

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSAL

STATE AID PROJECT NOS. H-3-057(058)006 (PCN-23579) and H-3-020(139)097 (PCN-23580)

4.420 Miles

CONTRACT PATCHING

ND 57, FORT TOTTEN TO JCT OF ND 20 and ND 20, JCT ND 57 N TO NEAR CMC 3634

BENSON and RAMSEY COUNTIES

BID OPENING: The bidder's proposal will be accepted via the Bid Express on-line bidding exchange at www.bidx.com until **09:30AM Central Time on May 13, 2022.**

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

Proposal Form of:

(Firm Name)

(Address, City, State, Zipcode)

(For official use only)

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Projects: H-3-057(058)006 (PCN-23579) and H-3-020(139)097 (PCN-23580)

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

Projects: H-3-057(058)006 (PCN-23579) and H-3-020(139)097 (PCN-23580)

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

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

Explanation: _____

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

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

BID LIMITATION (Optional)

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

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

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

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

OR

that exceed a total number of _____ projects.

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

Projects: H-3-057(058)006 (PCN-23579) and H-3-020(139)097 (PCN-23580)

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.

Projects: H-3-057(058)006 (PCN-23579) and H-3-020(139)097 (PCN-23580)

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

Projects: H-3-057(058)006 (PCN-23579) and H-3-020(139)097 (PCN-23580)

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	401	0050	TACK COAT	GAL	6,964.				
003	411	0105	MILLING PAVEMENT SURFACE	SY	2,667.				
004	430	0043	SUPERPAVE FAA 43	TON	17,376.				
005	430	5803	PG 58S-28 ASPHALT CEMENT	TON	1,059.				
006	702	0100	MOBILIZATION	L SUM	1.				
007	704	0100	FLAGGING	MHR	200.				
008	704	1000	TRAFFIC CONTROL SIGNS	UNIT	2,652.				
009	704	1048	PORTABLE RUMBLE STRIPS	EA	4.				
010	704	1185	PILOT CAR	HR	100.				
011	706	0550	BITUMINOUS LABORATORY	EA	1.				
012	706	0600	CONTRACTOR'S LABORATORY	EA	1.				
013	760	0005	RUMBLE STRIPS - ASPHALT SHOULDER	MILE	8.840				
014	760	0007	RUMBLE STRIPS - ASPHALT CENTERLINE	MILE	4.420				
015	760	0010	RUMBLE STRIPS - INTERSECTION	SET	1.				
016	762	0103	PVMT MK PAINTED-MESSAGE	SF	1,040.				

BID ITEMS

Projects: H-3-057(058)006 (PCN-23579) and H-3-020(139)097 (PCN-23580)

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

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$\$	000	\$\$\$\$\$	00
017	762	0430	SHORT TERM 4IN LINE-TYPE NR	LF	121,267.				
018	762	1104	PVMT MK PAINTED 4IN LINE	LF	191,392.				
019	762	1108	PVMT MK PAINTED 8IN LINE	LF	10,500.				
020	762	1124	PVMT MK PAINTED 24IN LINE	LF	272.				
			TOTAL SUM BID						

Projects: H-3-057(058)006 (PCN-23579) and H-3-020(139)097 (PCN-23580)

Type of Work: CONTRACT PATCHING

Counties: BENSON and RAMSEY

Length: 4.4200 Miles

TIME FOR COMPLETION:

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

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

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

COMPLETION DATE CONTRACT The project completion date is 10/15/2022. The Department provides a minimum of NA working days. The Department will begin charging working days beginning NA or the date work begins on the project site, whichever is earlier.

PROPOSAL FORM

North Dakota Department of Transportation

BID OPENING: May 13, 2022**Job 23579**

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Projects: H-3-057(058)006 (PCN-23579) and H-3-020(139)097 (PCN-23580)**Type of Work:** CONTRACT PATCHING**Counties:** BENSON and RAMSEY**Length:** 4.4200 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 _____)
COUNTY OF _____) **ss.**

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 23579, H-3-057(058)006 & H-3-020(139)097

Contract Patching

INDEX OF PROVISIONS

Road Restriction Permits

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

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

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

On-The-Job Training Program 2022

SSP 4 Longitudinal Joint Density

SSP 5 Limitations of Operations

SSP 10 E-Ticketing

SP 26(22) Tribal Employment Rights Ordinance (TERO)

SP 27(22) Tribal Employment Rights Ordinance (TERO)

PSP 27(22) Permits and Environmental Considerations

SP Fuel Cost Adjustment Clause dated September 8, 2006

NOTICE

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

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

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

NDDOT ROAD AND VEHICLE RESTRICTIONS

Date Revised 05-22-10

ROAD RESTRICTION PERMITS

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

RESTRUCTION CLASSIFICATIONS WITH ALLOWABLE AXLE WEIGHTS AND GROSS VEHICLE WEIGHTS	PERMIT AND TON/MILE FEES
<p>Highways Restricted by Legal Weight</p> <p>Single Axle -- 20,000 lbs. Tandem Axle -- 34,000 lbs. Triple Axle -- 48,000 lbs. 4 Axles or more -- 15,000 lbs. per axle</p> <p>Gross Vehicle Weight -- 105,500 lbs.</p> <p>Note: The above weights apply to state highways restricted by legal weights, other than interstate highways, in areas where road restrictions are in force. When the gross weight of an axle grouping exceeds 48,000 pounds, the \$1 per ton per mile shall apply to all weight in excess of 15,000 pounds per axle.</p>	<p>Permit Fee: \$20-\$70 per trip</p> <p>Ton Mile Fee:</p> <p>105,501 lbs. to 130,000 lbs. GVW -- \$1 per mile</p> <p>Over 130,000 lbs. GVW -- \$1 per mile plus \$5 per ton per mile for that weight exceeding 130,000 lbs. GVW</p> <p>Exceeding axle limits -- \$1 per ton per mile</p>
<p>8-Ton:</p> <p>Single Axle -- 16,000 lbs. Tandem Axle -- 32,000 lbs. 3 Axles or more -- 14,000 lbs. per axle</p> <p>Gross Vehicle Weight -- 105,500 lbs.</p>	<p>Permit Fee: \$20-\$70 per trip</p> <p>Ton Mile Fee:</p> <p>105,501 lbs. to 120,000 lbs. GVW -- \$1 per mile</p> <p>Over 120,000 lbs. GVW -- \$1 per mile plus \$5 per ton per mile for that weight exceeding 120,000 lbs. GVW</p> <p>Exceeding restricted axle limits -- \$1 per ton per mile</p>
<p>7-Ton:</p> <p>Single Axle -- 14,000 lbs. Tandem Axle -- 28,000 lbs. 3 Axles or more -- 12,000 lbs. per axle</p> <p>Gross Vehicle Weight -- 105,500 lbs.</p>	<p>Permit Fee: \$20-\$70 per trip</p> <p>Ton Mile Fee:</p> <p>105,500 lbs. to 110,000 lbs. GVW -- \$1 per mile</p> <p>Over 110,000 lbs. GVW -- \$1 per mile plus \$5 per ton per mile for that weight exceeding 110,000 lbs. GVW</p> <p>Exceeding restricted axle limits -- \$1 per ton per mile</p>
<p>6-Ton:</p> <p>Single Axle -- 12,000 lbs. Tandem Axle -- 24,000 lbs. 3 Axles or more -- 10,000 lbs. per axle</p> <p>Gross Vehicle Weight -- 80,000 lbs.</p>	<p>Permit Fee: \$20-\$70 per trip</p> <p>Ton Mile Fee:</p> <p>\$5 per ton per mile for all weight exceeding 80,000 lbs. GVW</p> <p>Exceeding restricted axle limits -- \$1 per ton per mile</p>
<p>5-Ton:</p> <p>Single Axle -- 10,000 lbs. Tandem Axle -- 20,000 lbs. 3 Axles or more -- 10,000 lbs. per axle</p> <p>Gross Vehicle Weight -- 80,000 lbs.</p>	<p>No overweight movement allowed</p>

SINGLE UNIT FIXED LOAD VEHICLES SUCH AS TRUCK CRANES AND WORKOVER RIGS

A. Permit Fee and Ton Mile Fee for Self-Propelled Fixed Load Vehicles .

1. Permit Fee: \$25 per trip
2. \$1 per ton per mile for all weight in excess of restricted axle limits or in excess of legal limits on state highways in areas where road restrictions are in force. When the gross weight of an axle grouping exceeds 48,000 pounds, the \$1 per ton per mile shall apply to all weight in excess of 15,000 pounds per axle (see weight classification chart in section C.)
3. **\$5 per ton per mile** for all movements exceeding the following gross vehicle weight limits:
 - a. 105,500 lbs. GVW on unrestricted state highways, other than interstate highways, in areas where road restrictions are in force.
 - b. 105,500 lbs. GVW on 8-ton highways.
 - c. 105,500 lbs. GVW on 7-ton highways.
 - d. 80,000 lbs. GVW on 6-ton highways.
 - e. No overweight movement allowed on 5-ton highways

B. Permit Fees for Work-Over Rigs and Special Mobile Equipment Exceeding 650 but not 670 Pounds Per Inch Width of Tire.

1. Permit Fee:
 - a. \$50 per trip on work-over rigs up to 650 pounds per inch width.
 - b. \$75 per trip on work -over rigs that exceed 650 but not 670 pounds per inch width of tire.
2. The work-over rig shall be stripped to the most minimum weights.
3. A minimal number of state highway miles shall be used.
4. District engineer approval shall be obtained prior to movement when vehicle exceeds restricted axle weights by more than 5,000 pounds.
5. A validation number ending in TM must be obtained from the Highway Patrol prior to using a self-issue single trip movement approval form.
6. The ton mile shall be waived .

10/1/2014

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

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

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

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

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

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

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

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
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 (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 (15th) calendar day of every following month the trainee is employed under the OJT Program.

Regardless, all vouchers for trainee hours worked on state funded only projects from July 1 to June 30 must be received by CRD no later than July 15 in order to be reimbursed. All vouchers for trainee hours worked on federally funded projects from October 1 to September 30 must be received by CRD no later than October 15 in order to be reimbursed. This is due to state and federal end-of-the-year budget fiduciary requirements.

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

- A. The contractor is required to consistently demonstrate efforts to recruit, hire, and train candidates for the OJT Program.
- B. If the contractor does not show in a timely manner good faith efforts to recruit, hire, and train candidates in the targeted group, the Department may withhold progress payments
- C. If payments have been made, the Department will deduct the amount paid from the contractor's progress payment.
- D. No payment shall be made to a contractor for failure to provide the required training or failure to hire the trainee as a journey-worker when such failure is caused by the

contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this OJT Program Special Provision.

- E. Hiring a trainee to begin training as soon as feasible after start of work is evidence of a contractor's good faith efforts to comply with the OJT Program requirements. Additional evidence supporting a contractor's good faith efforts would be to keep the trainee employed as long as training opportunities exist in the approved work classification or until the trainee has completed his or her training program.
- F. It is not required that all trainees be employed for the entire length of the construction season. A contractor will have fulfilled its responsibilities under this OJT Special Provision if it has provided acceptable training to the number of trainees assigned.

XIV. UNFILLED OR INCOMPLETE TRAINEE POSITIONS

- A. By October 1, provide written explanation of the firm's good faith efforts for unfilled or incomplete trainee assignments to CRD. CRD will decide, on a case-by-case basis, whether to carry the assigned positions over to the next construction season.
- B. Positions carried over from the previous construction season must be among the first positions filled at season startup. To notify CRD of the trainee's rehiring, submit *SFN 60226 Request for On-the-Job Trainee Approval*, marking 'Check if Carryover Trainee' in the Approved Training Program section of the form. There is no need for the training position or a returning trainee to be re-approved.
- C. Sanctions, up to and including revocation of bidding privileges, may be imposed on the contractor for failure to provide sufficient explanation and documentation for reasons assigned trainee positions when unfilled or incomplete.

XV. DEFINITIONS

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

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

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

LONGITUDINAL JOINT DENSITY FOR HOT MIX ASPHALT PAVEMENTS

DESCRIPTION

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

ATTACHMENTS

Appendix A – Notched Wedge

CONSTRUCTION REQUIREMENTS

A. General

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

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

B. Longitudinal Joint Placement.

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

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

C. Notched Wedge Construction Option.

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

D. Coring.

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

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

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

E. Longitudinal Joint Field Density.

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

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

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

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

F. Low Density Requirements.

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

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

METHOD OF MEASUREMENT

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

BASIS OF PAYMENT

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

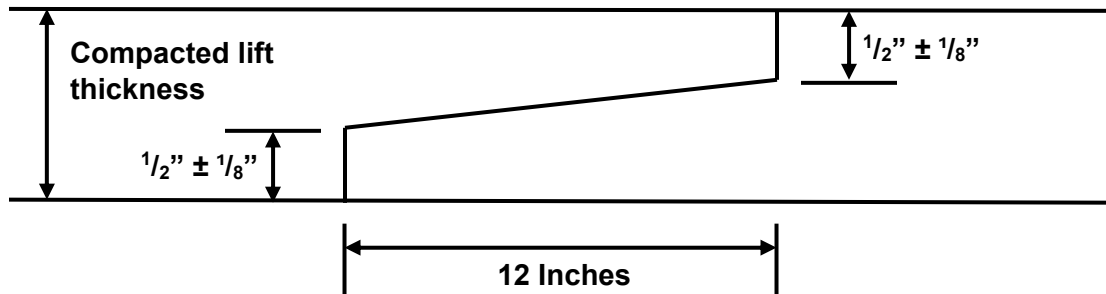
The Engineer will apply the appropriate pay adjustment specified in Table 1 for each lot.

Table 1

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

Appendix A

Notched Wedge



NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

LIMITATIONS OF OPERATIONS

DESCRIPTION

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

108.05 LIMITATION OF OPERATIONS

A. General.

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

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

B. Holidays.

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

C. 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

E-Ticketing

DESCRIPTION

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

CONTRACT REQUIREMENTS

A. Material Accepted by Weight.

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

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

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

B. Concrete Batch Plants.

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

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

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

BASIS OF PAYMENT

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) REQUIREMENTS

Project 3-057(058)006 – PCN 23579

This Special Provision defines the core crew, TERO fees, and the Indian preference requirements for the Project listed above. This project consists of contract patching on ND 57, which is within the exterior boundaries of the Spirit Lake Reservation.

The core crew and workforce requirements identified in this Special Provision apply to all portions of the highway construction project.

The Contractor and Subcontractors must comply with Tribal laws as long as the Tribal laws are in compliance with state and federal requirements.

CORE CREW

The Contractor and Subcontractor shall choose a core crew and utilize it on the Project listed above. The core crew will consist of the following operators and key personnel:

Asphalt Pavement Patching Operations:

- 1 Superintendent
- 1 Truck Foreman
- 1 Front End Loader Operator
- 1 Crusher Operator
- 1 Paver Operator
- 1 Asphalt Plant Operator
- 1 Roller Operator
- 2 On The Job Program Trainees

Rumble Strip Operations:

- 1 Rumble Strip Grinder Operator
- 1 Road Oil Distributor Operator
- 1 Painter
- 1 Follow Vehicle Driver
- 1 Truck Driver

Pavement Marking Operations:

- 1 Superintendent
- 2 Painter
- 1 Follow Vehicle Driver
- 1 Truck Driver
- 1 Traffic Control Person

Traffic Control Operations:

- 1 Foreman
- 1 Traffic Control Supervisor
- 1 Watch Person

The successful Bidder will be allowed to fill these key positions with personnel of their choosing.

WORK FORCE

The Contractor and all Subcontractors performing work on this Project shall extend preferential employment to Indians. The Contractor and all Subcontractors shall hire at least 75% of all positions (over and above the Core Crew) and 100% of their Group 1-4 Laborers through the Spirit Lake Reservation TERO office.

Each Contractor and Subcontractor shall prepare a list of workers needed to complete the labor force as defined above. This list shall be submitted to the TERO office at least 72 hours (not including Saturday and Sunday) prior to commencement of construction activities. The TERO office shall then see that the qualified employees are available for work at the time and date indicated by the Contractor. The term qualified employees cannot be used to eliminate or discriminate against any potential Indian employees.

If any of the employees have not reported for work within 24 hours of start-up time, the Contractor shall be free to hire by his/her own methods. The Contractor must abide by the Indian preference requirements when hiring additional and replacement workers.

After construction activities have commenced, requests for additional and replacement workers shall be made to the TERO office. The TERO office shall have 24 hours to furnish such employees. If the employees are not provided within this time, the Contractor will be at liberty to do their own hiring. The Contractor must abide by the Indian preference requirements when hiring additional and replacement workers. After the Contractor has hired an additional or replacement employee or subcontractor, the Contractor will be permitted to retain this employee or subcontractor through completion of the Project. The Contractor will not be required to displace workers or subcontractors on the Project.

FEES AND LICENSES

The rate of the TERO fee will be based on the percentage of the Contract that lies within the boundary of the Spirit Lake Reservation as determined below. The TERO fee percentage applies to the entire contract.

The established TERO fee on the Spirit Lake Reservation is two percent (2%) with an established TERO Training fee of one-half percent (1/2%), resulting in a total of up to two and one-half percent (2 ½%) in TERO fees to be assessed to the Contract. For project 3-057(058)006, one hundred percent (100.0%) of this project lies within the boundaries of the Spirit Lake Reservation. Therefore the Contractor shall pay a TERO fee in the amount of 2.5% of the total contract amount.

The fee shall be paid at a rate of 2.5% of each progressive estimate. Payment shall be made within two weeks of receipt of progress payment.

Each Contractor and Subcontractor shall obtain a \$500 business permit and a \$10 license decal fee for each truck or semi from the Spirit Lake Nation Tax Department before beginning any work on this contract.

The TERO fee, training fee, and license costs shall be bid as incidental to the Contract as a whole.

The Contractor shall make TERO Fee and Training Fee payments to:

Spirit Lake Tribe TERO
PO Box 450
816 3rd Ave N.
Fort Totten, North Dakota 58335

The Contractor shall make payments for the Spirit Lake Tribe Business License & Truck Decal Fees to:

Spirit Lake Tribe, Tribal Tax Department
PO Box 192
816 3rd Ave N.
Fort Totten, North Dakota 58335

TERO COMPLIANCE

Obtain a signed TERO Compliance Plan before beginning work on the Spirit Lake Reservation.

Contract compliance is the responsibility of the North Dakota Department of Transportation, and the Department has the exclusive right to suspend construction operation on this Project for any instances of noncompliance, including TERO issues. If there is reason to believe that the Contractor or Subcontractors are violating the requirements of the Special Provision, the TERO office will notify the Department. The Department, working with the TERO Office, will resolve those issues with the Contractor or Subcontractor.

Contractor will be required to provide proof of payment to the Engineer before final acceptance of the project.

Attachment B

MEMORANDUM OF UNDERSTANDING

Tribal Employments Rights Ordinance (TERO) and Tribal Business License Requirements
Project No. 3-057(058)006 – PCN 23579


Be it understood that the Spirit Lake Nation and the North Dakota Department of Transportation (NDDOT) mutually agree in the award of the above-mentioned project contract to the contractor determined by the NDDOT to be the successful bidder. This memorandum is consistent with and does not supersede or eliminate any requirements specified in SP 26(22), which is part of the bidding proposal for this contract.

NDDOT:

1. The NDDOT and the NDDOT's employees and agents will not be subject to reservation taxes, fees, permits, licenses, or TERO provisions.
2. NDDOT will provide copies of the payment estimates to the Tribe.

Contractors and Subcontractors of the NDDOT:

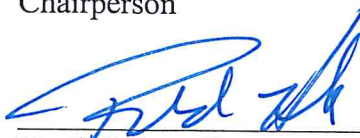
1. The prime contractor and subcontractors of the NDDOT shall provide preference in employment and contracting to Indians in accord with the Spirit Lake Tribe's Tribal Employment Rights Ordinance and as outlined in SP 26(22).
2. Core crew of the contractor will be as outlined in SP 26(22).
3. A TERO fee and training fee shall be paid as outlined in SP 26(22).
4. Each contractor and subcontractor must obtain a \$500 business license and \$10 license decal fee for each truck or semi from the Tribe before beginning any work on the Reservation. Tribal business licenses and license decal fee are available from the Tribe's Tax Department.



Spirit Lake Nation
Chairperson

3-25-22

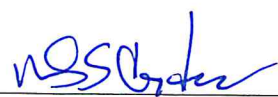
Date

for the


North Dakota Department of Transportation
William T. Panos, Director

4/5/2022

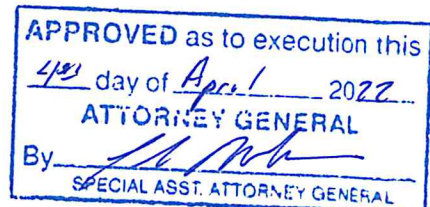
Date

CNO


Approved as to Substance by:
Environmental & Transportation Services
Mark Gaydos, P.E.
North Dakota Department of Transportation

3/23/22

Date



**AMENDMENT #25 TO ATTACHMENT C,
OF THE MEMORANDUM OF UNDERSTANDING**

Between North Dakota Department of Transportation and the Spirit Lake Nation on Funding Issues Related
to Highways Within the Spirit Lake Reservation

WHEREAS, the State of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, and the Spirit Lake Nation, hereinafter referred to as the Tribe, entered into a Memorandum of Understanding on Funding Issues Related to Highways Within the Spirit Lake Reservation on March 15, 2010, hereinafter referred to as the MOU; and

WHEREAS, NDDOT has identified highway constructions projects for 2022 within the Spirit Lake Reservation that should be completed but which were not identified at the time the parties executed their MOU, Amendments #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, and #24 to Attachment C, and proposed an Amendment #25 to the MOU to include these projects; and

WHEREAS, the Tribe agrees that the work should be done on these additional projects pursuant to the terms of that MOU:

NOW, THEREFORE:

1. Attachment C is hereby amended, to include the following project in the List of State Highway Projects Covered by the Memorandum of Understanding.

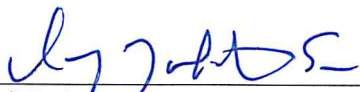
61. Special Provision 26(22)

Project: 3-057(058)006 – PCN 23579

62. Special Provision 27(22)


Project 3-020(139)097 – PCN 23580

2. Except as provided herein, all of the other terms and conditions of the Memorandum of Understanding and its Attachments shall remain unchanged.



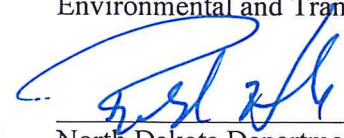
Spirit Lake Nation
Chairperson

3-25-22
Date

CNO


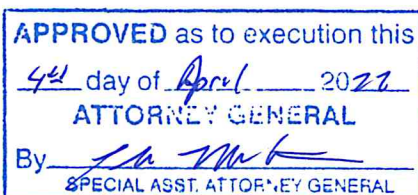
North Dakota Department of Transportation
Mark Gaydos, P.E.
Environmental and Transportation Services Director

3/23/22
Date

for the


North Dakota Department of Transportation
William T. Panos, Director

4/5/2022
Date



NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION
TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) REQUIREMENTS

Project 3-020(139)097 – PCN 23580

This Special Provision defines the core crew, TERO fees, and the Indian preference requirements for the Project listed above. This project consists of contract patching on ND 20, which is within the exterior boundaries of the Spirit Lake Reservation.

The core crew and workforce requirements identified in this Special Provision apply to all portions of the highway construction project.

The Contractor and Subcontractors must comply with Tribal laws as long as the Tribal laws are in compliance with state and federal requirements.

CORE CREW

The Contractor and Subcontractor shall choose a core crew and utilize it on the Project listed above. The core crew will consist of the following operators and key personnel:

Asphalt Pavement Patching Operations:

- 1 Superintendent
- 1 Truck Foreman
- 1 Front End Loader Operator
- 1 Crusher Operator
- 1 Paver Operator
- 1 Asphalt Plant Operator
- 1 Roller Operator
- 2 On The Job Program Trainees

Rumble Strip Operations:

- 1 Rumble Strip Grinder Operator
- 1 Road Oil Distributor Operator
- 1 Painter
- 1 Follow Vehicle Driver
- 1 Truck Driver

Pavement Marking Operations:

- 1 Superintendent
- 2 Painter
- 1 Follow Vehicle Driver
- 1 Truck Driver
- 1 Traffic Control Person

Traffic Control Operations:

- 1 Foreman
- 1 Traffic Control Supervisor
- 1 Watch Person

The successful Bidder will be allowed to fill these key positions with personnel of their choosing.

WORK FORCE

The Contractor and all Subcontractors performing work on this Project shall extend preferential employment to Indians. The Contractor and all Subcontractors shall hire at least 75% of all positions (over and above the Core Crew) and 100% of their Group 1-4 Laborers through the Spirit Lake Reservation TERO office.

Each Contractor and Subcontractor shall prepare a list of workers needed to complete the labor force as defined above. This list shall be submitted to the TERO office at least 72 hours (not including Saturday and Sunday) prior to commencement of construction activities. The TERO office shall then see that the qualified employees are available for work at the time and date indicated by the Contractor. The term qualified employees cannot be used to eliminate or discriminate against any potential Indian employees.

If any of the employees have not reported for work within 24 hours of start-up time, the Contractor shall be free to hire by his/her own methods. The Contractor must abide by the Indian preference requirements when hiring additional and replacement workers.

After construction activities have commenced, requests for additional and replacement workers shall be made to the TERO office. The TERO office shall have 24 hours to furnish such employees. If the employees are not provided within this time, the Contractor will be at liberty to do their own hiring. The Contractor must abide by the Indian preference requirements when hiring additional and replacement workers. After the Contractor has hired an additional or replacement employee or subcontractor, the Contractor will be permitted to retain this employee or subcontractor through completion of the Project. The Contractor will not be required to displace workers or subcontractors on the Project.

FEES AND LICENSES

The rate of the TERO fee will be based on the percentage of the Contract that lies within the boundary of the Spirit Lake Reservation as determined below. The TERO fee percentage applies to the entire contract.

The established TERO fee on the Spirit Lake Reservation is two percent (2%) with an established TERO Training fee of one-half percent (1/2%), resulting in a total of up to two and one-half percent (2 ½%) in TERO fees to be assessed to the Contract. For project 3-020(139)097, three percent (3.0%) of this project lies within the boundaries of the Spirit Lake Reservation. However, it is NDDOT policy to pay a minimum TERO fee of ten percent (10.0%). Therefore, the Contractor shall pay a TERO fee in the amount of 10.0% of the established 2½% rate, or 0.25 % of the total contract amount.

The fee shall be paid at a rate of 0.25% of each progressive estimate. Payment shall be made within two weeks of receipt of progress payment.

Each Contractor and Subcontractor shall obtain a \$500 business permit and a \$10 license decal fee for each truck or semi from the Spirit Lake Nation Tax Department before beginning any work on this contract.

The TERO fee, training fee, and license costs shall be bid as incidental to the Contract as a whole.

The Contractor shall make TERO Fee and Training Fee payments to:

Spirit Lake Tribe TERO
PO Box 450
816 3rd Ave N.
Fort Totten, North Dakota 58335

The Contractor shall make payments for the Spirit Lake Tribe Business License & Truck Decal Fees to:

Spirit Lake Tribe, Tribal Tax Department
PO Box 192
816 3rd Ave N.
Fort Totten, North Dakota 58335

TERO COMPLIANCE

Obtain a signed TERO Compliance Plan before beginning work on the Spirit Lake Reservation.

Contract compliance is the responsibility of the North Dakota Department of Transportation, and the Department has the exclusive right to suspend construction operation on this Project for any instances of noncompliance, including TERO issues. If there is reason to believe that the Contractor or Subcontractors are violating the requirements of the Special Provision, the TERO office will notify the Department. The Department, working with the TERO Office, will resolve those issues with the Contractor or Subcontractor.

Contractor will be required to provide proof of payment to the Engineer before final acceptance of the project.

Attachment B

MEMORANDUM OF UNDERSTANDING

Tribal Employments Rights Ordinance (TERO) and Tribal Business License Requirements
Project No. 3-020(139)097 – PCN 23580


Be it understood that the Spirit Lake Nation and the North Dakota Department of Transportation (NDDOT) mutually agree in the award of the above-mentioned project contract to the contractor determined by the NDDOT to be the successful bidder. This memorandum is consistent with and does not supersede or eliminate any requirements specified in SP 27(22), which is part of the bidding proposal for this contract.

NDDOT:

1. The NDDOT and the NDDOT's employees and agents will not be subject to reservation taxes, fees, permits, licenses, or TERO provisions.
2. NDDOT will provide copies of the payment estimates to the Tribe.

Contractors and Subcontractors of the NDDOT:


1. The prime contractor and subcontractors of the NDDOT shall provide preference in employment and contracting to Indians in accord with the Spirit Lake Tribe's Tribal Employment Rights Ordinance and as outlined in SP 27(22).
2. Core crew of the contractor will be as outlined in SP 27(22).
3. A TERO fee and training fee shall be paid as outlined in SP 27(22).
4. Each contractor and subcontractor must obtain a \$500 business license and \$10 license decal fee for each truck or semi from the Tribe before beginning any work on the Reservation. Tribal business licenses and license decal fee are available from the Tribe's Tax Department.



Spirit Lake Nation
Chairperson

3-25-22


Date

for the


North Dakota Department of Transportation
William T. Panos, Director

4/5/2022

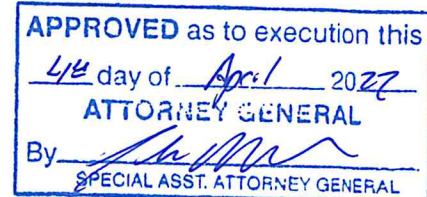
Date

CNO


Approved as to Substance by:
Environmental & Transportation Services
Mark Gaydos, P.E.
North Dakota Department of Transportation

3/23/22

Date



**AMENDMENT #25 TO ATTACHMENT C,
OF THE MEMORANDUM OF UNDERSTANDING**

Between North Dakota Department of Transportation and the Spirit Lake Nation on Funding Issues Related
to Highways Within the Spirit Lake Reservation

WHEREAS, the State of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, and the Spirit Lake Nation, hereinafter referred to as the Tribe, entered into a Memorandum of Understanding on Funding Issues Related to Highways Within the Spirit Lake Reservation on March 15, 2010, hereinafter referred to as the MOU; and

WHEREAS, NDDOT has identified highway constructions projects for 2022 within the Spirit Lake Reservation that should be completed but which were not identified at the time the parties executed their MOU, Amendments #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, and #24 to Attachment C, and proposed an Amendment #25 to the MOU to include these projects; and

WHEREAS, the Tribe agrees that the work should be done on these additional projects pursuant to the terms of that MOU:

NOW, THEREFORE:

1. Attachment C is hereby amended, to include the following project in the List of State Highway Projects Covered by the Memorandum of Understanding.

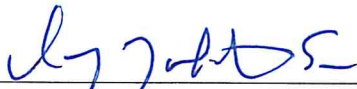
61. Special Provision 26(22)

Project: 3-057(058)006 – PCN 23579

62. Special Provision 27(22)

Project 3-020(139)097 – PCN 23580

2. Except as provided herein, all of the other terms and conditions of the Memorandum of Understanding and its Attachments shall remain unchanged.



Spirit Lake Nation
Chairperson

3-25-22

Date

CNO

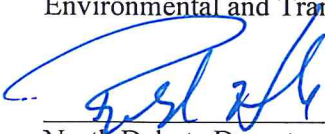


North Dakota Department of Transportation
Mark Gaydos, P.E.
Environmental and Transportation Services Director

3/23/22

Date

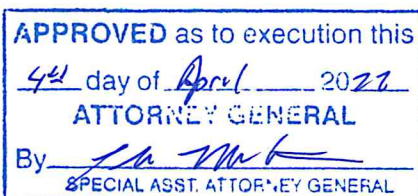
for the



North Dakota Department of Transportation
William T. Panos, Director

4/5/2022

Date



NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

PERMITS AND ENVIRONMENTAL CONSIDERATIONS

**PROJECT NUMBER: H-3-057(058)006 – PCN 23579
H-3-020(139)097 – PCN 23580**

Floodplain Permits are needed from for the project for work within FEMA mapped 100-yr floodplains. NDDOT anticipates obtaining the Floodplain Permits prior to the Bid Opening. The Permits and Environmental Considerations Special Provision will be revise and incorporated into the plans once the Floodplain Permits are obtained.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION

FUEL COST ADJUSTMENT CLAUSE
Revision Date: 9/8/2006

Introduction

This Special Provision provides for price adjustments to the Contract when significant changes in the cost of motor fuels and burner fuels occur while completing the Contract work. Participation in fuel cost adjustment program is not mandatory. A Contractor is not required to notify the Department at the time of submitting bids whether the Contractor will or will not participate in the fuel cost adjustment provision.

The North Dakota Department of Transportation (NDDOT) will send the low responsible bidder a "Fuel Cost Adjustment Affidavit" (SFN 58393) with the proposed Contract. The Contractor shall return a completed Fuel Adjustment Affidavit with the signed Contract as specified in Standard Specification Section 103.06, Execution and Approval of the Contract. The affidavit shall be returned on all Contracts with this provision even if the Contractor elects not to participate in the provision.

Compensation adjustments for motor fuels and burner fuels consumed in prosecuting the Contract shall be determined by the Engineer in accordance with the provisions set forth herein. Compensation adjustments will be assessed monthly for the cost of the motor fuels and burner fuels whenever the Current Fuel Index (CFI) is outside the given threshold of the Base Fuel Index (BFI) for the Contract.

If the Contractor has a fixed price for fuel for motor or burner fuels to complete the work, no fuel cost adjustments will be made for that fuel type. If there is no fixed fuel price for motor or burner fuels, participation in the Fuel Adjustment provision is the decision of the prime Contractor.

If the prime Contractor decides not to participate, no fuel cost adjustments will be made to the Contract for the Contractor or any subcontractors. If the prime Contractor elects to participate in the fuel cost adjustment provision, the prime Contractor shall include the anticipated fuel cost of subcontractors who wish to participate. If fuel cost adjustments are made to the Contract, the prime Contractor shall ensure that participating subcontractors including second and lower tier, are included in the adjustments in proportion to the percentage of work and anticipated fuel cost by that subcontractor.

Fuel Indexes

Each month, NDDOT will record the average wholesale price for No. 2 diesel fuel and the average wholesale price for unleaded gasoline (87 octane). The monthly average will be the average of the daily rack prices for the month as reported by DTN Energy for Fargo ND.

The burner fuel index will be the No. 2 diesel fuel index regardless of the type of burner fuel actually used.

The Base Fuel Index (BFI) price for motor fuels and burner fuel to be used in the Contract will be the average wholesale price for the month prior to the bid opening.

The Current Fuel Index (CFI) price for motor fuels and burner fuel to be used for each monthly adjustment will be the average wholesale price for the month prior to the adjustment month.

Fuel Ratio

For motor fuels diesel and unleaded gas, the fuel ratio of the Contract will be determined by dividing the Contractor's affidavit costs for each motor fuel by the original Contract amount.

For burner fuels, the fuel ratio of the contract will be determined by dividing the Contractor's affidavit cost for burner fuels by the original Contract amount of plant-mixed hot bituminous pavement paid by the ton. Asphalt cement, binders and other miscellaneous bituminous items shall not be included.

The fuel ratio of the contract for motor and burner fuels will remain the same throughout the length of the contract. The sum of the affidavit fuel costs shall not exceed 15% of the original Contract amount.

The fuel ratio for the three fuel types will be determined by the following equation:

Fuel Ratio_(x, y, z) = Affidavit Cost_(x, y, z) / Original Contract Amount_(x, y, z)		
(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel
Fuel Ratio _(x, y, z)	=	Fuel ratio of the contract for each respective fuel type
Affidavit Cost _(x, y, z)	=	Fuel costs from Fuel Adjustment Affidavit (SFN 58393)
Original Contract Amount _(x, y)	=	Total of the original contract amount excluding lane rental, and Part B of the bid (when A+B bidding is used), if applicable.
Original Contract Amount _(z)	=	Total original contract amount for all hot bituminous pavement bid items combined, excluding bid items for asphalt cement, sawing and sealing joints, coring, etc. Only hot bituminous pavement bid items measured by the Ton will be included in the calculation.

Cost Change

The monthly change in fuel costs will be determined by the following equation:

Cost Change_(x, y, z) = (CFI_(x, y, z) - BFI_(x, y, z)) / BFI_(x, y, z)		
(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel (use diesel prices)
Cost Change _(x, y, z)	=	The relative change in the current CFI and the BFI for each fuel type
CFI _(x, y, z)	=	Current Fuel Index for each fuel type
BFI _(x, y, z)	=	Base Fuel Index for each fuel type

Contract Adjustments

Contract adjustments will be made for the cost of motor and burner fuels whenever the cost change exceeds a ±0.10 threshold. No fuel cost adjustment will be made for work done under liquidated damages. Adjustments will be determined for Motor Fuel (diesel), Motor Fuel (unleaded), and Burner Fuel (burner) separately and shall be computed on a monthly basis.

When the cost change is greater than 0.10, the rebate to the Contractor for each fuel type shall be computed according to the following formulas:

$FCA_{(x, y, z)} = \text{Fuel Ratio}_{(x, y, z)} \times \text{Estimate}_{(x, y, z)} \times (\text{Cost Change}_{(x, y, z)} - 0.10)$		
(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel
$FCA_{(x, y, z)}$	=	Fuel Cost Adjustment for each of the fuel types
$\text{Fuel Ratio}_{(x, y, z)}$	=	Fuel Ratio for each of the fuel types
$\text{Estimate}_{(x, y)}$	=	The monthly total of work done on estimates issued in the current month excluding incentive or disincentive payments, pay factor adjustments and any work completed under liquidated damages.
$\text{Estimate}_{(z)}$	=	The monthly total of hot bituminous pavement work done on estimates issued in the current month, excluding bid items for asphalt cement, sawing and sealing joints, coring, etc. Only hot bituminous pavement bid items measured by the Ton will be included in the calculation. Hot bituminous pavement work completed under liquidated damages will not be included.
$\text{Cost Change}_{(x, y, z)}$	=	The monthly change in fuel costs for each of the fuel types

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

$FCA_{(x, y, z)} = \text{Fuel Ratio}_{(x, y, z)} \times \text{Estimate}_{(x, y, z)} \times (\text{Cost Change}_{(x, y, z)} + 0.10)$		
(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel
$FCA_{(x, y, z)}$	=	Fuel Cost Adjustment for each of the fuel types
$\text{Fuel Ratio}_{(x, y, z)}$	=	Fuel Ratio for each of the fuel types
$\text{Estimate}_{(x, y)}$	=	The monthly total of work done on estimates issued in the current month excluding any incentive or disincentive payments, pay factor adjustments and any work completed under liquidated damages.
$\text{Estimate}_{(z)}$	=	The monthly total of hot bituminous pavement work done on estimates issued in the current month, excluding bid items for asphalt cement, sawing and sealing joints, coring, etc. Only hot bituminous pavement bid items measured by the Ton will be included in the calculation. Hot bituminous pavement work completed under liquidated damages will not be included.
$\text{Cost Change}_{(x, y, z)}$	=	The monthly change in fuel costs for each of the fuel types

Payments

Adjustments will be determined by the Engineer monthly. Adjustments will be made under the following spec and code for each fuel type:

109 0100	Motor Fuels (Diesel)
109 0200	Motor Fuels (Unleaded)
109 0300	Burner Fuel

When significant payment adjustments are made on final estimates to account for final in-place measured quantities, the Engineer may prorate the adjustments back to the months when the work was done.

Attachments

For informational purposes, a 'Fuel Cost Adjustment Affidavit' (SFN 58393) is included as Attachment A.

FUEL COST ADJUSTMENT AFFIDAVIT

North Dakota Department of Transportation, Construction Services
SFN 58393 (8-2017)

SP Fuel Cost Adjustment Clause
6 of 6

Attachment A

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