Job 23495

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSAL

STATE FEDERAL AID PROJECT NO. SS-ARP-9-999(488) (PCN-23495)

3.643 Miles

GRADING, STREAM MITIGATION, AND INCIDENTALS

SAND CREEK, NEAR CMC 2702 3 MI W OF ND 1806 (STREAM MITIGATION BANK - MCKENZIE COUNTY)

MCKENZIE COUNTY

BID OPENING: The bidder's proposal will be accepted via the Bid Express on-line bidding exchange at www.bidx.com until **09:30AM Central Time on November 20, 2026.**

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

Proposal Form of:

_____
(Firm Name)

_____
(Address, City, State, Zipcode)

(For official use only)

PAGE INTENTIONALLY LEFT BLANK

Project: SS-ARP-9-999(488) (PCN-23495)

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

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

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

Explanation:_____
_____
_____
_____

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

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

BID LIMITATION (Optional)

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

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

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

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

$_____

OR

that exceed a total number of _____ projects.

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

Project: SS-ARP-9-999(488) (PCN-23495)

PERMISSIBLE DISCOUNT (optional)

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

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

Space for Offering Discounts:

_____
_____
_____

Item No:_____

Description:_____

Unit:_____

Proposal Quantity:_____ Unit Price Reduction: $_____ Discount: $_____

Item No:_____

Description:_____

Unit:_____

Proposal Quantity:_____ Unit Price Reduction: $_____ Discount: $_____

Item No:_____

Description:_____

Unit:_____

Proposal Quantity:_____ Unit Price Reduction: $_____ Discount: $_____

Item No:_____

Description:_____

Unit:_____

Proposal Quantity:_____ Unit Price Reduction: $_____ Discount: $_____

TOTAL DISCOUNT_____

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

Project: SS-ARP-9-999(488) (PCN-23495)

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: SS-ARP-9-999(488) (PCN-23495)

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	0200	CULTURAL RESOURCE CONSTRUCTION MONITORING	L SUM	1.				
003	201	0300	CLEARING & GRUBBING	ACRE	21.360				
004	201	0370	REMOVAL OF TREES 10IN	EA	100.				
005	202	0400	REMOVAL OF RIPRAP - LOOSE ROCK	CY	130.				
006	203	0103	COMMON EXCAVATION-TYPE C	CY	31,788.				
007	203	0109	TOPSOIL	CY	7,564.				
008	251	0300	SEEDING CLASS III	ACRE	16.320				
009	251	1000	WETLAND SEED	ACRE	5.110				
010	251	2000	TEMPORARY COVER CROP	ACRE	21.440				
011	253	0101	STRAW MULCH	ACRE	32.650				
012	253	0201	HYDRAULIC MULCH	ACRE	10.220				
013	256	0301	RIPRAP GRADE III	TON	2,444.				
014	256	0501	RIPRAP-SPECIAL	TON	413.				
015	260	0300	SILT FENCE	LF	5,825.				
016	260	0301	REMOVE SILT FENCE	LF	5,825.				

BID ITEMS

Project: SS-ARP-9-999(488) (PCN-23495)

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	261	0112	FIBER ROLLS 12IN	LF	8,596.				
018	261	0113	REMOVE FIBER ROLLS 12IN	LF	8,596.				
019	262	0100	FLOTATION SILT CURTAIN	LF	305.				
020	262	0101	REMOVE FLOTATION SILT CURTAIN	LF	305.				
021	302	0113	AGGREGATE BASE COURSE CL 3	TON	316.				
022	302	0250	DRAINAGE AGGREGATE	TON	159.				
023	702	0100	MOBILIZATION	L SUM	1.				
024	709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	504.				
025	752	0320	FENCE BARBED WIRE 4 STRAND-STEEL POST	LF	16,409.				
026	752	0911	TEMPORARY SAFETY FENCE	LF	8,778.				
027	752	2140	VEHICLE GATE 8FT X 16FT	EA	2.				
028	752	2160	WIRE GATE	EA	10.				
029	752	3140	CORNER ASSEMBLY BARBED WIRE	EA	69.				
030	752	3975	SINGLE BRACE ASSEMBLY BARBED WIRE-WOOD POST	EA	20.				
031	752	4100	DOUBLE BRACE ASSEMBLY BARBED WIRE	EA	4.				
032	902	0400	MACHINE HYGIENE	L SUM	1.				

BID ITEMS

Project: SS-ARP-9-999(488) (PCN-23495)

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

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						$$$$$	000	$$$$$	00
033	970	0595	TOE WOOD	LF	365.				
034	970	2000	LIVE STAKES	EA	375.				
			TOTAL SUM BID						

Project: SS-ARP-9-999(488) (PCN-23495)

Type of Work: GRADING, STREAM MITIGATION, AND INCIDENTALS

County: MCKENZIE

Length: 3.6430 Miles

TIME FOR COMPLETION:

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

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

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

COMPLETION DATE CONTRACT The project completion date is **12/01/2028 *** . The Department provides a minimum of **NA** working days. The Department will begin charging working days beginning **NA** or the date work begins on the project site, whichever is earlier.

***REFER TO SP 586(25) FOR ADDITIONAL TIME REQUIREMENTS.**

Project: SS-ARP-9-999(488) (PCN-23495)

Type of Work: GRADING, STREAM MITIGATION, AND INCIDENTALS

County: MCKENZIE

Length: 3.6430 Miles

CONTRACT EXECUTION:

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

AFFIDAVIT:

STATE OF _____)
) ss.
COUNTY OF _____)

The undersigned bidder, being duly sworn, does depose and say that they are an authorized representative of _____
CONTRACTOR NAME
of _____ , a
MAILING ADDRESS

☐ Individual ☐ Partnership ☐ Joint Venture ☐ Corporation

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

_____ , 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 23495, SS-ARP-9-999(488)

Grading, Stream Mitigation, and Incidentals

INDEX OF PROVISIONS

Road Restriction Permits

Hot Line Notice

Price Schedule for Miscellaneous Items dated January 2, 2026 (PS-1)

Required Contract Provisions Federal Aid Construction Contracts
(Form FHWA 1273 Revised June 25, 2026)

SP Certified Payrolls, dated 3-7-24

SP Project Payment Reporting

Labor Rates from U.S. Department of Labor dated October 1, 2026 (Mod. No. 5)

On-The-Job Training Program 2026

SSP 1 Temporary Erosion & Sediment Best Management Practices

SSP 5 Limitations of Operations

SSP 8 Federal Prohibition on Certain Technological Hardware

SSP 10 E-Ticketing

SSP 11 Domestic Material Procurement Preferences

SSP 12 Public Liability and Property Damage Insurance

SSP 13 Federal Drone Restriction

SP 306(25) United States Forest Service Considerations

SP 307(25) Utility Coordination

SP 358(25) Cultural Resources Construction Monitoring

INDEX OF PROVISIONS

SP 486(25) Soil Stabilization

SP 586(25) Interim Completion

PSP 44(25) Permits and Environmental Considerations

SP Fuel Cost Adjustment Clause

NOTICE

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

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

A. The contractor may purchase up to 10 single trip permits for each NDDOT highway construction project at a cost ranging from $20 to $70 each. These permits must be purchased from the Motor Carrier Division of the Highway Patrol at the central office of the NDDOT in Bismarck, North Dakota.

B. The $1 per mile fee will not be charged for Gross Vehicle Weights (GVW) exceeding 105,500 pounds, 105,500 pounds, and 105,000 pounds for highways Restricted by Legal Weights, 8 Ton, and 7 Ton highways respectively.

C. The $5 per ton per mile fee will be charged only for loads exceeding a GVW of 130,000 pounds, 120,000 pounds, 110,000 pounds and 80,000 pounds for highways Restricted by Legal Weights, 8 Ton, 7 Ton, and 6 Ton highways respectively.

D. The maximum weights per axle for each of the class restrictions still apply. If it is shown that more axles cannot be added, movement may be authorized; however, a $1 per ton per mile fee will be charged for all weight in excess of the restricted axle limits.

E. These construction equipment single trip permits apply to State and US Highways only.

F. The District Engineers and Highway Patrol will select the route of travel.

G. Contractors moving equipment to other than NDDOT highway construction projects are subject to all fees as shown in the Road Restriction Permit Policy.

H. Contractors must call the Highway Patrol prior to movement of all overweight loads on all State and US Highways.

NDDOT ROAD AND VEHICLE RESTRICTIONS Date Revised 05-22-10

ROAD RESTRICTION PERMITS

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

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

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

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

1. Permit Fee: $25 per trip

2. $1 per ton per mile for all weight in excess of restricted axle limits or in excess of legal limits on state highways in areas where road restrictions are in force. When the gross weight of an axle grouping exceeds 48,000 pounds, the $1 per ton per mile shall apply to all weight in excess of 15,000 pounds per axle (see weight classification chart in section C.)

3. $5 **per ton per mile** for all movements exceeding the following gross vehicle weight limits:

    a. 105,500 lbs. GVW on unrestricted state highways, other than interstate highways, in areas where road restrictions are in force.
    b. 105,500 lbs. GVW on 8-ton highways.
    c. 105,500 lbs. GVW on 7-ton highways.
    d. 80,000 lbs. GVW on 6-ton highways.
    e. No overweight movement allowed on 5-ton highways

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

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

NOTICE

U.S. DEPARTMENT OF TRANSPORTATION

"HOT LINE"

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

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

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

WRITE
Inspector General
Post Office Box 23178
Washington, DC 20026-0178

Email: hotline@oig.dot.gov

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

CHICAGO REGIONAL OFFICE

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

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. Materials and construction methods used in performing maintenance and restoration work for 107. 08 Haul Roads shall meet the requirements of the relevant specifications.

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.

Spec	Code	Specification Section No.	Section Name	Item	Price
100	9950	704.04 C.5	Temporary Traffic Control	Flagging	$61.00 per MHR
100	9951	216.04	Water	Water	$35.00 per M Gal
100	9952	430.04 G & I.3	HMA – Bituminous Materials	Patching – Machine Placed	$250.00 per Ton
100	9952	430.04 G & I.3	HMA – Bituminous Materials	Patching – Hand Placed	$270.00 Per Ton
100	9954	302.04 B	Aggregate Base and Surface Course	Aggregate Base CL 13	$40.00 per Ton [1]
100	9955	203.01 C	Rock Excavation	Rock Excavation	$30.00 per CY
100	9956	203.01 D	Shale Excavation	Shale Excavation	$9.25 per CY
100	9957	203.01 E	Muck Excavation	Muck Excavation	$10.50 per CY
100	9958	203.01 G & 203.05 G.3	Excavation and Embankment	Overhaul	$0.08 per CY-Sta
100	9960	420.04 E	Bituminous Seal Coat	Blotter Sand	$40.00 per Ton [1]
100	9962	260.06	Silt Fence	Cleaning Silt Fence	$5.00 per LF
100	9963	261.06	Fiber Rolls	Cleaning of Fiber Rolls	$5.00 per LF
100	9964	260.06	Silt Fence	Removal of Silt Fence [2]	$5.00 per LF
100	9965	261.06	Fiber Rolls	Removal of Fiber Rolls [2]	$5.00 per LF

[1] 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 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.

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

CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Davis-Bacon and Related Act Provisions
IV. Contract Work Hours and Safety Standards Act Provisions
V. Subletting or Assigning the Contract
VI. Safety: Accident Prevention
VII. False Statements Concerning Highway Projects
VIII. Implementation of Clean Air Act and Federal Water Pollution Control Act
IX. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
X. Certification Regarding Use of Contract Funds for Lobbying
XI. 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. Historically, contracting agencies using Federal-aid highway funds were required to ensure Form FHWA-1273 was physically incorporated into all contracts and subcontracts. Effective June 10, 2026, this requirement was eliminated [91 FR 25492]. Future use of Form FHWA-1273 is now optional on the part of the contracting agency using Federal-aid highway funds. FHWA continues to make Form FHWA-1273 available as a convenience to contracting agencies. Contracting agencies must continue to ensure compliance with the provisions cited in Form FHWA-1273 in accordance with the provisions regardless of the use of Form FHWA-1273. Accordingly, the contracting agency retains the authority to determine whether the contractor must use Form FHWA-1273 to physically incorporate required contract provisions in each subcontract and in lower tier contracts. Where permitted by the contracting agency, the contractor may choose other ways to include required contract provisions in each subcontract, besides incorporating Form FHWA-1273. Contract provisions in Form FHWA-1273 are not required to be physically included in subcontracts for design services on Federal-aid design-build contracts, or in purchase orders, rental agreements and other agreements for supplies or services.

The applicable provisions 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 or 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.

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

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

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 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

The contractor and all subcontractors must comply with the following policies: 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, including any amendments thereto.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with 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, including any amendments thereto.

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.

1. Assurances Required:

a. The requirements of 49 CFR Part 26, including any amendments thereto, 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, including any amendments thereto, 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, including any amendments thereto, are incorporated by reference. 49 CFR Part 21.

III. 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. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. 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 classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH–1321) must 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. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

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

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used 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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) 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 will be sent by the contracting officer by email to *DBAconformance@dol.gov*. 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.

(4) 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 will, by email to *DBAconformance@dol.gov*, 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.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must 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.

d. *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and 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.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph 2.a. of this section or Section IV, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number

of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must 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.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.,* the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working 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; and

(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(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

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

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* 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. 3729.

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must 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, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with 29 CFR part 30, including any amendments thereto.

c. 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 III. 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 journeyworkers 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 must insert in any subcontracts the clauses set forth in paragraphs (1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 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. a. By entering into this contract, the contractor certifies that neither it 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 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

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

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

IV. 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 watchpersons 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 and interest from the date of the underpayment. 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 watchpersons 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.

* $33 as of January 15, 2025 (See 90 FR 1859) 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

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section III paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

V. 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 this section 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 this section 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 long-standing 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).

VI. 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).

VII. 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."

VIII. 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 200.327.

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 200.327.

IX. 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.

* * * * *

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 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).

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.

* * * * *

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

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

(1) 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;

(2) 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

(3) 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)

b. 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.

* * * * *

X. 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.

XI. 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 (40 U.S.C. sections 14501(d) and 14701 and the Appalachian Regional Commission Code as authorized under 40 U.S.C. section 14302)
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 40 U.S.C. 14501 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/construction-and-planning/construction-and-contractor-resources/contractor-information. 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 Program (Davis-Bacon)/LCPtracker page at: https://www.dot.nd.gov/about-nddot/civil-rights/labor-compliance-program-davis-bacon. 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.

CONTRACT SPECIAL PROVISION
MANDATORY USE OF ONLINE
PROJECT PAYMENT REPORTING

A. DESCRIPTION

This Special Provision (SP) replaces Section 109.04 D, "Prompt Payment"

This SP details the requirements for Contractors to document payment to all tiers of DBE subcontractors and suppliers and all non-DBE subcontractors. For the purposes of this SP, the term "payee" will be used to denote all tiers of DBE subcontractors and suppliers as well as all tiers of non-DBE subcontractors.

The Department utilizes the Certification and Compliance System (CCS) for this purpose. The direct web address to this system is https://dotnd.diversitycompliance.com/

B. PROMPT PAYMENT REQUIREMENTS

Within 20 calendar days of receiving payment from the Department, pay all payees their portion of the payment less applicable retainage, not to exceed 2 percent. If the Contractor does not make prompt payment, the payee may notify the Engineer.

The Contractor may withhold payment to a payee for just cause. If withholding payment from a payee, immediately provide written notification to the payee and the Engineer with the reasons for withholding the payment. If the Engineer determines the Contractor is withholding payment with just cause, interest will not accrue.

If the Engineer determines the Contractor is withholding payment without just cause, beginning on the 21st calendar day after the Contractor's receipt of payment from the Department interest will accrue for the payee at the rate provided by NDCC 13-01.1-02. Additionally, the Department may withhold all payments to the Contractor until the Contractor properly pays the payee and agrees to make all future payments to payees as required by the contract.

The Department will apply these prompt payment procedures to all payees, in accordance with 49 CFR 26.29.

C. REPORTING REQUIREMENTS

1. General.

Create a vendor account with CCS if one does not exist. Create a user for each employee who will use the system and identify the main user. The main user will receive communications from the Department.

2. Utilization Plan.

Complete a Utilization Plan (UP) and submit it for approval in CSS within 14 days of being notified the UP is available, or contract execution, whichever is later. The Department may grant an extension upon written request from the Contractor.

List all payees with the UP and at the proper tier. Ensure payees are completing their requirements and provide assistance as necessary.

The Department's Civil Rights Division will review the UP, verify the DBE participation is reported correctly, and approve the UP or return it for updates. If the UP is returned it will contain a note describing the necessary updates. Complete changes and resubmit within 7 days of receiving a returned UP.

a. Non-Account Holders.

If a payee does not already have an account within CSS when creating the UP send the information listed below to the compliance officer via CSS:

- Company name;
- Mailing address;
- Phone number;
- Contact person's name; and
- Contact person's email address.

The NDDOT will then set up a vendor account within CCS for the payee and notify the contractor when they are available to add to the UP.

b. Additional Payees.

If a payee is added after the initial UP is approved, submit a request for the payee to be added via the "Subs" tab inside CCS. Complete this process before the payee is due payment.

3. Payments.

Once the UP is approved, the UP is locked in and contractor progress payments will be reported, and the monthly auditing process begins. An audit is the term used in the system to refer to a monthly period while the project is active.

Contractors must report any payments for all payees for each audit period. A payment may be marked as final and if the payee agrees to the final payment no other reporting will be required on that payee. Payments of $0 must be reported or the audit will be considered incomplete. Audits are available in subsequent months, meaning the January audit period will open in February. Payments not reported within 30 days will be considered past due. Audits containing past due payments must be unlocked by a system administrator.

4. Payment Discrepancies.

Payees are required to confirm payments or open a Discrepancy (dispute original submission) within 30 days of the payment being recorded. Payments not confirmed nor disputed within 30 days will be auto-confirmed by the system administrators and the ability to dispute that payment will no longer be available. Contractors are to ensure the payees on their project are timely confirming/disputing payments.

Attempts should be made to resolve Discrepancies between the two parties. CCS provides functionality for each party to comment publicly or privately (private comments are visible to system administrators only). If the parties cannot come to a resolution, the Department will make a resolution. The Department may request additional information, if applicable, before making a resolution.

5. **Certification and Compliance System Assistance.**
   A user manual for UP's and recording project payments is available within the system. The user manual and other training is offered by navigating to it once logged in. A UP does not have to be assigned to an entity to view the guide or attend system training.

   For further assistance, contact the Civil Rights Division for DBE related inquiries and the Construction Services Division for all other inquiries.

01242023

LABOR RATES FROM U.S. DEPARTMENT OF LABOR

NDDOT's *Davis-Bacon Wage and Payroll Requirements Handbook* is available at:
https://www.dot.nd.gov/about-nddot/civil-rights/labor-compliance-program-davis-bacon

U.S. DEPARTMENT OF LABOR

STATE	COUNTY	
NORTH DAKOTA	STATEWIDE	ND20260006 Page 1

DATE OF DECISION
01-16-2026
01-30-26(Mod.1)
05-18-26(Mod.2)
07-30-26(Mod.3)
08-06-26(Mod.4)
10-01-26(Mod.5)

	Basic Hourly Rates	Fringe Benefits Payments H & W/Pensions
CARPENTERS	$39.45	$ 9.75
CEMENT MASONS/FINISHERS	39.45	9.75
LINE CONSTRUCTION:		
Lineman	55.35	24.55
Cable Splicer	55.35	24.55
Line Equipment Operator	47.00	22.21
Groundman	31.32	14.69
ELECTRICIANS:		
Electrician	55.35	24.55
Cable Splicer	55.35	24.55
(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	55.35	24.55
Cable Splicer	55.35	24.55
(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	55.35	24.55
Cable Splicer	55.35	24.55
(Burleigh, Morton and Stark Counties)		
Electrician	40.00	19.36
(Cass County)		
WELDERS:		
Receive rate prescribed for craft performing operation to which welding is incidental		

	Basic Hourly Rates	Fringe Benefits Payments H & W/Pensions
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.	$31.40	$ 3.90
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 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; muti-plate pipelayer; culvert pipe layers; carpenters tenders.	31.65	3.90
Group 3 Caisson Worker: Bottom Man (Sanitary sewer, storm sewer, water and gas liners); Concrete Mixer Operator (one bag capacity); Mortar Mixer.	31.80	3.90
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.	32.55	3.90
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.	38.25	24.05
Group 2 All Cranes 59 tons and under; 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.	36.85	24.05

POWER EQUIP.OPERATORS: (CONT.)

	Basic Hourly Rates	Fringe Benefits Payments H & W/Pensions
Group 3 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; Lazer-Screed 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 (SurfacePlaner) 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.	$36.60	$24.05
Group 4 Articulated/Off Road Hauler; Asphalt Dump Person(Controls the spread of asphalt); Asphalt Paving Screed 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; Hydro Vac and Hydro Excavator self propelled; 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.	36.45	24.05
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-Non-Truck; Power Actuated Auger and Horizontal Boring MachineOperator up to and including 5"; Roller (on other than hot mix asphalt		

	Basic Hourly Rates	Fringe Benefits Payments H & W/Pensions
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.	$35.60	$24.05
Group 6 Assistant/Apprentice Operator; Brakeman or Switchman; Dredge or Tugboat Deckhand; Drill Truck Gravel/Testing Operator; Form Trench Digger (Power); Gunite Operator Gunall; Paint Machine Striping Operator; Pickup Sweeper, 1 CY and over Hopper Capacity; Scissor Jack {Self -Propelled) Platform Lift; Straw Mulcher, Blower and straw press; Stump Chipper Operator; Tillage Equipment Operator; Tractor Pulling Compaction or Aerating Equipment and no till drills; Trenching Machine Operator up to and including 45 H.P.	34.80	24.05
TRUCK DRIVERS:		
Single-Axle Truck	35.14	19.98
Tandem- and Tri-Axle Truck	35.26	19.98
Tandem- and Tri-Axle Semi, Lowboy	35.57	19.98
Off Road Heavy Duty End Dumps 20 Yards and Under	35.57	19.98
Euclid, Over 20 Yards	37.09	19.98

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) (iii)].

HIGHWAY CONSTRUCTION PROJECTS

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022.

Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION (NDDOT)
ON-THE-JOB TRAINING SPECIAL PROVISION

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

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

After a training program and trainee candidate have been approved, the contractor begins training its regular employee according to the approved program. The goal of this training is to retain the trainee as a permanent employee 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 to March. 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 to March the following year:

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.

Contractors assigned OJT positions are required to attend one-on-one meetings with the OJT Program Administrator and the OJT Supportive Services Consultant in early spring. The meeting is conducted virtually via Microsoft TEAMS. At this meeting any changes to the program and other important information will be shared and the contractor will have an opportunity to ask any questions they may have.

Failure to follow the OJT Special Provision and 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

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/about-nddot/civil-rights/labor-compliance-program-davis-bacon

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.

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.

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 Civil Rights Division.

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."

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 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.

C. 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. Must have trainees available to the OJTSS consultant for at least two on-site visits during the construction season. The OJTSS consultant will be provided a private location to meet with the trainee and the trainee will be allowed as much time away from the project as necessary to complete the on-site visit.

E. Make the trainer and project superintendent available to the OJTSS consultant for at least two on-site visits each construction season.

F. Make trainees aware they are formally enrolled in the OJT program.

G. Identify trainees on the payroll excerpts, for example: "grp. 4 roller operator trainee." This includes trainees in job classifications not covered by DBRA. Handwritten notes are appropriate for identification.

H. Notify the Department when a trainee completes the number of hours required to graduate from the OJT Program. The Department will issue the trainee a confirmation letter as proof of the graduate's successful training program completion.

I. Notify the Department to "propose graduation" or discontinue the training period of a trainee who has completed 90% or more of their hours and thereafter advance the trainee to journey-worker status.

J. Elect to upgrade proficient trainees from one power equipment operator group or truck driver group to another, with the approval of CRD. Fewer hours are required to complete the upgraded position.

Minimum number of hours required:

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

Depending on the variety of experience the trainee has gained under the previous curriculum, the difference in the hours may be deducted from the actual operation of the piece of equipment or truck. The contractor will need to review the trainee's past performance 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 to complete the OJT Program. If transfers are made, CRD must be notified and provided with the name of the trainer.

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. Payrolls of employees trained on non-NDDOT projects must be provided to prove appropriate wages are paid.

N. Must train trainees on projects within North Dakota. Cannot train trainees on projects located outside of the state lines. The OJTSS consultant must be able to visit the trainee twice during their program. It is unreasonable for the OJTSS consultant to make these visits outside of the state.

O. 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.

P. 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.

Q. Must not use one trainee to simultaneously fill multiple trainee positions

R. 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 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.

Contractors will be reimbursed for classroom training hours after the trainee has completed 40 hours of work on highway construction projects.

Reimbursement for classroom training will be limited to 40 hours per trainee per construction season.

B. 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 non-federal aid 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. Current and prior labor rates can be found on the NDDOT website at: https://www.dot.nd.gov/about-nddot/civil-rights/labor-compliance-program-davis-bacon

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. DBRA requirements can be found on the NDDOT website at https://www.dot.nd.gov/about-nddot/civil-rights/labor-compliance-program-davis-bacon

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.

XII. BASIS OF PAYMENT

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

B. 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.

C. 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.

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

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

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

A. The contractor is required to consistently demonstrate efforts to recruit, hire, and train candidates for the OJT Program.

B. If the contractor does not show in a timely manner good faith efforts to recruit, hire, and train candidates in the targeted group, the Department may withhold progress payments

C. If payments have been made, the Department will deduct the amount paid from the contractor's progress payment.

D. No payment shall be made to a contractor for failure to provide the required training or failure to hire the trainee as a journey-worker when such failure is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this OJT Program Special Provision.

E. Hiring a trainee to begin training as soon as feasible after start of work is evidence of a contractor's good faith efforts to comply with the OJT Program requirements. Additional evidence supporting a contractor's good faith efforts would be to keep the trainee employed as long as training opportunities exist in the approved work classification or until the trainee has completed his or her training program.

F. It is not required that all trainees be employed for the entire length of the construction season. A contractor will have fulfilled its responsibilities under this OJT Special Provision if it has provided acceptable training to the number of trainees assigned.

XIV. UNFILLED OR INCOMPLETE TRAINEE POSITIONS

A. By October 1, provide written explanation of the firm's good faith efforts for unfilled or incomplete trainee assignments to CRD. CRD will decide, on a case-by-case basis, whether to carry the assigned positions over to the next construction season.

B. Positions carried over from the previous construction season must be among the first positions filled at season startup. To notify CRD of the trainee's rehiring, submit *SFN 60226 Request for On-the-Job Trainee Approval*, marking 'Check if Carryover Trainee' in the Approved Training Program section of the form. There is no need for the training position or a returning trainee to be re-approved.

C. Sanctions, up to and including revocation of bidding privileges, may be imposed on the contractor for failure to provide sufficient explanation and documentation for reasons assigned trainee positions when unfilled or incomplete.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES

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 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 ESCMs for a site may consist of identical ESCMs. In these cases, the temporary ESCMs may be used as the permanent 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, and 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.

CONSTRUCTION REQUIREMENTS

A. General.

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.

B. Permits.

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.

C. Submittals.

1. Preconstruction

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 (ESCC) 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 ESCC Certification Training at the preconstruction conference and will maintain that certification through the term of the contract.

For projects covered by an Environmental Protection Agency (EPA) Construction General Permit provide, at the preconstruction conference, the documentation of EPA construction inspection certification for all individuals conducting inspections under this permit.

2. Changes to the Erosion Control Plan.

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 have no effect on the erosion control plan or SWPPP do not require Engineer approval.

3. Inspection Reports

Provide copies of all inspections, documentation, record keeping, maintenance, remedial actions, and repairs required by the applicable permits to the Engineer. Provide these records within 3 working days of their creation.

D. Construction.

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

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

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.

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

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

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.

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 or perform winter stabilization techniques.

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

E Maintenance.

Maintain the effectiveness of the temporary ESCMs as long as required to contain sediment runoff. Inspect the temporary 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.

Correct any deficiencies in the ESCMs within the timelines established in the applicable permits. If conditions do not permit access to the ESCMs, corrective actions can include 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.

F. Close Out.

1. Removing Temporary ESCMs.

Remove the temporary ESCMs when directed by the Engineer or when permanent ESCMs are installed.

2. SWPPP Transfer.

Submit electronic copies of the final updated SWPPP, all inspection reports, and maintenance records as a single packet to the Engineer within 2 days of completing final stabilization..

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.
Designate a supervisor that is an employee of the Prime Contractor having the following qualifications:

1. 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;

2. Competent to supervise personnel in erosion and sediment control operations; and

3. Certified through the NDDOT ESCC Certification Training and maintain that training throughout the term of the contract. The EPA construction inspection course cannot take the place of the NDDOT ESCC. No other certifications may take the place of this requirement.

C. Duties.
The supervisor's duties shall include the following:

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 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 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 electronic documentation of all erosion and sediment control activities and inspections as required elsewhere in this provision.

EROSION AND SEDIMENT CONTROL INSPECTOR FOR EPA CONSTRUCTION GENERAL PERMIT

For projects covered by EPA Construction General Permit, utilize individuals conducting the Erosion and Sediment Control Inspections that have taken the EPA Construction inspection

course developed for this permit. These individuals must have passed the exam or hold a valid construction inspection certification or license from an equivalent program.

The NDDOT ESCC certification cannot take the place of EPA construction inspection certification. Only third-party training that is listed as EPA approved on the EPA website will be considered equivalent.

Provide the names of all individuals who will be conducting the Erosion and Sediment Control inspections on EPA projects. Notify the Engineer if this person changes and provide the new contact information.

The EPA Construction Inspection Certification or License must be active for the duration of the project.

PERFORMANCE

Correct areas identified as noncompliant 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.

METHOD OF MEASUREMENT

ESCM items will be measured as specified in the “Method of Measurement” portion of the appropriate portion of the contract.

BASIS OF PAYMENT

A. General.

ESCM installation will be paid for at the contract unit price for the applicable ESCM item and contract provision. The plans will detail the required ESCMs for temporary and permanent installations. The same contract item may be used for temporary and permanent ESCMs.

ESCM item removal will be paid for at the contract unit price for “Remove _____”in the appropriate section of the contract.

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

B. Replacement of ESCMs.

When the Engineer directs the replacement of temporary 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 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 ESCMs as required in the Contract.

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

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

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

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. Nighttime 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.

The following operations are exempt from the definitions of extended hours and nighttime operations:

- Pavement coring;
- Concrete joint cutting; and
- Temporary traffic control.

Work conducted less than 1 hour after sunset and less than 1 hour before sunrise is considered extended hours. All other operations conducted under darkness fall under nighttime operations.

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 before anticipated nighttime operations. Allow up to 7 calendar days for the Engineer to review the request. The Engineer may deny the request or delay approval if it would require additional staffing considerations. If nighttime

operations require 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

STANDARD 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

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.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

STANDARD 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.

EQUIPMENT

If the Contractor elects to use an E-ticketing application use an E-ticketing application developed by Haulhub, Earthwave Technologies (FleetWatcher) or an approved equivalent accessible through Windows and the Apple App Store.

Provide the Engineer access to the E-Ticketing applications' cloud storage and cloud computing for 90 days after final acceptance of the project on mobile and desktop platforms.

CONTRACT REQUIREMENTS

A. General.

If the Contractor elects to use E-Tickets, 30 days before delivering material to the project provide the Engineer with login and access to the E-ticketing application. Provide on-site technical assistance and training during the initial setup to all parties requiring access to the E-Ticketing information. Continue technical support during E-Ticket production

As E-Tickets are generated, submit them to the Department using the E-Ticketing application.

B. 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.

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

C. 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.

Produce both paper and E-Tickets. The Engineer may waive the requirement for dual concrete batch ticket 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.

Authored By: NDDOT ETS

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

STANDARD SPECIAL PROVISION

DOMESTIC MATERIAL PROCUREMENT PREFERENCES

DESCRIPTION

Replace Section 106.08, “Buy America”, with the following:

DOMESTIC MATERIAL PROCUREMENT FOR INFRASTRUCTURE PROJECTS

A. General.

Provide materials from domestic material sources when articles, materials, or supplies are permanently incorporated into the work.

The requirements of this SP are not applicable to equipment, tools, and temporary items.

Domestic material procurement requirements do not apply to items used by the Contractor to facilitate construction that are not required to be permanently installed as part of the contract requirements, but that are left in place upon completion of the work at the convenience of the Contractor.

The definitions and requirements in this SP have been assembled based on the following Federal requirements:

- Iron and steel requirements are based on 23 CFR Part 635, “Buy America requirements”;
- Manufactured products are based on 23 CFR Part 635 “Buy America requirements”; and
- Construction materials are based on 2 CFR Part 184, “Buy America Preferences for Infrastructure Projects” (BABA).

B. Certifications.

All certifications are submitted by the prime Contractor. When submitting certifications for materials that are subject to the requirements of this provision, the prime Contractor shall include a signed letter stating that the submitted documentation is the documentation that was received by the prime Contractor for material incorporated into the work. The prime Contractor’s signature on the Department’s Certificate of Compliance form meets this requirement.

C. Determination of Material Category.

1. General.

Only a single category of requirements will apply to an item.

Exceptions:

1) Precast concrete items are classified as manufactured products, however components of these items that consist wholly or in part of iron, steel, or a combination of both must meet the requirements of Section C.2, “Iron or Steel Products” of this provision.

2) Cabinets or enclosures for intelligent transportations systems or other electronic hardware systems classified as manufactured products that consist wholly or in part of iron, steel, or a combination of both must meet the requirements of Section C.2, “Iron or Steel Products” of this provision.

Some contract items are composed of multiple components that may fall into different categories. Individual components will be categorized based on their nature when they arrive at the work site. In cases where the classification of an item is in question or dispute, the Engineer’s determination of the classification will be binding.

Exception:
Items that comprise a kit will be considered based on their status as a whole product and classified as either iron or steel products or as manufactured products. A kit is a product intended for incorporation into the project whose parts are acquired from a single manufacturer or supplier and delivered to the work site as separate components but are then assembled to form a single product at the work site.

2. Iron or Steel Products.
Iron or steel products are defined as articles, materials, or supplies that consist wholly or predominantly of iron, steel, or a combination of both.

Predominantly iron or steel or a combination of both means the cost of the iron and steel components exceeds 50 percent of the total cost of all components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

3. Manufactured Products.
Manufactured products are defined as articles, materials, or supplies that have been:
- Processed into specific form or shape; or
- Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

If the cost of iron and steel components of a manufactured product exceed 50 percent of the total cost of the product, the iron and steel must meet the requirements of Section C.2, “Iron or Steel Products” of this provision. The remaining components are then exempt from any domestic procurement preference.

4. Construction Materials.
Construction materials are materials that consist primarily of:
- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Fiber optic cables (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; or
- Drywall.

Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization.

5. Other Materials

If articles, materials or supplies do not meet any of the definitions in sections C.2, C.3, or C.4, there are no requirements for domestic manufacturing. This includes the following items that are specifically categorized as other (excluded) materials per BABA Section 70917(c) of the Infrastructure Investment and Jobs Act of 2021:

Cement and cementitious materials;
Aggregates such as stone, sand, or gravel; or
Aggregate binding agents or additives.

D. Steel and Iron Certification.

1. General.

Ensure all manufacturing processes, including applications of coatings, occur in the United States. A coating includes all processes required to apply the coating to a product to protect or enhance the value of the product.

2. Bulk Manufactured Steel and Iron Materials.

In addition to the requirements of Section 106.01 C, “Certificate of Compliance”, submit a contractor’s Certificate of Compliance stating that the iron and steel products listed in Table 1 are of domestic origin.

Table 1

Mailbox supports	Cable Fence Materials
Chain Link Fence Materials	Barbed Wire Fence Materials
Guardrail Components	Woven Wire Fence Materials
Culvert Markers	Delineators
Perforated Tube Sign Supports and Related Materials	

3. Other Steel and Iron Products.

For steel and iron products that are not listed in Table 1, submit a manufacturer’s Certificate of Compliance as specified in Section 106.01 C, “Certificate of Compliance”.

4. Foreign or Uncertified Steel and Iron.

These requirements allow the use of steel and iron products produced and manufactured outside the United States, or steel and iron products that cannot be certified as manufactured in the United States, of a total value less than 0.1 percent of the original contract amount, or $2,500, whichever is greater.

The total value is that shown to be the cost of the steel and iron products as delivered to the project site.

Document the cost of:

- Foreign steel and iron products, plus
- Steel and iron products which cannot be certified as manufactured in the United States.

Submit the documentation of foreign and uncertified steel and iron products with the required certifications.

E. Manufactured Products.

Manufactured products are acceptable under this provision if the product was manufactured in the United States. For the purposes of this provision, “manufactured in the United States” means that the final assembly of the product occurred in the United States.

F. Construction Materials.

1. General.

Each material classified as a construction material has a specific standard for the material to be considered in compliance with this provision.

Except as specifically provided, only a single standard under this section should be applied to a single construction material.

2. Non-Ferrous Metals.

For non-ferrous metals, all manufacturing processes from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

3. Plastic and Polymer-Based Products.

For plastic and polymer-based products; including polyvinylchloride, composite building materials, and polymers used in fiber optic cables; all manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

4. Glass.

For glass; including optic glass; all manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

5. Fiber Optic Cable.

For fiber optic cable; including drop cable; all manufacturing processes, from the initial ribboning if applicable, through buffering, fiber stranding and jacketing, occurred in the United States.

All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

6. Optical Fiber.

For optical fiber, all manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

7. Lumber.

For lumber, all manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

8. **Drywall.**
   For drywall, all manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

9. **Engineered Wood.**
   For engineered wood, all manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

DESCRIPTION

This SP replaces Section 107.14 Public Liability and Property Damage Insurance.

107.14 Public Liability and Property Damage Insurance.

A. General Requirements.

Submit to the Department the certificates of insurance effecting the requirements in this section for the Commercial General Liability and Commercial Automobile Liability Insurances with the contract and the contract bond in accordance with Section 103.06, "Execution and Approval of Contract."

Provide insurance policies executed by a corporation qualified and authorized to write the policies in the State of North Dakota. The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.
Secure and maintain insurance in full force and effect before starting the work and until completion of all work required and accepted by the Department or owner. The policies shall provide 30 calendar days notice to the Department or the owner of any intent to cancel or materially alter such insurance.

Failure to maintain the insurance as required constitutes a material breach of contract. The Department or the owner may, after giving 5 business days notice to the Contractor to correct the breach, immediately terminate the Contractor in accordance with Section 108.08, "Termination of the Contract for Default," and procure or renew such insurance and pay all premiums. The Department or the owner may demand repayment of premium costs by the Contractor, or may offset the premium costs against funds due the Contractor from the Department or the owner.

B. Insurance Requirements.

Secure and maintain in full force and effect during the term of the contract the following insurance coverages:

1. Commercial General Liability for limits not less than $2,000,000 combined single limit per occurrence and aggregate for bodily injury, property damage, personal injury and completed operations/product liability. Provide products and completed operations coverage for a period of one year following final acceptance of the work. Provide coverage with the aggregate limit applied separately to occurrences at the location or project described in this contract. Provide a policy including a "stop-gap" Employers Liability endorsement to cover the employer's liability for injury to employees falling outside the State Worker's Compensation Law.

2. Commercial Automobile Liability for limits not less than $2,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers Compensation coverage as required by the State of North Dakota.

The General Liability and Automobile policies shall provide an additional insured endorsement in favor of the State of North Dakota and the Owner and shall contain a “Waiver of Subrogation” to waive any right of recovery that the Insurance company may have against the State and the Owner. The coverage required under this agreement shall be primary for the State and the Owner, and shall not be affected by any other insurance or coverage obtained by the State or the Owner on their own behalf.

Any right of the State to receive indemnification and insurance shall not give rise to a duty on the part of the State to exercise its rights or status for the benefit of the owner, or any other person or entity.

C. Subcontractor.

If subletting a portion of the contract, the Contractor shall obtain insurance protection in accordance with Section 107.14.B, “Insurance Requirements,” to provide liability coverage to protect the Contractor, State, and owner for work undertaken by the subcontractor. Ensure public liability and property damage insurance coverage in accordance with Section 107.14.B, “Insurance Requirements,” for all parties performing work under the contract.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

STANDARD SPECIAL PROVISION

FEDERAL DRONE RESTRICTION

DESCRIPTION

This Special Provision is to comply with the Federal Regulations, NDAA Public Law 118-31 - Section 1825 "American Security Drone Act of 2023", and the Office of Management and Budget (OMB) Memorandum-26-02 to prohibit the uses of Unmanned Aircraft Systems (UAS) manufactured by covered foreign entities on projects and project activities.

CONTRACT REQUIREMENTS

Maintain records and documents pertaining to the origins of drones used on NDDOT projects. Furnish copies of these records upon request of the Department or FHWA. Retain the records for a minimum of 4 years after the Contractor return the signed final payment voucher.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

UNITED STATES FOREST SERVICE CONSIDERATIONS

PROJECT SS-ARP-9-999(488) – PCN 23495

DESCRIPTION

The North Dakota Department of Transportation (NDDOT) in cooperation with the Federal Highway Administration (FHWA) have made the following environmental commitments to the United States Forest Service (USFS) for all work within USFS lands (T 153 N R 96 W Sections 9, 10, and 15):

- Fire Protection and Suppression
- Machinery Hygiene
- All commitments as outlined in Section 6 of the plans.

FIRE PROTECTION AND SUPPRESSION

A. General: A Holder is defined as the Permittee (permit holder), or Lessee and/or Operator and their representatives, employees, workers, contractors, and subcontractors.

1. Compliance to the stipulations in this exhibit shall not preclude the Holder from complying with any other Federal, State, County, or municipal laws, ordinances, or regulations pertaining to fire prevention and suppression.

2. The Fire Season for the Medora and McKenzie Ranger Districts normally will be from April 1 to October 31 of each year. If conditions warrant, the District Ranger may begin or extend the fire season as deemed necessary. The District Ranger may also amend, add, or delete any requirement as deemed necessary.

3. It is the Holder's responsibility to obtain and know the daily Fire Danger Index and fire restrictions on or near the lands to be occupied under an approved authorization. For information on Fire Danger Index and fire restrictions contact local fire officials, the North Dakota Forest Service, Bismarck National Weather Service, or the North Dakota Division of Emergency Services.

4. To the extent practicable, the Holder, their employees, contractors, and subcontractors, shall take measures to prevent uncontrolled fires on the area of operations resulting from the operations. Self-inspections are encouraged.

5. The Holder shall promptly report all fires, regardless of size, to 1) the local fire department and 2) the Forest Service office. The Holder is responsible to submit a complete written follow-up Fire Report within 24 hours of reporting a fire.

6. The Holder, and if applicable, the applicable lessees and transferees are jointly and severally liable in accordance with Federal and State laws for indemnifying the United States for: (a) Injury, loss or damage, including fire suppression costs, which the United States incurs

as a result of the operations; and (b) Payments made by the United States in satisfaction of claims, demands or judgments for an injury, loss or damage, including fire suppression costs, which result from the operations.

B. Fires: With the exception of approved facilities, no open fires (fires for warming, burning wastes, brush disposal, debris, etc.) are allowed unless approved in writing from the District Ranger.

C. Oil & Gas Production Facilities: A thirty (30) foot minimum bare ground buffer zone shall be maintained around any facility (equipment and/or accessories) capable of producing a flame. Examples include but are not limited to heater-treaters, separators, line heaters, etc. The 30-foot buffer for flare stacks and flare pits originates from the center of the stack or flare pit igniter.

D. Smoking: All smoking will be done inside of vehicles or in areas cleared of flammable material when the "Fire Danger" is “Very High” or “Extreme”.

E. Fireworks: Fireworks are prohibited on public lands.

F. Exhaust & Arrester Systems: Each internal combustion engine shall be equipped with a manufacturer’s approved or equivalent spark arrester or spark arresting device or system. Heavy-duty trucks may have a vertical stack exhaust system with muffler, provided the exhaust stack extends above the cab of the vehicle. An exhaust driven turbocharger is considered to be a satisfactory spark arrester. Internal combustion engine exhaust systems, arresters and other devices shall be properly installed and maintained.

G. Catalytic Converters: The Holder shall take extra precautionary measures when driving off-road with vehicles equipped with catalytic converters. Such measures shall include but are not limited to: avoiding driving over or through vegetation tall enough to come into contact with the converter, avoid parking in vegetation tall enough to come into contact with the converter, and keep all debris from building up around or on the exhaust system.

H. Chainsaws: The sawyer shall have a shovel and a fire extinguisher, containing not less than eight (8) ounces of extinguisher fluid or a dry chemical powder type of not less than one (1) pound capacity. The sawyer shall carry the extinguisher at all times. All refueling shall be done on bare soils. Chainsaws will have a manufacturer approved or equivalent spark arrester.

I. Required Fire Suppression Equipment: Any vehicle and/or piece of equipment used off-road will be equipped with an operational, charged fire extinguisher with a minimum 2 ½ pounds capacity and 4 BC or higher rating; a shovel (round point #0 or equal); and a 5-gallon backpack container with a hand pump attached, to be filled at all times.

J. Welding: Welding and use of cutting torches or cutoff saws will be permitted only in areas that have been cleared or are free of all material capable of carrying fire. Flammable debris and vegetation must be removed from within a minimum ten (10) foot radius of all welding and cutting operations or fireproof welding blankets used. When the "Fire Danger" is in the “High” category or above, each welding crew will have available in the immediate working or project area 1) A mix of the required fire suppression equipment and 2) A ground tanker of not less than three hundred (300) gallon capacity with a pump capable of pumping twenty (20) gallons per minute at a minimum of forty (40) pounds per square inch (PSI) and not less than one

hundred (100) feet of hose. When “Fire Danger” is in the “Very High” or “Extreme” category and a Red Flag Warning is issued no welding is permitted.

K. Fire Suppression Plan: Upon request from the District Ranger, or when required by regulation, the Holder shall submit a Fire Suppression Plan to be included as part of the Permit Package or Plan of Operations.

L. Failure to Comply: Failure to comply may result in the immediate suspension of all or portions of the operations.

MACHINERY HYGIENE

A. General.
Decontaminate off-road equipment prior to accessing USFS lands to prevent the spread of noxious weeds.

B. Definitions:

1. **Contractor Controlled Areas** are 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 or waste areas, etc.).
2. **Decontaminate** means to remove all mud, dirt, and plant material.
3. **Decontamination Site** refers to an onsite decontamination area, which shall be situated on ground away from drainages and waterways.
4. **Noncompliance** is any action or inaction that violates the regulations imposed by the applicable permits or the requirements of this Special Provision or other contract documents.
5. **Noxious Weeds** are those plants deemed detrimental to public health, agriculture, recreation, wildlife and/or property by the North Dakota Department of Agriculture, and/or the USFS.
6. **Off-Road Equipment** includes any non-road engines (e.g. generators, welders, etc.), equipment and vehicles that leave the roadway, and any licensed trucks and vehicles used to excavate, remove, and haul vegetation, debris, and topsoil.
7. **Service Vehicles** include vehicles that stay on the roadway, travelling frequently in and out of the project area, that are used to transport personnel, tools, equipment, supplies, and construction materials to and from the project site, with the exception of excavated materials (borrow, topsoil, aggregate, etc.).
8. **USFS Lands** are those lands owned by USFS, which includes T153N, R96W, Sections 9, 10, and 15.

CONSTRUCTION REQUIREMENTS

A. Coordination: At least 10 work days prior to commencement of any construction activities, coordinate with the Project Engineer and the USFS (Jack Dahl, Medora Ranger District, (701) 227-7832) to establish the absence of noxious weeds along the project corridor where existing right-of-way or easements occur, as well as in areas outside of right-of-way, such as borrow and/or waste sites, haul routes, and any other contractor controlled areas. If noxious weeds are found to be present in these areas, said vegetation shall be treated or removed by the

Contractor in a manner acceptable to the USFS. This clearance must be obtained at the start of each growing season during which construction occurs.

B. Decontamination Requirements: Decontaminate all off road equipment before entering USFS lands for the first time. Equipment used within the areas established to be free of noxious weeds as described herein does not need to be decontaminated each time it enters USFS lands. Repeat decontamination of any equipment utilized on another job prior to reentry of USFS lands. Conduct decontamination outside of USFS lands.

Service vehicles do not need to be decontaminated.

C. Decontamination Procedures: Pressure wash all off-road equipment to remove all caked on dirt and mud prior to arrival at the project site. Pressure washing shall be conducted at an offsite, dedicated washing station, with assurances of the proper containment and disposal of wash water and solid waste to avoid the spread of noxious weeds.

Inspect all off-road equipment prior to accessing USFS lands to ensure the absence of mud, dirt, and plant material. Tools needed for inspection typically include, mirrors, tools necessary to access internal components, probes, gloves, safety glasses, containers for contaminated material, and a checklist of inspection points (including, but not limited to, components of the cabin, engine, underside, tracks/wheels, blades/buckets, booms/arms, accessories/attachments, bumper/brush guard, and running boards).

Decontamination at decontamination site(s) shall consist of vacuuming/sweeping, physical removal, and air blasting. Use of water for decontamination is prohibited at the decontamination site(s). Cabins shall be swept and/or vacuumed. Caked on mud/dirt and large vegetative debris shall be physically removed using hand tools, including, but not limited to, brooms, brushes, scrapers, and shovels. Air blasting with compressed air shall be done to decontaminate dry, dusty equipment in such a way to limit dispersal of debris. Waste and debris removed shall be collected, sealed in refuse containers, and disposed of at the appropriate landfill.

D. Documentation and Reporting: Document all decontamination (both on and off project site) and inspection of all off-road equipment that accesses USFS lands. A log book shall be maintained by the Machinery Hygiene Supervisor to document for each piece of off-road equipment access USFS lands:

1) was pressure washed prior to arrival at the project site,
2) was decontaminated onsite, and
3) was inspected for noxious weeds and passed said inspection (i.e., was free of mud, dirt and vegetative debris).

The log book shall include applicable equipment identification, dates, responsible parties, locations, and methods. Within three working days of inspections, copies of this documentation shall be provided to the Project Engineer and USFS Medora Ranger District, Arden Warm, 161 21st St West, Dickinson, ND 58601.

E. Machinery Hygiene Supervisor

Qualifications: The Prime Contractor shall name a supervisor that:

- Is an employee of the Prime Contractor.

- Is familiar with project specifications, plans and this Special Provision.
- Has the ability to identify noxious weeds that may be present in Mckenzie County, North Dakota.
- Has at least one year of experience supervising personnel.

Duties: Have the supervisor:

- Adhere to this Special Provision.
- Be on the decontamination site to supervise the decontamination and inspection of equipment and perform required documentation.
- Distribute documentation of decontamination and inspection as described herein.

F. Performance: The Project Engineer shall determine whether the Prime Contractor is in compliance through inspection of the log book as described herein. Equipment that is in non-compliance will not be allowed to remain on the project site until decontamination has occurred.

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Pay Item	Pay Unit
Machine Hygiene	Lump Sum

Payment for Machine Hygiene will be based on the following table.

Amount of Total Contract Earned	Machine Hygiene Pay Amount
5%	25%
25%	50%
75%	75%
95%	100%

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

UTILITY COORDINATION

PROJECT SS-ARP-9-999(488) – PCN 23495

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".

DEFINITIONS

Abandon Utility (AU): Utility Encounter that was originally a Conflict, but relocated before bidding. The line is still represented in the Exhibits to make the Contractor aware of its location. See the Utility Coordination Table for final details.

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.

Proposed Resolution (PR): A proposed location of a future Utility Encounter. The Utility Owner is in the process of moving the Utility to this Proposed location. PIP activities may still be required in the proposed location.

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

UTILITY COMPANY CONTACTS

UTILITY COMPANY	CONTACT NAME	PHONE NUMBER	EMAIL
OneOK - Contact USFS	Mckenzie District Ranger	(701) 842-8500	michael.engelhart@usda.gov

CONTRACTOR RESPONSIBILITIES

A. Responsibilities.

The responsibilities for utility coordination include the following:

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

B. Utility Coordination Plan.

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

C. Record of Utility Outage Notifications.

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

D. Utility Coordination Schedule.

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

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

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

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

CONSTRUCTION REQUIREMENTS

A. General.

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

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

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

B. Utilities Identified in Plans.

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

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

The Contract documents show all known UE for the project.

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

C. Utilities Encountered During Work.

1. General.

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

2. Unidentified Utility Encounters.

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

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

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

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

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

D. Utility Coordination Meetings.

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

2. Weekly Utility Coordination Meeting.
Organize a weekly meeting to discuss utility coordination efforts with utility companies and affected subcontractors, local authorities, the Engineer and others who may have an interest in utility coordination efforts. Hold the weekly utility coordination meeting immediately before the weekly planning and reporting meeting. Publish minutes and distribute copies to all meeting attendees within 48 hours of the conclusion of the meeting.

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

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

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

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

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

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

The following are specialized notes that could not fit in the project notes

OneOK

I. 8” Abandoned Pipeline

There is an abandoned 8” polygas pipeline which crosses Sand Creek at approximately construction station 197+00. No additional location or depth information is available for this pipeline beyond what is shown on the Plans and Contractor is responsible for contacting USFS District Ranger to determine specific location and pipeline depth.

Contractor may excavate up to 4 feet above the pipeline elevation. Contractor must Protect in Place during construction activities in the vicinity of the Pipeline. Specific requirements for Protect in Place shall be determined at the Utility Coordination meeting and incorporated into the Utility Coordination Plan.

Rev. 2026-01-28

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

CONSTRUCTION MONITORING AND DISCOVERY PLAN

PROJECT 9-999(488) – PCN 23495

DESCRIPTION
This work consists of hiring an archeologist and a Traditional Cultural Specialist (TCS) to conduct monitoring for specific work activities.

ATTACHMENTS
Appendix A – Cultural Resource Discovery Plan

QUALIFICATIONS

A. Archaeologist.
Employ a qualified State Historical Society of North Dakota (SNSHD) permitted Archaeologist with a graduate degree in archaeology, anthropology, or closely related field as outlined by the North Dakota State Historic Preservation Office (SHPO) in Section 40-02-02-05. A list of qualified individuals is available from the SHPO.

B. Traditional Cultural Specialist (TCS).
Employ a TCS from the Mandan, Hidatsa, and Arikara (MHA) Tribes if possible. Contact the MHA Tribal Historic Preservation Officer (THPO) Office a minimum of 14 days before beginning fence installation.

MHA THPO Office Contact Information:

Allan Demaray
Director & THPO
701-421-6640
Ademaray@mhanation.com

CONSTRUCTION REQUIREMENTS

A. General.
The archaeologist will hire the TCS from the THPO Office listed above.

B. Construction Monitoring
The archaeologists and TCS will monitor fence installation, the excavation, initial earth-moving activities, and all activities located within cultural sites. The monitors will also photograph the disturbance, and perform periodic close-up inspections of spoil piles and stripped surfaces.

Monitoring is not required for back-filling and replacing soils that were removed in the same location.

If simultaneous work is being conducted, multiple monitors may be needed to meet all the cultural commitments

C. Discoveries.
If the monitor discovers an archaeological resource, work shall follow the procedure outlined in the Cultural Resource Discovery Plan located in Appendix A.

D. Report.
The archaeologist will submit a construction monitoring report to Reilly Lembo within 30 days of when the monitoring completed.

Reilly Lembo
Archaeologist II
701-328-6985
rlembo@nd.gov

METHOD OF MEASURMENT AND BASIS OF PAYMENT

Spec	Code	Name	Unit
107	200	Cultural Resource Construction Monitoring	Lump Sum

Include all costs for work associated with the Archaeologist, and the TCS are included in the contract unit price of bid item.

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

Appendix A

Cultural Resource Discovery Plan

NORTH Dakota Be Legendary.™ | Transportation

Cultural Resource Monitoring and Discovery Plan
NDDOT Project Number: SS-ARP-9-999(488); PCN: 23495
in McKenzie County:

Township	Range	Sections	County
153	96	9, 10	McKenzie

Introduction

This document is intended to clarify for consulting Tribes, interested city, state, and federal agencies, North Dakota Department of Transportation (NDDOT) personnel, and Project contractors on how the NDDOT will proceed in case of the discovery of burial and/or other cultural features such as the stone features or historic foundations to ensure the proper handling of all discoveries on these Projects. Further information for contractors on discoveries can be found in the NDDOT *Standard Specifications for Road and Bridge Construction* Section 107.06: DISCOVERIES

Contractors should exercise care and use appropriate construction means and methods to minimize disturbance or damage to 32MZ358, 32MZ359, 32MZ1074, 32MZ3536, 32MZ3537, 32MZ3585, 32MZ3586, 32MZ3587, and 32MZ3588 along and within the project limits. Further, they must restore any damaged items to preexisting conditions at no cost. If any historic properties (unevaluated or eligible for the NRHP) are damaged through this Project, they must be repaired according to the standards set forth by The Secretary of the Interior's (SOI) Standards for Rehabilitation (36 CFR § 67.7) www.nps.gov/tps/standards/treatment-guidelines-2017.pdf

Background

NDDOT and the Federal Highway Administration (FHWA) is proposing a Stream Restoration Project in McKenzie County, located on USFS property (Exhibit 1). A Class III inventory was conducted for the project in 2024 and 2025. Twelve sites were recorded/updated during the inventory (Exhibit 2). Given the Project footprint intersects, or is immediately adjacent to documented cultural resources, NDDOT is consulting with the State Historical Society of North Dakota State Historic Preservation Office (hereafter NDSHPO) to obtain a *No Adverse Effect* determination for the above Project. The project encompasses 163 acres of riparian corridor habitat. The work proposed here includes abandoning portions of the historic Sand Creek channel and constructing a new channel. NDDOT plans to construct a new channel and connect it tot the disconnected portions of Sand Creek.

Archeological Monitoring and Reporting

The above activities have the potential to uncover cultural remains in the area surrounding sites 32MZ358, 32MZ359, 32MZ1074, 32MZ3536, 32MZ3537, 32MZ3585, 32MZ3586, 32MZ3587, and 32MZ3588. Additionally, the project is located on USFS property and cultural monitoring is required in order for the work to be conducted on the USFS surfaces. Therefore, archeological monitoring by qualified personnel will take place during all construction activities for the project.

- The archaeological monitor(s) and the point of contact for the construction crew will communicate to facilitate the monitoring process during construction activities.

- Most of the monitoring will be done visually during construction activities. However, the monitor can halt excavation briefly to inspect excavated material when a concentration of materials indicates the possibility of intact features, structural ruins, or human remains.
- The monitor will prepare a Monitoring Report for submission to NDDOT and NDSHPO.

Types of Cultural Resource Finds

It is possible that previously unknown, undocumented, or under-documented cultural resources including prehistoric and historic burials could be encountered. This document defines three types of possible finds: 1) Historic Discoveries; 2) Inadvertent Discoveries; and 3) Burials and Associated Materials. Further, this document outlines the procedures to be followed by contractors and agency staff from the NDDOT. Project personnel may consult with NDSHPO and NDDOT cultural resources staff to determine the level of finds and the appropriate level of action.

1) Historic Discoveries

Historic Discoveries are cultural remains that have been documented or otherwise referenced. Monitors should record these discoveries, either dislodged or in place, according to the standards below. Any decisions on track removal will be discussed between NDDOT and SHPO.

1. Notify NDDOT cultural resources staff (begin with Reilly Lembo, 701-328-6985, rlembo@nd.gov).
2. Document each find with GPS points for later generation of shapefiles and CAD data.
3. Depict spatial relationships to buildings, property lines, and other landmarks.
4. Take color photographs detailing each find and its relationship to the landscape.
5. Take measurements of finds such as the length, height, and width.
6. List any thoughts, observations, or interpretations by Project staff on the nature of finds.
7. NDDOT cultural resources staff will instruct personnel on the disposition of the remains.

2) Inadvertent Discoveries

Inadvertent Discoveries are subsurface structural remains or other encroachments that intrude into the Project footprint. They are often attached to, or immediately adjacent to structures. Examples include tunnels, basements extending out towards the roadway, or coal chutes leading into basements. Other common subsurface features include catch basins, access holes (manholes), and utility control boxes, often constructed with brick, and former utility lines. Typically, these features have not been recorded as part of, or in relation to a structure. Since these discoveries can pose safety hazards, monitors should consult with Project engineers and the construction crew on a course of action. Exercise caution. If it is safe, photograph and record their location, composition, and size for the monitoring report. However, they do not have to be recorded as sites or isolated finds.

3) Burial Discoveries

Given the proximity to the Missouri River and the presence of stone features within the Project area, it is possible that human burial sites, human remains, or burial goods could be discovered. ***Note: these can be discovered in both intact and previously disturbed soils.*** If human remains or evidence of a burial is encountered, ***all work in the immediate vicinity shall stop*** (100 ft radius around the discovery).

The following will take place in accordance with ND Century Code:

"Any person who knows or has reasonable grounds to believe that a human burial site, human remains or

burial goods, found in or on any land, shall refrain from any activity which might disturb or immediately cease any continued activity which might cause further disturbance of such burial, remains, or goods and shall, as soon as practicable, report the presence or discovery of the burial, remains, or good to the local law enforcement agency with jurisdiction in the area in which the burial, remains or goods are located. A person is guilty of a class B Misdemeanor who is required to make such report and willfully as defined, in section 12.1-02-02 fails to make the same. The requirement imposed in this subsection do not apply to any person engaged in the salvaging excavation or other disinterment of a human burial under authority of law {23-06-27.5}.

*Intentional disturbance of human burial sites under North Dakota State Law, without the authority of law, is a Class C Felony. In accordance with ND Century Code 23-06-27.4, 23-06-27.5, and Administrative Code 40-02-03, the following procedure will be followed in the case of identification of burial, remains, or goods during construction of the Project:

1. The Contractor immediately will inform Law Enforcement (McKenzie County Sheriff's Office: Phone: (701) 444-3654), and NDDOT through the Cultural Resource Section (see below).
2. Law Enforcement will inform SHSND and North Dakota Department of Health and Human Services (NDDOHHS).
3. SHSND will notify the North Dakota Intertribal Reinternment Committee (NDIRC). SHSND and NDDOHHS will determine as soon possible if the remains are Native American. If the remains are determined or presumed to be Native American, NDIRC will become actively involved. NDIRC involvement will take place within 24 hours of the discovery or as soon as practicable after that time. Human remains will be studied within the scope allowed in the Administrative Rules (40-02-03-01).
    a. If the remains can be restored, the NDDOT archaeologist and NDIRC member will complete visual observation of the remains and burial goods.
    b. If the burial and goods must be disinterred, study will occur at the burial site and include visual observation, written description, and documentation of the remains and goods including limited photography agreed to by the NDDOT archaeologist and NDIRC member. Written documentation of the burial will be provided to IRC members and documentation acceptable to them will be forwarded to SHSND. Results will be reported to the NDDOT Tribal Consultation Committee at the next scheduled meeting. An NDDOT archaeologist, SHSND representative and/or a recognized physical anthropologist will complete study of the remains.
4. If possible, leave the burial in-place and backfill, stabilize, and protect the area.
5. If disinterment is the only feasible option, the NDIRC shall as soon as possible after study is completed, re-inter the disinterred remains and all burial goods either at a nearby location (with the consent of the landowner), or on Native lands within the boundaries of the appropriate reservation.
6. Disinterment will take place under the supervision of a NDDOT archaeologist, using standard archaeological procedures and contextual analysis.
7.

NDDOT Cultural Resource Section Contact Information

Paul Demers	701-328-4539	pdemers@nd.gov
Reilly Lembo	701-328-6985	rlembo@nd.gov
Gary Ellis	701-328-7611	gellis@nd.gov

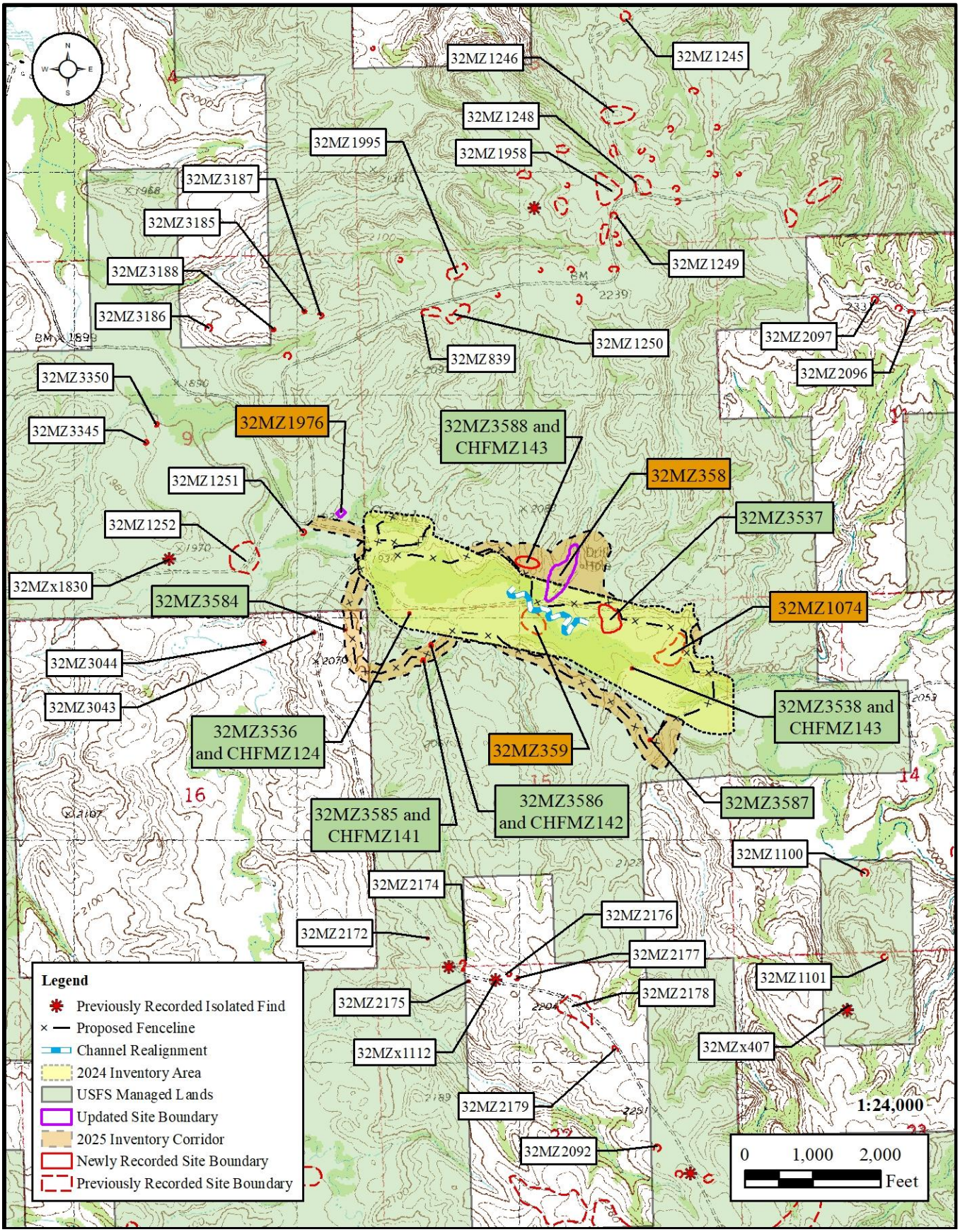


Figure 6: The location of the 2024 and 2025 inventory areas, the proposed channel realignment, along with newly and previously recorded cultural resources depicted on the USGS 7.5' Tobacco Garden Bay (1978) and Charlson SW (1965) quadrangle maps.

Exhibit 2

NORTH Dakota | Transportation
Be Legendary.™

January 26, 2026

Mr. William Peterson, PhD
ND State Historic Preservation Officer
ND Heritage Center
612 East Boulevard Avenue
Bismarck, ND 58505-0830

Attn: Lisa Steckler, Project Review Coordinator

CONSULTATION ON NDDOT PROJECTS, STATE HIGHWAY SYSTEM

We are initiating consultation on the following Project. This letter is intended to give you information on the proposed project and how we intend to proceed to meet our responsibilities under Section 106 of the National Historic Preservation Act of 1966 (as revised 1992). Further, it is intended to solicit your views pursuant to Section 102(2) (D) (IV) of the National Environmental Policy Act of 1969. We would appreciate your comment on the Project and our planned cultural resource work, and discussion of any concerns you may have regarding historic properties which may be affected by the Project.

NDDOT Project #:	SS-ARP-9-999(488)	**PCN: 23495**	
Legal Location:	McKenzie County	T153N R96W	Sections 9, 10

Project Type: Stream Restoration Project/Environmental Restoration

Purpose and Need: The purpose for the NDDOT to complete this project is to establish a mitigation Bank to provide credits designated to offset authorized unavoidable impacts caused by the NDDOT during road and bridge construction and maintenance to aquatic resources subject to mitigation by the Clean Water Act Section 404 permitting and Federal Highway Administration Executive Order 11990. US Forest Service System lands will serve as the location for the mitigation bank but have no connection to the credit system other than to serve as the project's location.

Project Description: The Bank encompasses 163 acres of riparian corridor habitat. The work proposed here includes abandoning portions of the historic Sand Creek channel and constructing a new channel. Currently, Sand Creek has approximately 2 miles of stream cut off due to a failed culvert and the channel now is head cutting and over widening/eroding laterally and warming the stream temperatures. NDDOT plans to construct a new channel and connect to the disconnected portion of Sand Creek. The material will be used to stabilize the failing slopes and banks in a few segments of the existing stream. The project will also shape the stream bank in localized areas to allow Sand Creek to reach its historical flood plain and improve the historically forested riparian corridor. In-stream bank stabilizations will include toe rock and toe wood to help reduce erosive conditions at critical meanders. This will also provide cover for aquatic invertebrates as well as feeding/spawning/resting habitat and cover for fish. Disturbed areas will be restored and reseeded

with upland species.

Right-of-Way: No permanent ROW is anticipated. NDDOT will execute an MOA with the USFS and provide perpetual protection for the property.

APE: The APE is a 222-acre survey area encompassing the proposed project and fenceline.

Justification: All project effects will be within the Class III survey area.

Proposed Cultural Resource Work: Avoidance fencing and cultural monitoring will be required, see below:

Table 2: Summary of Cultural Resources and Management Recommendations.

SITs/CHF	Description	NRHP Status	Management Recommendations
32MZ358	Historic - CMS and Foundations	UN	Avoidance, monitoring, and protective fencing
32MZ359	Historic - CMS and Foundations	UN	Mitigation installation of toe rock/rip-rap to prevent horizontal meandering along with ditch block along the edge of the site, avoidance of features within site area, and monitoring
32MZ1074	Historic - CMS and Foundations	UN	Avoidance, monitoring, and protective fencing
32MZ1976	Historic - CMS and Foundations	UN	Out of inventory area, no further work.
32MZ3536/ CHFMZ124	Prehistoric - Stone Features	UN	Avoidance, monitoring, and protective fencing
32MZ3537	Prehistoric - Stone Features	UN	Avoidance, monitoring, and protective fencing
32MZ3538	Historic - Trash Scatter	NE	No further work or avoidance measures
32MZ3584	Prehistoric - Stone Features	UN	Avoidance, monitoring, and protective fencing
32MZ3585/ CHFMZ141	Prehistoric - Stone Features	UN	Avoidance, monitoring, and protective fencing
32MZ3586/ CHFMZ142	Prehistoric - Stone Features	UN	Avoidance, monitoring, and protective fencing
32MZ3587	Prehistoric - Stone Features	UN	Avoidance, monitoring, and protective fencing
32MZ3588/ CHFMZ143	Prehistoric - Stone Features	UN	Avoidance, monitoring, and protective fencing

Justification: Juniper conducted a Class III Cultural Resource Inventory and report (Morrison 2025; ROI: 878) which NDDOT has reviewed and accepted. The Class I Literature Search revealed that the site distribution is dense and included 130 cultural resources on file at the time of the file search. Three of the previously recorded cultural resources are located within the survey area and were revisited during this inventory. Eight additional cultural resources were encountered within the inventory area.

Site 32MZ358 is located approximately 78 ft from the project area enclosed by the barbed wire fenceline. The site is recommended as Unevaluated for the NRHP and avoidance is recommended. The site will be fenced approximately 25 ft from the site boundary and cultural monitoring will be conducted for the fence installation and removal.

Site 32MZ359 is an Unevaluated site that the channel realignment project runs through. The project will cross through a small area just inside the site boundary. None of the features will be impacted, as they are all located to the south of the current stream. Therefore, provided the features are avoided, the current alignment will not rise to the level of an Adverse Effect. In order to preserve the site from further erosion, a ditch block and rip-rap will be installed to help the site stabilize. Cultural monitoring will be required for all project work within the site.

Site 32MZ1074 is an Unevaluated site located approximately 45ft away and 10ft above the project area. The bank stabilization work and floodplain reconnection will be approximately 50ft from the site and will be lower in elevation than the site. Seasonal and lower magnitude flooding events are predicted to avoid the site. No project equipment or activities will take place within the site boundary. An avoidance fence will be installed approximately 25ft from the edge of the site boundary. Cultural monitoring will be required for the installation and removal of the avoidance fence.

Site 32MZ3536/CHFMZ124 is recommended as Unevaluated for the NRHP. The project activities will be to the north of the site and will not impact the site areas. However, avoidance fencing will be installed 100ft from the edge of the site boundary and cultural monitoring will be required for the installation and removal of the fence.

Site 32MZ3537 is recommended as Unevaluated for the NRHP. The project activities will be approximately 20ft to the east of the site. Avoidance fencing will be installed approximately 20ft from the edge of the site boundary and within 50ft of the site, the fence will need to be installed by hand. Cultural monitoring will be required for the installation and removal of the fence.

Site 32MZ3538 is Not Eligible as agreed to by USFS, NDDOT, and NDSHPO. Accordingly, no avoidances are recommended for the project.

Site 32MZ3584 is recommended as Unevaluated for the NRHP. The proposed fenceline installation will be located approximately 85ft to the east of the site. No other project activities are located within 500 ft of the site. Additionally, the proposed fenceline will be placed between the site and the channel restoration, and no project activities will impact the site. However, avoidance fencing will be installed approximately 25ft from the edge of the site boundary prior to the proposed fenceline installation to ensure avoidance. Cultural monitoring will also be required for the installation and removal of the avoidance fencing.

Site 32MZ3585/CHFMZ141 is recommended as Unevaluated for the NRHP. The proposed fenceline is located approximately 45ft to the north of the site area. None of the other project activities will be located within 500ft of the site. Additionally, the proposed fenceline will be placed between the site and the channel restoration and no project activities will impact the site. The installation of the proposed fenceline in this area will be hand installed. An avoidance fence will be installed approximately 25ft from the site boundary to ensure avoidance. Cultural monitoring will be required for the installation and removal of the avoidance fencing.

Site 32MZ3586/CHFMZ142 is recommended as Unevaluated for the NRHP. The proposed fenceline is located approximately 70ft to the south of the site and no other project activities will be within 500ft of the site. Avoidance fencing will be installed approximately 50ft from the edge of the site boundary. Cultural monitoring will be required for the avoidance fence installation and removal.

Site 32MZ3587 is recommended as Unevaluated for the NRHP. The proposed fenceline is located approximately 85ft to the west and 75ft to the south of the site. No other project activities will be within 500ft of the site. Avoidance fencing will be installed approximately 50ft from the edge of the site boundary. Cultural monitoring will be required for the avoidance fence installation and removal.

Site 32MZ3588/CHFMZ143 is recommended as Unevaluated for the NRHP. The proposed fenceline is located approximately 30ft to the south of the site, along a steep drop to the Sand Creek floodplain below. The site will be avoided by elevation due to the difference between the project location elevation and the site elevation. However, avoidance fencing will be installed approximately 10ft from the edge of the site boundary and cultural monitoring will be required for the installation and removal of the avoidance fence.

Because the project is located almost entirely on USFS property, cultural monitoring will be required for all ground disturbance on USFS property, per their guidelines. In addition to the monitoring required for the installation and removal of avoidance fencing, the project activities will also be monitored by a qualified archaeologist and a representative of the MHA THPO office.

The avoidances and requirements for Section 106 will be listed in the Plans for the project, either in the Notes (Section 6) of the plan set or as a Special Provision (SP) attached to the plan set.

Other Consulting Parties: The TCC is consulted on all NDDOT projects. This project has been discussed at multiple TCC meetings, the latest of which was held on September 9th, 2025.

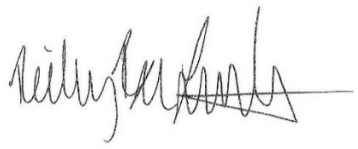
Plan for Public Involvement: There are no plans for a public involvement meeting.

We are requesting your concurrence with this finding of ***No Adverse Effect*** for the proposed Project as a whole. Additionally, we are requesting Consensus Determinations on the following site eligibility determination:

- Site 32MZ3538 – Not Eligible

If you need further information on the proposed project, please contact me.

Sincerely,



Reilly Lembo, M.S.
Archaeologist II, NDDOT-ETS(CRS)

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

SOIL STABILIZATION

PROJECT: 9-999(488) – PCN 23495

DESCRIPTION

A. General.
This SP overrides Section 253 “Mulching”

B. Straw or Hydraulic Mulch.
This work consists of grass hay or straw mulching, and hydraulic mulching for temporary or permanent stabilization.

C. Soil Stabilizer.
This work consists of hydraulic application of soil stabilizers for temporary stabilization.

EQUIPMENT

Use straw mulch equipment that uniformly distributes the mulch over the seedbed.

Use a puncher that consists of a series of dull, flat disks:
- With notched or cutout edges;
- Approximately 20 inches in diameter;
- 0.25 inches thick;
- Spaced approximately 8 inches apart; and
- Fitted with scrapers.

MATERIALS

A. Hydraulic Mulch.
Use hydraulic mulch free of germination or growth inhibiting factors. Provide hydraulic mulch free of toxins.

Provide hydraulic mulch with fibers capable of absorbing water and allowing infiltration to the underlying soil without restricting emergence of seedlings.

B. Straw Mulch.
Use mulch material consisting of straw from cereal grain or native hay. The mulch shall be free of seed bearing stalks of noxious weeds as defined by the North Dakota Department of Agriculture.

The Engineer will not accept mulch that:
- Is wet, musty, moldy, or rotted;
- Is chopped or ground; or
- Contains deleterious material.

C. Tackifier.

Use a tackifier consisting of one of the following:

1. Water soluble natural proteins, vegetable gums, or guar gums blended with gelling and hardening agents. Guar gum based tackifier shall consist of a minimum of 95 percent guar gum by weight with the remainder consisting of dispersing and cross-link additives.

2. Water soluble blend of hydrophilic polymers, viscosifiers, sticking aids and other gums.

D. Soil Stabilizer.

1. General.

Use soil stabilizer from the list below or an approved equal:

Product	Manufacturer
StarTak 600 Applied at a rate of 150 Lb/Acre	Chemstar Products Company Minneapolis, MN Phone: 1-800-328-5037 www.chemstar.com
EarthGuard SFM Applied at a rate of 60 LB/Acre (approx. 6 Gallons/Acre)	Terra Novo Inc. Bakersfield, CA Phone: 1-661-747-5956 www.terranovo.com
M-Binder Applied at a rate of 150 Lb/Acre	Ecology Controls Carpinteria, CA Phone: 1-805-684-0436 www.ssseeds.com
FiberRX Applied at a rate of: Slope None to 4:1 50 Lb/Acre 3:1 60 Lb/Acre 2:1 70 Lb/Acre 1:1 or steeper 80 Lb/Acre	Hydrostraw, LLC Manteno, IL Phone: 1-800-545-1755 hydrostraw.com
Enviropam Applied at a rate of 9 Lb/Acre	Innovative Turf Solutions, LLC Cincinnati, OH Phone: 1-513-317-8311 www.innovativeturfsolutions.com
HydraTack, Tack Plus, Tack-P, or Tack-P Plus Applied at a rate of 30 Lb/Acre	Innovative Turf Solutions, LLC Cincinnati, OH Phone: 1-513-317-8311 www.innovativeturfsolutions.com
FI-1045 Hydrobond or FI-1046 Hydrobond Applied at a rate of 15 Lb/Acre	JRM Chemical, Inc. Cleveland, OH Phone: 1-216-475-8488 www.soilmoist.com

Product	Manufacturer
HF5000 Tack Applied at a rate of 60 Lb/Acre	Rantec Corporation Ranchester, WY Phone: 1-307-655-9565 www.ranteccorp.com
R-Tack Applied at a rate of 150 Lb/Acre	
SpecTac Applied at a rate of: Slope — None: 30 to 80 Lb/Acre; 4:1: 50 to 100 Lb/Acre; 3:1: 80 to 120 Lb/Acre; 2:1: 100 to 170 Lb/Acre	
Super Tack Applied at a rate of 60 Lb/Acre	

2. **Tracer Material.**
   Provide tracer material that consists of a hydraulic mulch that contains a green dye. Provide tracer material that is free of the following:
   - Toxins; and
   - Germination or growth inhibitors.

CONSTRUCTION REQUIREMENTS

A. General.
Uniformly cover areas of disturbed ground where construction activities have ceased according to SSP 1 “Temporary Erosion and Sediment Control Measures and the Erosion and Sediment Control Permit.

Uniformly cover seeded areas with mulch within 24 hours of initiating seeding.

Protect traffic, signs, structures, and other objects from being marked or splattered by the material.

B. Hydraulic Mulch.

1. **General.**
   Use mulch that is evenly dispersed and suspended in agitated water. Apply at a rate of one ton per acre with a minimum of 95 percent coverage of the seedbed.

2. **Anchoring.**
   Use tackifier on areas where temporary stabilization is required for slopes that are steeper than 3:1. Mix tackifier with the mulch and apply at the rate recommended by the manufacturer.

C. Straw Mulch.

1. **Application.**
   Place mulch at a rate of 2 tons per acre.

Do not perform mulching operations when the sustained wind velocity is greater than 25 miles per hour.

Avoid placing excessive cover that smothers seedlings.

2. **Anchoring.**

   a. **General.**
   Anchor mulch using one of the following methods to:

   b. **Punching.**
   Immediately following application, punch mulch into the soil using a puncher.

   Operate the puncher parallel to the contours of the ground.

   Push the mulch into the soil 3 inches, with the ends of the mulch exposed above the soil surface.

   c. **Tackifier.**
   Use tackifier on areas where slopes are steeper than 3:1. Apply the tackifier at the rate recommended by the manufacturer. If no manufacturer recommendations are available, apply at a rate between 175 and 275 pound per acre by spraying with the mulch or immediately following the mulching application.

3. **Maintenance.**
   Repair or re-mulch damaged areas.

D. Soil Stabilizer.

1. **General.**
   Only use soil stabilizer in temporary stabilization applications.

   Uniformly cover areas of disturbed ground where construction activities have temporarily ceased with a minimum of 95 percent coverage of the disturbed area.

   Hydraulically apply soil stabilizer with tracer material in accordance with the manufacturer's application instructions and at the rate specified in the list of approved soil stabilizers.

   Protect traffic, signs, structures, and other objects from being marked or splattered by the material.

2. **Tracer Material.**
   Include enough trace material for it to be easily visible for the inspector and installer. Use tracer material that is evenly dispersed and suspended in agitated water and Soil Stabilizer mix.

METHOD OF MEASUREMENT

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

Soil stabilization is the use of any mulching material to cover the disturbed ground.

BASIS OF PAYMENT

Pay Item	Pay Unit
Soil Stabilization	Acre

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

INTERIM COMPLETION

PROJECT 9-999(488) – PCN 23495

DESCRIPTION

This project has a long construction schedule. This special provision outlines the requirements for interim completion dates and the requirements for the suspension of work.

CONSTRUCTION REQUIREMENTS

A. General.

Complete work listed for each completion date, both interim and final, on or before the required date. Obtain the written Engineer's permission to perform work not listed during a particular season. Obtain the Engineer's permission to perform work during a suspension of work.

The Engineer will enforce the liquidated damages as specified in Section 108.07 B, "Failure to Complete within the Contract Time" if the work to be completed and any necessary suspension of work requirements are incomplete prior to the interim completion dates. The Engineer will cease the enforcement of liquidated damages once the required work and suspension requirements are met

B. Establishment of Workspace Construction.

1. **General.**
   Complete the work as described in "Section B" of the Construction Requirements of this SP prior the interim completion date of April 1, 2027.

2. **Work to be Completed.**
   Complete all tree removal, installation of low ford crossings, and clearing and grubbing.

C. Barbed Wire Fencing.

1. **General.**
   Complete the work as described in "Section C" of the Construction Requirements of this SP prior the interim completion date of June 1, 2027.

2. **Work to be Completed.**
   Install all barbed wire fencing before start of Dakota Skipper flight period. Barbed wire fencing must be in place before starting excavation.

D. Main Construction

1. General.

Complete the work as described in “Section D” of the Construction Requirements of this SP prior the interim completion date of March 15, 2028.

2. Work to be Completed.

At the conclusion of this phase of work the remaining items are connecting the proposed channel to the existing channel, installation of ditch block within the existing channel, final seeding and related erosion control items, as well as the work described in Section E.

E. Seeding Construction

1. General.

Complete the work as described in “Section E” of the Construction Requirements of this SP prior the interim completion date of May 1, 2028.

2. Work to be Completed.

Plant wetland seed and temporary cover crop in disturbed areas.

3. Suspension of Work Requirements.

Prior to the May 1, 2028 interim completion date, perform the work described above and meet the work site requirements listed here.

- Install seeding and temporary erosion control items as necessary to prevent erosion during the suspension; and
- Remove all construction equipment from all areas of the project, including staging areas.

Schedule a suspension of work inspection with the Engineer 5 days before the anticipated suspension of work. The Engineer may require the completion of additional items of work relating to the suspension before issuing the suspension.

F. Final Construction

Perform final construction work after October 1, 2028 and before the project completion date shown elsewhere in the contract.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

PERMITS AND ENVIRONMENTAL CONSIDERATIONS

PROJECT NUMBER: SS-ARP-9-999(488) – PCN 23495

A US Army Corps of Engineer (USACE) Section 404 Permit and an ND Department of Water Resources (DWR) Construction Permit are needed for this project and are currently pending. NDDOT anticipates obtaining the Section 404 Permit and Construction Permit prior to the Bid Opening. The Permits and Environmental Considerations Special Provision will be revised and incorporated into the proposal once the pending permits are obtained.

- **USACE 404 Permit - PENDING**
- **DWR Construction Permit - PENDING**

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

FUEL COST ADJUSTMENT CLAUSE

DESCRIPTION

This special provision provides for contract price adjustments when changes to the cost of diesel fuel occur while completing the work. Participation in the fuel cost adjustment clause is voluntary, and notification is not required at the time the proposal is submitted.

ATTACHMENTS

SFN 58393 “Fuel Cost Adjustment Affidavit” is attached for informational purposes only.

CONTRACT REQUIREMENTS

A. Fuel Cost Adjustment Affidavit.

1. **General.**
   The Department will include SFN 58393 “Fuel Cost Adjustment Affidavit” when submitting the Contract to the awarded Bidder. Return the completed Fuel Cost Adjustment Affidavit with the signed Contract as specified in Section 103.06, “Execution and Approval of the Contract”. Return the affidavit regardless of the intent to enroll in the program.

   Diesel fuel used in the operation of equipment and vehicles in the completion of contract work is the only fuel type eligible for participation in the fuel cost adjustment clause.

   If the Contractor has contracted for diesel fuel or has a fixed price for diesel fuel planned for use in the completion of the work, the Contractor will be ineligible to participate in the fuel cost adjustment clause.

   Identified costs must be reasonable and justifiable for the project. If the Engineer may request information and calculations used by participants to determine estimated diesel fuel costs. Failure to provide required information may result in the Engineer determining the Contractor is not eligible to participate in the fuel cost adjustment clause.

2. **Contractor Does Not Participate.**
   If the prime Contractor does not participate, fuel cost adjustments will not be made for the prime contractor nor for any subcontractors.

3. **Contractor Does Participate.**

   a. **General.**
      The Engineer will determine compensation adjustments as described in Section B, “Fuel Cost Adjustment Calculations” of this special provision.

      Once the form has been submitted, the quantity of fuel eligible for the adjustment clause cannot be adjusted.

b. Subcontractors.
If the prime Contractor chooses to participate in fuel cost adjustments include the estimated fuel costs for all subcontractors that also choose to participate.

If fuel cost adjustment payments are made, make payments to participating subcontractors in proportion to the percentage of work performed and the estimated fuel costs made by the participating subcontractors.

B. Fuel Cost Adjustment Calculations.

1. Definitions.

The following definitions apply when calculating the fuel cost adjustment:

Average Wholesale Price (AWP): The AWP for diesel fuel is the average daily rack price for a given month as reported by DTN Energy for Fargo, ND.

Base Fuel Index (BFI): The BFI for diesel fuel is the AWP for the full month preceding the bid opening.

Current Fuel Index (CFI): The CFI for diesel fuel is the AWP for diesel fuel from the full month preceding the month for which the adjustment is to be calculated.

Estimate: Monthly total of work performed based on progressive estimates issued in the month in which calculations are determined. This number excludes the following:

- Incentive/disincentive payments;
- Pay factor adjustments; and
- All work performed where the Department is able to assess Liquidated Damages.

Fuel Ratio (FR): The cost of diesel fuel included in the affidavit divided by the original contract amount. This number will remain constant for the duration of the contract, regardless of any changes made to the work. If this calculated ratio exceeds 10% of the original contract amount, the Engineer will cap the ratio at 10% and use that figure for the contract.

2. Cost Change Determination.

a. General
Each month the Engineer will determine the Cost Change (CC) for diesel fuel using the following calculation:

$$CC = CFI - BFI$$

When the CC is greater than ±$0.10, the Engineer will process a contract price adjustment for the price of diesel fuel for the portion of the cost change above $0.10.

b. Cost Change is Positive.
When the Cost Change is a positive number, the Engineer will determine the Fuel Cost Adjustment (FCA) for the price of diesel fuel for the portion of the cost change, in excess of $0.10, based on the following calculation:

$$FCA = FR \times Estimate \times (CC - \$0.10)$$

The Engineer will process this amount as a contract price adjustment in favor of the Contractor on the next progressive estimate.

c. Cost Change is Negative.
When the Cost Change is a negative number, the Engineer will determine the Fuel Cost Adjustment (FCA) for the price of diesel fuel for the portion of the cost change, in excess of $0.10, based on the following calculation:

$$FCA = FR \times Estimate \times (CC + \$0.10)$$

The Engineer will process this amount as a contract price adjustment in favor of the Department on the next progressive estimate.

BASIS OF PAYMENT

The Engineer will utilize the following spec and code when processing contract price adjustments related to the fuel cost adjustment clause.

Spec	Code	Pay Item	Pay Unit
109	0100	Diesel Fuel Cost Adjustment	Lump Sum

FUEL COST ADJUSTMENT AFFIDAVIT

North Dakota Department of Transportation, Construction Services
SFN 58393 (7-2026)

SP Fuel Cost Adjustment Clause
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.

Does your company elect to participate in a fuel adjustment for this contract? (fixed price fuel is not eligible)

◯ Yes ◯ No

If yes, provide the total estimated dollars for diesel:

Estimated Diesel Fuel Cost	Original Contract Amount	Estimated Diesel Fuel / Original Contract Amount

May not exceed 10% of the original contract amount.

Under the penalty of law for perjury of falsification, the undersigned,

Name	Title

Contractor

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.

Identified costs must be reasonable and justifiable for the project. The Engineer may request information and calculations used by participants to determine estimated diesel fuel costs. Failure to provide required information may result in the Engineer determining the Contractor is not eligible to participate in the fuel cost adjustment clause.

Legal Signature (sign before a Notary Public or Authorized Officer)	Date

Acknowledgement

State of

County of

Signed and sworn to (or affirmed) before me on this day _____
(month, day, year)

Name of Notary Public or other Authorized Officer (Type or Print)	Affix Notary Stamp
Signature of Notary Public or other Authorized Officer	
Commission Expiration Date (if not listed on stamp)	