustment Clause dated September 8, 2006

Contract

Contract Bond

# NOTICE

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

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

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

# 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 SU-CVD-5-983(066) (PCN-23165)

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

## NOTICE:

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

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

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

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

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

Or contact:

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

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

## Page 2 of 5

01-07-2022

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)

ND20220054

Page 2

### LABORERS:

#### Group 1

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

Page 3 of 5

01-07-2022

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)

ND20220054

Page 3

## POWER EQUIP.OPERATORS: (CONT.)

### Group 3

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

### Group 4

Articulated/Off Road Hauler; Asphalt Dump Person(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

### Page 4 of 5

01-07-2022

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)

ND20220054

Page 4

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

#### Group 5 (CONT.)

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

#### Group 6

Assistant/Apprentice Operator; Brakeman or Switchman; Dredge or Tugboat Deckhand; Drill Truck Gravel/Testing Operator; Form Trench Digger (Power); 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

Page 5 of 5

01-07-2022

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**

**LOCAL AGENCY CONTRACTS**

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

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



## **NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

### **SPECIAL PROVISION**

### **LIMITATIONS OF OPERATIONS**

#### **DESCRIPTION**

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

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

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

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

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

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

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

##### **C. Night-time Operations and Extended Hours.**

###### **1. General.**

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

###### **2. Nighttime Operations.**

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

Submit a written request to the Engineer a minimum of 7 calendar days before anticipated nighttime operations. The Engineer may deny the request or delay approval if it would require additional staffing considerations. If nighttime operations requires the Engineer to hire additional forces, nighttime operations may not be allowed for up to 30 days from the receipt of the request.

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

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

**3. Extended Hours.**

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

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION**

**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): \_\_\_\_\_

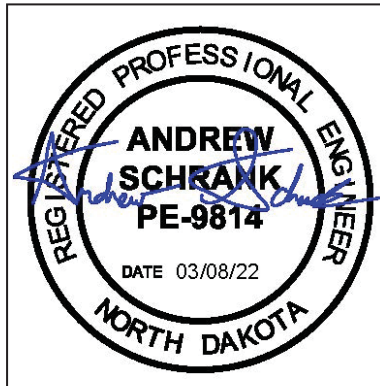
PCN(s): \_\_\_\_\_

Company Name: \_\_\_\_\_

Signatory Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_

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

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION****SPECIAL PROVISION****STREET LIGHTING****PROJECT SU-5-983(066) – PCN 23165****1. GENERAL**

This work consists of furnishing, installing, and modifying components for the street lighting system.

**2. EQUIPMENT**

Reserved.

**3. MATERIALS**

Use new materials unless otherwise noted in the Plans. All components shall be UL Listed or Listed by a certified testing laboratory as required by the National Electric Code.

Ensure all work performed on any street lighting component or system is done under the direct on-site supervision of an Electrician licensed in North Dakota as a Journeyman or greater.

Ensure that a licensed electrician supervises the installation of electrical raceways that are part of a street lighting system.

**A. Poles and Arms**

All lighting poles shall consist of a continuous tapered round steel pole shaft of the length specified, pole cap, anchor bolt cover, and hand hole cover(s), with the bolts, nuts, and washers necessary to complete the installation of the pole shaft. Poles shall be installed on concrete foundations with anchor bolts. All fastening hardware shall be non-corrosive, cadmium-plated, or equal, approved by the City Engineer. Fasteners shall be of the size and configuration noted on the drawings.

Light poles shall meet the requirements of AASHTO publication, Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals 2013, 6th Edition. A wind velocity of 90 mph with the necessary coefficient of height correction factor shall be used in the calculations. All the necessary calculations and drawings used in the design of these poles shall be furnished with the shop drawing submittal. Calculations and work

drawings used in the design of Street Light Poles shall be signed, sealed, and dated by a Professional Engineer duly registered in the State of North Dakota.

When specified in the project documents for a breakaway base, the breakaway base shall be provided and be designed according to AASHTO requirements.

Luminaire mast arms shall be manufactured of tapered steel tubing. The pole attachment end shall include a 3 bolt, rain-tight, steel simplex fitting. The fitting shall be welded in place. The bolts shall be high strength conforming to ASTM A325.

Pole assemblies, luminaire mast arms and brackets, anchor-bolt and hand hole covers, and pole and mast arm caps shall be hot-dip galvanized in conformance with ASTM A123 and then coated with powder coat paint or urethane wet coat paint. Finish color shall be a standard flat black, FS 37038. Associated hardware shall be hot-dip galvanized in accordance with ASTM A123.

Anchor-bolt covers shall be a 2-piece ferrous metal design with a finish to match the pole shaft (including galvanizing and powder coating) and shall cover the base plate completely, and shall be firmly secured in place at the bottom of the pole. Anchor bolt covers for street light poles shall rest on the top of the foundation when installed properly but shall not exceed 6-inches in height. All bolts, screws, nuts, and washers necessary to assemble the cover shall be included. The pole shafts shall be of round cross section, with a minimum 8" outer diameter at the base.

The anchor bolt pattern shall consist of 4 anchor bolts with a diameter range of 10.5-to-11.5-inches.

All welds shall be continuous. Welding shall be done by AWS certified welders.

All surplus weld material or protrusions shall be ground smooth. Ground joints shall maintain the strength of the original metal. Exposed welds, except fillet welds, shall be ground flush with the base metal.

Sheet steel used in the manufacturing process of street light poles shall have a minimum yield of 48,000 psi, or which after forming or cold rolling shall develop a minimum of 48,000 psi.

The pole base plate shall be determined by pole loadings and engineering. The base plates shall be slotted to accommodate a minimum of four anchor bolts equally spaced. Exposed edges of base plates shall be finished smooth with the corners neatly rounded to a radius.

The hand hole shall be a minimum of 4-inches by 6-inches net outside diameter reinforced frame with slip resistant indented type cover located 12-inches above the base plate. The hand hole cover shall utilize two standard thread screws to secure the cover in place. The screws shall be a weather and vandal resistant hexagonal socket head screw.

A grounding lug shall be supplied interior to the pole shaft opposite the hand hole for securing the grounding connections. This grounding lug shall be threaded to accept a standard ½-inch bolt and shall be welded to the inside of the pole where it is easily accessed for maintenance and repairs.

The manufacturer's identification tag shall be placed above the hand hole.

Light standard poles shall be manufactured by Millerbernd, model RJAC8-320, or approved equal.

Finish color for both the light pole, mast arm, and fixture shall be a standard flat black, FS 37038.

## **B. Luminaires**

The standard luminaire shall be of the light emitting diode (LED) type designed for roadway lighting where specified in the contract documents. The LED Luminaire shall meet the following requirements:

1. All LED luminaires to be the same model from the same manufacturer.
2. The luminaire shall consist of rugged die-cast aluminum housing, full cut-off lens, LED engine/driver, tool free entry hinged door, terminal block, and quick disconnects.
3. Luminaires shall have a standard black polyester powder-coat, corrosion resistant finish.
4. Die-cast trigger latch on door frame allows for tool free entry and enables easy and secure opening with one hand allowing the door to swing free on its hinge.
5. Wildlife shield shall be cast into the housing.
6. All parts and fittings shall have a corrosion resistant finish.
7. A bubble level shall be located inside the electrical compartment. A bubble leveling device shall also be provided on the exterior of the luminaire to aid in this process.
8. The LED shall produce a light with a color temperature of 3000K CCT unless otherwise specified in the plan documents.
9. Fixture shall have a maximum wattage of 208W.
10. Fixture shall have a minimum lumen output of 10,500.
11. Fixtures shall have multi-volt driver option with a voltage connection range from 120-277V.
12. The luminaires shall have an IES full cut-off type 2 or type 3 distribution or as specified in the plans.

All luminaires and component parts shall be new with labels in accordance with ANSI standards. Reconditioned, reconstructed, or remanufactured luminaires and component parts are not acceptable.

Luminaires shall be leveled and adjusted in accordance with instructions of the manufacturer or as directed by the Engineer. The complete unit shall have uniform lines throughout and shall aesthetically combine in a complete design. The luminaire shall maintain the horizontal line of the housing when properly mounted on the bracket arm.

The luminaire fixture shall be bonded to earth ground with an equipment grounding conductor.

## **C. Anchor Bolts**

Use anchor bolts for standard lighting poles that conform to the following requirements:

1. Conform to ASTM F1554, Grade 55, or ASTM A307 with a minimum yield strength of 36,000 psi.
2. Provide and install anchor bolts with 2 hex nuts and two 2-inch flat washers.
3. Use anchor bolts, nuts, and washers that are galvanized for their entire length, by the hot-dip process conforming to ASTM A123 and ASTM A153.
4. Ensure that, after galvanizing, the bolt threads accept the standard galvanized nuts for the full length of the thread without requiring tools, causing removal of protective coating, or requiring rethreading of the bolt or nut.

5. Use anchor bolts for street light poles that are 1½-inch diameter by 40-inches by 4-inches, minimum.
6. Ensure the upper 8-inches of the anchor bolts are threaded.

#### **D. Fuseholders and Fuses**

This subsection applies to multiple street lighting circuits.

Install fuseholders and fuses in the bases of all street lighting poles so they are accessible through the handholes. Use single pole fuseholders for 120 volts or double-pole fuseholders for 240 volts. Use waterproof fuseholders (without the use of tape) with integral or separate conductor insulating boots.

For the double-pole fuseholder for 240-volt operation, use 2 fuseholder chambers that consist of a line side section and a load side section that are secured together with a screw when properly closed. Ensure both load side connections are simultaneously disconnected when the fuseholder is opened.

Use fuse holders rated for 600 volts and that accept Midget 250-volt L4J12F fuse, or approved equal. Glass, paper, or indicating type fuses are not acceptable.

#### **E. Conduit**

Underground conductors shall be installed in polyvinylchloride (PVC) conduit where specified.

Conduit shall be listed by the Underwriters Laboratories, Inc., and shall bear the UL label on each length.

Signal conductors and low voltage conductors shall not be installed in high voltage light standards.

The conduit sizes to be used shall be as indicated in the Plans.

PVC coated rigid steel conduit shall consist of galvanized rigid steel conduit conforming to applicable federal specifications and Underwriters Laboratories.

1. The exterior surface of the conduit shall be acid-treated to provide an acceptable surface for plastic coating with a heat polymerizing lacquer with a thickness not to exceed 0.0005-inch thick.
2. A polyvinyl chloride compound shall then be bonded to the prepared conduit with a thickness not less than 0.035-inch for the full length of the conduit except the threads.
3. The bond between the metal and the plastic shall be equal to or greater than the tensile strength of the plastic coating.
4. In addition, the PVC compound shall have the following physical characteristics:
  - a. Hardness: 85+ Shore A Durometer
  - b. Dielectric Strength: 400 (Volts/mil @ 60 cycles)
  - c. Tensile Strength: 3,500 psi

All 90° elbows and all other conduit bends of 45° or more installed as part of electrical raceways exceeding 300-feet in length and that are to be used as components shall be PVC coated rigid steel, unless otherwise specified in the Contract Documents or directed by the Engineer. The minimum radius for 90° elbows (or equivalent combination of smaller bends) for traffic signal cables shall be 18-inches.

All trenched underground conduit installed shall have a red, continuous marking tape installed in the trench at 12-inches below finished grade.

#### **F. Conductors And Cable**

Install conductors and cables as indicated by the Plans. Use conductors and cable that conform to the following requirements:

1. Use copper wire meeting applicable portions of ASTM D2220, ASTM B3, and ASTM B8.
2. Use Insulation for multiple circuit lighting conductors rated at 600 volts, 194° F minimum.
3. Ensure insulation for service feeds between the transformer and the service pedestal or pole are rated at 600 volts, 194° F minimum. Use conductors with a minimum stranded No. 4/0 AWG copper wire with RHW-2 insulation with a SE or USE rating as required by the NEC.

#### **G. Excavating and Backfilling**

Perform excavations required for the installation of conduit, foundations, and other facilities in a manner to cause the least possible damage and disturbance to the native soil, streets, sidewalks, and other improvements. Limit excavations to the size necessary for the proper installation of conduit, electrical facilities, and foundations. Do not perform excavations until immediately before installation of conduit, facilities, and foundations.

Do not leave excavations open overnight except when adequate protection for the public, including pedestrians, is provided.

Do not place material from excavations in areas that will disrupt vehicular and pedestrian traffic, or in areas where surface drainage will occur.

Surplus excavated material shall be removed and disposed of outside of the right-of-way.

Backfill excavated areas according to Standard Specification Section 203.04 E.2.

#### **H. Foundations**

Rest the bottom of concrete foundations on firm, natural, undisturbed ground.

Finish tops of footings for posts and poles, except special foundations, 1-inch above grade of curb or sidewalk. Form the exposed portions of the foundations to present a neat appearance.

Ensure forms are rigid and securely braced in place prior to placing concrete. Hold conduit ends and anchor bolts in place by means of a template until the concrete sets. Moisten forms and soil which will be in contact with the concrete before placing concrete. Do not remove forms until the concrete has thoroughly set. Strip forms away from the foundation to at least 1-foot below finished grade. Apply a standard surface finish to exposed surfaces of concrete.

Allow concrete for bases and foundations to cure for a minimum time of 72-hours before live loads are set on the foundation. Luminaire arms are considered live loads.

Feed point cabinets shall also have a concrete slab foundation. The concrete pad shall be a minimum of 2-feet on each side of the pedestal foundation and 4-feet in front of the feed point cabinet. The concrete slab shall be 4 inches thick. The cost of the concrete pad shall be included in the cost of the feed point.



## I. Wiring and Conduit

Use wire that conforms to appropriate articles of the latest version of the National Electrical Code (NEC). Ensure wiring within pedestals and junction boxes is neatly arranged.

Use powdered soapstone, talc, or other approved lubricant when installing conductors in conduit. Remove excess lubricant.

Provide a minimum of 18-inches of slack coiled within each streetlight pole and at least 2-feet of slack coiled in each pull box. The length of slack is that amount of extra conductor that is available to be pulled completely out of the pole shaft or pull box.

Use split bolt or gel-cap type splices. Use gel-cap types that:

1. Consist of a kit containing a high abrasive and impact resistant clear elastomer cap factory-filled with cross-linked silicon gel for environmental sealing.
2. Have silicon gel that will not become hard or brittle and has a temperature tolerance of -40°F to +221° F.
3. Have a UV-resistant cap, clamp, and gel.
4. Contain a split bolt connector and accommodate a range of cable sizes.
5. Permit removal and re-entry of wiring for maintenance purposes without damage to the splice kit.

Tape all ends of the conductors and cables to exclude moisture when conductors and cables are pulled into the conduit. Tape ends of spare conductors.

Use a 6 AWG stranded copper conductor with green RHW-2 insulation, which is secured at both ends by a conduit cap with a J-hook for all new street lighting conduit for future use. Install a yellow polyethylene pull string in the conduits for future use. Leave the 6 AWG green conductor in the conduit at all times for locating and grounding purposes. Perform all splices using waterproof methods.

Run conductors from terminal to terminal without splices. Ream the ends of all conduits to remove burrs and rough edges. Ensure field conduit cuts are made square and true so that the ends will butt or come together for the full circumference in the couplings or adapters. Do not use slip joints or running threads for coupling metal conduit.

Tighten couplings for steel conduit until the ends of the conduits are brought together so a good electrical connection will be made throughout the entire length of the conduit run.

Conduit ends shall be threaded and capped with standard pipe caps until wiring is installed. Approved conduit bushings shall be installed when the caps are removed.

Manual or power operated equipment normally used for cutting rigid steel conduit is acceptable for use in cutting PVC coated rigid steel conduit. Do not peel PVC back before cutting. Ream all cuts. Use the same threading procedure as for non-coated rigid conduit. Touch up all scarred and grip marked areas with approved heavy consistency coating compound.

Hand-tighten all couplings and threaded fittings for PVC coated rigid steel prior to using a wrench. Re-coat all wrench marks and scores and seal joints with heavy consistency PVC compound.

Ensure that the final installation does not have exposed metal areas.

Use standard field bending techniques, which typically use a shoe 1 size larger to accommodate the larger pipe diameter. Bend rigid steel conduits without crimping or flattening. Do not include more than two 45° bends and two 90° bends in a single run.

Extend conduit terminating in lighting poles 3-inches above the crash cap but not above the hand hole.

Bring conduit into the concrete pull boxes from the bottom. Terminate conduit at least 2-inches inside the box wall and 4- to 6-inches above the bottom of the pull box. Provide at least 6-inches of clearance between the top of the conduits and the bottom of the pull box cover. Install the conduits to facilitate pulling of conductors. Locate conduit entering the bottom of a pull box near the end walls to leave the major portion of the box clear. At all outlets, bring the conduit into the box from the direction of the run.

Lower conduits as necessary in the vicinity of poles, posts, pull boxes, electrical vaults, and other electrical enclosures for the conduits to facilitate entrance into the enclosure. Do not modify existing pull boxes, electrical vaults, lighting poles or posts, cabinets, pedestals, or any other electrical device for the purpose of entering the device with the conduits without written approval of the Engineer. Seal entry points and form fit them with grout or other acceptable material.

Clean existing underground conduit to be incorporated into a new system by blowing out with compressed air.

#### **J. Electrical Service**

Coordinate electrical service points for electrical systems with the power company by company

#### **K. Pull Boxes**

Pull boxes shall be polymer concrete type. The cover shall clearly be marked as "Lighting". Duct seal all conduits entering and exiting the pull boxes. No splicing is allowed in pull boxes. The style shall be as shown in the standard drawings and include stackable bottom extension with knockouts.

A minimum of 6-inches of clearance shall be maintained between the top of the conduits and the bottom of the pull box cover.

A minimum of 4-inches of conduit shall extend into the pull box.

Conduit caps shall be installed to help prevent the entry of foreign material into the electrical raceway.

Entry holes into pull boxes and electrical vaults shall be cut or "knock-outs" provided by the manufacturer. All entry points shall be sealed and form fitted with grout or other acceptable material approved by the Engineer.

#### **L. Bonding and Grounding**

Metallically join together and make mechanically and electrically secure metallic cable sheaths, steel conduit, metal poles, pedestals, pull boxes, and other metal enclosures together to form a continuous electrical conducting path. Effectively ground components as required by the National Electrical Code.

In ground system conduits, use a No. 6 AWG, stranded copper grounding conductor with RHW-2 insulation.

Bond street light poles and foundations with a bare No. 4 AWG stranded copper wire attached to each anchor bolt, ground rod, and to the grounding bolt installed on the lower lip of the lighting pole hand hole or inside the base of the pole. Connect the grounding end of the bare wire to a grounding plate installed under a felt protective insulator under the foundation. Provide a ½"x10' minimum ground rod installed through the concrete foundation as required by ND State Electrical Code. Bond using a bare No. 4 AWG stranded copper wire. Connect the No. 6 AWG green systems grounding conductor from the conduit and the No. 10 AWG luminaire ground to the No. 4 AWG bare foundation grounding wire.

Connect all electrically conductive materials of the electrical system to earth and system grounds. Conform to the following:

1. Ground metallic pull box covers with No. 4 AWG 7-strand copper bare wire connected to the system ground and the pull box cover. Make the connection to the pull box cover using an exothermal welding system that is appropriate for the material of the cover. Use an irreversible compression type connector to connect to the system grounding conductor.
2. Ensure grounding of conduit and neutral at the service point complies with the applicable sections of Article 250 of the National Electrical Code.
3. Equip pole foundation grounding wire with a copper grounding lug attached to the equipment ground screw. Size the lug to fit over the ½-inch grounding bolt of the pole. Use an irreversible, compression type component grounding lug installed on the bare grounding conductor approximately 24-inches from the end of the wire to allow connection of other grounding conductors. Install the grounding lug so that the bare grounding wire end, when pulled through the hand hole, has a minimum length of 12-inches outside of the pole.
4. Connect the No. 6 AWG green system grounding conductor from the conduit and all other grounding conductors servicing equipment on the pole to the end of the bare grounding conductor with a removable, mechanical device such as a split bolt.

## **M. Electrical Testing**

Prior to acceptance of the work, perform the following tests on all lighting and electrical circuits in the presence of the Engineer:

1. Test for continuity of each circuit.
2. Visually inspect all grounding connections. Do not energize electrical equipment and components unless properly grounded.
3. Perform a megohmmeter test on each single conductor circuit between the circuit conductor and all other circuits and ground in the conduits.
  - a. Ensure insulation resistance is not less than 500 megohms when tested at 1,000 volts for 1-minute.
  - b. The Engineer shall exempt individual conductors in UF cable and other multi-conductor cables shall be exempted from the megohmmeter testing if a visual inspection of the cables show no suspicious cuts, tears, or other damage to the outside insulation.
  - c. Do not subject street light fixtures or other low voltage components to the high voltage of this test.
4. Replace any fault in material or in a part of the installation revealed by these tests. Repeat the same tests after repairs until corrected.

## 5. MEATHOD OF MEASUREMENT

The Engineer will measure, completed and in place, as specified in Standard Specification Section 109.01 "Measurement of Quantities" and as follows:

1. The Engineer will not measure conduit that is placed in concrete foundations and in feed points.
2. The Engineer will include the additional conductor lengths in the measurement of the conductor.

## 6. BASIS OF PAYMENT

<b>Pay Item</b>	<b>Pay Unit</b>
Concrete Foundation – Highway Lighting	Each
Cable Trench-Type II	Linear Foot
2" Diameter Rigid Conduit	Linear Foot
Underground Conductor No 2-Type RHW	Linear Foot
Underground Conductor No 4-Type RHW	Linear Foot
Underground Conductor No 6-Type RHW	Linear Foot
Pull Box	Each
LT STD 8FT MA 32 FT Pole Breakaway	Each
LED Luminaire	Each
Feed Point- Type 1-Pad Mounted	

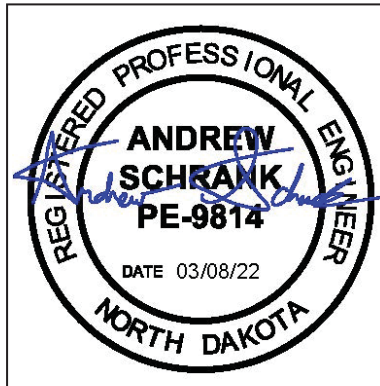
Such payment is for full compensation for furnishing all materials, equipment, labor, and incidentals to complete the work as specified.

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION**

**INTERNAL MANHOLE CHIMNEY SEALS**

**PROJECT SU-5-983(066) – PCN 23165**



**1. GENERAL**

This specification includes the materials and procedures required for the internal sealing of the entire chimney area of sanitary sewer manholes that are being adjusted.

**2. EQUIPMENT**

Use the manufacturer's recommended expansion tool and all other equipment/tools necessary to prepare the surfaces of the manhole and install the frame seals.

**3. MATERIALS**

**A. Frame Seal.**

Use frame seals consisting of a flexible internal rubber sleeve, extensions, and expansion bands.

Provide manhole frame seal designed to prevent leakage of water through the above described portions of the manhole throughout a 50-year design life. Provide seal designed to be installed in manholes where the diameters of the frame and chimney differ by up to 20%.

Provide a frame seal capable of repeated vertical movement of not less than 2-inches and/or repeated horizontal movement of not less than 1/2-inch after installation and throughout its design life. Provide a test report from a qualified testing agency showing that the seals meet the performance requirements. The test unit shall consist of a watertight base unit, at least 1 unsealed grade ring or brick course, and a differentially moveable, unsealed, manhole frame. The Engineer reserves the right to observe the testing. Include the results of the following test performed on a test unit on which the frame seal is attached in the required test report.

1. Raise the manhole frame 2-inches and move laterally 1/2-inch. Hold frame in this position for a minimum of 100 hours, after which, return frame to its normal position.
2. Then, place the same test unit in a water tank filled to just below the top of the frame. Raise the frame 2-inches and lower back down through a minimum 30 cycles. Then, raise the frame 2-inches and hold in that position while the frame is moved laterally 1/2-inch. Finally, return the frame to its normal position to complete the test. The seal shall remain in place and watertight throughout the duration of the test. Any displacement, dislodgement, or leakage of the seal shall be cause for failure. Any seal that fails the test may be reworked and retested.

#### **B. Rubber Sleeve and Extension.**

Provide a seal extruded or molded from a high-grade rubber compound conforming to the applicable material requirements of ASTM C-923, with a minimum 1500 psi tensile strength, maximum 18% compression set and a hardness (durometer) of  $48 \pm 5$ .

Provide double, triple, or quadruple pleated seal with a minimum unexpanded vertical height of 8-inches, 10-inches, or 13-inches, respectively, and a minimum thickness of 3/16-inches. Provide an integrally formed expansion band recess and a series of sealing fins to facilitate a watertight seal at the top and bottom section of the sleeve that compresses against the manhole frame casting and the chimney/cone. Provide teardrop holes or air pockets on the sealing fins to allow the sealing area to conform to minor surface irregularities that may be encountered.

Provide a top section with a minimum thickness of 3/32-inches that is shaped to fit into the bottom band recess of the sleeve under the bottom chimney seal band, with the remainder of the extension having a minimum thickness of 3/16-inches. Provide an integrally formed expansion band recess and multiple sealing fins matching that of the rubber sleeve on the bottom section of the extension. Do not use hot vulcanized splices to fabricate the sleeve.

Use hot vulcanized extensions with a strength such that the sleeve will withstand a 180° bend with no visible separation.

#### **C. Expansion Bands.**

Use integrally formed from 16 gauge stainless steel with a minimum width of 1 3/4-inches conforming to the applicable material requirements of ASTM A-240 Type 304 with no welded attachments.

Supply bands having a minimum adjustment range of 2 1/2 diameter inches. Provide a mechanism to expand the band with the capacity to develop the pressures necessary to make a watertight seal. Permanently hold the band in place with a positive locking mechanism that secures the band in its expanded position after tightening.

#### **D. Cementitious Grout.**

Use a premixed, non-metallic, high strength, non-shrink grout which meets the requirements of ASTM C-191 and C-827 as well as CRD-C-588 and C-621. Use grout having a minimum one day and 28 day compressive strength of 6,000 and 9,000 psi, respectively, when mixed to a mortar or "plastic" consistency.

### **4. CONSTRUCTION REQUIREMENTS**

**A. Preparation.**

Field measure the manholes to determine the information required for the manufacturer's sizing and ordering procedure.

Clean surface to be sealed and repair rough areas or excessive honeycombing. The top internal portion of the manhole cone shall have a minimum 3-inch high vertical surface. Prepare the surface in accordance with the frame seal manufacturer's instructions if this vertical surface does not exist.

**B. Installation of Frame Seal.**

Install the internal frame seals and extensions in accordance with the manufacturer's instructions.

**C. Quality Assurance.**

Engineer will visually inspect manhole frame seals after installation to insure that the seal is properly positioned, tight against the manhole and frame surfaces, that no voids or leakage points exist, and that the bands are securely locked in place. Rework and retest any seals not meeting the requirements of this inspection as determined by the Engineer. Any seals not passing this visual inspection may, at the Contractor's option, be tested for leakage using a method approved by the Engineer.

**5. MEASUREMENT AND PAYMENT**

The Engineer will not measure Internal Manhole Chimney Seals as separate items. Include materials, labor, and work described herein in the "Adjust Manhole" bid item.

## **NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

### **SPECIAL PROVISION**

#### **TEMPORARY PEDESTRIAN FACILITIES**

##### **PROJECT SU-5-983(066) – PCN 23165**

#### **DESCRIPTION**

This work consists of constructing temporary pedestrian facilities for use while permanent facilities are impacted by the project work.

#### **MATERIALS**

##### **A. Pedestrian Channelization.**

Provide pedestrian channelization that meets the following requirements:

- Interlocked with a 1" maximum gap between devices;
- Upper rail with a smooth continuous guide handrail positioned 32 to 38 inches above the walkway;
- A smooth lower edge on the pedestrian side of the wall to allow sight impaired cane tapping positioned based on the following requirements:
  - The bottom edge is less than 2 inches above the walkway; and
  - The top edge a minimum of 6 inches above the walkway
- Openings in the bottom of the wall to allow for water passage;
- Support legs that do not impede the clear walkway;
- In compliance with NCHRP Report 350 or MASH Test Level 3 (TL3);
- Channelization portions are orange or white, or a combination of orange and white, in color.

##### **B. Temporary Pedestrian Surfacing.**

Compacted aggregate is not an acceptable surface.

#### **CONSTRUCTION REQUIREMENTS**

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

Provide surfaces for temporary pedestrian facilities with the following characteristics:

- Stable;
- Firm;
- Weather resistant; and
- Non-slip.

##### **B. Pedestrian Walkway.**

###### **1. General**

Pedestrian walkways consist of two components; pedestrian channelization and temporary pedestrian surfacing.

Move and reset the pedestrian walkway as needed for multiple phases of construction.



**2. Pedestrian Channelization.**

Install pedestrian channelization as follows:

- Place pedestrian channelization to delineate a clear, temporary pedestrian walkway directing pedestrians through the work area;
- Provide a minimum, continuous, clear width of 48 inches;
- Where the clear width of a temporary pedestrian walkway is less than 60 inches, provide passing spaces at maximum intervals of 200 feet that have minimum dimension of 60 × 60 inches.

**3. Temporary Pedestrian Surfacing.**

Place temporary surfacing to match the widths detailed in Section 2, “Pedestrian Channelization” in the Construction Requirements portion of this special provision.

Place temporary surfacing with a maximum cross slope of 2 percent and maximum running slope of 5 percent. Construct and maintain the surface with no vertical discontinuities greater than 0.25 inches, and free of barriers to wheelchair use.

**C. Temporary Curb Ramp.**

Construct curb ramps with a clear width of 48 inches. Construct ramps with a slope of 12:1 or flatter. Maintain a clear turning platform above and below the ramp of at least 48 × 48 inches.

Maintain a maximum curb ramp and turning platform cross-slope of 50:1 (2%) on parallel curb ramps.

Maintain 0.5-inch maximum width lateral joints or gaps between surfaces and maximum 0.5-inch surface height changes.

Maintain water flow in the gutter system.

**METHOD OF MEASUREMENT**

**A. Pedestrian Walkway.**

The Engineer will measure “Pedestrian Walkway” along the centerline of the walkway and make 90 degree turns when measuring around corners. If multiple phases of construction cause the walkway to be moved or reset, the Engineer will pay for the greatest length of walkway used at one time.

**B. Temporary Curb Ramp.**

The Engineer will measure “Temporary Curb Ramp” based on each curb ramp installed and will pay for the maximum number of curb ramps in place at one time.

**BASIS OF PAYMENT**

The contract item “Temporary Curb Ramp” includes both parallel and perpendicular curb ramps.

<b>Pay Item</b>	<b>Pay Unit</b>
Pedestrian Walkway	Linear Foot
Temporary Curb Ramp	Each

Include all costs to furnish, install, maintain, relocate, replace, and remove pedestrian channelization and temporary pedestrian surfacing in the contract unit price for "Pedestrian Walkway."

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

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  
6 of 6

**Attachment A**

PCN	Project Number
The Contractor is not required to notify the Department at the time of submitting bids whether he will or will not participate in the fuel cost adjustment program. The Contractor shall return the affidavit on all Contracts with this Provision even if the Contractor elects not to participate.	
Check the box for each fuel type that has a fixed price. No adjustments in fuel price will be made for the boxes that are checked. <input type="checkbox"/> Diesel <input type="checkbox"/> Unleaded <input type="checkbox"/> Burner	
Does your company elect to participate in a fuel adjustment for this contract for the fuels that do not have a fixed price? No adjustments in fuel prices will be made if <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)	



## AGREEMENT

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

THIS AGREEMENT is made and entered into on the date stated herein, between the City of Dickinson, a North Dakota municipal corporation (hereinafter, the "City"), and \_\_\_\_\_ (hereinafter, the "Contractor").

In consideration of the mutual promises, covenants, agreements and stipulations contained herein, the City and the Contractor hereby agree as follows:

1. The Contractor shall complete construction of project SU-CVD-5-983(066), as reflected in the specifications for the project, the project proposal, North Dakota Department of Transportation's (NDDOT's) standard specification, supplemental specifications, special provisions, and plans. All such documents, plans, and specifications are hereby incorporated into and as a part of this Agreement as if set out in full. The Contractor shall provide all labor, equipment, and materials necessary to complete the work. The Contractor shall pay or cause to be paid all claims for work, labor, materials, equipment, including equipment rental or repair, and other supplies or insurance premiums, all of which are attributable to or utilized in the improvement and construction of the project.
2. The NDDOT agrees to pay the Contractor for the work performed pursuant to project SU-CVD-5-983(066). Such payment shall be in the total amount of \$ \_\_\_\_\_ as reflected in the Contractor's bid proposal. Such payment shall be made upon completion and acceptance of the work by the City Engineer, with any required progress payments being made pursuant to the project specifications, upon presentation of the proper certification of the engineer.
3. The work shall be done pursuant to this Agreement and the laws of the State of North Dakota, to the satisfaction of the City, subject at all times to the inspection and approval of NDDOT and the U.S. Department of Transportation, its agents and representatives and in accordance with the rules and regulations made pursuant to state and federal law.
4. The decision of the City Engineer upon any question connected with the execution of this Agreement or any failure or delay in the prosecution of the work by the Contractor shall be final and conclusive.
5. The Contractor, in employing and maintaining labor, shall do so in conformity with state and federal law and this Agreement.
6. The Contractor shall begin work as required by this Agreement or when so ordered by the City and shall maintain the maximum and efficient work force on the project necessary to complete the work within the time established by this Agreement.
7. In the event of any unsettled claims, counterclaims, disputes, and other matters in question between the City and the Engineer arising out of or relating to this Agreement or the work to be performed by the Contractor hereunder, the claiming party shall timely provide Notice of Claim

to the other party. Such Notice of Claim shall be in written form, and shall adequately state the unsettled claim, counterclaim, dispute, or other matter in question in order for the other party to understand and resolve the same. The parties shall thereafter enter into direct negotiations for settlement of the same.

In the event that such direct negotiations are unsuccessful in fully resolving the dispute, the City and the Contractor agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the work to be performed by the Contractor hereunder to mediation. A mediator shall be chosen jointly by the City and the Contractor and shall be mutually acceptable to all parties.

If such mediation is unsuccessful in fully resolving the dispute, then all such disputes may be resolved only in a court of competent jurisdiction. The parties hereby stipulate and agree that the District Court, Southwest Judicial District, State of North Dakota, shall have personal jurisdiction over the parties hereto, and that such District Court, Southwest Judicial District, State of North Dakota, is the appropriate and proper venue for resolving any such dispute.

8. Contractor agrees to indemnify and hold the City harmless from any and all claims, liabilities, losses, damages or expenses resulting from this Agreement and the Contractor's services performed or to be performed under this Agreement, specifically including, without limitation, any claim, liability, loss, damage or expense arising: (a) by reason of the injury to person or property, from whatever cause, or in any way connected with the this Agreement or the work to be performed hereunder, including any liability or any injury to the person or personal property of the Contractor, its agents, officers, or employees; (b) by reason of any work negligently performed under this Agreement; (c) by reason of the Contractor's negligent failure to perform any provision of the work under this Agreement or to comply with any requirement imposed upon the City, the Contractor, or any other party by any duly authorized governmental agency or political subdivision; or (d) because of the Contractor's failure or inability to pay as such shall become due any obligations incurred by the Contractor in its performance of the work under this Agreement.
9. This Agreement may not be assigned by the Contractor without the prior written authorization and consent of the City.
10. Contractor's failure to fulfill any condition or term of this Agreement shall be a material default. Upon such material default, City shall be entitled to any and all remedies available under law, without limitation, and without the same working any forfeiture or a waiver of any of the covenants, terms, or conditions of this Agreement to be performed by the Contractor. A waiver by the City of any default or breach hereunder on the part of the Contractor shall not be construed to be a continuing waiver of such default or breach, nor a waiver in any manner of a default or breach subsequently occurring.
11. This Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their respective administrators, representatives, successors, and assigns.
12. This Agreement shall be governed by North Dakota law and any question arising hereunder

shall be construed or determined according to such law.

13. Time is of the essence with respect to the performance of any and all provisions of this Agreement. Engineer will provide services as expeditiously as is consistent with professional skill and care and the orderly progress of the work.
14. This Agreement, together with the specifications for the project, the project proposal, North Dakota Department of Transportation's (NDDOT's) standard specification, supplemental specifications, special provisions, and plans, contains the entire agreement between and among the parties hereto, and supersedes all prior and contemporaneous discussions, negotiations, understandings and agreements, whether oral or written, express or implied, between or among them relating to the subject matter of this Agreement. This Agreement may not be amended orally, nor shall any purported oral amendment (even if accompanied by partial or complete performance in accordance therewith) be of any legal force or effect or constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the City and Contractor have respectively executed this Agreement as of the day and year first above written.

CITY OF DICKINSON

By: \_\_\_\_\_  
Scott Decker, President  
Board of City Commissioners

ATTEST:

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

CONTRACTOR

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF NORTH DAKOTA        )  
  ) ss  
COUNTY OF STARK                                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared **SCOTT DECKER** and \_\_\_\_\_, known to me to be, respectively, the President of the Board of City Commissioners and the \_\_\_\_\_ of the City of Dickinson, the persons who are described herein and who executed the within and foregoing instrument and acknowledged to me that the City of Dickinson executed the same.

\_\_\_\_\_  
Notary Public  
Stark County, North Dakota

STATE OF \_\_\_\_\_)  
  ) ss  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared the Authorized Representative of \_\_\_\_\_, known to me to be the entity that is described herein and who executed the within and foregoing instrument and acknowledged to me that such entity executed the same.

\_\_\_\_\_  
Notary Public  
Stark County, North Dakota

## CONTRACT BOND

Project No.: SU-CVD-5-983(066)  
PCN: 23165

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_ as principal, and

---

Name and Address of Surety

---

as surety, are held and firmly bound unto the City of Dickinson, 38 1<sup>st</sup> Street West, Dickinson, ND 58601, as owner in the penal sum of \$ \_\_\_\_\_ for the use of the owner and also for the use of any person having any lawful claim against the principal or any subcontractor on account of labor or supplies or materials as set forth in the conditions hereof; for the payment of which well and truly to be made we jointly and severally bind ourselves, and each of our heirs, executors, administrators, and successors, firmly by these presents.

WHEREAS, said principal has entered into a written contract with the owner for: 4<sup>th</sup> Ave E Reconstruction in the city of Dickinson, North Dakota, which contract and incorporated plans and specifications are by this reference made a part hereof, and are hereinafter referred to as the contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS THAT if the principal shall: (1) perform all the terms, covenants and conditions of said contract; (2) protect the owner against any loss or damage from any cause arising out of said contract; (3) pay or cause to be paid all bills and claims against the principal or any subcontractor on account of labor or services performed and all materials, equipment or supplies furnished, whether directly or indirectly arising out of the performance of said contract; (4) pay all insurance premiums and all items for which payment under the terms of the contract is to be made or guaranteed by the principal; (5) have made or will make, prior to the commencement of any work by the principal or any subcontractor under such contract, full and true report to the Worker's Compensation Bureau of the payroll expenditures for the employees to be engaged in such work, and that the principal has paid, or will pay, the premium thereon prior to the commencement of such work; (6) pay or cause to be paid all contributions due to the Unemployment Compensation Division; and (7) pay or cause to be paid any and all taxes that may be assessed or levied or to be a charge against such contractor or any subcontractor under such contract by the owner or any of its subdivisions; then this obligation shall be null and void; otherwise it will remain in full force and effect.

And the said surety hereby stipulates and agrees that any change, extension, alteration, deduction or addition, with or without notice to the surety, in or to the terms of said contract or the plans or the specifications accompanying the same as provided for therein, shall not in anywise affect the obligation and liability of said surety on this bond.

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Seal of  
Principal)

\_\_\_\_\_  
Principal  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

(Seal of  
Surety)

\_\_\_\_\_  
Surety  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

### IMPORTANT NOTICE

An individual doing business under a firm name must give both names, and the individual shall designate himself as sole owner.

If a partnership, so state, and at least one member of such partnership must sign.

If a corporation, the full corporate name must be used and the execution must be by an officer of the corporation.

Any other person executing for the principal or surety must attach a power of attorney.

#### Section 26.1-03-01, N.D.C.C. Provides:

**"Limitation on risks acceptable by company.** An insurance company transacting an insurance business in this state may not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess is reinsured."

If excess reinsurance agreements are required on this bond, an affidavit executed by an officer of the surety shall be attached, stating that such reinsurance agreements have been entered into and are in effect at the time the bond is executed, giving the name and address of all companies with whom such agreements have been entered, and that copies of such reinsurance agreements will be furnished to the North Dakota commissioner of insurance.

**ACKNOWLEDGMENT OF PRINCIPAL**

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me a notary public in and for the state of \_\_\_\_\_, personally appeared \_\_\_\_\_ known to me to be \_\_\_\_\_ (title) of the principal described in the within instrument and who executed the same and acknowledged to me that the same was executed for and on behalf of said principal.

Notary Public, State of \_\_\_\_\_

\_\_\_\_\_  
(Notary Public must print or type name here)

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

**ACKNOWLEDGMENT OF SURETY**

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me a notary public in and for the state of \_\_\_\_\_, personally appeared \_\_\_\_\_ known to me to be \_\_\_\_\_ (title) of the surety described in the within instrument and who executed the same and acknowledged to me that the same was executed for and on behalf of said surety.

Notary Public, State of \_\_\_\_\_

\_\_\_\_\_  
(Notary Public must print or type name here)

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

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

By: \_\_\_\_\_  
(City's Attorney)

Approved by owner this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

By: \_\_\_\_\_  
(President, City Commission)