

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION  
**REQUEST FOR PROPOSAL**

STATE FEDERAL AID PROJECT NO. NH-3-003(030)202 (PCN-21984)

0.415 Miles

CONCRETE PAVING, TURN LANES, STORM DRAIN, LIGHTING, SANITARY SEWER, WATERMAIN & INCIDENTALS

ND 3, 6TH ST SW N TO 5TH AVE NW - RUGBY

PIERCE COUNTY

DBE Race Conscious Goal - 10.00%

**BID OPENING:** The bidder's proposal will be accepted via the Bid Express on-line bidding exchange at [www.bidx.com](http://www.bidx.com) until **09:30AM Central Time on October 14, 2022.**

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

**Proposal Form of:**

\_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(Address, City, State, Zipcode)

(For official use only)

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**Project:** NH-3-003(030)202 (PCN-21984)

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

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

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

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

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

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

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

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

**Project:** NH-3-003(030)202 (PCN-21984)

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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.

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**PERMISSIBLE DISCOUNT (optional)**

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

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

Space for Offering Discounts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**PROPOSAL GUARANTY**

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

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

Annual Bid Bond\*

Single Project Bid Bond

Certified or Cashier's Check

\*Annual Bid Bond is required when submitting proposals electronically

BID ITEMS

Project: NH-3-003(030)202 (PCN-21984)

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

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
001	103	0100	CONTRACT BOND	L SUM	1.				
002	107	0100	RAILWAY PROTECTION INSURANCE	L SUM	1.				
003	201	0380	REMOVAL OF TREES 18IN	EA	3.				
004	201	0390	REMOVAL OF TREES 30IN	EA	2.				
005	202	0136	REMOVAL OF PAVEMENT	TON	8,825.				
006	202	0174	REMOVAL OF PIPE ALL TYPES AND SIZES	LF	1,684.				
007	202	0210	REMOVAL OF MANHOLES	EA	6.				
008	202	0230	REMOVAL OF INLETS	EA	2.				
009	202	0312	REMOVE EXISTING FENCE	LF	54.				
010	203	0101	COMMON EXCAVATION-TYPE A	CY	331.				
011	203	0109	TOPSOIL	CY	310.				
012	203	0113	COMMON EXCAVATION-WASTE	CY	2,319.				
013	216	0100	WATER	M GAL	216.				
014	251	0100	SEEDING CLASS I	ACRE	2.				
015	253	0201	HYDRAULIC MULCH	ACRE	4.				
016	255	0104	ECB TYPE 4	SY	50.				

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**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	256	0100	RIPRAP GRADE I	CY	31.				
018	261	0112	FIBER ROLLS 12IN	LF	2,249.				
019	261	0113	REMOVE FIBER ROLLS 12IN	LF	1,437.				
020	262	0100	FLOTATION SILT CURTAIN	LF	36.				
021	262	0101	REMOVE FLOTATION SILT CURTAIN	LF	36.				
022	302	0120	AGGREGATE BASE COURSE CL 5	TON	8,838.				
023	302	0129	AGGREGATE BASE COURSE CL 7	TON	729.				
024	430	0500	COMMERCIAL GRADE HOT MIX ASPHALT	TON	100.				
025	550	0300	8IN NON-REINF CONCRETE PVMT CL AE-DOWELED	SY	9,687.				
026	624	0123	PEDESTRIAN RAILING	LF	22.				
027	702	0100	MOBILIZATION	L SUM	1.				
028	704	1000	TRAFFIC CONTROL SIGNS	UNIT	2,354.				
029	704	1018	LANE CLOSURE-SIGNAL CONTROL/FLAGGING CONTROL	EA	1.				
030	704	1052	TYPE III BARRICADE	EA	50.				
031	704	1054	SIDEWALK BARRICADE	EA	36.				
032	704	1058	PEDESTRIAN WALKWAY	LF	250.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
033	704	1060	DELINEATOR DRUMS	EA	139.				
034	704	2108	TEMPORARY CURB RAMP	EA	4.				
035	706	0400	FIELD OFFICE	EA	1.				
036	706	0500	AGGREGATE LABORATORY	EA	1.				
037	708	1540	INLET PROTECTION-SPECIAL	EA	32.				
038	708	1541	REMOVE INLET PROTECTION-SPECIAL	EA	32.				
039	709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	12,357.				
040	709	0155	GEOSYNTHETIC MATERIAL TYPE RR	SY	63.				
041	714	4097	PIPE CONDUIT 15IN-STORM DRAIN	LF	202.				
042	714	4101	PIPE CONDUIT 18IN-STORM DRAIN	LF	178.				
043	714	4107	PIPE CONDUIT 24IN-STORM DRAIN	LF	462.				
044	714	4112	PIPE CONDUIT 30IN-STORM DRAIN	LF	349.				
045	714	4117	PIPE CONDUIT 36IN-STORM DRAIN	LF	203.				
046	714	4121	PIPE CONDUIT 42IN-STORM DRAIN	LF	516.				
047	714	4124	PIPE CONDUIT 36IN-JACKED OR BORED	LF	865.				
048	714	4227	PIPE CONDUIT ARCH 51IN X 31IN	LF	114.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
049	714	7040	SANITARY SEWER SERVICE CONNECTION	EA	5.				
050	714	7050	PIPE PVC 8IN SEWER	LF	218.				
051	714	7100	PIPE PVC 10IN SEWER	LF	494.				
052	714	7155	PIPE PVC 15IN SEWER	LF	97.				
053	714	9680	PLUG PIPE-ALL TYPES & SIZES	EA	4.				
054	722	0100	MANHOLE 48IN	EA	4.				
055	722	0110	MANHOLE 60IN	EA	4.				
056	722	0120	MANHOLE 72IN	EA	6.				
057	722	0130	MANHOLE 84IN	EA	2.				
058	722	0200	MANHOLE 108IN	EA	1.				
059	722	1100	MANHOLE RISER 48IN	LF	33.700				
060	722	1110	MANHOLE RISER 60IN	LF	36.				
061	722	1120	MANHOLE RISER 72IN	LF	66.				
062	722	1130	MANHOLE RISER 84IN	LF	16.				
063	722	1200	MANHOLE RISER 108IN	LF	10.				
064	722	3510	INLET-TYPE 2	EA	7.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
065	722	3520	INLET-TYPE 2 DOUBLE	EA	3.				
066	722	3701	INLET SPECIAL-TYPE 2 48IN	EA	1.				
067	722	3713	INLET SPECIAL MOUNTABLE-TYPE B 48IN	EA	1.				
068	722	3771	INLET SPECIAL MOUNTABLE-TYPE B 60IN	EA	1.				
069	722	3778	INLET SPECIAL MOUNTABLE-TYPE B DOUBLE 96IN	EA	2.				
070	722	3826	INLET SPECIAL-TYPE 2 DOUBLE 96IN	EA	2.				
071	722	4060	INLET MOUNTABLE CURB-TYPE B	EA	5.				
072	724	0300	GATE VALVE & BOX 6IN	EA	9.				
073	724	0411	6IN HYDRANT	EA	4.				
074	724	0810	WATERMAIN 6IN PVC	LF	855.				
075	724	0944	CONNECTION TO EXISTING MAIN	EA	18.				
076	724	0958	WATER SERVICE CONNECTION 1 1/2IN	EA	5.				
077	724	7004	6IN TEE	EA	5.				
078	724	7007	6IN 45DEG BEND	EA	8.				
079	744	0050	INSULATION BOARD	CF	594.				
080	748	0120	CURB & GUTTER MOUNTABLE-TYPE I	LF	104.				

BID ITEMS

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
081	748	0140	CURB & GUTTER-TYPE I	LF	3,983.				
082	748	0520	CURB-TYPE I	LF	109.				
083	748	1020	VALLEY GUTTER 36IN	SY	19.				
084	750	0111	DECORATIVE PAVED BOULEVARD	SY	205.				
085	750	0115	SIDEWALK CONCRETE 4IN	SY	1,337.				
086	750	0140	SIDEWALK CONCRETE 6IN	SY	55.				
087	750	1000	DRIVEWAY CONCRETE	SY	626.				
088	750	2115	DETECTABLE WARNING PANELS	SF	244.				
089	754	0110	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	155.				
090	754	0112	FLAT SHEET FOR SIGNS-TYPE IV REFL SHEETING	SF	111.				
091	754	0206	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	714.				
092	754	0592	RESET SIGN PANEL	EA	41.				
093	754	8005	PORTABLE CHANGEABLE MESSAGE SIGN	EA	2.				
094	762	0122	PREFORMED PATTERNED PVMT MK-MESSAGE(GROOVED)	SF	64.				
095	762	1305	PREFORMED PATTERNED PVMT MK 4IN LINE-GROOVED	LF	4,014.				
096	762	1307	PREFORMED PATTERNED PVMT MK 6IN LINE-GROOVED	LF	420.				



**Project:** NH-3-003(030)202 (PCN-21984)

**Type of Work:** CONCRETE PAVING, TURN LANES, STORM DRAIN, LIGHTING, SANITARY SEWER, WATERMAIN & INCIDENTALS

**County:** PIERCE

**Length:** 0.4151 Miles

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**TIME FOR COMPLETION:**

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

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

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

**COMPLETION DATE CONTRACT** The project completion date is 10/14/2023. The Department provides a minimum of NA working days. The Department will begin charging working days beginning NA or the date work begins on the project site, whichever is earlier.

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**Type of Work:** CONCRETE PAVING, TURN LANES, STORM DRAIN, LIGHTING, SANITARY SEWER, WATERMAIN & INCIDENTALS

**County:** PIERCE

**Length:** 0.4151 Miles

**UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISE (DBE):**

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

**CONTRACT EXECUTION:**

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

**AFFIDAVIT:**

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

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

of \_\_\_\_\_, a  
CONTRACTOR NAME  
MAILING ADDRESS

- Individual       Partnership       Joint Venture       Corporation

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

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

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

Subscribed and sworn to before me this day.

\_\_\_\_\_  
COUNTY

(Seal)

\_\_\_\_\_  
STATE      DATE

\_\_\_\_\_  
NOTARY PUBLIC

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

# **NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

Job 21984, NH-3-003(030)202

Concrete Paving, Turn Lanes, Storm Drain, Lighting, Sanitary Sewer, Watermain,  
and Incidentals

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Required Contract Provisions Federal Aid Construction Contracts  
(Form FHWA 1273 Rev. July 5, 2022)

SP Certified Payrolls, dated 9-6-17

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

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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.

ROAD RESTRICTION PERMITS

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

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

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

- A. Permit Fee and Ton Mile Fee for Self-Propelled Fixed Load Vehicles .
1. Permit Fee: \$25 per trip
  2. \$1 per ton per mile for all weight in excess of restricted axle limits or in excess of legal limits on state highways in areas where road restrictions are in force. When the gross weight of an axle grouping exceeds 48,000 pounds, the \$1 per ton per mile shall apply to all weight in excess of 15,000 pounds per axle (see weight classification chart in section C.)
  3. **\$5 per ton per mile** for all movements exceeding the following gross vehicle weight limits:
    - a. 105,500 lbs. GVW on unrestricted state highways, other than interstate highways, in areas where road restrictions are in force.
    - b. 105,500 lbs. GVW on 8-ton highways.
    - c. 105,500 lbs. GVW on 7-ton highways.
    - d. 80,000 lbs. GVW on 6-ton highways.
    - e. No overweight movement allowed on 5-ton highways
- B. Permit Fees for Work-Over Rigs and Special Mobile Equipment Exceeding 650 but not 670 Pounds Per Inch Width of Tire.
1. Permit Fee:
    - a. \$50 per trip on work-over rigs up to 650 pounds per inch width.
    - b. \$75 per trip on work -over rigs that exceed 650 but not 670 pounds per inch width of tire.
  2. The work-over rig shall be stripped to the most minimum weights.
  3. A minimal number of state highway miles shall be used.
  4. District engineer approval shall be obtained prior to movement when vehicle exceeds restricted axle weights by more than 5,000 pounds.
  5. A validation number ending in TM must be obtained from the Highway Patrol prior to using a self-issue single trip movement approval form.
  6. The ton mile shall be waived .

# NOTICE

## U.S. DEPARTMENT OF TRANSPORTATION

### "HOT LINE"

As part of its continuing investigation into Highway Construction Contract Bid Rigging and abuses in the Disadvantaged Business Enterprise Program, the Inspector General for the Department of Transportation (DOT) has established a "HOT LINE" to receive information from contractors, suppliers, or anyone with knowledge of such activities.

The toll-free "HOT LINE" telephone number is 1-800-424-9071 and will be manned during normal working hours (8 a.m. to 5 p.m. EST). This operation is under the direction of DOT's Inspector General. All information will be treated confidentially and anonymity will be respected.

#### CALL

Inspector General's 'HOT LINE'  
Toll Free 1-800-424-9071  
Washington, DC Area:  
202-366-1461  
Fax: 202-366-7749

#### WRITE

Inspector General  
Post Office Box 23178  
Washington, DC 20026-0178  
  
Email: [hotline@oig.dot.gov](mailto:hotline@oig.dot.gov)

The field office address and telephone number for NORTH DAKOTA is:

#### CHICAGO REGIONAL OFFICE

Special Agent-in-Charge  
Commercial: 312-353-0106  
111 N. Canal St., Suite 677  
Chicago, Illinois 60606

10/1/2014

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

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

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

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

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

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

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

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

**PROJECT NH-3-003(030)202 (PCN-21984)**

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

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

**PURPOSE**

These provisions:

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

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

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

**QUOTES:**

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

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

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

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

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

## REQUIREMENTS FOR ALL BIDDERS:

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

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

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

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

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

## REQUIREMENTS FOR NON-ALBs WHEN THE PROJECT DBE GOAL IS NOT MET AT THE TIME OF BID OPENING OR WHEN ALB DOESN'T SUBMIT PAPERWORK:

- When the ALB does not meet goal, or doesn't submit paperwork on time, other bidders may be contacted to submit Form C(s) if they met the goal or Good Faith Efforts if they did not meet the goal for their bids. If other bidders are contacted, they have until 4:00 pm CST 5 business days after the bid opening to submit the required documents via email to [subquotes@nd.gov](mailto:subquotes@nd.gov) to be considered.

## **GOOD FAITH EFFORTS**

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

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

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

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

- 1) Did you use the DBE Directory to solicit DBEs who are certified to perform the work on the project?
- 2) Did you send timely written email solicitation notices to certified DBE's?
- 3) Did you maintain a follow-up log to track responses to your initial solicitations?
  - a. For firms that do not respond to your initial solicitation it is required to attempt to contact them at least one more time and document it.
    - i. Follow-ups can be made via email or telephone. For emails, if a read receipt was attached and the DBE firm responded as the email being "read" a follow-up is not required. If a read receipt was not attached and/or the DBE did not respond to the first email a follow-up email is required.
- 4) Did you provide DBEs with information about the plans, specifications, and requirements of the contract so they are able to respond to your solicitation in a timely manner?
- 5) Did you solicit DBE participation for work you could have self-performed?
  - a. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable.
- 6) Did you ask your firm's subcontractors to solicit DBE work for the subcontractors' portion of the project?
- 7) Did you receive and evaluate all quotes given? If not, what are your reasons?
  - a. The quotes **must be** converted to an acceptable format, whether the quotes are calculated by ton-mile, hour, acre or square mile.
- 8) Did you advertise using one or both of the following options? Submit a copy with your Good Faith Efforts documentation.

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

- Submit the required information online at <https://apps.nd.gov/dot/cr/csi/login.htm> no later than noon, 15 calendar days before the bid opening.

**OPTION 2:** Directly contact by email, all DBEs certified in the specific work type (NAICS) required for the job.

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

Either method of advertisement must:

- Provide the name, email address, telephone, and fax number of the company contact who will be available to discuss and/or receive quotes.
- Offer assistance to DBEs in interpreting plans; quantities; expected overtime; project scheduling; pit and batch plan locations, length of haul, type of road; method of measurement (seeding by the mile or acre, hauling by hour or by ton-mile) or other issues

that may affect a price quote.

9) Did you sign-in?

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

- The **Bid Opening Sign-In** web application located at <https://apps.nd.gov/dot/cr/csi/login.htm>.

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

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

## **EVALUATION OF GOOD FAITH EFFORTS**

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

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

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

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

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

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

### **Administrative Reconsideration 49 CFR § 26.53 (d)**

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

## **POST-AWARD REQUIREMENTS**

### **FEDERAL AUTHORITY**

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

The contractor or all tiers of subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR § 26.13 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NDDOT deems appropriate which may include, but is not limited to:

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

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

### **PRIME CONTRACTOR'S MONITORING, RESPONSIBILITIES, REPORTING**

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

The prime is responsible to:

- Report payments to DBEs used to meet the project goal.
  - Monthly audits are required through the Certification and Compliance System (CCS) on all federally funded projects, regardless of DBE goal. Once the prime receives progress payments from NDDOT they will be required to report DBE payments every month for the life of the project, including reporting zeros on months when no payments are made. The DBE will either confirm the payment amount and date paid is correct or they will open a discrepancy if the information the prime submitted differs from their records. The prime and DBE are encouraged to find resolution to the discrepancy on their own. If resolution cannot be attained, the project engineer and CRD will become involved in the process.
  - See DBE Program Manual for further information about CCS and prompt pay requirements
- Invite and encourage all subcontractors and all DBEs listed on Form C to the pre-construction conference.
- Provide minutes to any DBE not in attendance at the pre-construction conference.
- Ensure their firm as well as any subcontractors, manufacturers, and regular dealers/suppliers comply with the requirements of this special provision.
- Provide all subcontractors with Proposed Project Schedules and any necessary updates.
- Maintain project records and documentation of payments to DBEs for three years following acceptance of the final payment from NDDOT (per FHWA-1273, Section II Nondiscrimination #11).
  - This reporting requirement also applies to any certified DBE.
  - NDDOT may perform interim audits of contract payments to DBEs to ensure that the actual amount paid to DBEs equals or exceeds the dollar amount stated on Form C.
  - Make these records available for inspection, upon request, by an authorized representative of the NDDOT or USDOT.

**If any requirements are not met, progress payments will be withheld from the prime until completed.**

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

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

The Department's contract includes a provision stating:

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

[SFN 60595 - Replacement Approval Request](http://www.dot.nd.gov/forms/sfn60595.pdf) must be submitted and approved prior to replacement of each DBE firm(s), or Non-DBE/BD(s), or any work the prime originally intended to self-perform prior to the commencement of any replacement work. No payment will be made if work commences without written approval. The form may be accessed at the Department's website: <http://www.dot.nd.gov/forms/sfn60595.pdf>

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

## **EXCEPTION FOR REPLACEMENTS DUE TO PUBLIC NECESSITY**

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

## **TERMINATION FOR CAUSE**

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

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

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

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

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

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

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

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

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

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

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

## **UNFULFILLED OBLIGATIONS**

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

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

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

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

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

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

## **NON-COMPLIANCE, FAILURE TO PERFORM, AND SANCTIONS**

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

- Not submitting required documentation in a timely manner
- Not paying a DBE or non-DBE subcontractor in a timely manner

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

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

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

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

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

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

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

## **NDDOT MONITORING AND ENFORCEMENT MECHANISMS**

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

## **COMMERCIALLY USEFUL FUNCTION**

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

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

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

contract, or project through which funds are passed in order to obtain the appearance of DBE participation. 49 CFR § 26.55(c)(2)

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

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

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

The Department will count DBE participation toward our overall annual goal as noted below.

**Manufacturer:** Manufacturer credit is appropriate when the DBE maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Alterations or customization of a "stock" product would be eligible for manufacturer credit. DBE credit is awarded at 100% for this type of work. Delivery type is not relevant in this type of credit.

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

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

**Regular Dealers/Suppliers:** Supplier credit is appropriate when the DBE owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business sells to the general public with inventory on hand. If a legitimate public warehouse exists, that regularly stocks, deals and sells to the walk-in public, then the method of delivery of the goods is not examined. Supplier credit would be awarded at 60% of the cost of the materials. 49 CFR 26.55 (e)(ii).

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

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

### **Specialty Products**

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

- Supplier credit would be available if the DBE owns its own facility and is in the business of selling products and materials to the public and sells products of similar nature to the specialty item and the DBE must take possession of the specialty item to determine quality and quantity of the specialty item(s). To be eligible for supplier credit, the DBE must deliver the specialty item with its own distribution equipment and employees.

- Supplier credit would be available if the DBE does not own its own facility but does own its own distribution equipment which it uses to pick up the specialty item(s) and deliver to the job site with the DBEs own employees

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

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

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

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

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

- Example: DBE owns 2 trucks and subcontracts 2 non-DBE match trucks. The total number of trucks that may be counted towards DBE participation is the amount paid for all 4 trucks (100%)
- Example: DBE owns 5 trucks and subcontracts 5 trucks from non-DBE(s). The total number of trucks that may be counted towards DBE participation is the amount paid for 5 of the 10 trucks (100%)
- Example: DBE owns 1 truck and subcontracts 4 non-DBE trucks. 1 of the no-DBE trucks acts as a match truck and the other 3 are non-DBE non-match trucks. The amount of the total subcontract with the DBE that may be counted is 40%.

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

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

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

A legitimate subcontract must be in place between the DBE and non-DBE trucking firm to count participation. The non-DBE trucking firm must be added to the Utilization Plan/Contract in CCS under the DBE and the DBE is required to report payments to the non-DBE trucking firm for the participation to be counted. Additional reporting lines under the DBE on the contract within CCS may also be necessary to report non-DBE non-match payments and/or brokerage/fees for non-DBE non-match trucks if applicable. Certified payroll requirements also apply.

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

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

## **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Manufacturer** means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. See Counting DBE Participation section.

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

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

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

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

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

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

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

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

**Subcontractor** means any firm intending to perform work, or intending to perform work and supply the materials, which were intended for their work on the project.

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

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

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

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

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

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
EEO AFFIRMATIVE ACTION REQUIREMENTS**

**March 15, 2014**

Bidders shall become familiar with the following requirements and be prepared to comply in good faith with all of them:

**APPENDIX A**

Notice or Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).

- 1. The Bidder’s attention is called to the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” set forth herein.
- 2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor’s aggregate work force in each trade on all construction work in the covered area, are as follows:
  - a. Goals for Female Participation in Each Trade – Statewide . . . . .6.9%
  - b. Goals for Minority Participation in Each Trade by County:
    - Barnes, Cass, Dickey, Eddy, Foster, Griggs, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, Steele, Stutsman, Traill . . . . .0.7%
    - Grand Forks . . . . .1.2%
    - Benson, Cavalier, Nelson, Pembina, Ramsey, Towner, Walsh . . . . .2.0%
    - Burleigh, Morton . . . . .0.4%
    - Adams, Billings, Bowman, Dunn, Emmons, Golden Valley, Grant, Hettinger, Kidder, Mercer, Oliver, Sheridan, Sioux, Slope, Stark, Wells . . .1.3%
    - Bottineau, Burke, Divide, McHenry, McKenzie, McLean, Mountrail, Pierce, Renville, Rolette, Ward, Williams . . . . .4.4%

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

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

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

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

Notification should be sent to:

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

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

## **APPENDIX B**

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

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

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

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

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

the sources compiled under 7b above.

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

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

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

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

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

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

**ATTACHMENTS**

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

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

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

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

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

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

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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

**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

#### **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

#### **10. Assurances Required:**

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

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

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

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

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

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

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

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

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

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

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

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

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

#### 1. Minimum wages (29 CFR 5.5)

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

## **2. Withholding (29 CFR 5.5)**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records (29 CFR 5.5)**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

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

#### 4. Apprentices and trainees (29 CFR 5.5)

##### a. Apprentices (programs of the USDOL).

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

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

##### b. Trainees (programs of the USDOL).

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

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

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

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

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

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **10. Certification of eligibility (29 CFR 5.5)**

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

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

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

#### **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

\* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

### **3. Withholding for unpaid wages and liquidated damages.**

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

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

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

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on longstanding interpretation of 23 CFR 635.116).

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

## **VII. SAFETY: ACCIDENT PREVENTION**

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

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

### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

#### **1. Instructions for Certification – First Tier Participants:**

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

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

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

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

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

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

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

## **3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

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

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

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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

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

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

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

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

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

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**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

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

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

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

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

## **XII. USE OF UNITED STATES-FLAG VESSELS:**

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

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

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

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

After award, the Prime Contractor (Prime) must:

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

09/06/2017

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

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

After award, the Prime Contractor (Prime) must:

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

10/3/2017

## NOTICE:

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

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

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

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

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

Or contact:

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

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

U.S. DEPARTMENT OF LABOR

<small>STATE</small> NORTH DAKOTA	<small>COUNTY</small> STATEWIDE	ND20220054 Page 1  <small>DATE OF DECISION</small> 01-07-22 Revised 01/14/2022 (Mod No. 1) Revised 01/28/2022 (Mod No. 2) Revised 02/11/2022 (Mod No. 3) Revised 02/25/2022 (Mod No. 4) Revised 05/20/2022 (Mod No. 5)
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**CARPENTERS**

**CEMENT MASONS/FINISHERS**

**LINE CONSTRUCTION:**

- Lineman
- Cable Splicer
- Line Equipment Operator
- Groundman

**ELECTRICIANS:**

- Electrician
- Cable Splicer  
(Adams, Billings, Bottineau, Bowman, Burke, Divide, Dunn, Emmons, Golden Valley, Grant, Hettinger, McHenry, McKenzie, Mclean, Mercer, Mountrail, Oliver, Pierce, Renville Rolette, Sheridan, Sioux, Slope, Ward and Williams Counties)

- Electrician
- Cable Splicer  
(Barnes, Benson, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, Kidder, La-Moure, Logan, McIntosh, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Stutsman, Towner, Traill, Walsh, and Wells Counties)

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

- Electrician  
(Cass County)

**WELDERS:**

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

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$31.85	\$ 7.60
31.85	7.60
48.00	7.80 + 29.5%
48.00	7.80 + 29.5%
40.75	7.80 + 29.5%
27.17	7.80 + 19.5%
48.00	7.80 + 29.5%
48.00	7.80 + 29.5%
37.20	11.35 + 11.5%
38.82	11.35 + 11.5%
48.00	7.80 + 29.5%
48.00	7.80 + 29.5%
14.72	3.40

**LABOR RATES**

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**01-07-2022**

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**LABORERS:**

**Group 1**

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

**Group 2**

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

**Group 3**

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

**Group 4**

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

**POWER EQUIPMENT OPERATORS:**

**Group 1**

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

**Group 2**

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

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$23.65	\$ 3.15
23.90	3.15
24.05	3.15
24.80	3.15
31.60	18.85
30.20	18.85

**LABOR RATES**

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**01-07-2022**

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

**Group 3**

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

**Group 4**

Articulated/Off Road Hauler; Asphalt Dump Person(Controls the spread of asphalt); Asphalt Paving Screen Operator; Backhoe, up to and including 1/2 CY; Boring Machine Locator; Console Board Operator; Curb Machine Operator; Distributor Operator (Bituminous); Forklift Operator; Front End Loader, 1-1/2 CY up to and including 3 CY; Fuel/ Lube Truck Operator; Grade Person(Responsible for establishing and determining grade through instrumentation); Gravel Screening Plant Operator (not Crushing or Washing); Greaser; Lazar Screed Operator; Longitudinal Float and Spray Operator; Micro Surfacer Machine; Motor Grader Operator (Haul Roads); Paving Breaker HydroHammer Type; Pugmill Operator; Push Tractor; Roller, Steel and Rubber on Hot Mix Asphalt Paving; Rotomilling Machine (Surface Planer), up to and including 42"; Rumble Strip Machine; Sand and Chip Spreader; Self-Propelled Sheepsfoot Packer with or without Blade Attachment; Self Propelled Traveling Soil Stabilizer; Sheepsfoot Packer with Dozer Attachment 100 H.P. and over; Shouldering Machine; Slip Form, Curb and Gutter Operator; Slurry Seal Machine; Tamping Machine Operator; Tie Tamper and Ballast Machine; Trenching Machine Operator, 46 H.P. up to and including 99 H.P.; Truck Mechanic; Tub Grinder; Well Points.

**Group 5**

Boom Truck, A-Frame or Hydraulic 2 tons up to and including 7 tons; Broom Self-Propelled; Concrete Saw (power operated); Cure Bridge Operator; Front End Loader Operator, less than 1-1/2 CY; Mobile Cement Mixer; Power Actuated Auger and Horizontal Boring Machine Operator, up to and including 5"; Roller (on other than hot mix asphalt

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

# LABOR RATES

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## POWER EQUIP. OPERATORS: (CONT.)

### Group 5 (CONT.)

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

### Group 6

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

## TRUCK DRIVERS:

Single-Axle Truck

Tandem- and Tri-Axle Truck

Tandem- and Tri-Axle Semi, Lowboy

Off Road Heavy Duty End Dumps 20 Yards and Under

Euclid, Over 20 Yards

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

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

# LABOR RATES

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## HIGHWAY CONSTRUCTION PROJECTS

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

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

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

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

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

# NORTH DAKOTA DEPARTMENT OF TRANSPORTATION (NDDOT)

## ON-THE-JOB TRAINING (OJT) PROGRAM SPECIAL PROVISION

The requirements in this special provision apply to any OJT assignments made the following construction season. Example: OJT Special Provision included in projects bid April 1, 2022-March 31, 2023 takes effect for OJTs assigned during the 2023 construction season. Please reference the appropriate OJT Program Manual on the web that coordinates with the OJT Special Provision located in the project proposal.

The bidder's signature on the proposal sheet indicates the bidder agrees to take part in the On-the-Job Training Program and to follow the OJT Program Manual and Special Provision. Contractors that fail to do so will be subject to suspension of progress payments or sanctions up to and including revocation of bidding privileges.

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

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

### I. POLICY STATEMENT

The purpose of the OJT Program is to provide training in the highway construction industry for minority, female, and economically disadvantaged individuals, from this time known as the targeted group. Pursuant to 23 Code of Federal Regulations Part 230, Subpart A, Appendix B - Training Special Provisions, this program provides for on-the-job training aimed at developing journey-level workers in skilled trades.

The Contractor shall take all necessary and reasonable steps to ensure that minorities and women have the opportunity to compete for and participate as trainees or apprentices and to develop as journey-level workers employed in the skilled trades.

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

### II. INTRODUCTION/PROGRAM BACKGROUND

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

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

### III. ASSIGNED OJT POSITIONS

- A. Trainee positions are assigned based only on federal highway dollars awarded to contractors from April 1, 2021 to March 31, 2022. Trainee assignments are not project

specific; that means the contractor may train program participants on any project where training opportunities exist within the state of North Dakota.

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

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

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

B. Contractors will receive the number of positions assigned and links to resources necessary for completion of program requirements via email.

C. The number of trainee positions assigned to each contractor will increase proportionately, as shown below, for any applicable federally funded projects awarded to them.

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

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

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

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

#### IV. FUNDING

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

#### V. ONLINE RESOURCES

*OJT Program Manual:* Includes program requirements, wage rates, and curriculum:  
<https://www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf>

*SFN 60226 Request for On-the-Job Training Program and Trainee Approval:*  
<http://www.dot.nd.gov/forms/sfn60226.pdf>

*SFN 51023 Voucher for On-the-Job Training Program Hourly Reimbursement:*  
<http://www.dot.nd.gov/forms/sfn51023.pdf>

Davis-Bacon and Related Acts (DBRA) Handbook:  
<https://www.dot.nd.gov/manuals/civilrights/davisbacon.pdf>

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

## VI. APPROVALS REQUIRED

A. Requests for Approval of Training Programs and Trainee Candidates must be submitted to Civil Rights Division (CRD). Contractors must request and receive program and trainee candidate approval in order to pay trainees less than the established Davis-Bacon wage for the job classification concerned. **No training program hours will count toward the fulfillment of an assigned trainee position or be eligible for reimbursement without prior approval.** No retroactive approval will be granted.

1. Submit *SFN 60226 Request for On-the-Job Training Program and Trainee Approval* with each trainee's employment application. <http://www.dot.nd.gov/forms/sfn60226.pdf> and the pre-approved training curriculum for each trainee position assigned by April 1 or within fifteen (15) calendar days of notification of any additional position assignments.
2. Submit *SFN 7857 Application for Eligibility* directly to Job Service North Dakota (JSND) for approval of an economically disadvantaged individual for participation in the OJT Program. See attachment 3.

B. Pre-approved curriculum: NDDOT's OJT Program Manual contains pre-approved training curriculum for a number of skilled trade positions. Contractors should select a training program(s) based on their company's employment/staffing needs.

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

The request must include:

- A training curriculum, including the classification requested, minimum number of hours required, and type of training the individual will receive to achieve journey-level worker status.
- A minimum wage scale.

If approved, each new classification must comply with the provisions specified in the OJT Program Manual. No hours worked prior to approval will be credited toward completion of the customized training program. Training programs for classifications not covered by the Davis-Bacon and Related Acts (DBRA) will be considered on a limited basis.

The contractor may commence its "customized" training as of the date of the written approval.

D. Union apprenticeship and on-the-job training programs registered with the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, may be used for trainee positions assigned under the OJT Program, provided the trainees or apprentices are minority, female, or economically disadvantaged. Nonminority males not certified as economically disadvantaged may only be used when the contractor has requested and

received approval, from the Department, for additional trainee positions. The apprenticeship indenture agreements serve as the trainee's job application and must be provided prior to any hours being credited toward OJT Program completion.

E. Power Equipment Operators:

The contractor may train an individual on a combination of equipment if each piece of equipment falls within the same groups of power equipment operators identified in the training curricula (groups 1-3 and groups 4-6). These power equipment operator groups are referenced to the federal DBRA wage rates contained in the contract proposal. As an example, a "utility operator" may receive training on a broom, a front-end loader less than 1½ cubic yards, or other piece of equipment that is used around a paver if each piece falls within either groups 1-3 or groups 4-6. When multiple wage rates apply, the trainee's wage will be based on the equipment being operated at the time or on the highest of the applicable wage rates.

Use of the classification "pickup machine operator (asphalt dump-person)" as a group 4 power equipment operator is considered standard industry practice. The classification is defined as: "Operates the controls on the pickup machine that runs in front of the paver, trips the levers on the dump trucks, and balances the loads for the paver. The pickup machine operates on similar principles as a shouldering machine."

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

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

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

## VII. NDDOT'S RESPONSIBILITIES

A. The NDDOT OJT supportive services (OJTSS) consultant will monitor excerpts from the weekly certified payrolls or LCP Tracker for NDDOT projects submitted with the monthly vouchers for reimbursement. On contracts where certified payrolls are not required and not available for supporting documentation, contractors may enter trainee wages, hours in training, and the project control number(s) (PCN) in a spreadsheet to support their reimbursement vouchers. In this case, contractors should work with OJTSS to assure that all information required for payment is provided.

B. The OJTSS will do a preliminary review of any Daycare Reimbursement Forms and make recommendations to CRD on approvals. CRD approves any reimbursements and the OJTSS will process any payments. OJTSS tracks funds available/expended in order to stay within the limit of available funds that season/year. OJTSS Daycare reimbursements are made using OJTSS funding, which may be limited or unavailable

year to year.

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

## VIII. CONTRACTOR'S RESPONSIBILITIES

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

Minimum number of hours required:

- Power Equipment Operator Groups 4-6 to Groups 1-3 = 400 hrs.
- Class C Truck Driver to Class B = 200 hrs.
- Class B Truck Driver to Class A = 200 hrs.

Depending on the variety of experience the trainee has gained under the previous curriculum, the difference in the hours may be deducted from the actual operation of the piece of equipment or truck. The contractor will need to review the trainee's past performance in order to make this determination.

- K. May hire commercial driver's license (CDL) holders as truck driver trainees. Those having over-the-road driving experience, with little or no highway construction experience, may be considered to have completed the Class C truck driver training curriculum and, therefore, are eligible to be upgraded to a Class B truck driver trainee, with the approval of CRD.
- L. May transfer trainees from one project to another in order to complete the OJT Program. If transfers are made, CRD must be notified and provided with the name of the trainer. The training hours will count toward overall OJT Program completion.
- M. May train trainees on municipal, private, or other non-highway work. These training hours must be paid at the OJT minimum wage scale to count toward their OJT Program completion; however, no program reimbursement will be made for those hours.
- N. May delegate or reassign trainee positions to subcontractors, with the acceptance of the subcontractors and the approval of CRD. The prime contractor must verify that the trainee will be able to accumulate enough hours to complete his or her training program. If approved, the subcontractor must obtain training program and trainee approval from CRD before the trainee begins work under the OJT program. Program reimbursement will be made directly to the prime contractor. The trainee position will remain the responsibility of the prime contractor.
- O. May use trainees on projects subject to TERO requirements as part of the core crew. The training hours will count toward overall OJT Program completion; however, no program reimbursement will be made for those hours unless it is a NDDOT let project.
- P. May not use one trainee to simultaneously fill multiple trainee positions
- Q. May use a trainee on a piece of equipment in groups 1-3 or groups 4-6 for one assigned trainee position, then once that trainee has completed the program, the trainee may be trained on a different piece of equipment in groups 1-3 or groups 4-6 to fulfill a second assigned trainee position. When a trainee is used for a second time within a group, the contractor must pay that trainee at the higher wage rate as described in paragraph B under Wage Rates (page 8).

## IX. CLASSROOM TRAINING

- A. Classroom training may be used to train employees. Each classroom training curriculum must be pre-approved by CRD if the contractor wishes to count the classroom hours as training hours and be reimbursed.

Submit a proposed classroom training curriculum to CRD for approval. Define the type of training the individual will receive, classroom training curriculum, and the minimum number of hours required. The Department will determine the number of hours of credit each trainee will receive toward their training. No retroactive approval will be granted.

- B. Contractors will be reimbursed for classroom training hours after the trainee has completed 80 hours of work on highway construction projects.
- C. Reimbursement for classroom training will be limited to 60 hours per trainee per construction season. Reimbursement for classroom training required under the NDDOT Transportation Technician Qualification Program will be at the NDDOT discretion.
- D. The minimum wage scale to be used for classroom training will be that of the first federal-aid highway construction project on which the trainee will be employed. If the trainee is already employed on a federal-aid highway construction project, the trainee will be paid in accordance with the minimum wage scale applicable to that project. However, if the first project on which the trainee will be employed is a state funded only contract, the minimum wage scale to be used for the classroom training will be that of the appropriate DBRA wage in effect at the time of award of the state funded contract.

X. WAGE RATES

- A. When the contractor is submitting the trainee's hours toward training program, wages paid shall in no case be less than that of those stated in the approved curriculum. A trainee working on a state funded only project, must be paid the DBRA wage rate in effect at the time of award for the type of work the trainee is performing as a trainee.
- B. The minimum wage rates shall not be less than 80% of the journey-worker rate for the first two quarters of training, 85% of the journey-worker rate for the third quarter, and 90% of the journey-worker rate for the fourth quarter.
  - Under the power equipment operator training curricula only, once a trainee has completed a training curriculum in either groups 1-3 or groups 4-6, the contractor may enroll the trainee in another training curriculum on a different piece of equipment in either groups 1-3 or groups 4-6.
  - The minimum wage rate under the trainee's second program shall not be less than 85% of the journey-worker rate for the first two quarters of training, 90% of the journey-worker rate for the third quarter, and 95% of the journey-worker rate for the fourth quarter.
  - For the purpose of the OJT Program, a quarter is 25% of the hours the trainee works toward completion of their approved program. The first two quarters of a 550-hour training curriculum would end after 275 hours, the third quarter after 138 hours, and the fourth after 137 hours.
- C. At any time hours are being attributed toward the completion of the approved training program, trainees shall be paid full fringe benefit amounts, where applicable, in accordance to DBRA requirements.
- D. At the completion of the OJT Program, the trainee shall receive the wages of a skilled journey-worker.

XI. RECRUITMENT AND SELECTION

- A. Prerequisites:

Trainees must possess basic physical fitness for the work to be performed, dependability, willingness to learn, ability to follow instructions, and an aptitude to maintain a safe work environment. Trainees must be a North Dakota resident during their training program.

B. Licenses:

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

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

C. Recruitment:

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

D. Selection:

1. Hire and enroll OJT trainee candidates who qualify as an individual in the targeted group.
2. Select a training program(s) based on their company's employment/staffing needs.
3. Individuals in the targeted group having experience in the selected curriculum may be eligible to participate in the OJT Program providing they:
  - are not or have not been journey-workers in the selected curriculum, and/or
  - have not been previously trained in the selected curriculum.
4. Non-minority males who are economically disadvantaged must obtain written certification from Job Service North Dakota (JSND) to qualify for the OJT Program. Contractors wishing to hire and enroll economically disadvantaged candidates must provide JSND's certification along with SFN 60226 and the employment application when requesting trainee approval.
  - JSND is the only agency that may certify an individual as economically disadvantaged. If JSND refers the candidate to the contractor, written certification under this category will be provided to the contractor at the time of the interview.
  - Any person wishing to obtain this certification must apply to JSND and complete the Workforce Investment Act Program's Application for Eligibility (SFN 7857). A contractor recruiting a candidate who may qualify must contact the Workforce Investment Act Program Manager at JSND. JSND contacts are also online:

<http://www.dot.nd.gov/divisions/civilrights/docs/jobservice-workforce-invest-contacts.pdf>

E. Daycare Reimbursement Program:

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

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

XII. BASIS OF PAYMENT

E. Contractors will be paid \$4.00 for each hour of training in accordance with the OJT Program Manual.

F. Reimbursement will be made directly to the contractor. Complete SFN 51023 Voucher for On-the-Job Training Program Hourly Reimbursement for each trainee. LCPtracker must be utilized on NDDOT projects for reporting certified payrolls. The OJTSS consultant will be verifying hours submitted on NDDOT projects through this online reporting system. For non-NDDOT projects the firm must attach excerpts from the weekly certified payrolls showing the trainee's hours, rate of pay, and how applicable fringe benefits were paid. Vouchers without excerpts from payrolls will not be paid until the excerpts are provided. If the excerpts from the payrolls are not provided within one week, the voucher will not be paid and the trainee's hours will not be credited toward completion. <http://www.dot.nd.gov/forms/sfn51023.pdf>

G. On contracts where certified payrolls are not required and not available for supporting documentation, contractors may enter trainee wages, hours in training, and the project control number(s) (PCN) in a spreadsheet to support their reimbursement vouchers. In this case, contractors should work with OJTSS to assure that all information required for payment is provided.

H. Submit completed vouchers to CRD for approval and processing by the fifteenth (15<sup>th</sup>) calendar day of every following month the trainee is employed under the OJT Program.

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

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

- A. The contractor is required to consistently demonstrate efforts to recruit, hire, and train candidates for the OJT Program.
- B. If the contractor does not show in a timely manner good faith efforts to recruit, hire, and train candidates in the targeted group, the Department may withhold progress payments
- C. If payments have been made, the Department will deduct the amount paid from the contractor's progress payment.
- D. No payment shall be made to a contractor for failure to provide the required training or failure to hire the trainee as a journey-worker when such failure is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this OJT Program Special Provision.
- E. Hiring a trainee to begin training as soon as feasible after start of work is evidence of a contractor's good faith efforts to comply with the OJT Program requirements. Additional evidence supporting a contractor's good faith efforts would be to keep the trainee employed as long as training opportunities exist in the approved work classification or until the trainee has completed his or her training program.
- F. It is not required that all trainees be employed for the entire length of the construction season. A contractor will have fulfilled its responsibilities under this OJT Special Provision if it has provided acceptable training to the number of trainees assigned.

XIV. UNFILLED OR INCOMPLETE TRAINEE POSITIONS

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

XV. DEFINITIONS

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

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

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

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

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

OJT Supportive Services (OJTSS): Department contractor providing in-person oversight,

support, and guidance to contractors and trainees to increase the effectiveness of approved training programs.

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

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

## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

### SPECIAL PROVISION

#### TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES

##### 1. GENERAL

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

##### Definitions:

**A. Temporary Erosion and Sediment Control Measures** are to be installed and maintained before and during the term of the land disturbance activity. These items are removed when permanent erosion and sediment ESCMs are installed.

**B. Permanent Erosion and Sediment Control Measures** are to be installed and maintained once the project is completed so that the applicable permits can be terminated.

In some instances, individual temporary and permanent erosion and sediment ESCMs for a site may consist of identical ESCMs. In these cases, the temporary erosion and sediment ESCMs may be used as the permanent erosion and sediment ESCMs if they meet the following criteria:

1. The ESCM was installed correctly,
2. Is in a functional condition,
3. Has had all accumulated sediment removed.

**C. The Stormwater Pollution Prevention Plan (SWPPP)** is the document that identifies potential sources of sediment or other pollution from construction activity and ensures practices are used to reduce the contribution of pollutants from construction site runoff.

**D. Contractor Controlled Areas** are project areas not included in the contract, but are obtained and solely controlled by the Contractor (e.g., concrete or asphalt batch plants, concrete washout areas, equipment staging yards, material storage areas, excavated material disposal areas, Contractor furnished borrow areas, etc.).

**E. Maintenance** is any action taken to keep an ESCM in working condition. These actions may consist of repairing failures of the ESCM itself.

**F. Noncompliance** is any action or inaction that violates the regulations imposed by the applicable permits or the requirements of this special provision and other contract documents. Failure of an ESCM does not necessarily constitute noncompliance as long as the ESCM is repaired, replaced or supplemented within the timelines established in the applicable permits and no sediment is discharged from the site or into a water of the state.

## 2. CONSTRUCTION REQUIREMENTS

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

Obtain appropriate permit coverage for the activities conducted in Contractor Controlled Areas. A permit will be required for these areas regardless of their size. The NDDOT will have no responsibility for these areas. Provide copies of the completed and signed Notice of Intent submitted for permit coverage to the Engineer before activities in these areas commence. Do not commence activities in these areas until after permit coverage has begun. Provide copies of Permit Coverage Letters for these areas to the Engineer within 7 days of receiving them from the regulating agency.

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

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

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

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

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

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

Install stabilization ESCMs (mulch, seeding and mulch, etc.) in areas that have been disturbed where work has temporarily or permanently ceased following the timelines established in the applicable permits. If implementation of stabilization is precluded by snow cover, undertake such measures as soon as conditions allow.

Maintain the effectiveness of the temporary erosion and sediment ESCMs as long as required to contain sediment runoff. Inspect the temporary erosion and sediment ESCMs and complete the inspection and maintenance reports every 14 days and within 24 hours of a rainfall event of 0.25 inch or more. During prolonged rainfall (more than 1 day), conduct an inspection within 24 hours of the first day of the event and within 24 hours after the end of the event. Inspections are required only during normal business hours. Install a rain gauge to monitor rainfall amounts as required by the appropriate permit.

Correct any deficiencies in the ESCMs within the timelines established in the applicable permits. If conditions do not permit access to the ESCM, corrective actions can be taken by installing additional ESCMs. Correct the original deficiencies as soon as conditions allow access to their location without causing additional damage to the slopes. In the inspection logs, document the conditions that prohibit access.

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

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

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

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

### **3. Erosion and Sediment Control Supervisor.**

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

**B. Qualifications.** The supervisor shall be:

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

**C. Duties.** The supervisor shall:

1. Provide erosion and sediment control as required by the SWPPP, Plans, and Specifications.
2. Be on the site to supervise the installation, operation, inspection, maintenance, and removal of the erosion and sediment ESCMs.
3. Update the SWPPP as work progresses to show changes due to revisions in work schedules or sequence of construction, or as directed by the Engineer. Update the site map to reflect erosion and sediment ESCMs that have been installed, changed, or removed.
4. Propose changes to improve erosion and sediment control.
5. Be accessible to the job site within 24-hours.
6. Provide the Engineer with documentation of all erosion and sediment control activities and inspections as required above.

#### 4. PERFORMANCE

Correct all areas of noncompliance within 24 hours after notification of noncompliance. If corrective actions are not taken within 24 hours, the Engineer may:

1. Assess a contract price reduction of \$500 per day per instance;
2. Have deficiencies corrected by another Contractor and deduct the cost of the work from the monies due or to become due to the Contractor;
3. Suspend all work; or
4. Withhold payment on other contract items/pay estimates.

These actions will be applied until deficiencies have been corrected.

#### 5. BASIS OF PAYMENT

ESCM installation will be paid for at the contract unit price for erosion and sediment control for the appropriate items and sections. The plans will detail the required ESCMs for temporary and permanent installations. The same bid items may be used for temporary and permanent ESCMs.

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

ESCM item removal will be paid for at the contract unit price for "Remove \_\_\_\_\_" in the appropriate section of the specifications.

Include the costs for labor, materials, maintenance, equipment, disposal, adherence to the permit, and SWPPP modifications in the respective pay items.

When the Engineer directs the replacement of temporary erosion and sediment ESCMs that are no longer functional because of deterioration or functional incapacity and those items were installed as specified in the Contract or as directed by the Engineer, the Department will pay for replacement ESCMs

No payment will be made for replacing temporary erosion and sediment ESCMs that the Engineer determines are ineffective because of improper installation, lack of maintenance, or the Contractor's failure to pursue timely installation of permanent erosion and sediment ESCMs as required in the Contract.

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

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

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

## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

### SPECIAL PROVISION

### LIMITATIONS OF OPERATIONS

#### DESCRIPTION

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

#### 108.05 LIMITATION OF OPERATIONS

##### A. General.

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

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

##### B. Holidays.

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

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

###### 1. General.

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

###### 2. Nighttime Operations.

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

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

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

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

**3. Extended Hours.**

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

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION**

**BITUMEN TESTING PRICE ADJUSTMENTS**

**DESCRIPTION**

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

**MATERIAL ACCEPTANCE SPECIFICATION**

**A. Sampling.**

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

**B. Original and Check Samples.**

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

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

**C. Testing Parameters.**

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

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

**D. Determination of Pay Factor.**

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

**BASIS OF PAYMENT**

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

**Table 1**  
**Requirements on Original Binder**

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

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

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

**Table 3**  
**Requirements for Pressure Aging Vessel (PAV)**  
**Residue**

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

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

**FEDERAL PROHIBITION ON CERTAIN TECHNOLOGICAL HARDWARE**

**DESCRIPTION**

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

**CONTRACT REQUIREMENTS**

**A. Technological Equipment Prohibitions.**

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

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

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

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

**B. Contractor Certification.**

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

Project Number(s): \_\_\_\_\_

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

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

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

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

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

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

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

**CONSTRUCTION REQUIREMENTS**

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

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

Remove all surface irregularities before beginning compaction.

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

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

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

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

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

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

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

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

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

**(2) Pavement Density Cores.**

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

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

**(3) Pavement Thickness Determination Cores.**

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

**3. Ordinary Compaction.**

**a. General.**

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

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

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

**b. Breakdown Rolling.**

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

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

**c. Intermediate Rolling.**

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

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

**d. Finish Rolling.**

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

## **M. Acceptance.**

### **1. General.**

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

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

### **2. Aggregate.**

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

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

### **3. Asphalt Content.**

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

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

### **4. Field Density.**

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

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

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

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

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

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

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

**Table 430-10**

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

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

**BASIS OF PAYMENT**

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

**C. Contract Price Adjustments.**

**1. General**

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

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

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

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

## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

### SPECIAL PROVISION

#### E-Ticketing

##### **DESCRIPTION**

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

##### **CONTRACT REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

### SPECIAL PROVISION

#### UTILITY COORDINATION

**NH-3-003(030)202 – PCN 21984**

#### DESCRIPTION

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

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

#### ATTACHMENTS

Appendix A – Utility Coordination Table

Appendix B – Utility Exhibits

#### DEFINITIONS

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

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

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

#### CONTRACTOR RESPONSIBILITIES

##### A. Responsibilities.

The responsibilities for utility coordination include the following:

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

**B. Utility Coordination Plan.**

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

**C. Record of Utility Outage Notifications.**

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

**D. Utility Coordination Schedule.**

Create and maintain a construction schedule that includes timelines for the phasing of utility coordination work. Include information contained in the contract documents and information obtained during coordination discussions with utility owners. Written agreements between the Contractor and a utility company will govern over information contained in contract documents; however, the agreements must be signed by the NDDOT, Contractor and Utility Company to be effective. Written agreements are considered contract revisions; however, they are not eligible for additional compensation or additional time unless agreed to separately by the Engineer.

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

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

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

## **CONSTRUCTION REQUIREMENTS**

**A. General.**

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

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

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

**B. Utilities Identified in Plans.**

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

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

The Contract documents show all known UE for the project.

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

### **C. Utilities Encountered During Work.**

#### **1. General**

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

#### **2. Unidentified Utility Encounters**

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

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

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

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

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

### **D. Utility Coordination Meetings.**

#### **1. Preconstruction Utility Meeting.**

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

#### **2. Weekly Utility Coordination Meeting.**

Organize a weekly meeting to discuss utility coordination efforts with utility companies and affected subcontractors, local authorities, the Engineer and others who may have an

interest in utility coordination efforts. Hold the weekly utility coordination meeting immediately before the weekly planning and reporting meeting. Publish minutes and distribute copies to all meeting attendees within 48 hours of the conclusion of the meeting.

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

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

**E. Fire Hydrants.**

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

**F. Damage and Interruptions.**

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

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

**G. Utility Criteria.**

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

**Utility Coordination Table Appendix A of SP XXX(XX)**  
 3-003(03/01)202 PCN 21984  
 Sorted By Station

UE ID #	Utility Coordination Exhibits	Approx. Sta From	Approx. Sta To	LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Resolution Criteria / Comments (The following information for the Contractor is based on early coordination with utilities. Information is approximate. Details for the schedule and construction phasing will need to be finalized between the Contractor and Utility Companies. Comments also outline other items that Contractor will need to account for in potential phasing for the project).	Utility Company	Type of Facility	After Notification - Time For Utility to Mobilize (D = Working Day, W = Week)	Estimated Time to Complete (D = Working Day, W = Week)	UTILITY ENCOUNTER TYPE (UE)			Per Hole DR
															Project in Place	Conflict	Quantity of Potable Utility	
NODATC-1	1	10671+42	to 10671+42	LT	PR_4th_Ave	0.0	LF	-9	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
RUSTDR-1	1	10671+42	to 10671+47	LT	PR_4th_Ave	5.0	LF	-9	Level 4		Rugby Storm Drain	Pipe	-	-		X	0	
RUSTDR-2	1 - 3	10671+42	to 10677+40	LT	PR_4th_Ave	598.0	LF	0	Level 1		Rugby Storm Drain	Pipe	-	-	X	0	-	
NODATC-2	1 - 3	10671+42	to 10676+96	LT	PR_4th_Ave	554.0	LF	0	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-1	1 - 3	10671+42	to 10677+20	LT	PR_4th_Ave	578.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
NODATC-3	2	10675+59	to 10675+59	Crossing	PR_4th_Ave	0.0	LF	-9	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-2	2	10675+69	to 10675+69	Crossing	PR_4th_Ave	0.0	LF	-9	Level 1		Otter Tail Power Company	Overhead Power Line	-	-	X	0	-	
NODATC-4	3	10676+96	to 10676+96	Crossing	PR_4th_Ave	0.0	LF	-11	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
NODATC-5	3	10676+96	to 10677+22	LT	PR_4th_Ave	26.0	LF	0	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-3	3	10677+20	to 10677+20	Crossing	PR_4th_Ave	0.0	LF	-11	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-4	3	10677+20	to 10677+34	LT	PR_4th_Ave	14.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-5	3	10677+20	to 10677+20	Crossing	PR_4th_Ave	0.0	LF	-7	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-6	3	10677+20	to 10677+34	Crossing	PR_4th_Ave	14.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
RUMUWA-1	3	10677+22	to 10677+22	Crossing	PR_4th_Ave	0.0	LF	-11	Level 4	Pipe is 6" cast iron east of fire hydrant in the SE quadrant of the intersection and 6" PVC west of the hydrant. Shut off for construction will be at 8th Ave SW, between 7th Ave SW and 5th Ave SW, 5th Ave SW and 4th Ave SW.	Rugby Municipal Water	Pipe	-	-		X	0	
NODATC-6	3	10677+22	to 10677+22	Crossing	PR_4th_Ave	0.0	LF	-7	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
NODATC-7	3	10677+22	to 10677+34	LT	PR_4th_Ave	12.0	LF	-3	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
NODATC-8	3	10677+34	to 10677+54	LT	PR_4th_Ave	20.0	LF	-3	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-7	3	10677+34	to 10677+34	Crossing	PR_4th_Ave	0.0	LF	-7	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-8	3	10677+34	to 10677+34	Crossing	PR_4th_Ave	0.0	LF	-7	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-9	3	10677+34	to 10677+55	LT	PR_4th_Ave	21.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-10	3	10677+34	to 10677+55	RT	PR_4th_Ave	21.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
RUSASE-1	3	10677+35	to 10677+35	Crossing	PR_4th_Ave	0.0	LF	-12	Level 4		Rugby Sanitary Sewer	pipe	-	-		X	0	
RUSTDR-3	3	10677+40	to 10678+50	LT	PR_4th_Ave	110.0	LF	-12	Level 4		Rugby Storm Drain	pipe	-	-		X	0	
NODATC-9	3	10677+34	to 10677+34	Crossing	PR_4th_Ave	0.0	LF	-7	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
NODATC-10	3	10677+54	to 10677+54	Crossing	PR_4th_Ave	0.0	LF	-6	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
NODATC-11	3, 4	10677+54	to 10680+90	LT	PR_4th_Ave	336.0	LF	0	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-11	3	10677+55	to 10677+55	Crossing	PR_4th_Ave	0.0	LF	-6	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-12	3	10677+55	to 10677+55	Crossing	PR_4th_Ave	0.0	LF	-6	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-13	3, 4	10677+55	to 10680+90	RT	PR_4th_Ave	335.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-14	3, 4	10677+55	to 10680+90	LT	PR_4th_Ave	335.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
NODATC-12	3	10677+58	to 10677+58	Point	PR_4th_Ave	0.0	LF	-6	Level 3	Contractor to adjust the vertical elevation of the fiber optic box to the finished topsoil elevation.	North Dakota Telephone Company	Fiber Optic Box	-	-		X	0	
NODATC-13	3	10677+59	to 10677+59	Crossing	PR_4th_Ave	0.0	LF	-12	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
RUSTDR-4	3, 4	10679+50	to 10681+20	LT	PR_4th_Ave	270.0	LF	-3	Level 1		Rugby Storm Drain	Pipe	-	-	X	0	-	
NLDIPO-1	3	10678+91	to 10678+91	Point	PR_4th_Ave	0.0	LF	0	Level 1		ND3 Light Poles	Light Pole	-	-	X	0	-	
NODATC-14	3	10679+15	to 10679+15	Crossing	PR_4th_Ave	0.0	LF	-13	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-15	3	10679+23	to 10679+23	Crossing	PR_4th_Ave	0.0	LF	-13	Level 1		Otter Tail Power Company	Overhead Power Line	-	-	X	0	-	
NLDIPO-2	4	10680+60	to 10680+60	Point	PR_4th_Ave	0.0	LF	0	Level 1		ND3 Light Poles	Light Pole	-	-	X	0	-	
OTTAPC-16	4	10680+90	to 10680+90	Crossing	PR_4th_Ave	0.0	LF	-8	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-17	4	10680+90	to 10680+90	Crossing	PR_4th_Ave	0.0	LF	-8	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-18	4	10680+90	to 10681+00	RT	PR_4th_Ave	10.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-19	4	10680+90	to 10681+00	LT	PR_4th_Ave	10.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	

**Utility Coordination Table Appendix A of SP XXX(XX)**  
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 Sorted By Station

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															Project in Phase	Conflict	Quantity of Potable Utility	
NODATC-15	4	10680+90	to 10680+90	Crossing	PR_4th_Ave	0.0	LF	-8	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
NODATC-16	4	10680+90	to 10681+00	LT	PR_4th_Ave	10.0	LF	-3	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
RUMUWA-2	4	10680+90	to 10680+90	Crossing	PR_4th_Ave	0.0	LF	-16	Level 4	Pipe is 6" cast iron pipe. Shut off for construction will be at 5th Ave SW, 2nd Ave SW, and Main Ave South.	Rugby Municipal Water	Pipe	-	-		X	0	-
OTTAPC-20	4	10681+00	to 10681+00	Crossing	PR_4th_Ave	0.0	LF	-9	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
OTTAPC-21	4	10681+00	to 10681+00	Crossing	PR_4th_Ave	0.0	LF	-9	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
OTTAPC-22	4	10681+00	to 10681+20	LT	PR_4th_Ave	20.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
OTTAPC-23	4	10681+00	to 10681+20	RT	PR_4th_Ave	20.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
NODATC-17	4	10681+00	to 10681+00	Crossing	PR_4th_Ave	0.0	LF	-9	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
NODATC-18	4	10681+00	to 10681+20	LT	PR_4th_Ave	20.0	LF	-3	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
RUSASE-2	4	10681+00	to 10681+00	Crossing	PR_4th_Ave	0.0	LF	-16	Level 4		Rugby Sanitary Sewer	Pipe	-	-		X	0	-
OTTAPC-24	4	10681+20	to 10681+20	Crossing	PR_4th_Ave	0.0	LF	-5	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
NODATC-19	4	10681+20	to 10681+20	Crossing	PR_4th_Ave	0.0	LF	-5	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
OTTAPC-25	4	10681+20	to 10681+32	LT	PR_4th_Ave	12.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
NODATC-20	4	10681+20	to 10681+32	LT	PR_4th_Ave	12.0	LF	-3	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
RUSTDR-3	4	10681+20	to 10681+20	Crossing	PR_4th_Ave	0.0	LF	-5	Level 4		Rugby Storm Drain	Pipe	-	-		X	0	-
RUSTDR-4	4,5	10681+20	to 10684+85	LT	PR_4th_Ave	365.0	LF	-3	Level 1		Rugby Storm Drain	Pipe	-	-	X		0	-
OTTAPC-26	4	10681+35	to 10681+35	Crossing	PR_4th_Ave	0.0	LF	-6	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
OTTAPC-27	4	10681+20	to 10681+32	RT	PR_4th_Ave	12.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
OTTAPC-28	4,5	10681+32	to 10682+51	RT	PR_4th_Ave	119.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
OTTAPC-29	4,5	10681+32	to 10682+51	LT	PR_4th_Ave	119.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
NODATC-21	4,5	10681+32	to 10682+51	LT	PR_4th_Ave	119.0	LF	0	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
NDLPO-3	4,5	10682+44	to 10682+44	Point	PR_4th_Ave	0.0	LF	0	Level 1		ND3 Light Poles	Light Pole	-	-	X		0	-
OTTAPC-30	5	10682+51	to 10683+17	RT	PR_4th_Ave	66.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
OTTAPC-31	5	10682+51	to 10683+04	LT	PR_4th_Ave	53.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
NODATC-22	5	10682+51	to 10683+04	LT	PR_4th_Ave	53.0	LF	0	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
OTTAPC-32	5	10682+73	to 10682+73	Crossing	PR_4th_Ave	0.0	LF	-19	Level 1		Otter Tail Power Company	Overhead Power Line	-	-	X		0	-
NODATC-23	5	10682+76	to 10682+76	Crossing	PR_4th_Ave	0.0	LF	-19	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
OTTAPC-33	5	10683+04	to 10684+33	LT	PR_4th_Ave	129.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
NODATC-24	5	10683+04	to 10684+33	LT	PR_4th_Ave	129.0	LF	0	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
OTTAPC-34	5	10683+17	to 10684+33	RT	PR_4th_Ave	116.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
OTTAPC-35	5	10684+33	to 10684+54	LT	PR_4th_Ave	21.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
NODATC-25	5	10684+33	to 10684+54	LT	PR_4th_Ave	21.0	LF	0	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
OTTAPC-36	5	10684+33	to 10684+54	RT	PR_4th_Ave	21.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
NDLPO-4	5	10684+25	to 10684+25	Point	PR_4th_Ave	0.0	LF	0	Level 1		ND3 Light Poles	Light Pole	-	-	X		0	-
OTTAPC-37	5	10684+54	to 10684+54	Crossing	PR_4th_Ave	0.0	LF	-8	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
OTTAPC-38	5	10684+54	to 10684+54	Crossing	PR_4th_Ave	0.0	LF	-8	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
OTTAPC-39	5	10684+54	to 10684+65	LT	PR_4th_Ave	11.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
OTTAPC-40	5	10684+54	to 10684+65	RT	PR_4th_Ave	11.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X		0	-
NODATC-26	5	10684+54	to 10684+54	Crossing	PR_4th_Ave	0.0	LF	-8	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
RUMUWA-3	5	10684+54	to 10684+54	Crossing	PR_4th_Ave	0.0	LF	-22	Level 4	Pipe is 6" cast iron pipe. Shut off for construction will be at 5th Ave SW and 3rd Ave SW.	Rugby Municipal Water	Pipe	-	-		X	0	-
NODATC-27	5	10684+54	to 10684+65	LT	PR_4th_Ave	11.0	LF	-3	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
RUSASE-3	5	10684+40	to 10684+40	Crossing	PR_4th_Ave	0.0	LF	-22	Level 4		Rugby Sanitary Sewer	Pipe	-	-		X	0	-

**Utility Coordination Table Appendix A of SP XXX(XX)**  
 3-003(03)202 PCN 21984  
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UE ID #	Utility Coordination Exhibits	Approx. Sta From	Approx. Sta To	LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Resolution Criteria / Comments <small>(The following information for the Contractor is based on early coordination with utilities. Information is approximate. Details for the schedule and construction phasing will need to be finalized between the Contractor and Utility Companies. Comments also outline other items that Contractor will need to account for in potential phasing for the project.)</small>	Utility Company	Type of Facility	After Notification - Time For Utility to Mobilize (D = Working Day, W = Week)	Estimated Time to Complete (D = Working Day, W = Week)	UTILITY ENCOUNTER TYPE (UE)			Per Hole D/R
															Protect in Place	Conflict	Quantity of Potable Utility	
OTTAPC-41	5	10684+65	to 10684+65	Crossing	PR_4th_Ave	0.0	LF	-12	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-42	5	10684+65	to 10684+65	Crossing	PR_4th_Ave	0.0	LF	-12	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-43	5	10684+65	to 10684+84	LT	PR_4th_Ave	19.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-44	5	10684+65	to 10684+84	RT	PR_4th_Ave	19.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
NODATC-28	5	10684+65	to 10684+65	Crossing	PR_4th_Ave	0.0	LF	-12	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
NODATC-29	5	10684+65	to 10684+84	LT	PR_4th_Ave	19.0	LF	-3	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
NODATC-30	5	10684+84	to 10684+84	Crossing	PR_4th_Ave	0.0	LF	-5	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-45	5	10684+84	to 10684+84	Crossing	PR_4th_Ave	0.0	LF	-5	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-46	5	10684+84	to 10684+84	Crossing	PR_4th_Ave	0.0	LF	-5	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
NODATC-31	5	10684+84	to 10684+97	LT	PR_4th_Ave	13.0	LF	-3	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-47	5	10684+84	to 10684+97	LT	PR_4th_Ave	13.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-48	5	10684+84	to 10684+97	RT	PR_4th_Ave	13.0	LF	-3	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
RUSTDR-7	5	10684+85	to 10684+85	Crossing	PR_4th_Ave	0.0	LF	-5	Level 4		Rugby Storm Drain	Pipe	-	-	X	0	-	
RUSTDR-8	5, 6	10684+85	to 10686+45	LT	PR_4th_Ave	160.0	LF	-2	Level 1		Rugby Storm Drain	Pipe	-	-	X	0	-	
NODATC-32	5, 6	10684+97	to 10686+83	LT	PR_4th_Ave	186.0	LF	-2	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-49	5, 6	10684+97	to 10686+83	LT	PR_4th_Ave	186.0	LF	-2	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-50	5-7	10684+97	to 10688+36	RT	PR_4th_Ave	339.0	LF	-6	Level 4		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
NDLIPD-5	6	10685+95	to 10685+95	Point	PR_4th_Ave	0.0	LF	0	Level 1		ND3 Light Poles	Light Pole	-	-	X	0	-	
RUSTDR-9	6	10686+45	to 10686+45	Crossing	PR_4th_Ave	0.0	LF	-5	Level 4		Rugby Storm Drain	Pipe	-	-	X	0	-	
RUSTDR-10	6, 7	10686+45	to 10688+05	LT	PR_4th_Ave	160.0	LF	-2	Level 1		Rugby Storm Drain	Pipe	-	-	X	0	-	
NODATC-33	6	10686+83	to 10687+17	LT	PR_4th_Ave	34.0	LF	0	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-51	6	10686+83	to 10687+17	LT	PR_4th_Ave	34.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-52	6, 7	10687+17	to 10688+36	LT	PR_4th_Ave	119.0	LF	-9	Level 4		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
NODATC-34	6, 7	10687+17	to 10688+36	LT	PR_4th_Ave	119.0	LF	-9	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	5	NODATC-34-1 PH to SPH	
NDLIPD-6	6	10687+64	to 10687+64	Point	PR_4th_Ave	0.0	LF	-6	Level 4		ND3 Light Poles	Light Pole	-	-	X	0	-	
RUSTDR-11	6, 7	10688+05	to 10688+05	Crossing	PR_4th_Ave	0.0	LF	-5	Level 4		Rugby Storm Drain	Pipe	-	-	X	0	-	
RUSTDR-12	6, 7	10688+05	to 10688+53	LT	PR_4th_Ave	48.0	LF	-2	Level 1		Rugby Storm Drain	Pipe	-	-	X	0	-	
OTTAPC-53	6, 7	10688+36	to 10688+68	LT	PR_4th_Ave	32.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
NODATC-35	7	10688+36	to 10688+68	LT	PR_4th_Ave	32.0	LF	0	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-54	6-7	10688+36	to 10688+70	RT	PR_4th_Ave	34.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
RUSTDR-13	7	10688+53	to 10688+59	Crossing	PR_4th_Ave	6.0	LF	-8	Level 4		Rugby Storm Drain	Pipe	-	-	X	0	-	
NODATC-36	7	10688+68	to 10689+73	LT	PR_4th_Ave	105.0	LF	-9	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-55	7	10688+68	to 10689+73	LT	PR_4th_Ave	105.0	LF	-9	Level 4		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-56	7-8	10688+70	to 10691+05	RT	PR_4th_Ave	235.0	LF	-6	Level 4		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
NDLIPD-7	7	10689+34	to 10689+34	Point	PR_4th_Ave	0.0	LF	-9	Level 4		ND3 Light Poles	Light Pole	-	-	X	0	-	
NODATC-37	7-9	10689+73	to 10698+00	LT	PR_4th_Ave	827.0	LF	0	Level 1	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
OTTAPC-57	7, 8	10689+73	to 10692+11	LT	PR_4th_Ave	238.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-58	8	10690+96	to 10690+96	Crossing	PR_4th_Ave	0.0	LF	-10	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
NDLIPD-8	8	10691+05	to 10691+05	Point	PR_4th_Ave	0.0	LF	-3	Level 4		ND3 Light Poles	Light Pole	-	-	X	0	-	
OTTAPC-59	8	10692+02	to 10692+02	Crossing	PR_4th_Ave	0.0	LF	-6	Level 2		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-60	8	10692+11	to 10692+11	Crossing	PR_4th_Ave	0.0	LF	-14	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
OTTAPC-61	8, 9	10692+11	to 10693+51	LT	PR_4th_Ave	140.0	LF	0	Level 1		Otter Tail Power Company	Buried Power Line	-	-	X	0	-	
NDLIPD-9	8	10692+73	to 10692+73	Point	PR_4th_Ave	0.0	LF	-2	Level 4		ND3 Light Poles	Light Pole	-	-	X	0	-	
NODATC-38	8, 9	10693+47	to 10693+47	Crossing	PR_4th_Ave	0.0	LF	-8	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X	0	-	
RUSASE-4	8-10	10693+59	to 10693+59	Crossing	PR_4th_Ave	0.0	LF	-8	Level 1		Rugby Sanitary Sewer	Pipe	-	-	X	0	-	
OTTAPC-62	9	10694+10	to 10694+10	Crossing	PR_4th_Ave	0.0	LF	-7	Level 1		Otter Tail Power Company	Overhead Power Line	-	-	X	0	-	
OTTAPC-63	9	10694+10	to 10694+10	Crossing	PR_4th_Ave	0.0	LF	-7	Level 1		Otter Tail Power Company	Overhead Power Line	-	-	X	0	-	

**Utility Coordination Table Appendix A of SP XXX(XX)**  
 3-003(030)202 PCN 21984  
 Sorted By Station

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															Project in Place	Conflict		
RUMUWA-4	9	10694+21	to 10694+21	Crossing	PR_4th_Ave	0.0	LF	-6	Level 4	Pipe is 6" cast iron pipe. Shut off for construction will be at 2nd St NW.	Rugby Municipal Water	Pipe	-	-		X	0	-
RUSASE-5	8, 9	10694+21	to 10694+21	Crossing	PR_4th_Ave	0.0	LF	-6	Level 1		Rugby Sanitary Sewer	Pipe	-	-	X		0	-
NODATC-39	11	1+93	to 1+93	Crossing	PR_1st_St	0.0	LF	-5	Level 2	The line is within a duct.	North Dakota Telephone Company	Fiber Optic Line	-	-	X		0	-
RUSASE-6	8, 9, 11	1+75	to 1+75	Crossing	PR_1st_St	0.0	LF	-4	Level 4		Rugby Sanitary Sewer	Pipe	-	-	X		0	-
RUMUWA-5	9, 11	1+75	to 1+75	Crossing	PR_1st_St	0.0	LF	-4	Level 4	Pipe is 6" cast iron pipe. Shut off for construction will be at Third Ave NW.	Rugby Municipal Water	Pipe	-	-	X		0	-
RUMUWA-6	9, 10	3+33	to 3+33	Crossing	PR_1st_St	0.0	LF	-7	Level 4	Pipe is 6" cast iron pipe. Shut off for construction will be at Fifth Ave NW.	Rugby Municipal Water	Burried Power Line	-	-	X		0	-
OTTAPC-64	9	3+37	to 3+37	Crossing	PR_1st_St	0.0	LF	-7	Level 2		Otter Tail Power Company	Burried Power Line	-	-	X		0	-
NODATC-40	11	5+56	to 5+56	Point	PR_1st_St	0.0	LF	1	Level 3	Contractor to adjust the vertical elevation of the fiber optic box to the finished topsoil elevation.	North Dakota Telephone Company	Fiber Optic Box	-	-		X	0	-
NODATC-41	11	5+62	to 5+62	Point	PR_1st_St	0.0	LF	1	Level 3	Contractor to adjust the vertical elevation of the fiber optic box to the finished topsoil elevation.	North Dakota Telephone Company	Fiber Optic Box	-	-		X	0	-

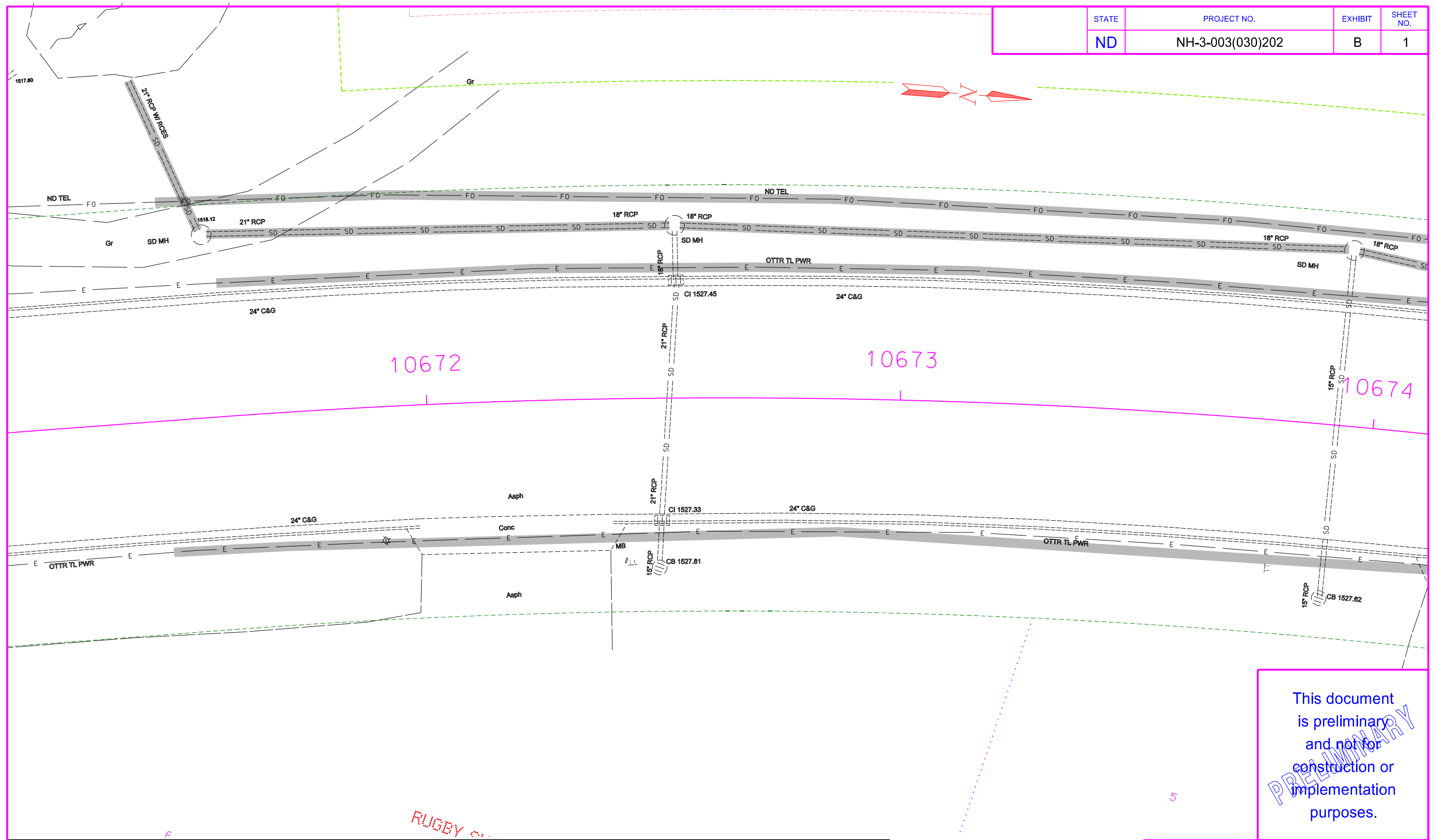
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															Protect in Place	Conflict		
<b>Totals:</b>															<b>99</b>	<b>23</b>	<b>5</b>	

Utility Company Information			
Utility Company	Contact Name	Phone Number	Email
North Dakota Telephone Company	TeeJay Kurts	701-230-1674	<a href="mailto:tkurts@ndtel.com">tkurts@ndtel.com</a>
Outer Tail Power Company	Kardell Blumhart	701-253-8550	<a href="mailto:kblumhart@otpc.com">kblumhart@otpc.com</a>
City of Rugby	Troy Munyer		<a href="mailto:tmunyer@cityofrugby.com">tmunyer@cityofrugby.com</a>

Utility Conflict Level Designations	
<small>(Disclaimer: the Following conflict levels were designated based on information provided by utility companies, surveyed located and limited pre-design potholing locations.)</small>	
<b>Level 1</b>	Utility not exposed by proposed improvements, no impacts.
<b>Level 2</b>	Utility exposed by proposed improvements but no permanent impacts, contractor to protect in place and perform careful excavation.
<b>Level 3</b>	Utility permanently impacted by proposed improvements and requires vertical adjustment only. Horizontal location of utility will not change.
<b>Level 4</b>	Utility permanently impacted by proposed improvements and requires complete relocation. Vertical and horizontal location of utility will change.

STATE	PROJECT NO.	EXHIBIT	SHEET NO.
ND	NH-3-003(030)202	B	1



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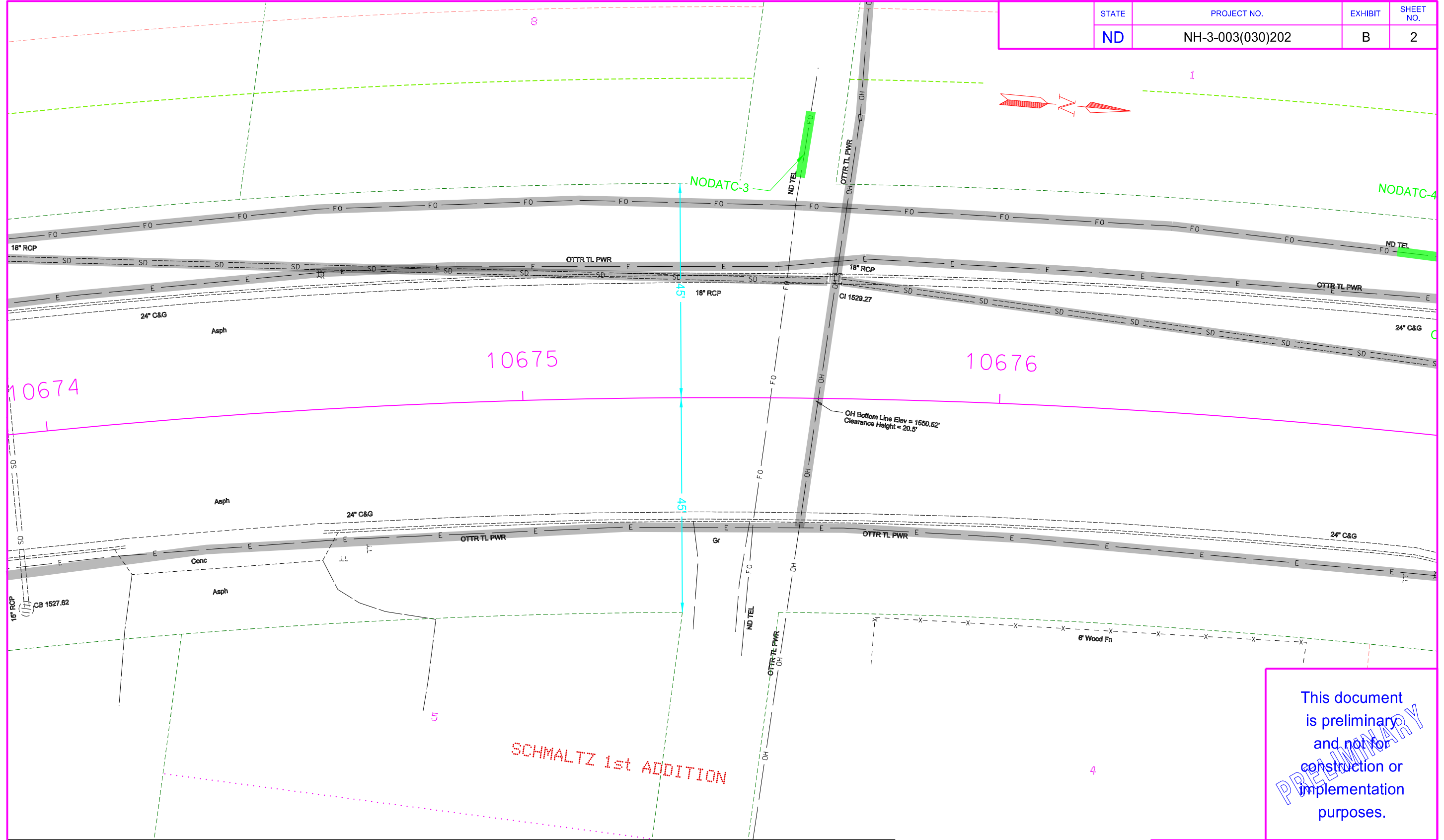
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- Proposed Pothole

RUGBY, ND - PIERCE COUNTY  
 UTILITY EXHIBITS  
 ND HIGHWAY 3  
 6TH ST SW N TO 1ST ST NW

STATE	PROJECT NO.	EXHIBIT	SHEET NO.
ND	NH-3-003(030)202	B	2



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**PRELIMINARY**

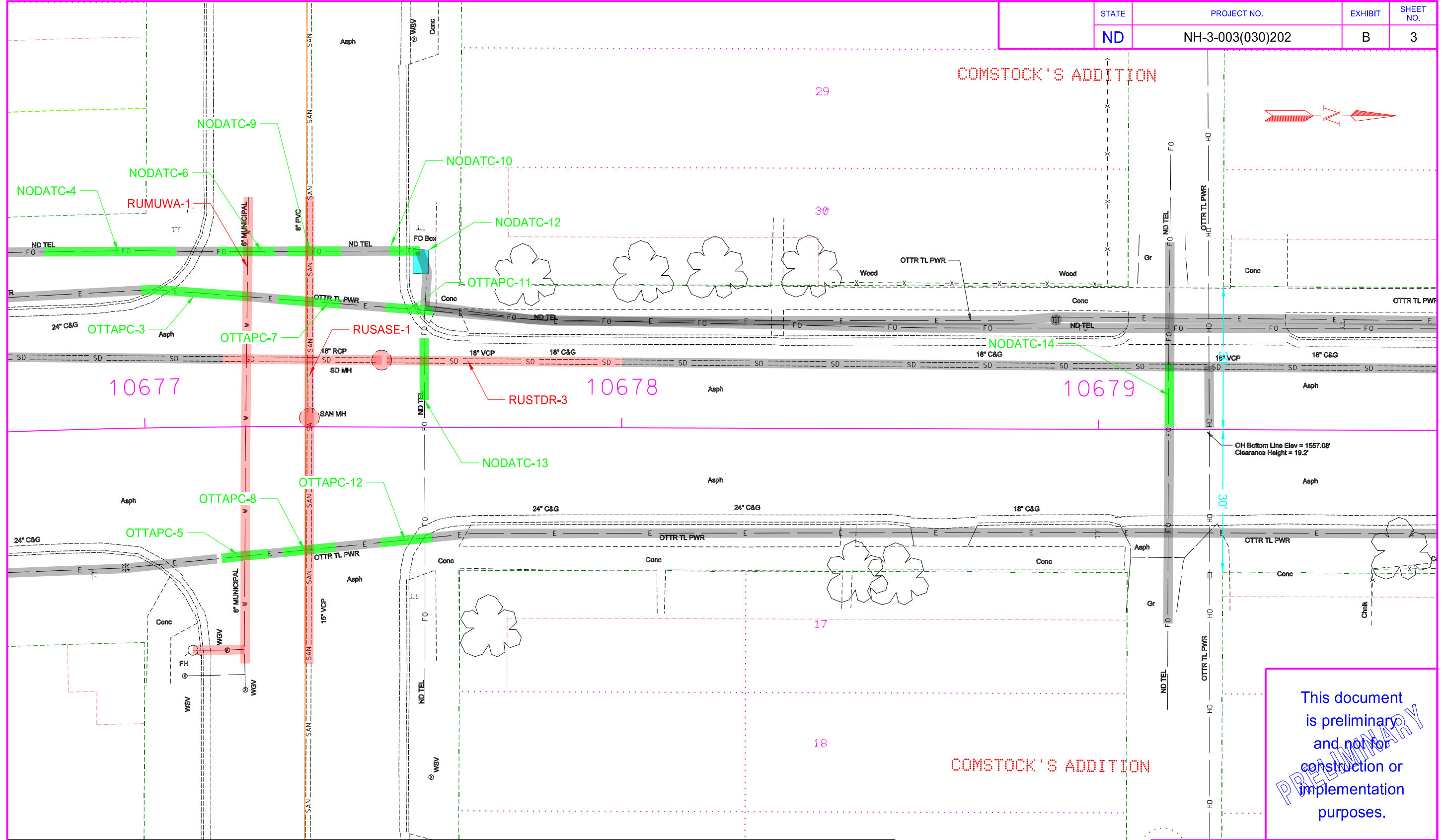
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	Proposed Pothole

RUGBY, ND - PIERCE COUNTY

UTILITY EXHIBITS

ND HIGHWAY 3

6TH ST SW N TO 1ST ST NW



PRELIMINARY

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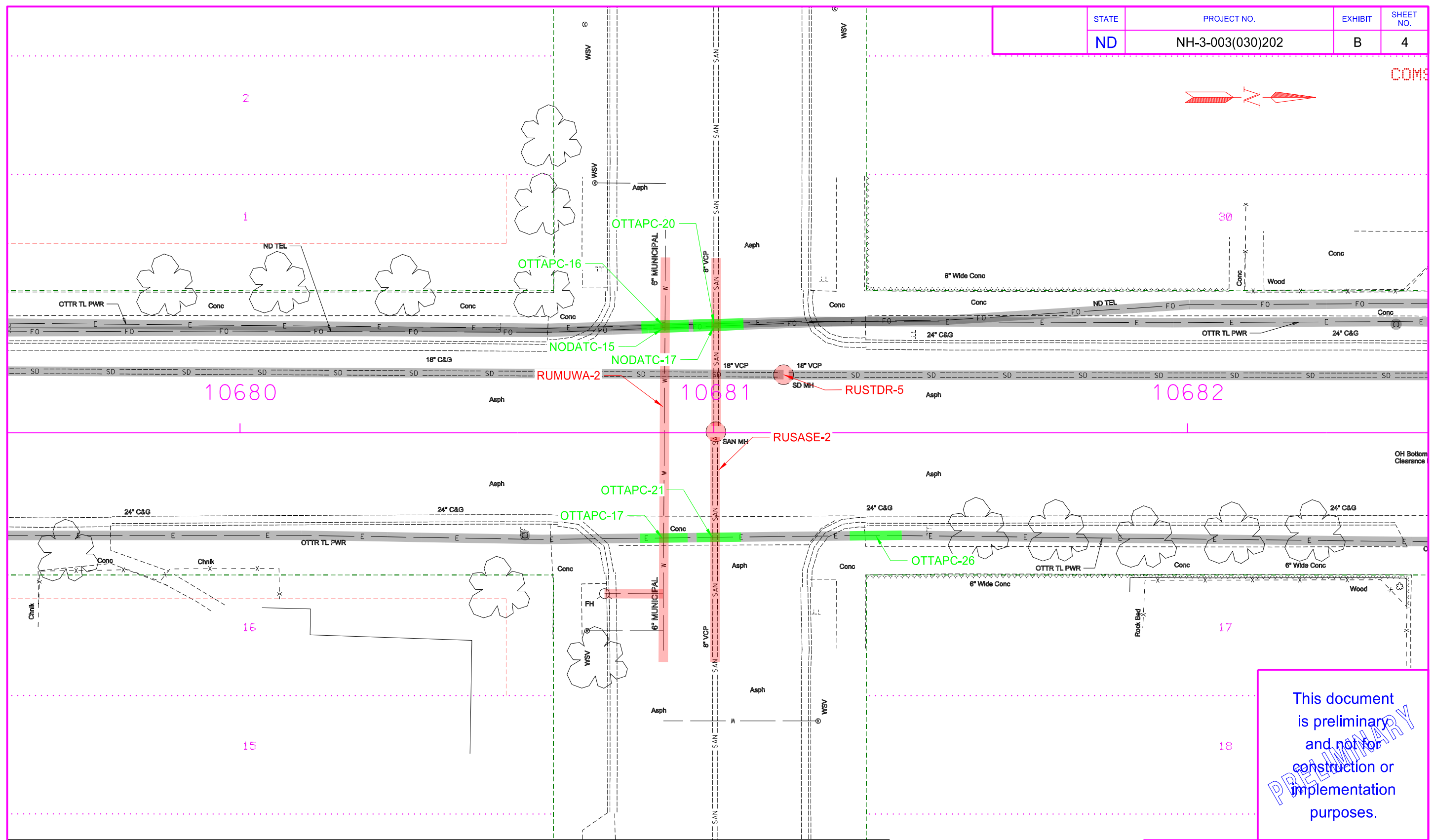
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RUGBY, ND PIERCE COUNTY  
 UTILITY EXHIBITS  
 ND HIGHWAY 3  
 6TH ST SW N TO 1ST ST NW

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PRELIMINARY

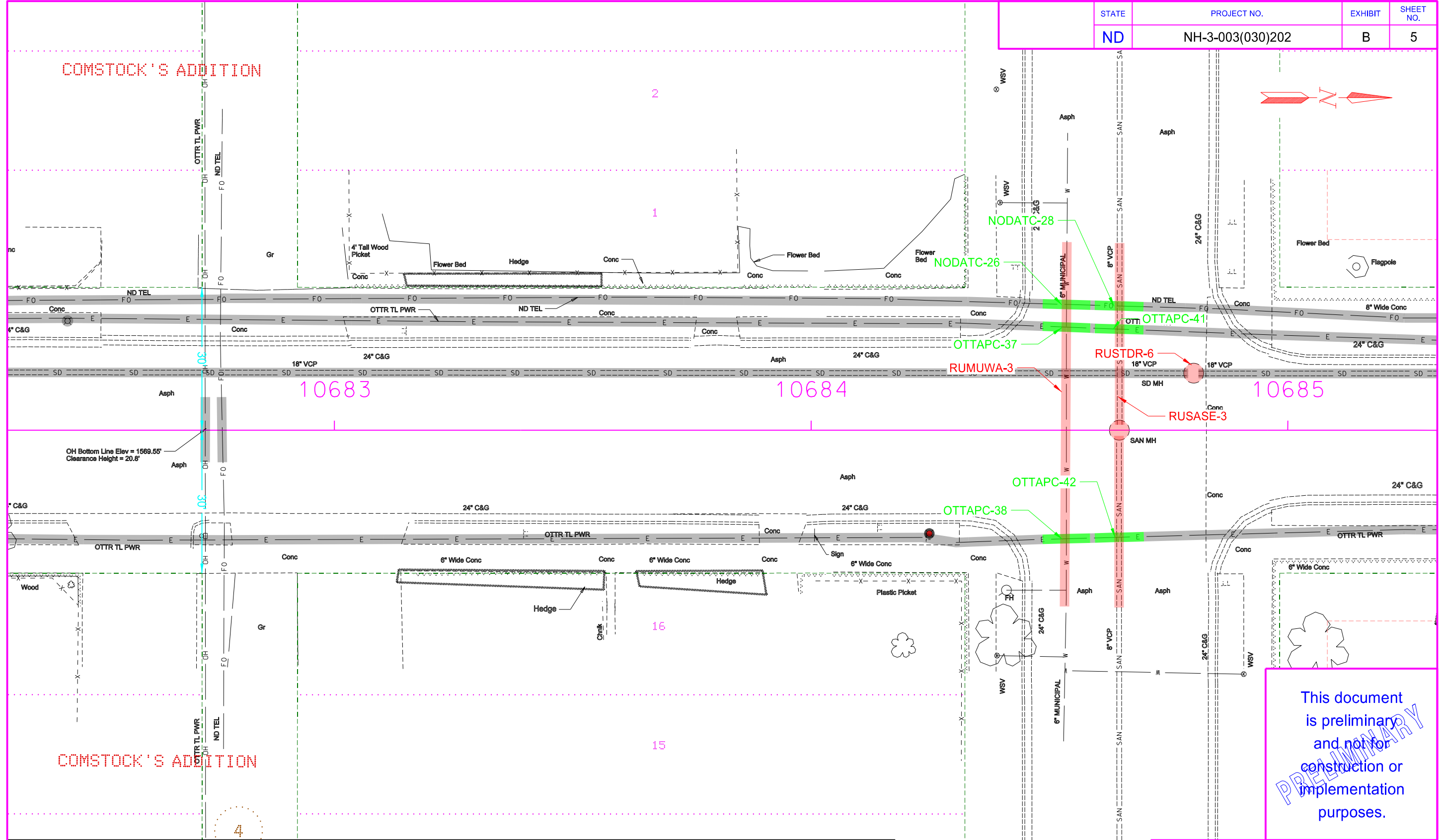
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- Level 4 : Utility permanently impacted by proposed improvements and requires complete relocation. Vertical and horizontal location of utility will change.
- Proposed Pothole

RUGBY, ND PIERCE COUNTY  
 UTILITY EXHIBITS  
 ND HIGHWAY 3  
 6TH ST SW N TO 1ST ST NW



This document is preliminary and not for construction or implementation purposes.

**UTILITY CONFLICT LEVEL DESIGNATIONS**

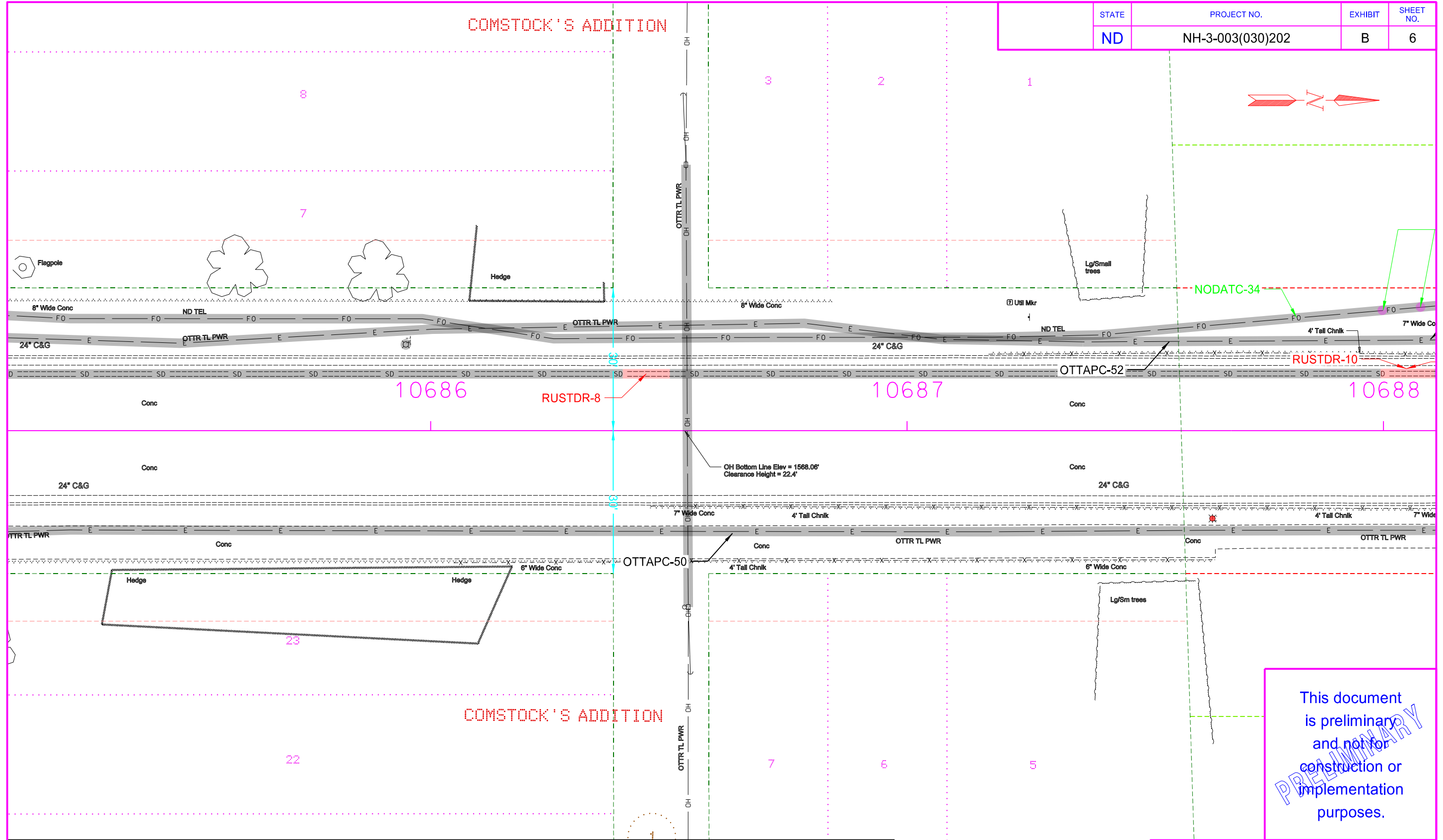
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RUGBY, ND PIERCE COUNTY  
 UTILITY EXHIBITS  
 ND HIGHWAY 3  
 6TH ST SW N TO 1ST ST NW

COMSTOCK'S ADDITION

STATE	PROJECT NO.	EXHIBIT	SHEET NO.
ND	NH-3-003(030)202	B	6



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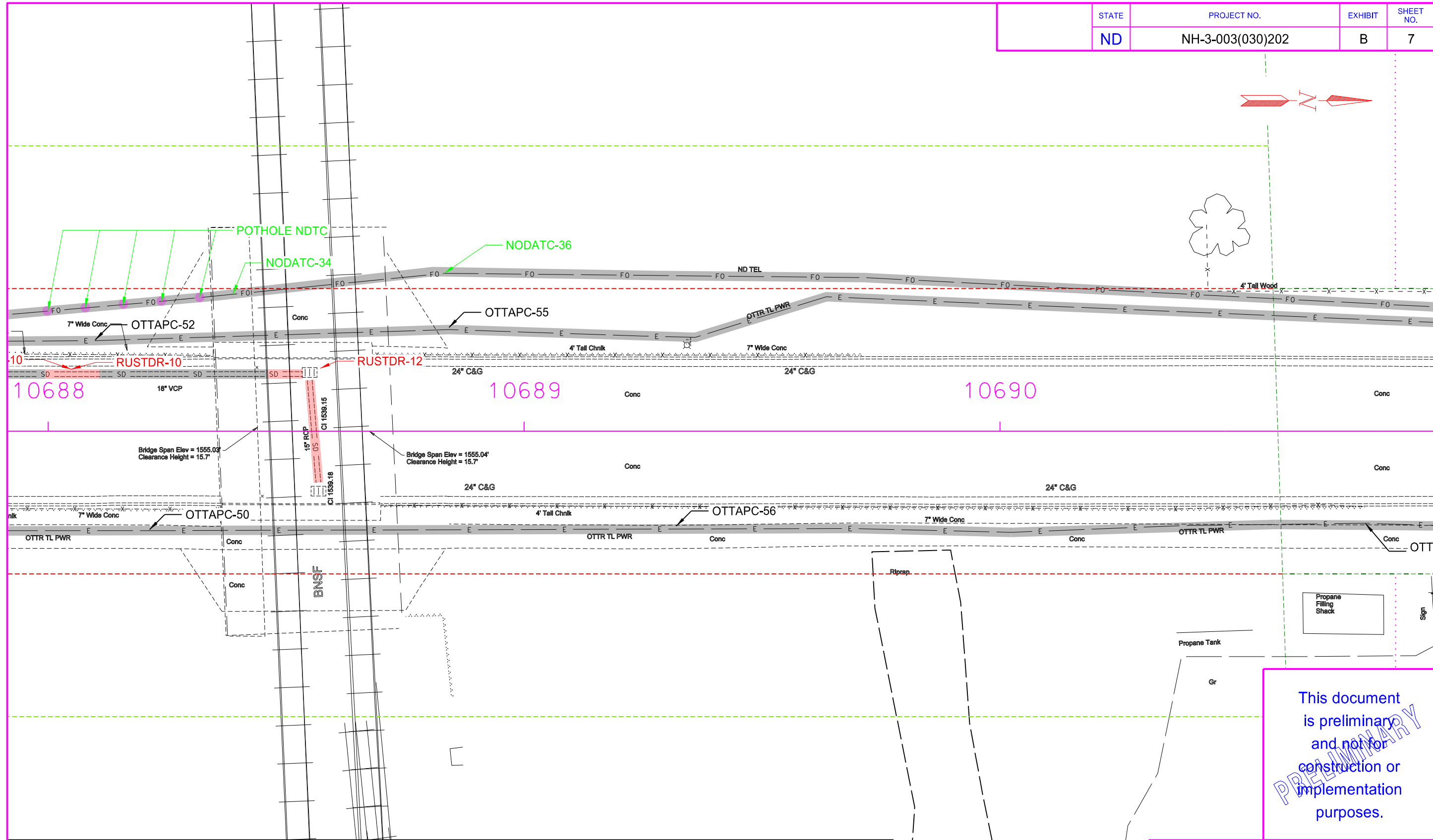
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RUGBY, ND - PIERCE COUNTY  
 UTILITY EXHIBITS  
 ND HIGHWAY 3  
 6TH ST SW N TO 1ST ST NW

STATE	PROJECT NO.	EXHIBIT	SHEET NO.
ND	NH-3-003(030)202	B	7

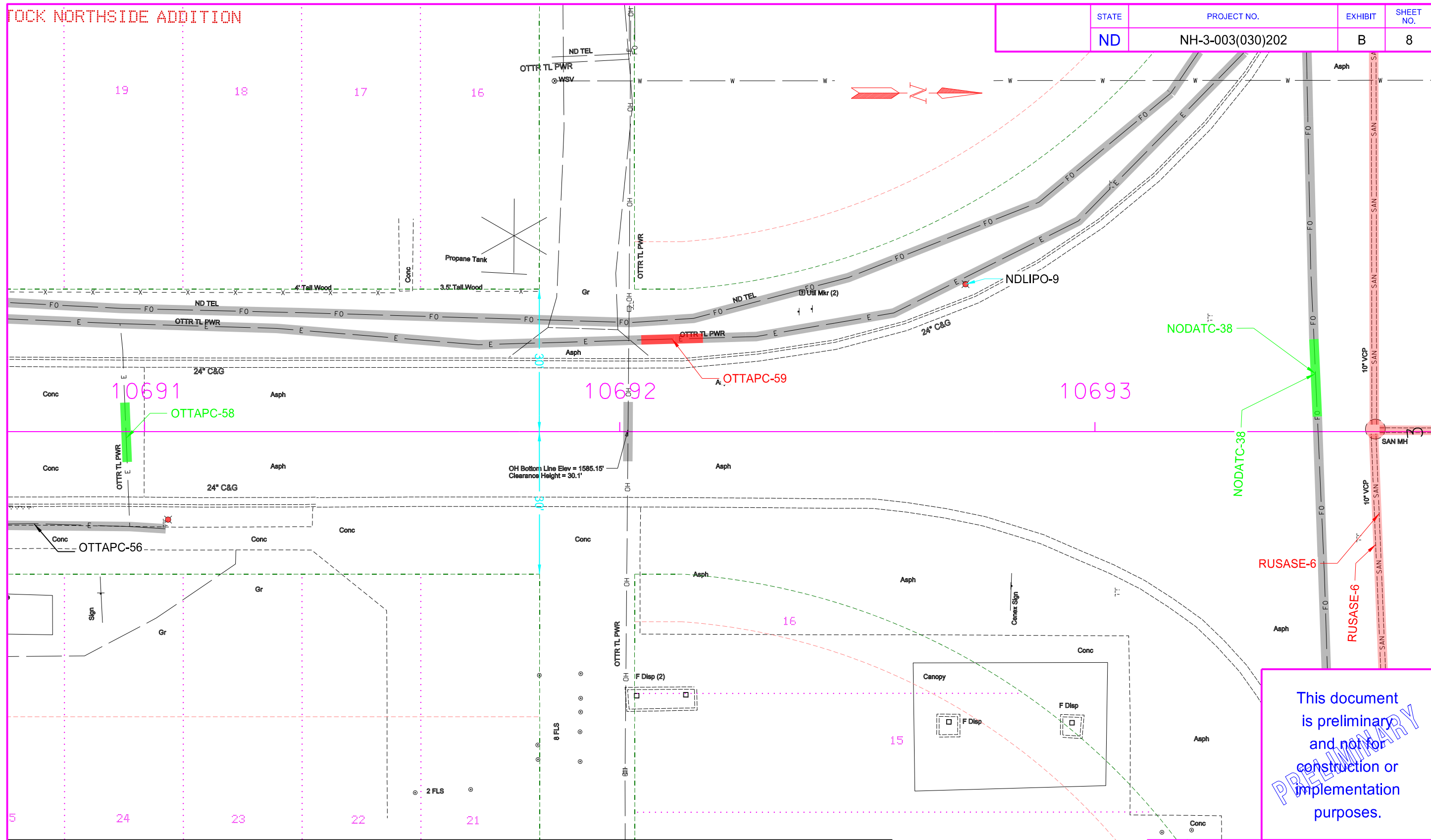


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RUGBY, ND - PIERCE COUNTY  
UTILITY EXHIBITS  
ND HIGHWAY 3  
6TH ST SW N TO 1ST ST NW



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PRELIMINARY

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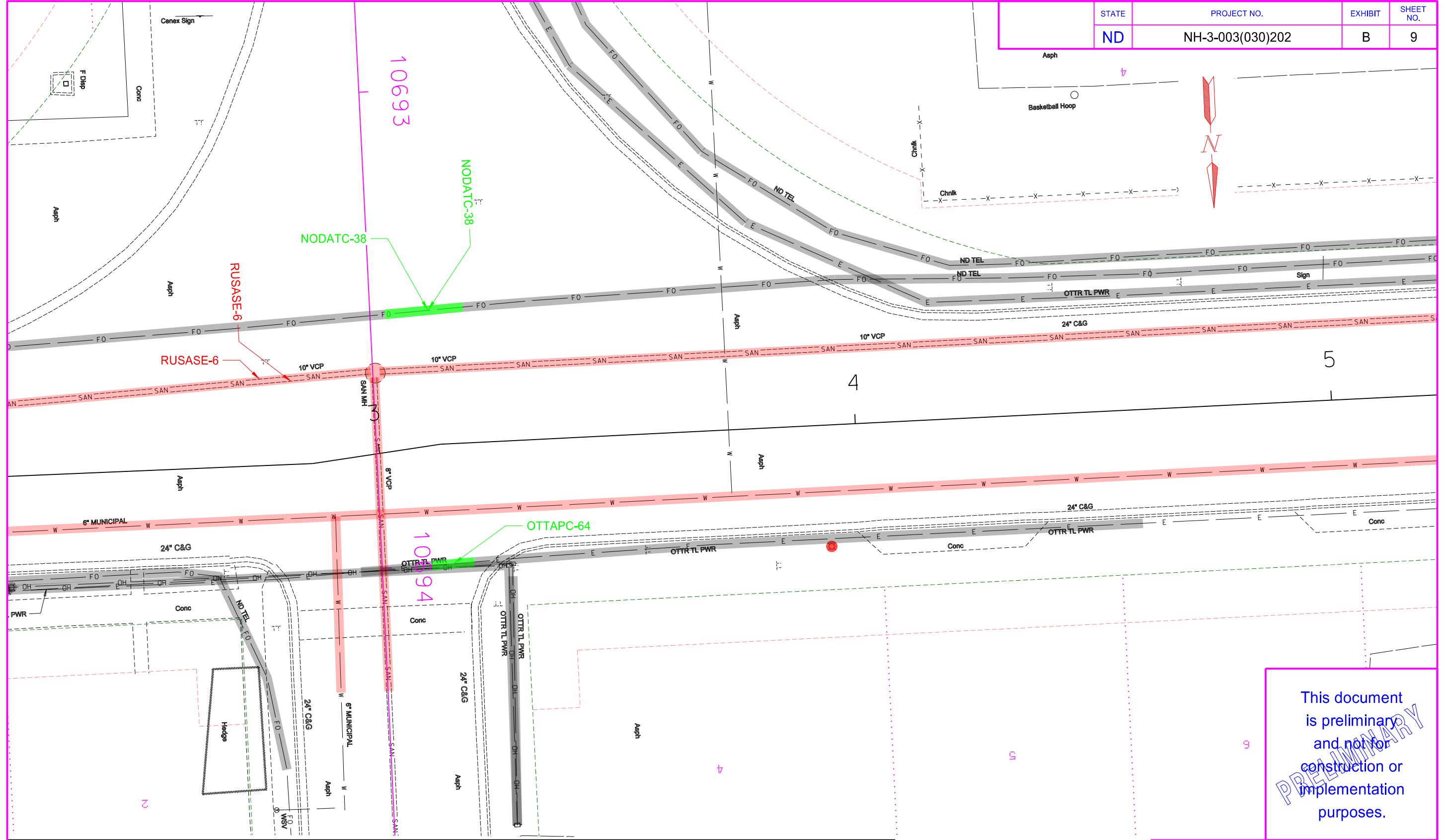
RUGBY, ND - PIERCE COUNTY

UTILITY EXHIBITS

ND HIGHWAY 3

6TH ST SW N TO 1ST ST NW

STATE	PROJECT NO.	EXHIBIT	SHEET NO.
ND	NH-3-003(030)202	B	9



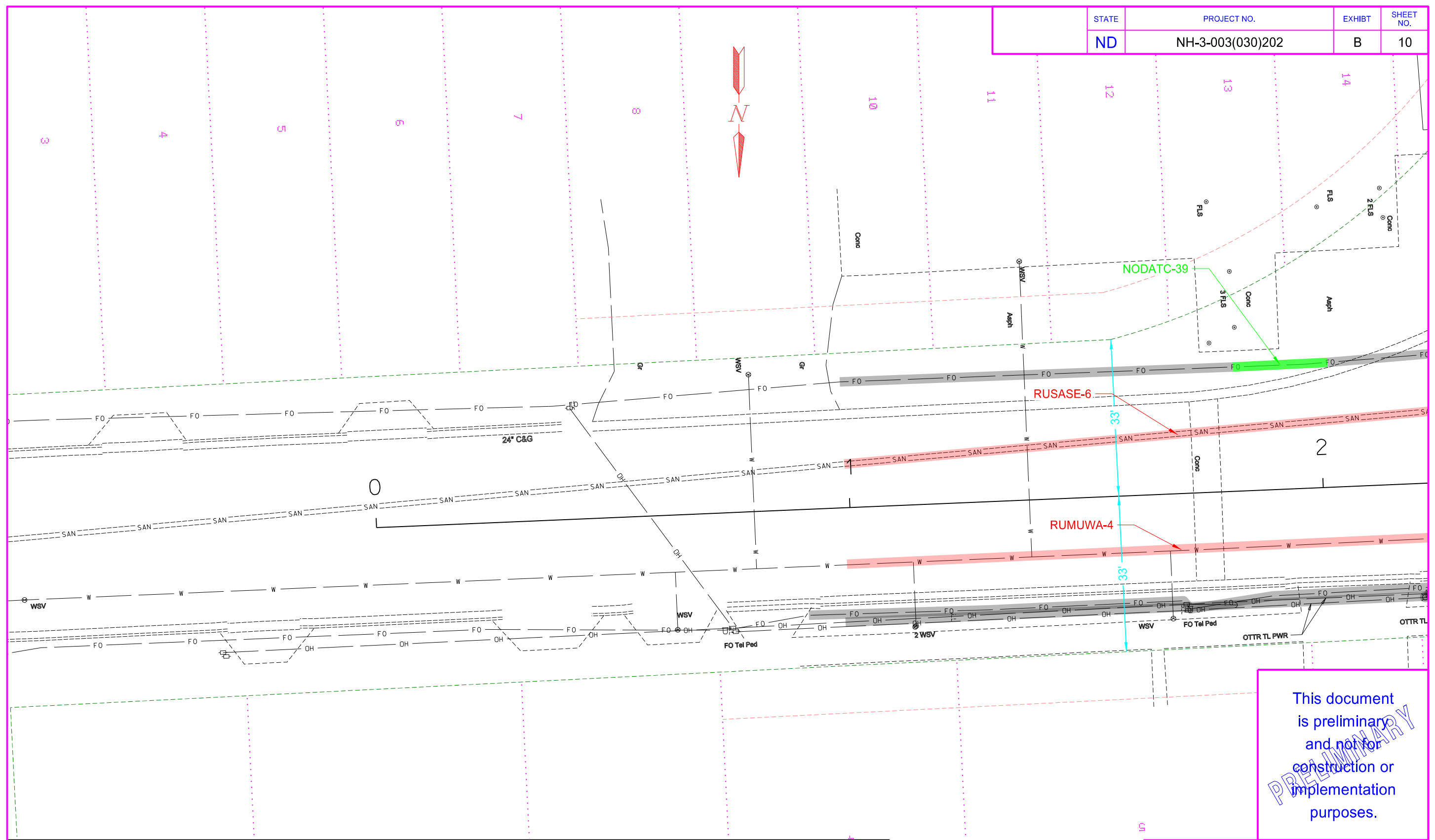
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 UTILITY EXHIBITS  
 ND HIGHWAY 3  
 6TH ST SW N TO 1ST ST NW



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PRELIMINARY

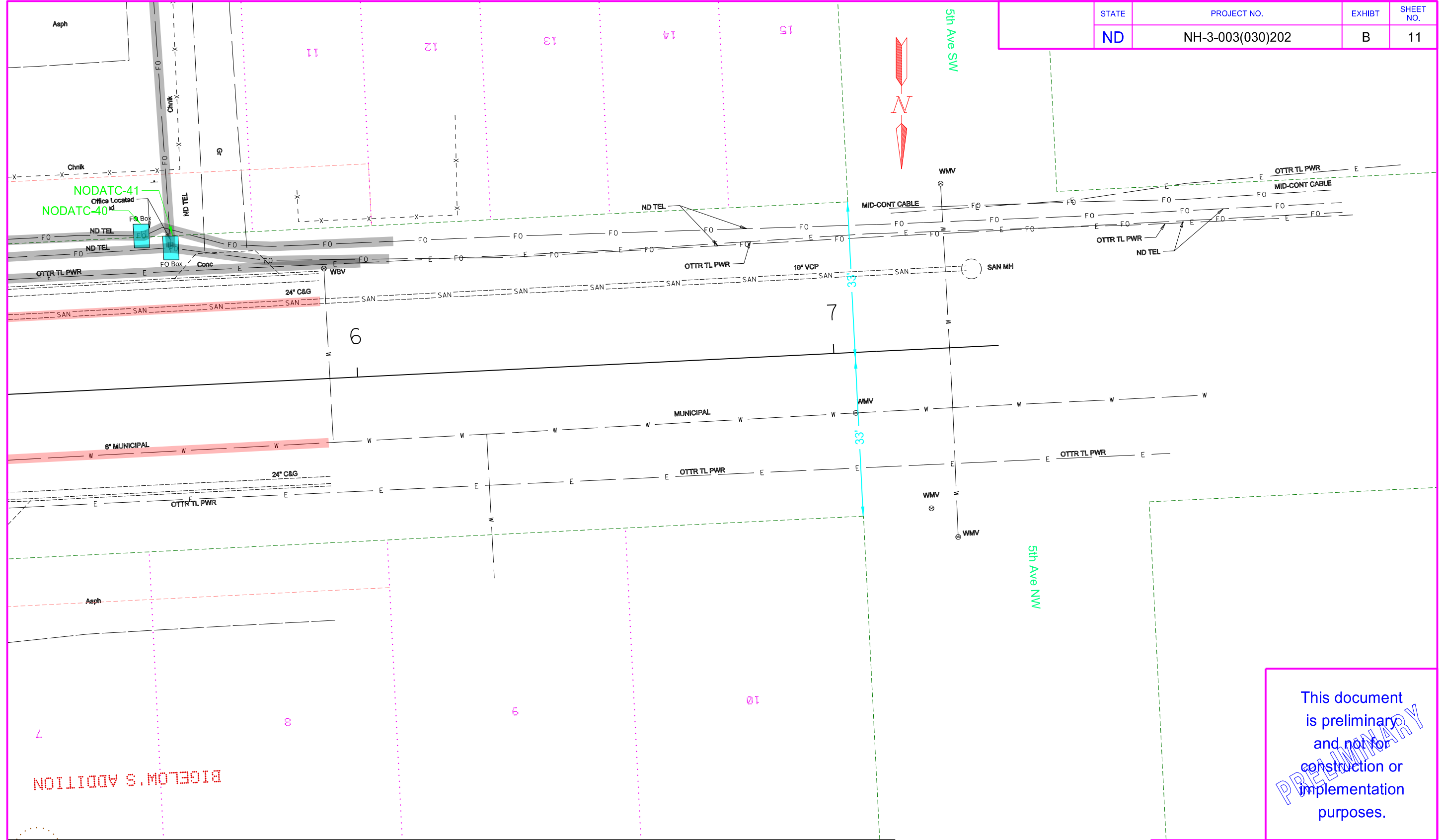
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RUGBY, ND PIERCE COUNTY  
UTILITY EXHIBITS  
ND HIGHWAY 3  
6TH ST SW N TO 1ST ST NW

STATE	PROJECT NO.	EXHIBIT	SHEET NO.
ND	NH-3-003(030)202	B	11



BIGELOW S ADDITION

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**UTILITY CONFLICT LEVEL DESIGNATIONS**

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RUGBY, ND - PIERCE COUNTY  
 UTILITY EXHIBITS  
 ND HIGHWAY 3  
 6TH ST SW N TO 1ST ST NW

# **SP 285(20) Railroad Agreement**

SP 285(20) Railroad Agreement has not been received as of September 19, 2022. When the Railroad Agreement is received it will be added by Addendum to the proposal.

If the Railroad Agreement has not been received by October 5, 2022. The project will be removed from the October 14, 2022 bid opening and placed in a future bid opening.

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION**

**COMMERCIAL GRADE HOT MIX ASPHALT**

**PROJECT 3-003(030)202 – PCN 21984**

**DESCRIPTION**

This work consists of supplying a Commercial Grade Hot Mix Asphalt that meets the requirements of Section 430, "Hot Mix Asphalt (HMA)", with the following revisions.

**MATERIALS**

Add the following to the end of Section 430.03 "Materials".

**F. Commercial Grade Hot Mix Asphalt.**

Provide commercial grade asphalt that meets the requirements of any of the FAA designations in Section 430.03 C, "Superpave Mix Properties".

The requirements of the following sections will not be applied to commercial grade asphalt:

- Section 430.04 B, "Engineer's Quality Assurance Plan";
- Section 430.04 C.2, "Determination of Specific Gravity"; and
- Section 430.04 E, "QC Testing".

Section 430.04 D "Mix Design" is replaced with the following requirements:

Submit a mix design that was previously approved under another Department contract. Include the project number and PCN of the previous project.

If using a stationary plant, use a mix design previously approved by the Department within the last year. Include the date that the mix design was approved.

If a previously approved mix design is not available, submit a new mix design to the Engineer at least 10 calendar days before placement of material. The Engineer will request materials to use in mix design verification before approving the mix design.

**CONSTRUCTION REQUIREMENTS**

**A. Contractor Personnel.**

Replace Section 430.04 A "Contractor Quality Control (QC) with the following:

Provide personnel meeting the requirements of NDDOT Technical Certification Program for the following tests:

- ND T 2 – Sampling of Aggregates; and
- NDDOT 5 Sampling and Splitting Field Verification of Hot Mix Asphalt (HMA) Samples.

**B. Engineer's Acceptance Testing:**

Replace Section 430.04 M "Acceptance" with the following:

The Engineer will perform acceptance tests at the frequency shown in Table 1. At times directed by the Engineer, obtain aggregate samples from the cold feed belt according to ND T 1.

<b>Table 1</b>	
<b>Testing Frequencies</b>	
<b>Test/Assessment</b>	<b>Minimum Testing Requirements</b>
ND T 11 Materials Finer than No. 200 Sieve	1 per production day.
ND T 27 Sieve Analysis of Fine and Coarse Aggregate	1 per production day
ND T 304 Fine Aggregate Angularity	1 per production day
ND T 166 Bulk Specific Gravity of Compacted Asphalt Mixtures Using Saturated Surface-Dry Specimens	1 per project
ND T 209 Theoretical Maximum Specific Gravity and Density of Hot Mix Asphalt	1 per project

The Engineer will determine the percentage of air voids when determining the maximum theoretical density. Provide mix with between 2 and 6 percent air voids, when calculated on the Maximum Density Worksheet (SFN 50289).

**METHOD OF MEASUREMENT AND BASIS OF PAYMENT**

<b>Pay Item</b>	<b>Pay Unit</b>
Commercial Grade Asphalt	Ton

Include the cost of aggregate, asphalt cement, prime coat, and tack coat in the contract unit price for "Commercial Grade Asphalt."

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

## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

### SPECIAL PROVISION

#### TEMPORARY PEDESTRIAN FACILITIES

#### PROJECT 3-003(030)202 – PCN 21984

##### DESCRIPTION

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

##### MATERIALS

###### A. Pedestrian Channelization.

Provide pedestrian channelization that meets the following requirements:

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

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

Compacted aggregate is not an acceptable surface.

##### CONSTRUCTION REQUIREMENTS

###### A. General.

Provide surfaces for temporary pedestrian facilities with the following characteristics:

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

###### B. Pedestrian Walkway.

###### 1. General

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

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

**2. Pedestrian Channelization.**

Install pedestrian channelization as follows:

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

**3. Temporary Pedestrian Surfacing.**

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

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

**C. Temporary Curb Ramp.**

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

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

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

Maintain water flow in the gutter system.

**METHOD OF MEASUREMENT**

**A. Pedestrian Walkway.**

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

**B. Temporary Curb Ramp.**

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

**BASIS OF PAYMENT**

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

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

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

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

## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

### SPECIAL PROVISION

### SOLDIER PILE SHORING

Project NH-3-003(030)202 – PCN 21984

#### DESCRIPTION

This work consists of furnishing equipment, materials, and labor to install soldier pile and lagging shoring as shown in the Plans.

#### MATERIALS

##### A. General.

Provide materials meeting the requirements in the following sections.

##### B. Steel Soldier Piles.

Furnish H-pile sections conforming to Section 840.01.

##### C. Steel Struts.

Furnish struts conforming to ASTM A992, Grade 50.

##### D. Lagging and Steel Plate.

Furnish lagging and steel plate conforming to ASTM A36.

##### E. Aggregate.

Furnish Class 41 aggregate conforming to Section 816.01.

##### F. Controlled Density Backfill.

Furnish Controlled Density Backfill that will have a compressive strength in the range of 75 psi to 125 psi at 28 days. If the mix design below is used, no further testing will be required. The mix designs yield approximately one cubic yard of material.

Item	Reference	Proportion
Cement	804	100 lbs
Fly Ash	820	300 lbs
Fine Aggregate	802	2600 lbs
Water	812	70 gallons

#### CONSTRUCTION REQUIREMENTS

##### A. Tolerances.

Install soldier piles within 3 inches in each direction of the plan location and elevation. Install soldier piles so that the flanges are oriented within 2 degrees of the orientation of the wall and are at a vertical inclination within 2 percent of plumb.

**B. Soldier Pile Installation**

Select the installation procedures and equipment necessary to install the soldier piles considering the anticipated ground conditions and site constraints. Low-headroom equipment is required when working below the BNSF bridge.

Soldier piles may be installed by one of the following methods:

- Pushed into ground;
- Vibrated into ground;
- Placed in a drilled hole; or
- Other methods approved by the Engineer.

**C. Drilled Installation.**

If installing soldier piles in drilled holes, use a minimum drill hole diameter of 24 inches.

Utilize temporary casing, slurry, or other methods approved by the Engineer to stabilize the excavation, control groundwater during installation, and prevent movement of adjacent ground that impacts existing facilities.

Ensure that the drill hole is open along its full length and that there is less than 2 inches of loose material at the base of the hole before placing the steel section in the hole.

After the placing the steel section in the drill hole and within 4 hours of drilling to the final depth, fill the drill hole with controlled density backfill to the ground surface. Controlled density backfill may be placed using free-fall methods if less than 2 inches of water or slurry is present at the base of the excavation. If the water or slurry exceeds 2 inches, place controlled density backfill using a tremie pipe extending to the base of the drill hole.

**D. Soldier Pile Splices.**

Splice soldier pile steel sections in accordance with Standard Drawing D622-1.

**E. Lagging Installation.**

Install lagging from the top down as excavation occurs. Push lagging downward as excavation occurs such that the retained soil is always supported.

Fill any voids that develop behind the lagging with Class 41 aggregate.

**F. Shoring Removal.**

Remove lagging as the excavation is backfilled such that the retained soil is always supported.

After backfilling to the top of the shoring, remove soldier piles from the ground and backfill the remaining holes with controlled density backfill.

**METHOD OF MEASUREMENT**

Soldier pile shoring that is installed and accepted will be measured along the length of top of the wall, through the centerline of each soldier pile.

**BASIS OF PAYMENT**

The unit price of soldier pile shoring is for full compensation of the work, including, but not limited to, drilling and installing soldier piles; completing soldier pile splices; installing struts;

placing lagging; hauling and disposing of drill cuttings; removing lagging and soldier piles; and for furnishing all tools, labor, equipment, materials and incidentals necessary to complete the work.

The Department will pay for accepted quantities at the contract unit price as follows:

<u>Spec - Code</u>	<u>Pay Item</u>	<u>Pay Unit</u>
930-4130	Soldier Pile Shoring	Linear Feet
930-4135	Soldier Pile Shoring - Mod	Linear Feet

The Soldier Pile Shoring – Mod pay item will be used to pay for shoring installed directly beneath the existing BNSF bridge.

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

## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

### SPECIAL PROVISION

#### TEMPORARY GROUND ANCHOR

Project NH-3-003(030)202 – PCN 21984

#### DESCRIPTION

This work consists of furnishing equipment, materials, and labor to install and test temporary ground anchors as specified.

#### MATERIALS

##### A. General.

Provide materials meeting the requirements in the following sections.

##### B. Solid Thread Bar Anchor Tendon.

Furnish solid thread bars conforming to AASHTO M31, Grade 75.

##### C. Hollow-Bar Anchor Tendon.

Hollow-bar anchors having an ultimate tensile capacity greater than or equal to that of the specified solid thread bar may be substituted for solid thread bar. Furnish hollow-bar anchors that consist of hollow, threaded bar with a sacrificial drill bit. Furnish bars with a continuous thread pattern that meets the pullout performance requirements of ASTM A 615.

##### D. Centralizers and Spacers.

For solid thread bar, furnish centralizers and spacers made from plastic or steel.

##### E. Cement Grout.

###### 1. General.

Item	Reference
Cement	AASHTO M 85, Type V
Water	812

###### 2. Fine Aggregate.

If using fine aggregate in the grout mix, provide natural sand that meets the following requirements.

Sieve Size	Percent Passing
No. 16	100
No. 200	5

**F. Bar Couplers.**

Furnish bar couplers that develop the full ultimate tensile strength of the bar as certified by the manufacturer.

**G. Bearing Plates and Hardware.**

Furnish bearing plates conforming to AASHTO M270, Grade 36.

Furnish nuts and washers conforming to AASHTO M291, Grade B. Provide a beveled washer or spherical seat to provide uniform bearing.

**H. Concrete.**

Furnish Class AE5 concrete conforming to Section 802.

**CONSTRUCTION REQUIREMENTS****A. Tolerances.**

Install ground anchors within 6 inches horizontally and 12 inches vertically in each direction of the plan location and at an inclination within 3 degrees of the plan inclination.

Relocate any ground anchors that encounter an obstruction as directed by the Engineer.

**B. Drilling**

Prior to beginning drilling, use a core drill to create a hole through the concrete retaining wall at the anchor location. Use a maximum core hole diameter of 8 inches.

Select drilling equipment and methods suitable for the ground conditions shown in the geotechnical report. Select a drill hole diameter to develop the pullout resistance indicated in the Plans. Use a minimum drill hole diameter of 4 inches.

Use cased drilling methods to support the drill holes if caving occurs. Alternatively, use hollow-bar anchors that are drilled with continuous grout injection.

**C. Solid Anchor Bar Installation.**

Remove cuttings from the drill hole prior to insertion of solid anchor bar. Insert anchor bars into the drill hole to the required depth without damaging the anchor bar or drill hole. If the thread bar cannot be installed to the required depth, remove the anchor bar, and clean out the drill hole to allow unobstructed installation of the anchor bar. Do not push or force the thread bar into the drill hole.

**D. Grout Mix.**

Grout the anchor bars with neat cement grout or sand/cement grout with a minimum 28-day compressive strength of 3,000 PSI per ASTM C 942. Provide a mix that is a pumpable and stable fluid.

Complete at least one test in accordance with ASTM C 942 for every 50 cubic yards of grout placed.

## **E. Grouting.**

### **1. Solid Thread Bar Anchors**

Place grout in uncased drill holes after installation of the anchor bar. Do not leave any portion of the drill hole open for more than 1 hour prior to grouting without approval of the Engineer. Cased holes may be grouted before or after installation of the anchor bar.

Inject grout at the lowest point of each drill hole through a tremie pipe, hollow-stem auger, or drill rods. Fill the drill hole with grout in a single continuous operation. Keep the conduit delivering the grout below the surface of the grout as the conduit is withdrawn from the drill hole. Maintain a sufficient level of grout in the drill hole to prevent caving and infiltration of groundwater.

Record the quantity of grout and grouting pressures for each hole.

### **2. Hollow-Bar Anchors**

Grout hollow-bar anchors by continuously injecting grout through the center of the drill rod during drilling. Ensure grout encapsulation by maintaining grout return at the top of the hole during drilling. If grout return is lost and cannot be reestablished, perform secondary grouting after initial grout has set with a tremie tube down the annulus of the hole. Complete additional secondary grouting as needed to provide full encapsulation.

Record the quantity of grout and grouting pressures for each hole.

## **F. Anchor Completion.**

After grout has cured for at least 72 hours, install bearing plates and associated hardware. Use wrench to hand-tighten the nut until the bearing plate is snug and uniformly seated against the existing concrete retaining wall.

## **G. Ground Anchor Verification Testing.**

### **1. General**

Perform verification testing of two sacrificial ground anchors prior to installation of production anchors. Install vertical sacrificial anchors in the ND-3 roadway for verification testing. Install one anchor on each side of the railroad bridge and within the NDDOT's easement from the BNSF. Do not complete testing of any anchor until the grout has cured for at least 72 hours or attained at least the specified 3-day compressive strength.

Provide test results to the Engineer for review and approval prior to beginning installation of production ground anchors.

### **2. Anchor Length**

Install the sacrificial anchors with a minimum unbonded length of 3 feet. Use smooth PVC pipe around the anchor bar to provide the unbonded length. Seal the ends of the pipe with tape to prevent intrusion of grout. Isolate the pipe from the reaction frame during testing.

Provide a bonded length that is equal to the bond length shown in the Plans.

### 3. Testing Equipment

Provide testing equipment consisting of two dial gauges, dial gauge supports, jack and pressure gauge, and a reaction frame. Provide a pressure gauge that is graduated in 700 kPa (100 psi) increments or less. Provide dial gauges capable of measuring to 0.025 mm (0.001 in.).

Submit to the Engineer calibration records for each jack and pressure gauge that will be used on the project. Provide calibration reports showing the date tested, device identification number, and test results. Use a qualified independent testing laboratory. Provide a calibration report dated within one year of the date of submittal to the Engineer.

### 4. Test Procedure

Install sacrificial ground anchors for verification testing using the same procedures that will be used to install the production ground anchors. Complete additional verification testing at no cost to the Department if drilling procedures change as determined by the Engineer during installation of the production ground anchors.

Select a bar size for the sacrificial anchors such that the allowable bar load is not exceeded during testing. The maximum bar load is defined as 90 percent of the steel yield strength for Grade 75 bars or as specified by the bar manufacturer.

Determine the Design Test Load (DTL) by multiplying the bond length by the design load transfer indicated in the Plans. Incrementally load the anchor in accordance with the schedule below. Record the anchor movement at each load increment.

Load	Hold Time
Alignment Load	(AL) 1 minute
0.25 DTL	10 minutes
0.50 DTL	10 minutes
0.75 DTL	10 minutes
1.00 DTL	10 minutes
1.25 DTL	10 minutes
1.50 DTL (Creep Test)	60 minutes
1.75 DTL	10 minutes
2.00 DTL	10 minutes
Alignment Load	1 minute (record permanent set)

The Alignment Load (AL) is the minimum load required to align the testing apparatus and should not exceed 0.05 x DTL. Zero the dial gauges after the AL has been applied.

Hold each load increment for at least 10 minutes. Measure and record ground anchor movements during the creep portion of the test at hold times of 1, 2, 3, 5, 6, 10, 20, 30, 50, and 60 minutes. Maintain the load during the creep test within 2 percent of the intended load.

At the end of testing, remove the bar from the ground and fill the remaining hole with grout.

## **5. Acceptance Criteria.**

A sacrificial ground anchor is acceptable when all the following criteria are met:

- The total creep movement is less than 0.08 in. between the 6- and 60-minute readings and the creep rate is linear or decreasing throughout the creep test load hold period when plotted on a semi-log scale.
- The total measured movement at the maximum test load exceeds 80 percent of the theoretical elastic elongation of the unbonded length.
- Pullout does not occur at the maximum test load. Pullout failure is defined as the inability to increase the test load while there is continued movement of the anchor.

## **6. Sacrificial Ground Anchors Not Meeting Acceptance Criteria.**

The Engineer will evaluate the results of each verification test. Installation methods that do not satisfy the ground anchor testing requirements will be rejected. Propose alternative installation methods and install replacement verification test ground anchors. Install and test replacement test ground anchors at no additional cost.

## **H. Anchor Removal.**

After pavement has been placed to finished grade in front of the retaining wall, or as directed by the Engineer, remove the ground anchor bearing plate and hardware. Cut the end of the bar or unthread a segment of the anchor bar such that the end of the bar is recessed at least one inch behind the front face of the retaining wall. Fill the remaining core hole with Class AE5 concrete such that the face of the patch is smooth and even with the face of the retaining wall.

## **METHOD OF MEASUREMENT**

Temporary ground anchors that are installed and accepted will be measured from the base of the bearing to the end of the installed anchor as shown in the Plans.

## **BASIS OF PAYMENT**

The unit price of a ground anchor is for full compensation of the work, including, but not limited to coring the existing retaining wall; completing the drill hole; hauling and disposing of drill cuttings; furnishing anchor bars; furnishing end hardware; grouting the anchors; placing and removing temporary drill casing; patching holes in the existing retaining wall; furnishing concrete for patching; all costs associated with verification testing; and for furnishing all tools, labor, equipment, materials and incidentals necessary to complete the work.

Costs associated with verification testing and patching of the existing retaining wall are considered incidental to the work. Separate payment will not be provided for these items.

The Department will pay for accepted quantities at the contract unit price as follows:

<u>Spec - Code</u>	<u>Pay Item</u>	<u>Pay Unit</u>
930-4145	Temporary Ground Anchor	Linear Feet

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

## **SP 612(20) Vibration Monitoring**

SP 612(20) Vibration Monitoring is not completed at this time.

If the Vibration Monitoring SP is not received by October 5, 2022. The project will be removed from the October 14, 2022 bid opening and placed in a future bid opening.

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION**

**PERMITS AND ENVIRONMENTAL CONSIDERATIONS**

**PROJECT NUMBER: NH-3-003(030)202 – PCN 21984**

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

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

- **Nonreporting Nationwide 3 Section 404 Permit**  
The Non-Reporting Nationwide 3 USACE 404 Permit authorizes maintenance activities to previously authorized structures or fills resulting in temporary impacts to jurisdictional waters of the US. The conditions listed in the attached Fact Sheets and Regional Conditions of the Nationwide 3 Permit must be followed. All temporarily impacted areas will be restored to original contours.
- **Floodplain Permits:**  
The Non-Building Floodplain Permit from City of Rugby allows work within the FEMA mapped 100-yr floodplain. The Floodplain Permit and the Flood Insurance Rate Map are attached.

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

## Nationwide Permit 03: Maintenance

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by [33 CFR 330.3](#), provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures ( e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.



(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

*Notification:* For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Sections 10 and 404)).

*Note:* This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

### **General Conditions**

*Note:* To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more



NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of [33 CFR 330.1](#) through 330.6 apply to every NWP authorization. Note especially [33 CFR 330.5](#) relating to the modification, suspension, or revocation of any NWP authorization.

### **1. Navigation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **8. Adverse Effects From Impoundments.**

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

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

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

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

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

## **11. Equipment.**

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

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

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

## **13. Removal of Temporary Structures and Fills.**

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

## **14. Proper Maintenance.**

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

## **15. Single and Complete Project.**

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

## **16. Wild and Scenic Rivers.**

(a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the



appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

## **17. Tribal Rights.**

No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

## **18. Endangered Species.**

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See [50 CFR 402.02](#) for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as [50 CFR 402.17](#), which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”



(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see [33 CFR 330.4\(f\)\(1\)](#)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.



(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

## **19. Migratory Birds and Bald and Golden Eagles.**

The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

## **20. Historic Properties.**

(a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see [33 CFR 330.4\(g\)\(1\)](#)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal



representative, as appropriate, and the National Register of Historic Places (see [33 CFR 330.4\(g\)](#)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see [36 CFR 800.3\(a\)](#)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under [36 CFR 800.2\(c\)](#) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA ([54 U.S.C. 306113](#)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to



occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

### **21. Discovery of Previously Unknown Remains and Artifacts.**

Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

### **22. Designated Critical Resource Waters.**

Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.



(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

### **23. Mitigation.**

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.*, on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-

specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see [33 CFR 332.3\(e\)\(3\)](#)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of [33 CFR part 332](#).

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the

NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see [33 CFR 332.3\(b\)\(2\)](#) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see [33 CFR 330.1\(e\)\(3\)](#)). (See also [33 CFR 332.3\(f\)](#).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of [33 CFR 332.4\(c\)\(2\)](#) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see [33 CFR 332.3\(k\)\(3\)](#)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP



authorization, instead of components of a compensatory mitigation plan (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at [33 CFR 332.3\(b\)](#). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

#### **24. Safety of Impoundment Structures.**

To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been



independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

## **25. Water Quality.**

(a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see [33 CFR 330.4\(c\)](#)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

## **26. Coastal Zone Management.**

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see [33 CFR 330.4\(d\)](#)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

## **27. Regional and Case-By-Case Conditions.**

The activity must comply with any regional conditions that may have been added by the Division Engineer (see [33 CFR 330.4\(e\)](#)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

## **28. Use of Multiple Nationwide Permits.**

The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

## **29. Transfer of Nationwide Permit Verifications.**

If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this



nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

### **30. Compliance Certification.**

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by [33 CFR 332.3\(l\)\(3\)](#) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

### **31. Activities Affecting Structures or Works Built by the United States.**

If an NWP activity also requires review by, or permission from, the Corps pursuant to [33 U.S.C. 408](#) because it will alter or temporarily or permanently occupy or use a U.S.



Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

### **32. Pre-Construction Notification.**

(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see [33](#)

[33 CFR 330.4\(f\)](#)) and/or section 106 of the National Historic Preservation Act (see [33 CFR 330.4\(g\)](#)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in [33 CFR 330.5\(d\)\(2\)](#).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.
  - (ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of



wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat



(or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to [33 U.S.C. 408](#) because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.



(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at [33 CFR 330.5](#).

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any



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Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

### Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).



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**2021 Nationwide Permits  
Regional Conditions for North Dakota  
and  
Omaha District - Required Best Management Practices**

The following Nationwide Permit (NWP) regional conditions will be used in the State of North Dakota. The issuance of the NWPs was announced in the January 13, 2021, issue of the Federal Register (86 FR 2744) and December 27, 2021, issue of the Federal Register (86 FR 73522). Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

**A. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO ALL NWPs OR LIMITED REVOCATION OF NWPs**

For all NWPs, permittees must notify the Corps in accordance with General Condition 32 Preconstruction Notification (PCN) requirements for regulated activities located within or comprised of the following:

**1. Wetlands Classified as Peatlands:**

For purposes of this condition, peatlands are permanently or seasonally waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12 inches) or more thick. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Any peat-covered areas, including fens, bogs, and muskegs, are all peatlands.

- a. PCN required for NWP 3, 5, 20, 32, 38 and 45.
- b. All NWPs not listed above are revoked for use in peatlands.

**2. Waters Adjacent to Natural Springs:**

PCN required for any regulated activity located within 100 feet of the water source in natural spring areas. For purposes of this condition, a spring source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

Springs do not include drain tile outlets.

**3. Bank Stabilization Activities:**

PCN required for any regulated activity that involves bank stabilization impacting an area greater than 1/10 of an acre below the Ordinary High Water Mark or includes features that extend out from the existing bank line greater than 25% of the bankfull channel width.

**4. Specific Waterways:**

PCN required for any regulated activity occurring in or under the Missouri River, including Lake Sakakawea and Lake Oahe. In addition, a PCN is required for any activity occurring in an off channel area (e.g. marinas and bays) of any of these waterways.



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**B. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO SPECIFIC NWP**

**1. NWP 23 – Approved Categorical Exclusions:**

In addition to PCN requirements identified in Regulatory Guidance Letter (RGL) 05-07 or the applicable Corps RGL, PCN is required prior to initiating any regulated activity under NWP 23 that would permanently impact an area greater than 1/2 an acre of waters of the United States. In addition to information required for PCN, the applicant must identify the approved categorical exclusion that applies in RGL 05-07 or the applicable Corps RGL and provide documentation that the project fits the categorical exclusion.

**C. BEST MANAGEMENT PRACTICES**

**Required Best Management Practices:**

In addition to the Regional Conditions above, additional required best management practices apply to NWPs within the Omaha District follow. These are also available at:

<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nation-Wide-Permit-Information/>

The following Nationwide Permit regional condition best management practices are required for Montana, Nebraska, North Dakota, South Dakota, and Wyoming in the Omaha District. The issuance of the NWPs was announced in the January 13, 2021, issue of the Federal Register (86 FR 2744) and December 27, 2021, issue of the Federal Register (86 FR 73522). Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

**A. REQUIRED BEST MANAGEMENT PRACTICES APPLICABLE TO MONTANA, NEBRASKA, NORTH DAKOTA, SOUTH DAKOTA, AND WYOMING**

**1. Suitable Material:**

Permittees are reminded of General Condition No. 6 which prohibits use of unsuitable material. A list of materials prohibited or restricted as fill material in waters of the United States can be found at:

<http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/12320/prohibited-restricted-materials.aspx>

**PARAGRAPHS PERTAINING TO ALL STATES EXCEPT NORTH DAKOTA HAVE BEEN REMOVED FROM THIS VERSION FOR CLARITY.**

**B. NORTH DAKOTA REQUIRED BEST MANAGEMENT PRACTICES**

**2. Minimum Culvert Width:**

For all NWPs in jurisdictional streams, the culvert opening width of a stream crossing shall not be less than the mean bank to bank width as measured from the Ordinary High Water Mark in the affected stream reach. In stable stream channels, the Ordinary High Water Mark is often found at the point where over-bank flow begins during a flood event. In incised stream channels that do not frequently access a floodplain or upper terrace, the Ordinary High Water Mark is generally located within the entrenched channel. The Ordinary High Water Mark may be identified by observing indicators such as a distinct change in slope, a change in vegetation characteristics, or a change in sediment characteristics, see 33 CFR 328.3(e).



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**3. Culvert Countersink Depth:**

For all NWPs in jurisdictional streams and a stable stream bed, culvert stream crossings shall be installed with the culvert invert set below the natural stream channel flow line according to the table below. This regional condition does not apply in instances where the lowering of the culvert invert would allow a headcut to migrate upstream of the project into an unaffected stream reach or result in lowering the elevation of the stream reach.

<b>Culvert Type</b>	<b>Drainage Area</b>	<b>Minimum Distance Culvert Invert Shall Be Lowered Below Stream Flow Line</b>
All culvert types	< 100 acres	Not required
Pipe diameter <8.0 ft	100 to 640 acres	1/2 ft
Pipe diameter <8.0 ft	>640 acres	1.0 ft
Pipe diameter > 8.0 ft	All drainage sizes	20% of pipe diameter
Box culvert	All drainage sizes	1.0 ft

- a. The stream flow line shall be defined as the longitudinal average of the low flow stream channel.
- b. The slope of the culvert should be parallel to the slope of the stream flow line.
- c. The culvert invert depression depth shall be measured at the culvert inlet for culverts installed at a slope less than the slope of the stream flow line.
- d. Riprap inlet and outlet protection shall be placed to match the height of the culvert invert.

**4. Spawning Areas:**

Spawning areas and seasons can be accessed on the North Dakota Game & Fish Department’s website at: <http://gf.nd.gov/gnf/conservation/docs/spawning-restriction-exclusions.pdf>

**5. Intake Structures:**

- a. Intake screens with a maximum mesh opening of 1/4-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed 1/2-foot per second.
- b. Pumping plant sound levels will not exceed 75 dB at 50 feet.
- c. Intakes located in Lake Sakakawea, above river mile 1519, and on the Yellowstone River, are subject to the following conditions:
  - i. The intakes shall be floating.
  - ii. At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
  - iii. If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.
  - iv. If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to 1/4-foot per second.
- d. Intakes located in Lake Sakakawea, below river mile 1519, and the Missouri River below



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Garrison Dam are subject to the following conditions:

- i. The intakes shall be submerged.
  - ii. At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
  - iii. The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
  - iv. If the 20-foot depth is not attainable, then the intake velocity shall be limited to ¼-foot per second with intake placed at the maximum practicable attainable depth.
- e. Intakes and associated utility lines that are proposed to cross sandbars in areas designated as piping plover critical habitat are prohibited.
- f. Any temporary open trench associated with utility lines are to be closed within 30 days of excavation. This time limit may be extended by notifying the North Dakota Regulatory Office and receiving a written response that the extension is acceptable

**6. Boat Docks:**

To ensure that the work or structure shall not cause unreasonable obstruction to the free navigation of the navigable waters, the following conditions are required:

- a. No boat dock shall be located on a sandbar or barren sand feature. The farthest point riverward of a dock shall not exceed a total length of 30 feet from the Ordinary High Water Mark. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.
- b. Any boat dock shall be anchored to the top of the high bank.
- c. Any boat dock located within an excavated bay or marina that is off the main river channel may be anchored to the bay or marina bottom with spuds.
- d. Section 10 Waters located in the State of North Dakota are:
  - i. Bois de Sioux River
  - ii. James River Missouri River
  - iii. Red River of the North
  - iv. Upper Des Lacs Lake
  - v. Yellowstone River



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**2022 Nationwide Permits  
Regional Conditions  
State of North Dakota  
Section 401 Water Quality Certification**

The following Nationwide permit (NWP) regional conditions pertaining to Section 401 Water Quality Certification (WQC) will be used in the State of North Dakota for NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 and 59.

The Environmental Protection Agency is responsible for providing WQC for activities that occur on Indian Lands in the State of North Dakota.

The North Dakota Department of Environmental Quality is responsible for providing WQC for Section 404 activities that occur in the State of North Dakota, excluding Indian Lands.

WQC by NWP follows:

- **NWP 1 – Aids to Navigation**  
-Certification not required (Section 10 Only)
- **NWP 2 – Structures in Artificial Canals**  
-Certification not required (Section 10 Only)
- **NWP 3 – Maintenance**  
-EPA certified with conditions (see EPA certification following this listing).  
-NDDEQ certified for all activities.
- **NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities**  
-EPA waived certification for all activities.  
-NDDEQ certified for all activities.
- **NWP 5 – Scientific Measurement Devices**  
-EPA certified with conditions (see EPA certification following this listing).  
-NDDEQ certified for all activities.
- **NWP 6 – Survey Activities**  
-EPA certified with conditions (see EPA certification following this listing).  
-NDDEQ certified for all activities.
- **NWP 7 – Outfall Structures and Associated Intake Structures**  
-EPA certified with conditions (see EPA certification following this listing).  
-NDDEQ certified with a condition requiring a copy of the preconstruction notification (PCN) be provided for any projects affecting classified rivers, streams or lakes.  
Classified waters are listed in Appendixes I and II of the State Water Quality Standards.
- **NWP 8 – Oil and Gas Structures on the Outer Continental Shelf**  
-Not applicable in North Dakota

- **NWP 9 – Structures in Fleeting and Anchorage Areas**  
-Certification not required (Section 10 Only)
- **NWP 10 – Mooring Buoys**  
-Certification not required (Section 10 Only)
- **NWP 11 – Temporary Recreational Structures**  
-Certification not required (Section 10 Only)
- **NWP 13 – Bank Stabilization**  
-EPA certified with conditions (see EPA certification following this listing).  
-NDDEQ certified with a condition requiring that a copy of the PCN be provided for any projects affecting classified waters.
- **NWP 14 – Linear Transportation Projects**  
-EPA certified with conditions (see EPA certification following this listing).  
-NDDEQ certified for all activities.
- **NWP 15 – U.S. Coast Guard Approved Bridges**  
-EPA certified with conditions (see EPA certification following this listing).  
-NDDEQ certified for all activities, except those affecting classified waters. Individual certification is required for projects affecting classified waters.
- **NWP 16 – Return Water From Upland Contained Disposal Areas**  
-EPA denied certification and individual certification is required for all activities.  
-NDDEQ certified with a condition requiring that a copy of the PCN be provided for any projects affecting classified waters.
- **NWP 17 – Hydropower Projects**  
-EPA denied certification and individual certification is required for all activities.  
-NDDEQ certified for all activities, except those affecting classified waters. Individual certification is required for projects affecting classified waters.
- **NWP 18 – Minor Discharges**  
-EPA certified with conditions (see EPA certification following this listing).  
-NDDEQ certified for all activities.
- **NWP 19 – Minor Dredging**  
-EPA certified with conditions (see EPA certification following this listing).  
-NDDEQ certified for all activities, provided spoils are disposed of at an upland site and are not allowed to drain back to waters of the state.
- **NWP 20 – Response Operations for Oil or Hazardous Substances**  
-EPA certified with conditions (see EPA certification following this listing).  
-NDDEQ certified for all activities.
- **NWP 22 – Removal of Vessels**  
-EPA waived certification for all activities.  
-NDDEQ certified for all activities.

- **NWP 23 – Approved Categorical Exclusions**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified for all activities, except those impacting classified waters and bank loss exceeds 300 linear feet. Individual certification is required for the excepted projects.
- **NWP 24 – Indian Tribe or State Administered Section 404 Programs**
  - Not applicable in North Dakota.
- **NWP 25 – Structural Discharges**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified for all activities.
- **NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified with conditions: 1) PCN must be provided for projects affecting classified waters; 2) Projects must not result in a net loss of wetland or wetland type; and 3) no in-stream berms, dams, or similar structures in classified waters, unless constructed in such a way that the stream assimilative capacity and aquatic life passage are maintained or the structures are part of a restoration project.
- **NWP 28 – Modifications of Existing Marinas**
  - Certification not required (Section 10 Only)
- **NWP 30 – Moist Soil Management for Wildlife**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified for all activities.
- **NWP 31 – Maintenance of Existing Flood Control Facilities**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified for all activities.
- **NWP 32– Completed Enforcement Actions**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified with a condition requiring that a copy of the PCN be provided for any projects affecting classified waters.
- **NWP 33 – Temporary Construction, Access, and Dewatering**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified for all activities.
- **NWP 34 – Cranberry Production Activities**
  - EPA denied certification and individual certification is required for all activities.
  - NDDEQ N/A
- **NWP 35 – Maintenance Dredging of Existing Basins**
  - Certification not required (Section 10 Only)

- **NWP 36 – Boat Ramps**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified for all activities.
- **NWP 37 – Emergency Watershed Protection and Rehabilitation**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified for all activities.
- **NWP 38 – Cleanup of Hazardous and Toxic Waste**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified for all activities.
- **NWP 41 – Reshaping Existing Drainage Ditches**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified for all activities.
- **NWP 45 – Repair of Uplands Damaged by Discrete Events**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified for all activities.
- **NWP 46 – Discharges in Ditches**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ certified for all activities.
- **NWP 49 – Coal Remining Areas**
  - EPA denied certification and individual certification is required for all activities.
  - NDDEQ certified for all activities.
- **NWP 53 – Removal of Low-Head Dams**
  - EPA denied certification and individual certification is required for all activities.
  - NDDEQ certified for all activities.
- **NWP 54 – Living Shorelines**
  - EPA waived certification for all activities.
  - NDDEQ N/A
- **NWP 59 – Water Reclamation and Reuse Facilities**
  - EPA certified with conditions (see EPA certification following this listing).
  - NDDEQ N/A

EPA certification follows.

**U.S. Environmental Protection Agency Region 8 Clean Water Act Section 401  
Water Quality Certification for the U.S. Corps of Engineers CWA Section 404  
2021 Nationwide Permits Reissuance**

This Certification applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers CWA 404 Nationwide Permit (NWP) into waters of the United States that occur within Indian country<sup>1</sup> lands within the state of North Dakota: NWP 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 34, 36, 37, 38, 41, 45, 46, 49, 53, 54, and 59/E.<sup>2</sup>

Section 401(a)(1) of the Clean Water Act requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has authority to give such certification, the U.S. Environmental Protection Agency (EPA) is the certifying authority. In this case, the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians currently are not authorized to provide CWA Section 401 certifications for discharges occurring on reservations, or any other Indian country lands, within the State of North Dakota, therefore, the EPA is making the certification decisions for discharges that may result from potential projects authorized under the proposed Corps CWA 404 NWPs listed above. Although the above Tribes currently are not authorized to provide CWA Section 401 certifications, EPA will condition certifications using Tribal water quality requirements where applicable and appropriate.

**General Information**

The general information provided in this section is intended to provide context for EPA's certification decision and does not itself constitute a certification condition(s). The information in this section is being provided to help project proponents comply with the terms and conditions of the CWA Section 401 certification on the NWPs on applicable Indian country lands.

- Prior to work commencing, project proponents should notify the appropriate Tribal Environmental Office.
- The project proponents for projects authorized under the NWPs should obtain all other permits, licenses, and certifications that may be required by federal, state, or tribal authority.

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<sup>1</sup> Indian country is defined in 18 U.S.C. Section 1151. Indian country in North Dakota generally includes (1) lands within the exterior boundaries of the following Indian reservations located within North Dakota: the Fort Berthold Indian Reservation, the Spirit Lake Reservation, the Lake Traverse Reservation, the Standing Rock Sioux Reservation, and the Turtle Mountain Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151.

<sup>2</sup> This Certification does not apply to the following NWPs: 1, 2, 8, 9, 10, 11, 24, 28, and 35. The Corps has not requested certification for these NWPs. If any activity authorized by these listed NWPs may result in a discharge into a water of the United States, the project proponent should contact the Corps or EPA to determine if a CWA Section 401 certification is required. Furthermore, NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, A/55, B/56, C/57, and D/58 were reissued in January 2021. 86 FR 2744. EPA denied certification for all these NWPs, except NWP 48. Project proponents must apply for an individual CWA Section 401 certification from EPA for all NWPs reissued in January 2021, except NWP 48, for which EPA expressly waived certification authority.

- If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the project proponent should request an individual CWA Section 401 certification from EPA. An individual certification request is subject to the requirements outlined in 40 CFR 121.
- Copies of this certification should be kept on the job site and readily available for reference.
- Pursuant to CWA section 308(a), EPA representatives may inspect the authorized activity and any mitigation areas to determine compliance with the terms and conditions of the NWP.
- If you have questions regarding this certification, or need assistance contacting the appropriate tribe, please contact EPA Region 8 at: [R8CWA401@epa.gov](mailto:R8CWA401@epa.gov) and Aaron Blair at (303) 312-6883 or via email at [blair.aaron@epa.gov](mailto:blair.aaron@epa.gov) or Toney Ott at (303) 312-6906 or via email at [ott.toney@epa.gov](mailto:ott.toney@epa.gov). Additional information on tribes in EPA Region 8 also can be found at: <https://www.epa.gov/tribal/region-8-tribal-program>.

### **NWPs Granted with Conditions (121.7(d)(2))**

On behalf of the tribes listed above, CWA Section 401 certification is granted with the following conditions for NWPs 3, 5, 6, 7, 13, 14, 15, 18, 19, 20, 23, 25, 27, 30, 31, 32, 33, 36, 37, 38, 41, 45, 46, and 59/E. EPA Region 8 has determined that any discharge authorized under these proposed NWPs will comply with water quality requirements, as defined in 40 C.F.R. 121.1(n), subject to the following conditions pursuant to Section 401(d). Note that all correlating justification statements and citations as required by 40 CFR 121.7(d)(2) are included in Appendix A.

**General Condition 1:** Point source discharges shall not occur in jurisdictional waters of these special aquatic resources: (1) fens, bogs, or other peatlands; (2) within 100 feet of the point of discharge of a known natural spring source; (3) riffle-pool complexes of streams; or (4) water sources above hanging gardens. Projects or activities expected to have potential discharges into these areas are not covered by this certification and require a project-specific CWA Section 401 certification from EPA Region 8.

A peatland is defined by the U.S. Forest Service as any type of peat covered terrain with an accumulation of at least 20 to 40 centimeters of peat within the upper 80 centimeters of the soil profile. More resources on peatlands and hanging gardens can be found here:

<https://www.fws.gov/mountain-prairie/es/fen/FWSRegion6FenPolicy1999.pdf>

[https://www.fs.fed.us/wildflowers/beauty/California\\_Fens/what.shtml](https://www.fs.fed.us/wildflowers/beauty/California_Fens/what.shtml)

<https://cnhp.colostate.edu/cnhpblog/2009/08/11/hanging-gardens/>

<https://springstewardshipinstitute.org/hanging-garden>

**General Condition 2:** Except as specified in the project plan, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter or be stored within 100 feet of waters of the U.S. If materials are stored within 100 feet of waters of the U.S., the project plan shall identify the measures and controls that will be used to ensure the materials will not enter waters of the U.S. No activities shall result in an unconfined discharge of liquid cement into waters of the U.S.

Any materials not specified in the project plan that do enter waters of the U.S. shall be reported to EPA ([R8CWA401@epa.gov](mailto:R8CWA401@epa.gov)) with a remediation plan within 15 days.

For emergency spills, including any spills of petroleum products, contact EPA's National Response Center at 1-800-424-8802, the appropriate Tribal Environmental Office, and local spill response hotlines within 24 hours.

**General Condition 3:** Activities that may result in a point source discharge shall occur during seasonal low flow or no flow periods. Activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

**General Condition 4:** When operating equipment or otherwise undertaking construction activities (including grouting riprap) in aquatic resources:

- Work shall be completed in the dry, unless justification for working in the wet can be documented by the project proponent prior to construction.<sup>3</sup>
- Concrete grouting shall be allowed to dry thoroughly before exposure to waters of the U.S.
- All equipment shall be cleaned prior to arriving on the project site. All equipment shall be inspected daily and prior to entering any streams or wetlands for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks.
- All contaminated areas shall be cleaned immediately, and contaminated soil removed from the site or contained in enclosed containers. Containers shall not be stored within 100 feet of waters of the U.S. If site conditions do not allow for storage at least 100 feet away from waters of the U.S., or if the topography is such that storage can occur within 100 feet without risk to waters of the U.S., the project proponent shall document this along with the measures and controls that will be used to ensure contaminants will not enter waters of the U.S. All equipment detected with leaks shall be repaired promptly or moved offsite within 24 hours.
- Containment booms and/or absorbent material shall be available onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the U.S.

**General Condition 5:** For projects that require coverage under EPA's Construction General Permit, the project proponent shall submit the Stormwater Pollution Prevention Plan (SWPPP) to EPA Region 8 (R8CWA401@epa.gov).

For projects that do not require the development of a SWPPP, the project proponent shall document how the project will utilize construction techniques, including soil erosion and sediment controls, to prevent or minimize water quality degradation because of the project. Projects shall not permanently impact the overall health of the aquatic resource; beneficial uses shall not be lost or impaired.

**General Condition 6:** Vegetation in jurisdictional wetlands and waterbodies shall be protected except where its removal is necessary for completion of the work. Locations disturbed by construction activities shall be revegetated with appropriate native vegetation in a manner that optimizes plant establishment for the specific site (e.g., stockpiling of existing topsoil that is weed-seed free). Revegetation may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching. All revegetation materials, including plants and plant seed shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Exceptions to native revegetation include agricultural lands that are being returned to crop or pasture vegetation, with Corps permission.

Where removal of vegetation occurs, the project proponent shall develop a restoration plan prior to initiating construction on the project. The restoration plan shall include measures, including but not limited to:

- The project proponent shall describe and photo document where the disturbance or removal of riparian/wetland vegetation will occur during the completion of the work.

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<sup>3</sup> See "Working in the dry: Cofferdams, in-river construction, and the United States Army Corps of Engineers" <https://usace.contentdm.oclc.org/digital/collection/p16021coll4/id/156/>

- The project proponent shall revegetate disturbed jurisdictional areas within three months of completion of construction, based on pre-disturbance or reference site conditions, including percent cover and native species diversity.
- The project proponent shall revegetate any disturbed wetland soil with native plant species. Non-native and invasive species shall not be used for restoration activities.

**General Condition 7:** The placement of material (discharge) for the construction of new dams is not certified, except for stream restoration projects. Activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

**General Condition 8 – Applicable only to the following NWPs:** 3, 7, 13, 14, 15, 19, 23, 27, 37, and 59/E. Project proponents shall provide notice to EPA Region 8 at least 30 days prior to commencing work in water of the U.S. to provide EPA Region 8 with the opportunity to review and inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. In cases where the Corps requires a PCN for the applicable NWP, in accordance with Corps' National General Condition 32(b), Pre-Construction Notification (86 FR 2873), the applicant shall also provide the PCN to Region 8.

Additionally, the applicant shall include a summary of communications with the affected Tribe's water quality staff regarding the project, including any concerns or issues, in its submission to EPA.

**NWP-Specific Conditions:**

**NWP 3, Specific Condition 1:** No more than 25 cubic yards of new or additional riprap shall be placed to protect the structure or fill. If a project proponent seeking NWP authorization plans to use more than 25 cubic yards of new or additional riprap to protect the structure or fill, the project proponent shall request a project-specific CWA Section 401 certification from EPA Region 8.

**NWP 3, Specific Condition 2:** Bridge replacements shall span the bankfull width and/or the ordinary highwater mark of the affected waters of the U.S. Projects or activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

**NWP 3, Specific Condition 3:** Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions for the repair of low water crossings, or loss of stream cross section dimensions. Original land contour dimensions shall be documented prior to construction to confirm contours are returned to these dimensions post-maintenance activities.

**NWP 3, Specific Condition 4:** Silt and sediment removal shall not exceed:

- 1) 50 linear feet for low water crossings; and
- 2) 100 linear feet for bridge crossings.

Projects or activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

**NWP 7, Specific Condition 1:** Construction of the outfall structure shall be placed at the streambed elevation and, at a minimum, the pipe should be sized to prevent high pressure discharge of stormwater. Pipe sizing selection methods and justification that high pressure discharge will be minimized shall be documented by the

project proponent.

**NWP 7, Specific Condition 2:** Outfall structures shall not be constructed in jurisdictional wetlands. If a project proponent plans to construct an outfall structure in a jurisdictional wetland, the project proponent shall request a project-specific CWA Section 401 certification from EPA Region 8.

**NWP 7, Specific Condition 3:** For activities that do not require a SWPPP, the project proponent shall submit to EPA, an erosion and sediment control plan prior to construction that includes outfall stabilization controls. (Projects or activities requiring a SWPPP must submit the SWPPP to EPA per General Condition 5.)

The plan shall describe type, location, and maintenance schedules for all controls to be put in place prior to, during, and after construction to stabilize all areas of the bed and bank around and adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively. The plan shall provide for maintenance of measures, and adaptive management processes if any measures are determined to be ineffective. During monitoring and maintenance, if water quality requirements are exceeded or if measures are identified as ineffective, then descriptions of additional measures taken to ensure compliance shall be sent to EPA within 48 hours of the exceedance or measure failure.

Rip rap aprons and/or energy dissipation structures shall be constructed to provide protection from the erosive potential of high-velocity flows, as documented in the erosion and sediment control plan, with adaptive management in place for potential structure failures.

**NWP 7, Specific Condition 4:** The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.
- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 ([R8CWA401@epa.gov](mailto:R8CWA401@epa.gov)). The report shall be labeled with the project name and Corps District number.

**NWP 13, Specific Condition 1:** The project proponent shall submit a project plan with design techniques and stabilization methods to EPA Region 8 prior to construction. Activities shall use native vegetation or other bioengineered design techniques (e.g., willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g., rock) and predominately native vegetation or bioengineered design techniques. Artificial soil stabilizing material (e.g., mulch, matting, netting, etc.) shall be used to reduce soil erosion. These materials, to include all plants and plant seed, shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Sediment control measures shall be maintained in good working order at all times.

Any project proposing bank stabilization solely using hard armoring methods, or where the scope of the entire project is greater than 500 linear feet, is not authorized under this certification and the project proponent shall seek a project-specific CWA Section 401 certification from EPA Region 8.

**NWP 13, Specific Condition 2:** The slopes of disturbed banks shall be configured to mimic a stable reference reach and not reduce the bottom width of the stream. Pre-construction cross sections shall be included in the project plan submitted to EPA Region 8.

**NWP 13, Specific Condition 3:** The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.
- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 ([R8CWA401@epa.gov](mailto:R8CWA401@epa.gov)). The report shall be labeled with the project name and Corps District number (if available).

**NWP 14, Specific Condition 1:** NWP 14 is conditionally certified, except that a project-specific CWA section 401 certification is required for projects authorized under one or more NWP by the Corps that result(s) in:

1. Greater than 1/10 acre of impacts to waters of the U.S.; or
2. Greater than 300 linear feet of impacts to waters of the U.S.

**NWP 14, Specific Condition 2:** The project proponent shall submit a project design plan to EPA Region prior to construction. Affected streambanks shall be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations. Stream bank slopes should not be steeper than 3:1. Justification for banks steeper than 3:1 shall be included in the project design plan. The project design plan also shall document how all temporary fills and structures will be removed, and the area restored to pre-project conditions.

**NWP 14, Specific Condition 3:** Permanent culverts shall be installed using an established culvert analysis and design tool (ex. HY-8, HEC-RAS, USGS CAP, etc.). Culverts shall span the bankfull width and/or ordinary high-water mark of the affected waterbody. The culvert bottom shall be installed below the existing streambed elevation to allow aquatic organism passage and the natural substrate to reestablish.

**NWP 14, Specific Condition 4:** The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- Impacts to aquatic resource buffers shall be avoided. If avoidance is not possible, methods for buffer restoration and monitoring shall be in the monitoring plan.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.

- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 ([R8CWA401@epa.gov](mailto:R8CWA401@epa.gov)). The report shall be labeled with the project name and Corps District number (if available).

**NWP 15, Specific Condition 1:** Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions of the waterbody. Original land contour dimensions shall be documented prior to construction to confirm contours are restored to pre-disturbance conditions. Affected streambanks shall be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations. Stream bank slopes should not be steeper than 3:1. Justification for banks steeper than 3:1 shall be included in the project design plan. The project design plan also shall document how all temporary fills and structures will be removed, and the area restored to pre-project conditions.

**NWP 15, Specific Condition 2:** Crossings shall be placed perpendicular to the water course, unless the project proponent can document that this would result in increased impacts to aquatic resources or compromise the safety of the structure.

**NWP 15, Specific Condition 3:** Bridge decks shall be designed such that they do not drain directly into the waterbody.

**NWP 15, Specific Condition 4:** Bridges shall span the bankfull width, adjacent wetlands, and/or ordinary high-water mark of the affected waterbody. Projects that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

**NWP 19, Specific Condition 1:** Dredged or fill materials shall be placed in non-jurisdictional areas and controlled such that it cannot return to waters of the U.S. Dredged or fill material shall not be placed on islet, islands, sandbars, landmass or other area of sediment accumulation within the banks of a stream, shore of lake, edge of wetland or other type of waterbody, unless the project proponent can document that the vegetation and geomorphology signify a long-term stable configuration (e.g., areas of sediment accumulation are not formed from temporary situations such as drought conditions or upstream reservoir release conditions).

**NWP 27, Specific Condition 1:** NWP 27 is conditionally certified, subject to the general conditions listed above, except for the following activities, where an individual project-specific CWA Section 401 certification is required: (1) the project involves dam removal; and/or (2) the project or activities involve greater than 1-acre of impacts to waters of the U.S.; and/or (3) the project impacts greater than 500 linear feet of waters of the U.S.

**NWP 37, Specific Condition 1:** Original and planned stream contours shall be documented by the project proponent. Construction activities shall not result in the channelization of streams or sloughs. Channelization is defined, for this purpose, as the placement of excess material in a manner that modifies the bank alignment, and subsequently the channel alignment, from its present condition.

**NWP 37, Specific Condition 2:** Construction activities shall not remove silt beyond what was deposited by the emergency event. Based on the original site conditions and planned project design, the project proponent shall justify the amount of silt identified for removal, such that the construction activities do not result in the removal of silt beyond what was deposited by the emergency event (e.g., excavating a wetland area to the point it's a stormwater retention pond, or deepening/widening a stream channel to accommodate higher flow capacity).

**NWP 37, Specific Condition 3:** Construction of temporary structures or drains for the purpose of reducing or preventing flood damage shall be removed within 60 days following the emergency event, unless justification for retaining the structures for a longer period is documented by the project proponent.

### **NWPs Denied (121.7(e)(2))**

On behalf of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 cannot certify that the range of discharges from potential projects authorized under the following proposed NWPs will comply with water quality requirements, as defined in 40 CFR 121.1(n). Therefore, CWA Section 401 water quality certification is denied for NWPs 16, 17, 34, 49, and 53 and applicants must request an individual water quality certification, consistent with 40 CFR 121.5.

Certification denial is due to insufficient information. 40 CFR 121.7(e)(2)(iii). In EPA's unique role certifying on behalf of a tribe, EPA lacks important information about tribal water resources. In the case of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 lacks sufficient information on sensitive resources that may exist on these tribal lands, potential impaired waters on these tribal lands, and potential cultural importance of the water resources on these tribal lands. Additional information on these specific subjects would be needed for EPA Region 8 to assure that the range of discharges from potential projects authorized under NWPs 16, 17, 34, 49, and 53 will comply with water quality requirements, as defined in 40 CFR 121.1(n).

This information would also be necessary for EPA Region 8 to identify specific water quality requirements and evaluate whether the range of discharges from potential projects will comply with such requirements, in accordance with CWA section 401(a)(1) and 40 CFR 121.7(b). Lacking this information, EPA Region 8 is therefore denying certification.

### **NWPs Waived (121.9(a)(1))**

On behalf of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 is expressly waiving its authority to act on the CWA § 401 certification request for the following proposed NWPs: 4, 22, and 54.

December 8, 2020

Patricia L. McQueary  
Regulatory Program Manager, North Dakota  
US Army Corps of Engineers  
1513 South 12<sup>th</sup> Street  
Bismarck, ND 58504-6640

Dear Ms. McQueary:

The department has completed reviewing the proposed 2020 Nationwide Permits (NWP) for compliance with Standards of Quality for Water of the State (WQ-standards) and for Certification under Section 401 of the Clean Water Act.

The department has Clean Water Act Section 401 authority for North Dakota. Under that authority the department certifies, certifies with conditions, or denies select 2020 NWP. Certification, certification with condition, and denials are issued to ensure that the water quality requirements as defined in the Standards of Quality of Water Quality of the State, North Dakota Administrative Code Chapter 33.1-16-02.1 (WQ-Standards) are supported as intended by the Clean Water Act (CWA) Sections 301, 301, 303, 306, and 307, the 40 Code of Federal Registry Part 121 and the ND Century Code 28-61-04.

If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the applicant may request an individual certification from the department. An individual certification request must follow the requirements outlined in §121.5 of EPA's CWA § 401 Certification Rule, effective September 11, 2020.

The department may inspect any authorized activity to determine compliance with the terms and conditions (Section 121.11).

**Under Section 401 of the Clean Water Act this department grants certification to the following Nationwide Permits as the discharge(s) will comply with water quality requirements:**

- 1) **Nationwide Permits Not Applicable:** No. 8, 24, 34, 54, A, B, and E.
- 2) **Nationwide Permits Clean Water Certified:** No. 1, 2, 3, 4, 5, 6, 9, 10, 11, 14, 18, 20, 21, 22, 25, 28, 30, 31, 33, 36, 37, 38, 41, 43, 44, 45, 46, 48, 49, 50, 51, 53, and C.

**Under Section 401 of the Clean Water Act the department grants certification with conditions (Section 121.7(d)(2)) to the following Nationwide Permits, as with the conditions discharge(s) will comply with water quality requirements:**

- 3) **Nationwide Permits 7, 13, 16, 32, 35, and 52:** Nationwide Permits 7, 13, 16, 35 and 52 are granted Section 401 Clean Water Certification with the condition that all projects, (Including Federal and Non-Federal Permittees), provide preconstruction notification (PCN) for projects in, over or under Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-Standards

Section 121.7(d)(2)

(i) A preconstruction notification (PCN) requirements for Federal and Federal Permittees provides the department the means to ascertain if the Water Quality Standards are being supported and to confirm if the action was implemented as permitted. Both of these are required under 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.11(b) [The certifying authority, prior to the initial operation of a certified project, shall be afforded the opportunity to inspect the facility or activity of the purpose of determining whether the discharge from the certified project will violate the certification].

(ii) Without a PCN the department and USACE regulator will be blind to any violations, preventing the requirements of 40 CFR 121.11(c) [The Federal agency shall be responsible for enforcing certification condition that are incorporated into a license or permit]. Without a PCN Sections 301,302,303,306 and 307 of the Clean water act (CWA) cannot be supported.

- 4) **Nationwide Permits 15, and 17:** Nationwide Permits 15 and 17 are granted Section 401 Clean Water Certification except those in, on or over Class I, IA, II Rivers and Streams.

Section 121.7(d)(2)

(i) Bridges and hydropower dams sequester sediments and other pollutants from runoff, as well as reduce or increase flow velocities in waters of the state. Maintaining natural stream morphology reduces the destabilization of the stream/river.

Drainage directly from hydropower surfaces and bridge decks may cause erosion, and introduce additional pollutants, such as oil, gas, sediment, and toxics. Directing bridge deck drainage into constructed runoff water quality control systems will help prevent erosion and keep pollutants from directly entering the waterway.

The placement of a structure within the ordinary highwater alters the hydrologic characteristics of the waterbody leading to increased erosional forces, scour around the structures, increased sediment loads to the waterbody, abandonment of the primary channel, and undermining of the structure itself.

(ii) All streams are waters of the state under North Dakota Century Code 28-61-04 and protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the

beneficial uses, municipal, domestic, aquatic life, recreation, agriculture, and industry. In order to ensure that state law is supported bridges and hydropower projects need project and specific conditions and allow inspections during and after construction (Section 121.11).

Authority for NWP 15 and 17 are 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.11(b) [The certifying authority, prior to the initial operation of a certified project, shall be afforded the opportunity to inspect the facility or activity of the purpose of determining whether the discharge from the certified project will violate the certification]. Conditioning of NWP 17 and 19 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 5) **Nationwide Permit 19:** Nationwide Permit 19 is granted Section 401 Clean Water Certification with the condition spoils are disposed at an upland site where they will not drain back to waters of the state.

Section 121.7(d)(2)

(i) Discharge of dredge material has the capacity to bury the biological community, impact stream function, and release trace elements in concentration exceeding the numeric criteria in the WQ-standards.

(ii) All streams, rivers, lakes, ponds and wetlands are waters of the state under North Dakota Century Code 28-61-04 are protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the beneficial uses, municipal, domestic, aquatic life, recreation, agriculture, and industry. Conditioning of NWP 19 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 6) **Nationwide Permits 23, and 29:** Nationwide Permits 23 and 29 are granted Section 401 Clean Water Certification with the condition that the project will not result in a stream bank loss exceeding 300 Linear feet in Class I, IA, II and III streams. Projects that cannot meet the condition under nationwide Permits 23 and 29 will require an individual certification.

Section 121.7(d)(2)

(i) Projects exceeding 300 linear feet of stream bank have the capacity to remove the biological, hydraulic and geomorphic stream function, disconnect and fragment the watershed and potentially result in the total loss of a stream.

(iii) All streams are waters of the state under North Dakota Century Code 28-61-04 and protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the beneficial uses of municipal, domestic, aquatic life, recreation, agriculture, and industry. Conditioning of NWP 19 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 7) **Nationwide Permit 27:** Nationwide Permit 27 is granted Section 401 Clean Water Certification with the following conditions: (1) Projects in Class I, IA, II, III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-Standards must provide a preconstruction notification, (2) projects will not result in a net loss of wetland or wetland type, and (3) no in-stream berms, dams, or similar structures on Class I, IA, and II, III river or stream listed in the Appendix I of the standards unless constructed in such a way that the stream assimilative capacity and aquatic life passage are maintained or the structures are part of a stream, river, wetland, or lake restoration project.

Section 121.7(d)(2)

(i) NWP 27 is sometimes used for damming, ephemeral and intermittent drainages. A PCN is required to ensure appropriate conditions are applied during and after construction to protect aquatic life passage, existing beneficial uses and prevent construction in ecological settings likely to become contaminant sinks (WQ-Standards). Projects need to demonstrate that at maturity there will be no net loss of wetland and wetland types. Wetland/wetland type and associated vegetation ensure no loss of assimilative capacity of contaminants, nutrients, and sediment to protect aquatic life (WQ-Standards).

(iv) Under 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge], 40 CFR 121.11(b) [The certifying authority, prior to the initial operation of a certified project, shall be afforded the opportunity to inspect the facility or activity of the purpose of determining whether the discharge from the certified project will violate the certification], and 40 CFR 121.11(c) [The Federal agency shall be responsible for enforcing certification condition that are incorporated into a license or permit]. Without a PCN, 40 CFR § 121.2, 40 CFR 121.11(b), or 40 CFR 121.11(c) cannot be satisfied. Conditioning of NWP 27 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 8) **Nationwide Permits 39, 40, and 42:** Nationwide Permits 39, 40 and 42 are granted Section 401 Clean Water Certification with the condition that the resulting will not cause a loss or relocation of 150 feet or more of any river or stream. Projects that cannot meet the condition under nationwide Permits 39, 40 and 42 will require an individual certification.

Section 121.7(d)(2)

(i) North Dakota has many intermittent and perennial streams with bed widths of less than four (4) feet. Projects with large footprints (i. g., Commercial, Industrial, Agricultural, and Recreational) that remove  $\geq 150$  linear feet of stream bank have the capacity to remove the capability, singularly or cumulatively, of the biological, assimilative, hydraulic and geomorphic stream function, disconnect and fragment the watershed and potentially result in the total loss of a stream.

(v) All streams are waters of the state under North Dakota Century Code 28-61-04 and protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the beneficial uses, municipal, domestic, aquatic life, recreation, agriculture, and industry.

Conditioning of NWP 39, 40, and 42 insure support of Sections 301,302,303,306 and 307 of the CWA.

9) **Nationwide Permit D (Utility Line Activities for Water and Other Substances):**

Utility line activities under Nationwide Permit D for water and other substances are granted Section 401 Clean Water Certification with the condition they do not carry oil and gas production water, produce water, or brine water. Pipelines that carry oil or gas production water, produced water, or brine water, collectively called saltwater pipelines, in, over or under Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-standards will require an individual certification with conditions based on the specific waterbody, location on the water, type of construction, and safety controls applied prior, during, and after construction.

Section 121.7(d)(2)

(i) Documentation of the “may discharge” by saltwater pipelines in violation of North Dakota’s Administrative Code Chapter 33.1-16-02.1, the Clean Water Act 301, 302 (40 CFR part 121) are the 284 reported pipeline releases/failures reported in North Dakota between January 1, 2016 and October 1, 2020.

Saltwater pipelines in, over or under Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-standards need to be conditioned based on the waterbody, location on the water, type of construction, and safety controls applied prior during and after construction.

Pipelines carrying oil or gas production water, produced water, or brine water can be constructed to minimize discharge and failure potential through appropriate permit conditions. Under the proposed 2020 NWP D information is required to develop project specific conditions. General information needed to certify or certify with conditions is, but not limited to is: 1) construction type, 2) design, 3) crossing type, 4) monitoring, 5) safety systems installed, and 6) what toxin or pollutant is being transported by the pipeline.

Specific information required: (1) The geologic and geomorphic conditions at the constructions site to determine the likelihood of point source releases from construction activities such as the common frac-out of directional drilling fluids and the toxicity of the fluids, and (2) the location of the project in order to inspect during and after construction to ensure compliance with conditions (§121.11). Finally, there is a physical requirement to know that that all saltwater pipelines are installed at depths below any potential scour to protect them from the hydraulic energies of water.

(ii) Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-61-04 have federally and state defined beneficial uses. These include the Clean Water Act (CWA) 101(a)(2) beneficial uses of “*wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983*”. Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-

61-04 also have state defined beneficial uses. These include municipal, domestic, agriculture, and industrial uses. Pollutant releases into state waters may occur during and after construction of production, produced and brine water (saltwater) pipelines. Releases will violate sections 301, 302, 303, and 306 of the Clean Water Act, and WQ-Standards.

The department has the legal obligation to ensure the protection of the beneficial uses: municipal and industrial, fish and aquatic biota, recreation, agriculture, and industrial by insuring the ND Century Code 28-61-04 is supported by the WQ-Standards as determined by the Clean Water Act 301, 302, 303, and 306 and information to do so (§121.11).

**Under Section 401 of the Clean Water Act the department denies (CFR 40 Section 121.7(e)(2)) certification of the following Nationwide Permits as the discharge(s) will not comply with water quality requirements:**

- 10) **Nationwide Permit 12:** Oil and gas natural related projects in Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the standards are denied Section 401 Water Quality Certification.

Denied Section 121.7(e)(2)

(i) Documented "May discharge" by oil and natural gas pipelines in violation of North Dakota's Administrative Code Chapter 33.1-16-02.1, the Clean Water Act 301, 302 and 40 CFR Part 121 is documented by the 183 crude oil pipeline releases/failures reported in North Dakota between January 1, 2016 and October 1, 2020.

Pipeline permitted under NWP 12 can be built/constructed to minimize discharge and failure potential through appropriate conditioning. Under the proposed 2020 NWP there is not enough information to do so. General information needed to certify or certify with conditions is, but not limited to is: 1) construction type, 2) design, 3) crossing type, 4) monitoring, 5) safety systems installed, and 6) what toxin or pollutant is being transported by the pipeline.

Specific information required: (1) The geologic and geomorphic conditions at the constructions site to determine the likelihood of point source releases from construction activities such as the common frac-out of directional drilling fluids and the toxicity of the fluids, and (2) the location of the project in order to inspect during and after construction to ensure compliance with conditions (§121.11). Finally, there is a requirement to know that all oil and natural gas pipelines are installed at depths below any potential scour to protect them from the hydraulic energies of water.

(ii) Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-61-04 have federally and state defined beneficial uses. These include the Clean Water Act (CWA) 101(a)(2) beneficial uses of "*wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983*".

Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-61-04 also have state defined beneficial uses. These include municipal, domestic, agriculture, and industrial uses. Pollutant releases into state waters may occur during and after construction of crude oil, natural gas and oil related pipelines. Releases will violate sections 301, 302, 303, 306 and 307 of the Clean Water Act, and WQ-Standards.

The department has the legal obligation to ensure the protection of the beneficial uses: municipal and industrial, fish and aquatic biota, recreation, agriculture, and industrial by ensuring the ND Century Code 28-61-04 is supported by the WQ-Standards as determined by the Clean Water Act 301, 302, 303, 306, and 307 and information to do so (§121.11).

The WQ-Standards may be found at <https://www.legis.nd.gov/information/acdata/pdf/33.1-16-02.1.pdf>. Within the WQ-Standards are the Authority 33.1-16-02.1-01, Beneficial uses 33.1-16-02.1-04, Narrative standards 33.1-16-02.1-08, Numeric standards 33.1-16-02.1-09, Stream and stream class (Appendix I), Lake and lake classifications (Appendix II), Antidegradation policy (Appendix IV).

Sincerely,

A handwritten signature in black ink, appearing to read "Karl H. Rockeman", with a long horizontal flourish extending to the right.

Karl H. Rockeman, P.E.  
Director, Division of Water Quality

PNW:saj

# FLOODPLAIN DEVELOPMENT PERMIT APPLICATION NON-BUILDING SITUATION

## GENERAL INFORMATION

PERMIT APPLICATION # \_\_\_\_\_ DATE: \_\_\_\_\_

Applicant/Contact: *NDDOT/Mark S. Gaydos* Telephone # *(701) 328-4417*

Address: *North Dakota Department of Transportation  
Attn: Engineering and Environmental Services  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700*

Brief project description - location of proposed development - legal description:

*Section 2, T156N, R73W; Pierce County*

*The project will include replacing a section of the existing storm drain system between 4th St SW and 1st St NW with a new larger trunk line that will outlet into the unnamed tributary to Russ Lake. The unnamed tributary is a Zone AE Floodway. Work within the floodway will include placing an outlet pipe and riprap associated with the new trunk line. The outlet pipe will be placed outside of the floodway boundary and the riprap will be placed below the existing ground.*

Contractor: Telephone # \_\_\_\_\_

Address: *Contract Not Awarded*

Estimated Cost of project: \$

## FLOODPLAIN DETERMINATION :

(Complete the appropriate information)

Project is located: 100-year floodplain? (Flood Fringe): *Yes*  
Regulatory Floodway: *Yes*

Map information: FIRM Date: *3/16/1992*  
FIRM Zone: *AE*  
BFE at Development Site:  
Development will be elevated to:

**DEVELOPMENT ACTIVITIES:** (check all that apply and explain the activity)

- Fill placement (fill brought in from outside the floodplain)
- Excavation (where subgrade fill is removed from the floodplain)
- Landscaping (cut and fill, fill borrow and placement)
- Construction or maintenance of a dike/levee/floodwall
- Removal of fill, embankment, or dikes
- Watercourse alterations (river, stream, lake - channel modifications, rip-rap)
- Road, street or bridge construction (new, repair or replacement, realignment)
- Drainage improvements (including culvert work)
- Mining (removal of gravel, rock, fill or other natural materials)
- Installation of utilities (water, sewer, pipeline, gas, electric, communications)
- Well drilling (water, oil, natural gas etc.)
- Subdivision (new or expansion)
- Other (please specify and describe)

**ADDITIONAL INFORMATION REQUIRED** (attach additional information):

- Comments or further explanation of work:
- Copies of project description, plans, blueprints, etc.
- Wetlands - will the activity impact identified wetlands? *Yes*
- Will the development aggravate flooding elsewhere? *Unknown*

**OTHER NOTIFICATION OR PERMITS NECESSARY:**

U.S. Army Corps of Engineers 404 Permit is pending.

**ELEVATION INFORMATION:**

Attach information about the completed project elevations(s) with registered professional engineer or registered land surveyor certifications if part of the project:

**ACTION / APPROVAL:**

The proposed development is in conformance with applicable community floodplain standards subject to the following conditions with this approval.

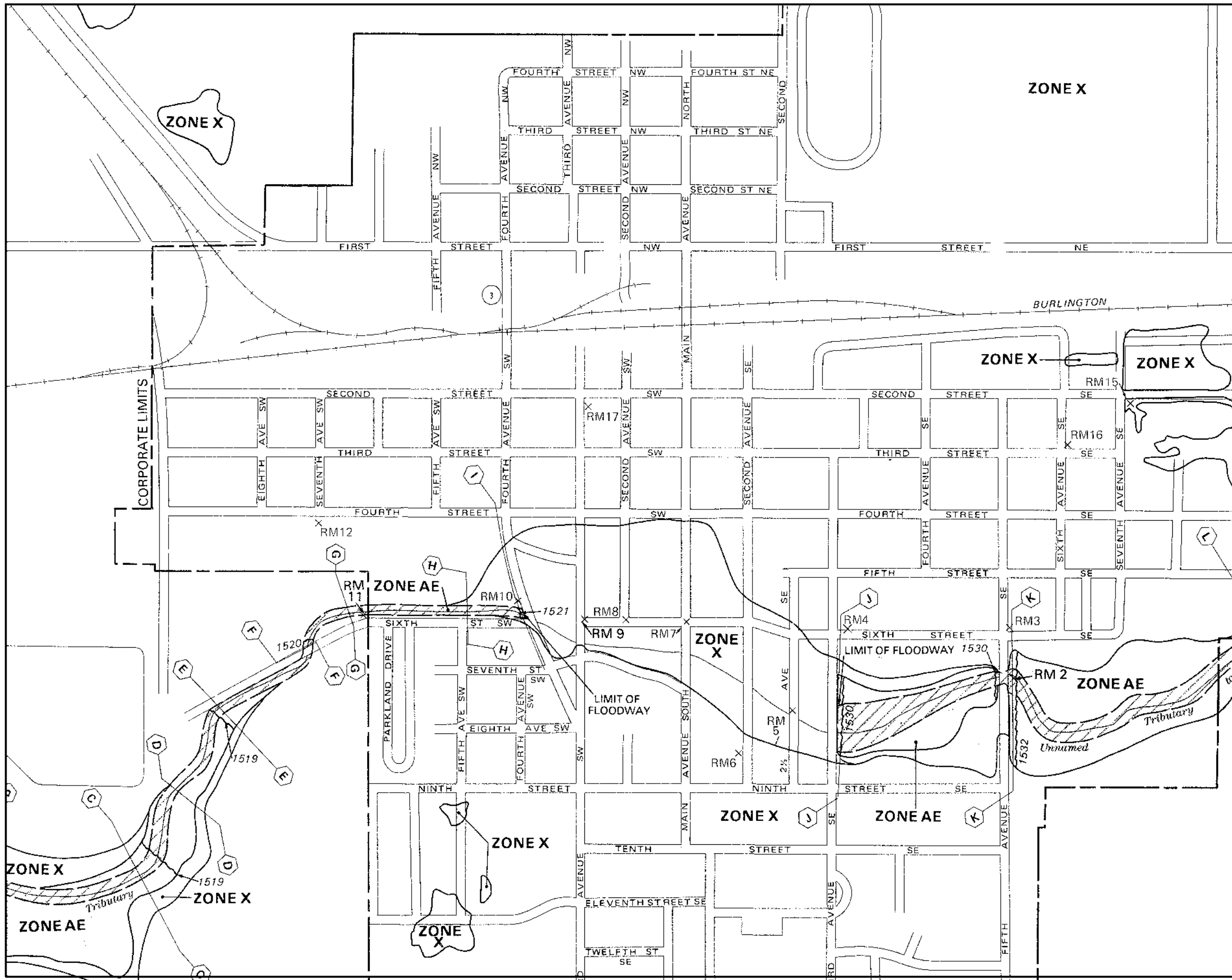
PERMIT APPLICATION IS APPROVED

(Conditioned on the description provided. As-built information/certification will be available at the NDDOT District Office upon completion of construction.)

Signature (Floodplain

Administrator): *Jennifer Stewart*

Date: *May 4, 2020*



APPROXIMATE SCALE IN FEET  
 600 0 600

NATIONAL FLOOD INSURANCE PROGRAM

**FIRM**  
 FLOOD INSURANCE RATE MAP

CITY OF  
**RUGBY, NORTH DAKOTA**  
 PIERCE COUNTY

ONLY PANEL PRINTED

COMMUNITY-PANEL NUMBER  
 380088 0001 D  
 MAP REVISED:  
 MARCH 16, 1992



Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at [www.msc.fema.gov](http://www.msc.fema.gov)

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION

FUEL COST ADJUSTMENT CLAUSE

Revision Date: 9/8/2006

Introduction

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

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

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

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

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

Fuel Indexes

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

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

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

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

Fuel Ratio

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

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

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

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

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

Cost Change

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

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

Contract Adjustments

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

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

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

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

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

Payments

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

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

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

Attachments

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

**FUEL COST ADJUSTMENT AFFIDAVIT**

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

SP Fuel Cost Adjustment Clause  
6 of 6

**Attachment A**

PCN	Project Number		
The Contractor is not required to notify the Department at the time of submitting bids whether he will or will not participate in the fuel cost adjustment program. The Contractor shall return the affidavit on all Contracts with this Provision even if the Contractor elects not to participate.			
Check the box for each fuel type that has a fixed price. No adjustments in fuel price will be made for the boxes that are checked.			
<input type="checkbox"/> Diesel <input type="checkbox"/> Unleaded <input type="checkbox"/> Burner			
Does your company elect to participate in a fuel adjustment for this contract for the fuels that do not have a fixed price? No adjustments in fuel prices will be made if <b>No</b> is checked .			
<input type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, provide the total dollars for each of the applicable fuels:			
Diesel (D)		<div style="border: 1px solid black; height: 100px; width: 100%;"></div>	
Unleaded (U)			
Burner Fuel (B)			
Sum (D+U+B)			
		% of Original Contract Amount *	
<small>*The sum of the D, U, and B may not exceed 15% of the original contract amount.</small>			
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 _____ <span style="display: block; text-align: center; font-size: small;">(month, day, year)</span>	
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)	