Job 23905

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSAL

STATE FEDERAL AID PROJECT NO. IM-BRI-8-029(216)000 (PCN-23905)

0.000 Miles

BRIDGE DECK OVERLAY, SPALL REPAIR, CURB OVERLAY, SLOPE PROTECTION REPAIRS, & PIER EMBANKMENT REPAIR

I-29, ND / SD STATE LINE; I-29, JCT ND 46

RICHLAND 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: IM-BRI-8-029(216)000 (PCN-23905)

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: IM-BRI-8-029(216)000 (PCN-23905)

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: IM-BRI-8-029(216)000 (PCN-23905)

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: IM-BRI-8-029(216)000 (PCN-23905)

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	203	0195	EMBANKMENT SPECIAL	L SUM	1.				
003	255	0201	TRM TYPE 1	SY	115.				
004	258	0200	REMOVE & REPLACE CONCRETE SLOPE PROTECTION	SY	423.				
005	411	0114	MILLING PAVEMENT SURFACE - 2 INCH	SY	6,744.				
006	430	0500	COMMERCIAL GRADE HOT MIX ASPHALT	TON	755.				
007	430	1000	CORED SAMPLE	EA	7.				
008	602	1250	PENETRATING WATER REPELLENT TREATMENT	SY	2,668.				
009	602	1300	BRIDGE DECK GROOVING	SF	17,050.				
010	624	3012	REMOVE & RESET DBL BOX BEAM RETROFIT - E-RAIL	LF	980.				
011	650	0704	OVERLAY CONCRETE	CY	132.				
012	650	0707	DECK CONCRETE	CY	79.				
013	650	0710	CLASS 1-H REMOVAL	SY	1,894.				
014	650	0720	CLASS 1 REMOVAL	SY	1,894.				
015	650	0723	CLASS 3 REMOVAL	SY	294.				
016	650	0724	CLASS 4 REMOVAL	SY	147.				

BID ITEMS

Project: IM-BRI-8-029(216)000 (PCN-23905)

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	702	0100	MOBILIZATION	L SUM	1.				
018	704	0100	FLAGGING	MHR	140.				
019	704	1000	TRAFFIC CONTROL SIGNS	UNIT	4,698.				
020	704	1018	LANE CLOSURE-SIGNAL CONTROL/FLAGGING CONTROL	EA	2.				
021	704	1038	ATTENUATION DEVICE-TYPE B-40	EA	1.				
022	704	1039	ATTENUATION DEVICE-TYPE B-45	EA	1.				
023	704	1041	ATTENUATION DEVICE-TYPE B-55	EA	1.				
024	704	1043	ATTENUATION DEVICE-TYPE B-65	EA	1.				
025	704	1046	ATTENUATION DEVICE-TYPE B-80	EA	1.				
026	704	1048	PORTABLE RUMBLE STRIPS	EA	4.				
027	704	1052	TYPE III BARRICADE	EA	8.				
028	704	1060	DELINEATOR DRUMS	EA	102.				
029	704	1067	TUBULAR MARKERS	EA	49.				
030	704	1087	SEQUENCING ARROW PANEL-TYPE C	EA	2.				
031	704	1500	OBLITERATION OF PAVEMENT MARKING	SF	1,329.				
032	704	3511	STATE FURNISHED MEDIAN BARRIER	LF	1,338.				

BID ITEMS

Project: IM-BRI-8-029(216)000 (PCN-23905)

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	748	0141	CURB & GUTTER-TYPE 1 SPECIAL	LF	60.				
034	762	0422	SHORT TERM 6IN LINE-TYPE R	LF	18,880.				
035	762	0426	SHORT TERM 24IN LINE-TYPE R	LF	48.				
036	762	1106	PVMT MK PAINTED 6IN LINE	LF	8,900.				
037	764	0150	REMOVE & RESET GUARDRAIL	LF	83.				
038	930	7012	ROADWAY CANOPY	L SUM	1.				
039	930	9612	SPALL REPAIR	SF	69.				
040	930	9690	CURB OVERLAY	LF	980.				
			TOTAL SUM BID						

Project: IM-BRI-8-029(216)000 (PCN-23905)

Type of Work: BRIDGE DECK OVERLAY, SPALL REPAIR, CURB OVERLAY, SLOPE PROTECTION REPAIRS, & PIER EMBANKMENT REPAIR

County: RICHLAND

Length: 0.0000 Miles

TIME FOR COMPLETION:

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

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

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

COMPLETION DATE CONTRACT The project completion date is 10/09/2027 *. 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.

***THE 102ND ST SE INTERCHANGE MAY BE REDUCED TO ONE LANE OF TRAFFIC FOR UP TO 105 CALENDAR DAYS. THE COUNTING OF CALENDAR DAYS WILL BEGIN WHEN THE BRIDGE IS REDUCED TO ONE LANE OF TRAFFIC OR JUNE 14, 2027, WHICHEVER OCCURS FIRST. FAILURE TO REOPEN THE BRIDGE TO TWO-WAY TRAFFIC WITHIN THE ALLOTTED TIME WILL RESULT IN LIQUIDATED DAMAGES BEING CHARGED AT A RATE OF $900 PER CALENDAR DAY UNTIL TWO-WAY TRAFFIC IS REESTABLISHED.**

THE KINDRED INTERCHANGE MAY BE REDUCED TO ONE LANE OF TRAFFIC FOR UP TO 80 CALENDAR DAYS. THE COUNTING OF CALENDAR DAYS WILL BEGIN WHEN THE BRIDGE IS REDUCED TO ONE LANE OF TRAFFIC OR JULY 6, 2027, WHICHEVER OCCURS FIRST. FAILURE TO REOPEN THE BRIDGE TO TWO-WAY TRAFFIC WITHIN THE ALLOTTED TIME WILL RESULT IN LIQUIDATED DAMAGES BEING CHARGED AT A RATE OF $900 PER CALENDAR DAY UNTIL TWO-WAY TRAFFIC IS REESTABLISHED.

Project: IM-BRI-8-029(216)000 (PCN-23905)

Type of Work: BRIDGE DECK OVERLAY, SPALL REPAIR, CURB OVERLAY, SLOPE PROTECTION REPAIRS, & PIER EMBANKMENT REPAIR

County: RICHLAND

Length: 0.0000 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 23905, IM-BRI-8-029(216)000

Bridge Deck Overlay, Spall Repair, Curb Overlay, Slope Protection Repairs, & Pier Embankment Repair

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 2 Federal Migratory Bird Treaty Act

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 464(25) Concrete Spall Repair

SP 465(25) Hydro demolition and Overlay of Concrete Bridge Decks

SP 466(25) Commercial Grade Asphalt with Density

INDEX OF PROVISIONS

SP 547(25) Tribal Employment Rights Ordinance (TERO)

PSP 1 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

FEDERAL MIGRATORY BIRD TREATY ACT

GENERAL

Work may impact migratory birds or active migratory bird nests. A nest is considered active when it contains eggs or chicks.

Nests are active primarily during the primary breeding season for migratory birds in North Dakota from February 1 to July 15.

All reasonable, prudent, and effective measures should be identified and implemented to avoid take. The definition of take in 50 CFR 10.12 is: to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.

PREVENTATIVE MEASURES

General

If no active nests are present at bridges, reinforced concrete box culverts, or structural plate pipes; prevent migratory birds from building new nests and from using nests built in previous years.

Preventative measures include securing tarps, fabric, netting, or wire mesh to the structure to prevent and discourage nesting. Additional measures may include hosing or knocking down any inactive nests or unfinished nests while avoiding take.

Preventative measures may be utilized before, during, and after breeding season.

Collect nests and nest debris and treat as agriculture waste. Disposal can occur by hauling waste to a permitted landfill or on-site when mixed with topsoil uniformly at the rate of 2 tons per acre away from water bodies and runoff.

If a nest where birds are present is found; the Contractor shall have a qualified biologist conduct a bird/nest survey no more than 5 working days prior to starting work at the structure site. A biologist is considered qualified if they have obtained a 4 year degree from an accredited university in a natural sciences field and is employed as an environmental professional.

If active nests are identified, cease construction or demolition and maintain a minimum buffer of 25 feet around active nests to avoid take. The qualified biologist may adjust the buffered distance in coordination with the USFWS. Maintain the buffer as construction resumes until the nests are no longer active.

SURVEY REQUIREMENTS

The USFWS requires that field surveys conducted for nesting birds with the intent of avoiding take include documentation of the presence of migratory birds, eggs, inactive and active nests, along with information regarding the qualifications of the biologists performing the survey, and any avoidance measures implemented at the project site.

If the survey or other available information indicates a potential for take of migratory birds, their eggs, or active nests, contact the USFWS for further coordination on the extent of the impact and the long-term implications of the intended use of the project on migratory bird populations.

Ecological Services
U.S. Fish & Wildlife Service
3425 Miriam Avenue
Bismarck, ND 58501
701-250-4481

BASIS OF PAYMENT
Include the costs for the removal and disposal of nests, the prevention of nesting, and bird/nest surveys in the price bid for the work at the structure site.

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

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

CONCRETE SPALL REPAIR

PROJECT 8-029(216)000 – PCN 23905

DESCRIPTION

This work consists of repairing areas of spalled and deteriorated concrete on existing structures.

EQUIPMENT

A. General.

Do not use aluminum tremies, forms, hoppers, downspouts, or chutes.

If using a batch plant, use equipment as specified in Section 155, “Concrete Equipment”.

B. Batching and Mixing.

Provide batching and mixing equipment capable of thoroughly mixing the material to continuously supply the delivery equipment.

C. Shotcrete Dry Mix Delivery Equipment.

Provide dry mix delivery equipment that delivers a continuous and uniform mix material to the nozzle. Supply a nozzle that is equipped with a water ring and valve to adjust the water. Maintain the water at least 16 psi higher than the air pressure. Use a nozzle that delivers a conical discharge stream.

D. Shotcrete Air Supply.

Supply a clean, dry air supply, capable of maintaining sufficient nozzle velocity for all parts of the work. Provide a moisture and oil trap in the air supply to prevent contamination of the

E. Sandblasting Equipment.

Used compressed air type sandblasting equipment.

MATERIALS

A. General.

Name	Section
Burlap Cloth	810.01 A
Liquid-Membrane Curing Compounds	810.01 B
Water	812

B. Prepackage Patching Materials.

Supply a prepackage polymer-modified cementitious repair mortar specifically designed for patching concrete that contains a corrosion inhibitor supplied by one of the following:

- Sika Top 123 Plus (Sika Corporation);

- Duraltop Gel (Euclid Chemical Company);
- MasterEmaco N 400 (Sika Corporation);
- DuoPatch (SpecChem); or
- Approved Equal.

C. Formed Concrete.
If the repair exceeds 3 inches in depth repairs can be completed using any Class AE concrete meeting Section 602.03, “Materials”.

D. Shotcrete Dry Mix.

1. General.
Provide pre-blended dry mix shotcrete that meets the following:

- Produced in a facility with quality control;
- All mix components were weigh batched; and
- Is pre-packaged.

Supply pre-packaged shotcrete bags with the following printed on the outside:

- The manufacturer’s name;
- Mix name; and
- Identification or lot number.

Store the material in the following conditions:

- Within a temperature range of 40 to 85 °F;
- Out of direct sunlight; and
- Protected from precipitation and humidity.

2. Portland Cement.
Supply cement that meets the requirements of Section 804.01 “Cement” and *ASTM C150, Standard Specification for Portland Cement, Type I*.

3. Silica Fume.
Provide Silica Fume conforming to *ASTM C1240, Standard Specification for Silica Fume Used in Cementitious Mixtures*.

4. Blended Aggregates.
Provide blended natural siliceous aggregates consisting of hard, clean, strong, durable uncoated particles, conforming to the requirements of *ASTM C33, Standard Specification for Concrete Aggregates*. Provide all aggregates dried to a moisture content of less than 0.1% by mass, based on oven drying at 220ºF to 230ºF.

Supply a gradation that meets the requirements of Table 1

Table 1

Sieve Size	Percent Passing
1/2-inch	100
3/8-inch	90-100
#4	70-85
#8	50-70
#16	35-55
#30	20-35
#50	8-20
#100	2-10

Clearly indicate in the product name or data sheet the gradation being supplied.

5. Synthetic Fiber Reinforcement.

Use Type III Collated fibrillated-polypropylene (CFP) synthetic fibers that conform to *ASTM C1116, Standard Specification for Fiber-Reinforced Concrete*. The fibers will need to control plastic, thermal and drying shrinkage cracking at a dosage designed by the manufacturer, but at a minimum dosage rate of 1.5 pounds per cubic yard of shotcrete. Recommend a fiber length modification, if necessary, to achieve both shotcrete consolidation and mitigation of cracking due to shrinkage and thermal related effects.

6. Mix Design and Testing.

Use dry-bagged premixed shotcrete materials in conformance with the pertinent requirements of *ASTM C1480, Standard Specification for Packaged, Pre-Blended, Dry, Combined Materials for Use in Wet or Dry Shotcrete Application*.

In situ shotcrete mix properties must meet or exceed the performance requirements outlined in the following Table 2:

TABLE 2

TEST DESCRIPTION	TEST METHOD	AGE (Days)	REQUIREMENT
Min. Compressive Strength (psi)	ASTM C1604	7 28	4000 5000
Min. Flexural Strength (psi)	ASTM C78	28	900
Max. Boiled Absorption, %	ASTM C642	7	8
Max Volume of Permeable Voids, %	ASTM C642	7	17
Max. Air Void Spacing Factor (µm/m)	ASTM C457		300
Min. Freeze- Thaw Resistance (%)	ASTM C666		100
Max. Salt Scaling (lb/ft^2)	ASTM C672		0.04
Max. Rapid Chloride Penetrability	ASTM C1202	28	700
Max. Uniaxial Drying Shrinkage (µm/m)	ASTM C157	28	650

Make allowances for the shooting orientation and rebound in shotcrete mixture proportioning. Perform tests at curing temperatures expected to be encountered in the field.

E. Supplemental Reinforcement and Anchors.

Name	Section
Reinforcing Steel, Dowel Bars, and Tie Bars	836

CONSTRUCTION REQUIREMENTS

A. Submittals.

1. Patching Materials.
Submit product data, including the manufacturer's recommendations for storage, mixing, placement, and curing, at least 14 calendar days prior to beginning work. Include the recommended epoxy bonding agent with the product submittals.

2. Class AE Concrete.
Use a Class AE mix design that was previously used on another Structure within the past 3 years. If no mix design is available, submit a mix design as follows:

Supply AE Portland Cement Concrete using a gradation as specified in Section 802.02 B. Design a mix the meets Section 802 and will attain a minimum compressive strength of 3,000 PSI at 7 days and a minimum of 4,000 psi at 28-days.

3. Shotcrete.

a. General.
Submit the following written documentation at least 14 calendar days before beginning shotcreting operations:

1. Pre-bagged mix material data sheets;
2. Experience of the Nozzleman and Foreman;
3. Proposed method of mixing;
4. Proposed method of applications.
5. Proposed method of installing reinforcement;
6. Proposed mechanical anchors to be used for supplemental bond strength; and
7. Proposed curing method.

b. Qualifications of Shotcrete Work Crew.
Provide the qualifications of the work crew 10 days before beginning shotcrete operations.

Provide a Foreman with the following:

- 5 years of experience as a Foreman; and
- Is an American Concrete Institute (ACI) Certified Shotcrete Inspector.

Provide a Nozzleman with the following:

- 3 years experience as a Nozzleman: and
- Is an ACI Certified Shotcrete Nozzleman or Nozzelman In Training (Dry-Mix).

c. Preconstruction Trial.
Before applying shotcrete to any repair areas, perform a shotcrete preconstruction trial by applying shotcrete on a vertical surface using a plywood test panel that is 2 feet by 2 feet in size.

Finish the panels to demonstrate what the final shotcrete product will look like.

Demonstrate the proposed curing method on the preconstruction trial.

B. Surface Preparation.

1. General.
Provide arm's length access to the Engineer for locating loose, spalled and deteriorated concrete.

Do not damage area of sound concrete or reinforcing steel during the removal operations.

Do not exceed 4 inches of removal unless directed by the Engineer.

Dispose of material removed according to Section 107.17 "Removed Materials".

2. Removals.
Saw cut the perimeter of the spall repair to a depth of 1 inch.

Remove concrete using the following:
- Pneumatic hammers no larger than the nominal 30 pound class;
- Light duty jackhammers no larger than the nominal 15 pound class to remove concrete around reinforcing bars
- Chipping with hand picks;
- Chipping with chisels;
- Scarifying with scabblers; or
- Other suitable mechanical means.

Remove the concrete from the areas using power tools or hand tools. Use hand tools for final surface removal.

Remove all concrete within the repair area to minimum depth of 1", or to sound concrete, whichever is greater.

3. Steel Reinforcement.
If corroded reinforcing steel is exposed, continue concrete removal until there is a 3/4 inch clearance around the reinforcing bar. Do not damage concrete bond to adjacent non-exposed reinforcing steel during the concrete removal process.

Install supplemental reinforcement where open spaces between existing reinforcing bars exceed 2 square feet or the depth of repair exceeds 2 inches. Use steel welded wire reinforcement with a max opening of 4" x 4" and wire size between W2 and W3.5 (inclusive) for supplemental reinforcement. Install mechanical anchors at a spacing not to exceed 12 inches in areas requiring supplemental reinforcement. Use anchors that will

provide a minimum pullout strength of 250 pounds per anchor. Fasten the welded wire reinforcement to the anchors and any existing exposed reinforcement.

If the existing rebar shows deep pitting or a loss of more than 25 percent of the cross section, the Engineer will contact NDDOT Bridge Division and discuss the need for additional reinforcement. If additional reinforcement is needed, furnish and place the new reinforcement as directed by the Engineer.

4. Repair Area Surface.

After all deteriorated concrete has been removed, prepare the repair area surface by sandblasting and high-pressure (14,500 to 40,000 psi) water jetting. Develop a surface roughness of 3/16 inch when measured peak to valley.

Sand blast the reinforcing steel. Repair damaged epoxy coating on the reinforcing steel according to Section 612.04 E “Epoxy Coated Reinforcing Steel”.

Clean the area by removing the following by either sandblasting or high-pressure water:

- All fractured surface concrete;
- All unsound material; and
- Contaminants which could interfere with the bond of the shotcrete.

Apply shotcrete to cleaned areas within 48 hours or re-blasting will be required.

C. Surface Repair.

1. General.

Allow the Engineer to inspect the surfaces before applying repair material.

Do not apply repair material during weather conditions:

- When the surface temperature of the repair area is below 40°F;
- When the air temperature is below 50°F;
- When the air temperature is above 85°F and
- During periods of rain.

2. Applying Repair.

a. Patching Material.

Coat the surface of the repair area with an epoxy bonding agent.

Mix and apply the patching material according to the manufacturer's recommendations.

b. Class AE Concrete.

Follow the requirements of Section 602.04 “Construction Requirements.”

c. Shotcrete.

(1) General.

Before applying shotcrete, screen the work area to:

- Protect the work area from wind;

- Contain dust and rebound materials; and
- Protect nearby structures and vegetation.

Provide the Engineer with the following information during the shotcrete operations:

- Maintenance of test records for all quality control operations
- Wash-out testing of dry-bagged premix materials to check cementitious content and aggregate gradation

(2) Wetting.

A day before applying shotcrete saturate the surface of the planned work area with water and re-wet the surface before shooting. One hour before applying shotcrete flush the surface with water. Allow the surface to dry to saturated surface dry conditions before the application of shotcrete.

If a work stoppage lasts longer than 2 hours and the surface is not at the desired height, rewet the surface before continuing.

(3) Applying Shotcrete.

Supply shotcrete mix that is between 50°F and 95°F.

Do not apply shotcrete to a dry surface or to a surface with free water on it.

Bring the shotcrete to an even plane and to well-formed corners by working up to ground wires or other guides, using a lower-than-normal placing velocity.

Monitor the water ring in the nozzle for any signs of blockage of individual water spray holes. If non-uniform wetting of discharged shotcrete becomes apparent, stop the shooting and clean the water ring or take corrective actions.

Thoroughly clean the delivery equipment at the end of each shift. Remove any build-up of coatings in the delivery hose and nozzle liner.

Remove hardened rebound and hardened overspray before application of additional shotcrete using sandblasting, chipping hammers, high-pressure water blasting or other suitable techniques.

Do not allow shotcrete material to fall on natural surfaces within 200’ of the surface waters or onto surface waters.

Repair shotcrete surface defects as soon as possible after placement. Remove and replace shotcrete which exhibits the following:

- Segregation;
- Honeycombing;
- Lamination;
- Voids; or
- Sand pockets.

Stop the shotcrete application if plastic shrinkage and/or early drying shrinkage cracks occur.

(4) Finishing Shotcrete.
Build the surface of the shotcrete up and trim to the final surface with a sharp trowel. Remove imperfections by floating the surface with a rubber float.

Use a wooden float for a preliminary finish with the final surface finish performed with a rubber float.

D. Surface Tolerance.
Maintain the final surface finish within 1/4-inch of a straight line in any direction between the adjacent surfaces. Transition all surfaces smooth.

Grind hardened surfaces to bring out of tolerance surfaces into tolerance. Texture ground surfaces to match the non-ground surfaces.

E. Curing.

1. General.
Maintain the temperature of the repair area above 40°F for 5 days.

2. Patching Material.
Cure patching material according to the manufacturer's recommendations.

3. Formed Concrete.
Leave the forms covering the concrete for the duration of the curing period. Cure the repair area in accordance with Section 602.04 F "Curing Concrete". Use a minimum curing period of 5 days.

4. Shotcrete.

a. General.
Cure the shotcrete using one of the following procedures.

b. Wet Burlap Wrapping.
Prepare the burlap by presoaking it in water for 24 hours before installation. Wrap the elements in wet burlap. Keep the wet burlap saturated and in place for a minimum of 5 days or as recommended by the manufacturer.

c. Curing Compound.
Apply two successive coats of an approved curing compound meeting Section 810.01 B immediately after completion of surface finishing. When applying successive coats, follow the recommendations of the curing compound manufacturer.

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Spec	Code	Pay Item	Pay Unit
930	9612	Spall Repair	SF

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

Authored By: NDDOT ETS

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

HYDRODEMOLITION AND OVERLAY OF CONCRETE BRIDGE DECKS

PROJECT 8-029(216)000 – PCN 23905

650.01 DESCRIPTION

This work consists of removing and replacing unsound concrete and/or chloride contaminated concrete using a combination of mechanical equipment and hydrodemolition equipment, then resurfacing the bridge deck.

650.02 EQUIPMENT

A. General.

Equipment	Section
Bridge Deck Overlays Finishing Equipment	155.07 D
Sawing	155.09
Grinding	155.11
Concrete Buggy	155.12
Fogger	156.02
Milling Machine	156.03

B. Sandblasting Equipment.

Use sandblasting equipment that removes rust scale, oil, and concrete laitance from the surface of the bridge deck and uncoated reinforcing bars. Do not use equipment that employs the wet sandblasting method.

Equip air lines with filters that remove all oil from the air used by the sandblaster.

C. Pneumatic Hammers.

Use hammers that are no larger than the nominal 30 pound class. Use chipping hammers no larger than the nominal 15 pound class to remove concrete around or beneath reinforcing bars. Pointed bits for pneumatic hammers may only be used when performing Class 4 removals.

D. Hand Tools.

Provide hand tools, such as hammers and chisels, for the removal of fine particles of unsound concrete or to achieve the required depth.

E. Hydrodemolition Equipment.

Use hydrodemolition equipment with a water filter and pumping unit that operates in conjunction with a remotely controlled robotic water jet unit. Use equipment that produces a high-pressure water jet stream capable of removing concrete to the specified depth of sound concrete and removal of all unsound concrete with a single pass of the unit.

Use equipment that provides shielding to contain all dislodged concrete within the removal area to protect the traveling public and work crew from flying debris on, adjacent to, and below the work site.

Use vacuum equipment to clean-up the hydrodemolition debris. Use vacuums equipped with fugitive dust control devices and that collect wet debris as well as standing water in the same pass.

F. Placing and Finishing Equipment.

Placing and finishing equipment includes hand tools used for placing and brushing mixed mortar and for distributing concrete to a depth sufficient for the concrete to be struck off with a screed.

G. Mobile Mixers.

1. General.

Use self-propelled mixers.

Fill mixers to no more than the manufacturer's certified maximum capacity. Attach a capacity rating plate to the mixer.

Prevent deposits of hardened concrete from accumulating in the mixer.

2. Measurement.

Use a mixer that measures the cement and flow of water introduced into the mix.

Use a visible cement recording meter equipped with a ticket printout that shows quantity used.

Use a flow meter to indicate water flow that is adjustable to provide for minor variations in aggregate moisture.

3. Calibration.

Calibrate the mobile mixer as specified by the manufacturer. Perform the calibration in the presence of the Engineer. If there are no manufacturer recommendations, perform the calibration as specified below:

Calibrate the mixer and each individual component (coarse aggregate, fine aggregate, water, cement, and admixture).

Furnish:

- 500 pound capacity platform scale;
- 300 pounds of test weights;
- Container that can be placed on the scale; and
- Deflector to divert the material from the mixer into the container.

650.03 MATERIALS

A. General.

Item	Section
Concrete Admixtures	802.02 D
Burlap Cloth	810.01 A
Water	812

B. Deck Concrete.

Use Class AAE-5 concrete that meets Section 802, “Portland Cement Concrete,” except the design compressive strength required will be 4,000 psi at 28 days. Material meeting the requirements of Section 650.03 C, “Overlay Concrete” may be used in place of Class AAE-5 concrete.

C. Overlay Concrete.

1. General.

Item	Section
Fine Aggregate	802.02 B.2
Coarse Aggregate – Size 5	802.02 B.2
Water Reducing Admixture	802.02 D.2.b

Use cement that meets the requirements of AASHTO M 240, Type IL(MS).

Use coarse aggregate composed of crushed stone. Use crushed stone that has at least one fractured face on 75 percent of the particles retained on the number 4 sieve.

Entrain air within the concrete as specified in Section 802.02 F, “Air Entrainment”, except supply concrete with an air content between 5.0 and 8.0 percent of the volume of the concrete at the time of placement.

Produce concrete that has a slump of 1 inch or less, when determined according to ND T 119.

2. Mix Design.

Use a mix design that has the proportions shown in Table 650-01. Deviations from the weight shown in the table will be permitted for the Coarse Aggregate and Fine Aggregate to yield one cubic yard, with approval from the Engineer. Maintain the ratio of Coarse Aggregate to Fine Aggregate shown in the table.

Table 650-01
Quantity of Material for 1 CY of Concrete

Cement	600 lbs
Coarse Aggregate	1700 lbs
Fine Aggregate	1425 lbs
Water	230 lbs
Water Reducing Admixture	Manufacturer’s recommend dosage

D. Bonding Grout.
Produce grout for bonding the new concrete with existing deck concrete consisting of equal parts, by weight, of cement and fine aggregate mixed with water. Produce grout with a consistency that allows application with a stiff brush or broom and that does not puddle or run. Thin the grout as necessary when used for sealing construction joints.

650.04 CONSTRUCTION REQUIREMENTS

A. General.
Install protective shielding or secondary containment beneath the bridge

Operate removal equipment without cutting, stretching, or damaging reinforcing steel remaining in place.

Do not allow loads on the portion of the deck from which concrete has been removed, other than the equipment needed to remove and replace concrete.

Use a buggy or pump to place concrete on the bridge deck.

Do not open the overlay concrete to traffic until the curing period is complete.

B. Removals.

1. General.

a. Submittals.
At the preconstruction conference submit a Hydrodemolition Waste Management Plan (HWMP). Include the following in the HWMP:

- Shielding methods;
- Process Water Control Plan (PWCP) that includes the following:
  - Personnel administering the PWCP;
  - Storage method of process water including the size of storage facilities; and
  - Proposed disposal location of process water;
- Spill contingency plan addressing how spills or releases of process water will be contained, cleaned up and reported; and
- Disposal of other waste generated during the hydrodemolition process.

b. Mechanical Removals.
Angle pneumatic hammers at 65 degrees or less, as measured from the slab.

Use non-powered hand tools to remove fine particles of concrete or to reach the required depth.

Unless otherwise specified, use hand or mechanical means to remove loose debris from the deck immediately after performing each class of removal to prevent debris from adhering to the surface.

In areas inaccessible to hydrodemolition equipment, remove unsound or debonded concrete using mechanical removal methods as directed by the Engineer.

2. Class 1.
For Class 1 removal, use a milling machine to remove deck concrete to the depth designated in the plans.

3. Class 1-H.

a. Calibration of Hydrodemolition Equipment.
After performing Class 1 removals, the Engineer will designate a trial area of 30 square feet representing sound concrete. Calibrate the equipment on a representative sample of sound deck concrete by adjusting water pressure, robot speed, and jet oscillation speed to achieve 1/2” removal depth.

b. Hydrodemolition Removals.
Perform hydrodemolition over the entire surface of the bridge deck. Maintain the settings established at the time of calibration. Perform re-calibration if desired results are not being attained.

Operate the hydrodemolition equipment to remove 1/2 inch of sound concrete and all unsound concrete located above the top mat of reinforcement in a single pass. Take care to avoid removing the full depth of the concrete deck while using hydrodemolition equipment. If the depth of removal exposes the bottom mat of reinforcing steel in the bridge deck or blows completely through the deck, stop operating the hydrodemolition equipment and install sandbags or other approved devices to prevent water and debris from flowing through the deck.

Operate the hydrodemolition equipment to remove 1/2 inch of sound concrete and all unsound concrete above the top mat of reinforcement in a single pass. If the depth of removal exposes the bottom mat of reinforcing steel or blows through the bottom of the deck, stop operating the hydrodemolition equipment and consult with the Engineer to determine if it is necessary to re-calibrate the equipment.

Minimize the overlap of each pass of the hydrodemolition equipment to limit the depth of removal of sound concrete.

Follow the HWMP for removal of the slurry and rubble from the bridge deck immediately after performing hydrodemolition. Complete the cleanup before the slurry has dried.

c. Disposal of Process Water.
Dispose all process water according to Section 107.17 “Removed Materials”. Provide the Engineer with disposal agreement for the process water.

d. Deck Chaining and Additional Removals.
After slurry and rubble have been removed, the Engineer will chain the deck to determine if any unsound, undercut, or debonded concrete remains.

Remove unsound, undercut, and debonded concrete located above the top mat of reinforcing steel using pneumatic hammers, or other techniques approved by the Engineer.

Areas of unsound or debonded concrete located below the top mat of reinforcing steel will be designated for Class 3 removal.

4. **Class 3.**
   After completing Class 1-H removals, the Engineer will chain the deck to determine if any unsound concrete remains. Remaining areas of unsound concrete located below the top mat of reinforcing steel will be designated for Class 3 removal.

   Remove concrete using 15 pound pneumatic hammers.

5. **Class 4.**
   After performing Class 3 removals, the Engineer will chain the Class 3 removal areas to determine if any unsound concrete remains. Any remaining areas of unsound concrete will be designated for Class 4 removal.

   Remove concrete using 15 pound pneumatic hammers, through the full depth of the deck. Leave the edges of the hole tapered inward from top to bottom.

C. Final Preparations Prior to Deck Concrete and Overlay Concrete.

At longitudinal construction joints, saw the previously placed overlay concrete to produce a straight vertical edge before placing the adjacent overlay concrete.

Sandblast all exposed reinforcing steel to remove rust scale, oil, and concrete laitance from the surface of the bridge deck and reinforcing bars. Remove reinforcing bars which have lost 25 percent or more of the original cross section and replace with a new lap-splice bar. If a lap-splice is needed, contact the Engineer of Record to determine the required lap length. Include fabricating, transporting and installing new lap-splice bars in the bid item “Deck Concrete”.

After all preparations are complete, notify the Engineer a minimum of 24 hours before placing concrete.

D. Mixing of Materials.

Set up concrete mixing equipment at the bridge site. Operate the concrete mixer at a rate that allows the finishing operation to proceed at a steady rate.

Perform a yield box test before each pour to determine if the mobile mixer meets the manufacturer’s calibration requirements. Perform the yield test as follows:

- Use a 1/4 cubic yard yield box;
- Set the cement meter to zero;
- Discharge concrete until the yield box is full, but not overflowing; and
- Determine the cement meter count for the full yield box.

If the meter count is within 1 percent of the previous meter count, it becomes the new calibrated meter count. If the meter count is not within 1 percent of the previous meter count, recalibrate the mixer as specified by the manufacturer.

Do not use the material placed in the yield box in the deck.

E. Placing, Curing, and Finishing.

1. General.

a. Surface Preparation.

Clean the entire deck surface with compressed air and dry the deck surface, without the use of an open flame. Evenly and thoroughly coat all vertical and horizontal surfaces with a bonding grout using a brush, broom or sprayer system. Do not allow the bonding grout to dry before covering with new concrete.

Place and cure deck concrete before placing deck and overlay concrete.

b. Weather Requirements.

Place deck concrete and overlay concrete when the ambient air temperature is 45°F and rising and below 80°F.

c. Finishing Deck and Overlay Concrete.

Do not use water to facilitate finishing deck and overlay concrete.

d. Curing Deck and Overlay Concrete.

Use a curing period of at least 5 days and maintain the temperature of the concrete above 55°F during the curing period.

Place a double thickness of burlap over the concrete within 15 minutes of the screed passing over the concrete. If the wet cure is not applied within 15 minutes of the passing of the finishing equipment, remove and replace the affected concrete. Use a work bridge to place burlap without marring the concrete. Prewet the burlap before placement and keep the burlap continuously moist for the duration of the curing period. Burlap may not be covered by other materials.

Do not perform work or allow vehicles and equipment on the concrete during the curing period.

If enclosures are used to maintain curing temperatures, heat the enclosure with an electric heater or properly vented combustible heater. Before removing the enclosure, decrease the concrete's surface temperature to the air temperature at a rate not to exceed 15°F per hour.

If concrete is exposed to air temperatures below freezing during the curing period, the Engineer and the Department's Bridge Division will perform an evaluation of the in-place concrete to determine serviceability. The results of the evaluation may require remedial action up to and including removal of affected material. Perform remedial action at no additional cost to the Department.

2. Deck Concrete.

a. General.

Use mixing equipment that meets Section 155.03, "Mixers" or 650.02 G, "Mobile Mixers".

Fill areas of Class 3 or Class 4 removals to the bottom of the Class 1H removal. Leave the top of the deck concrete surface rough.

In areas where the deck concrete is less than 1 inch deep, place the deck concrete with the overlay concrete to the full depth of the repair according to Section 650.04 E.3 “Overlay Concrete”.

b. Full Depth.
If removal is full depth, provide forms to facilitate placement of new concrete. Remove forms at the end of the curing period. Leave the underside of the deck with a neat and smooth appearance.

3. Overlay Concrete.
Use mixing equipment that meets Section 650.02 G, “Mobile Mixers”.

Before concrete placement, move the finishing machine across the rails to check and adjust the screed to ensure proper concrete overlay thickness.

Consolidate the concrete and screed to final grade.

In areas where overlay concrete depth exceeds 3 inches, place and consolidate overlay concrete to the top of the top mat of reinforcing steel ahead of the paving screed. Place the remaining overlay concrete while the previously placed overlay concrete remains stiff enough that it will not roll back under the paving screed.

Complete placement before September 15 unless preauthorized by the Bridge Engineer.

Place overlay concrete in one operation leaving no transverse construction joint.

After machine finishing is completed, hand finish with a wood float to produce a tight, uniform surface.

Mark all transverse joints in the existing bridge deck. Saw or hand tool a joint in the overlay concrete at the location of the existing joint and seal with a silicone sealant.

Seal all vertical joints by painting the joint with a thinned grout prior to placing overlay concrete.

F. Surface Tolerances.
After the concrete has cured, the Engineer will test the bridge deck and approach slabs or adjacent pavement, if applicable, for surface irregularities with a 10 foot straightedge.

The Engineer will check the profile by performing the following:

“Check the profile using a 10 foot straightedge oriented in the longitudinal direction and starting at one end of the deck, move the straightedge transversely across the deck to the other edge with constant contact with the deck. Repeat this process in 5 foot intervals from one end of the deck to the other. Check the cross slope using the 10 foot straightedge oriented in the transverse direction and starting at one end of the deck, move the straightedge longitudinally from one end of the deck to the other end with constant contact

with the deck. Repeat this process in 5 foot intervals from one side of the deck to the other."

Grind areas with a deviation greater than 1/8 inch, but less than or equal to 1/2 inch, until the deviation is 1/8 inch or less. The Engineer will apply a contract price reduction as specified in Section 650.06 B, "Surface Tolerance".

The Engineer will make a serviceability determination as specified in Section 105.07, "Conformance with the Contract Requirements" for any deviations greater than 1/2 inch.

G. Grooving.
Perform grooving according to Section 602.04 D.3, "Deck and Approach Slab Grooving.

H. Sealant.
Apply a silicone sealant that meets the requirements of Section 826.02 B.1, "Sealant" to the joint where the deck overlay meets the barrier.

I. Penetrating Water Repellent Treatment.
After grooving operation is complete and the silicone sealant is applied, apply penetrating water repellent solution that meets the requirements of Section 822, "Penetrating Water Repellent" a minimum of 21 days after placement of the concrete deck overlay according to Section 602.04 J, "Penetrating Water Repellent Treatment".

650.05 METHOD OF MEASUREMENT

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

The Engineer will measure overlay concrete based on the mobile mixer count and the yield box. The Engineer will obtain counter readings from the mixer before and after each placement and multiply the readings by the meter count determined by the yield test, to determine the concrete quantity.

The Engineer will deduct waste concrete from the measured quantity. The Contractor and Engineer will agree upon the amount of waste, including the material used in the yield test, at the end of each day.

650.06 BASIS OF PAYMENT

A. General.

Pay Item	Pay Unit
Deck Concrete	Cubic Yard
Overlay Concrete	Cubic Yard
Class 1 Removal	Square Yard
Class 1-H Removal	Square Yard
Class 3 Removal	Square Yard
Class 4 Removal	Square Yard

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

B. Surface Tolerance.

The Engineer will process a contract price adjustment for overlay concrete based on the surface tolerance measurements determined in Section 650.04 F, “Surface Tolerances”. The amount of the contract price adjustment will be determined by multiplying the contract unit price for “Overlay Concrete” by the area ground, measured in square yards, by the appropriate Contract Price Reduction Factor in Table 650-02.

Table 650-02

Deviation	Contract Price Reduction Factor
> 1/8 inch and ≤ 1/4 inch	0.6%
> 1/4 inch and ≤ 1/2 inch	1.8 %

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

COMMERCIAL GRADE HOT MIX ASPHALT – WITH DENSITY

PROJECT 8-029(216)000 – PCN 23905

DESCRIPTION

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

MATERIALS

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

F. Commercial Grade Hot Mix Asphalt.

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

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

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

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

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

If using a stationary plant, use a mix design previously approved by the Department within the last year. Include the date that the mix design was approved.

If a previously approved mix design is not available, submit a new mix design to the Engineer at least 10 calendar days before placement of material.

CONSTRUCTION REQUIREMENTS

A. Contractor Personnel.

Replace Section 430.04 A "Contractor Quality Control (QC)" with the following:

Provide personnel meeting the requirements of NDDOT Technical Certification Program for the following tests:

- ND T 2 – Sampling of Aggregates; and
- NDDOT 5 Sampling and Splitting Field Verification of Hot Mix Asphalt (HMA) Samples.

B. Engineer's Acceptance Testing:

Replace Section 430.04 M "Acceptance" with the following:

The Engineer will perform acceptance tests at the frequency shown in Table 1. At times directed by the Engineer, obtain aggregate samples from the cold feed belt according to ND T 2.

Table 1
Testing Frequencies

Test/Assessment	Minimum Testing Requirements
ND T 11 Materials Finer than No. 200 Sieve	Minimum 1 per 3,000 ton
ND T 27 Sieve Analysis of Fine and Coarse Aggregate	Minimum 1 per 3,000 ton
ND T 166 Bulk Specific Gravity of Compacted Asphalt Mixtures Using Saturated Surface-Dry Specimens	Minimum 1 per 3,000 ton
ND T 209 Theoretical Maximum Specific Gravity and Density of Hot Mix Asphalt	Minimum 1 per 3,000 ton
ND T 312 Preparing and Determining the Density of Hot Mix Asphalt Specimens by Means of Superpave Gyratory Compactor	Minimum 1 per 3,000 ton

If ND T 11 and/or ND T 27 tests result in a deviation from the specified gradation, immediately sample and test aggregate again. Halt paving operations if two consecutive tests deviate from the specified gradation. Restart paving operations after taking corrective actions and passing a gradation test.

The Engineer will determine the density of the pavement based on a minimum of three density cores per 3,000 production tons.

The Engineer will direct the Contractor to obtain a minimum of three cores per every 3,000 production tons. The station and offset location of each core will be determined using random numbers including, but not limited to, within one foot of a longitudinal joint.

The Engineer will determine the density of the cores in accordance with ND T 166, “Bulk Specific Gravity of Compacted Hot Mix Asphalt Using Saturated Surface-Dry Specimens,” and ND T 209, “Maximum Theoretical Density.” The density of the core will be recorded by the Engineer.

The recorded density of the minimum of three cores per 3,000 production tons will be totaled and divided by the number of cores to obtain the average density of the pavement. Density cores will be averaged for Basis of Payment every 3,000 ton, regardless of number of paving days.

The Engineer will target 3.0 percent air voids when determining the maximum theoretical density. Provide mix with between 1.5 and 5.0 percent air voids, when calculated on the Maximum Density Worksheet (SFN 50289).

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Replace Section 430.06.C.4 Table 430-11 with the following table:

Density Adjustment Factors

Adjustment Factor	Average Pavement Density
1.0	≥ 92.0%
0.95	91.0 to 91.9 %
0.90	90.0 to 90.9 %
Remove & replace	< 90.0%

Pay Item	Pay Unit
Commercial Grade Hot Mix Asphalt	Ton

Include the cost of aggregate, asphalt cement, and tack coat in the contract unit price for "Commercial Grade Asphalt."

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION FOR

INDIAN EMPLOYMENT AND CONTRACTING
SISSETON-WAHPETON OYATE

PROJECT NO. 8-029(216)000 – PCN 23905

PURPOSE

The purpose of the Indian Employment and Contracting Special Provision is to establish the specifications for Indian preference and the responsibilities of contractor and subcontractors for this project.

All [or A portion] of this project is located within the historic exterior boundaries of the Lake Traverse Reservation.

Title 23 United States Code (USC), Section 140(d), recognizes and permits the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservations roads. The North Dakota Department of Transportation, consistent with the intent of Section 140(d), affirms that it is their policy to encourage employment of minorities.

DEFINITIONS

For the purposes of this Special Provision, the following definitions will apply:

A. **Indian:** An enrolled member of a federally recognized Indian tribe.

B. **Qualified Indian Applicant:** is defined as one or more of the following:

1) Applicants approved by the contractor based on job performance on other jobs.
2) Applicants who have demonstrated or are presently demonstrating their work qualifications during a probationary work period on this project.
3) Applicants certified by local referral agencies, including Tribal TERO offices, as having adequate skills and training necessary to perform the duties of the position.

C. **Core Crew Employee:** A contractor's or subcontractor's core crew is composed of full time employed individuals necessary to satisfy his/her reasonable needs for supervisory or specially experienced personnel to assure an efficient execution of the contract work. Any Indian already employed by a contractor will be included in the core crew, regardless of job function, to avoid the unintended results of having a contractor lay-off or terminate an Indian employee to hire another under this provision.

D. **Pre-Employment Standards:** Directly related job standards of fitness and ability which indicate that with a reasonable amount of job training a person would be capable of satisfactorily performing an entry level position as well as jobs at a higher level which, with a reasonable amount of training, are normally filled by progression from an entry-level position. This applies to those persons who, at the time of application for employment are

not fully qualified for the available job but have general potential of becoming qualified through a reasonable amount of training.

ENGINEER RESPONSIBILITIES

A. Will monitor contractor and subcontractors for compliance with the requirements of this special provision and will perform necessary reviews of contractors and subcontractors to ensure compliance with the Special Provision.

B. Will assist the contractor and subcontractor with any disputes with the TERO Office or other Tribal entity.

C. Will establish on-the-job training opportunities as specified in the On-the-Job Training Special Provision.

D. Will invite a representative of the TERO office to attend the preconstruction meeting and provide a copy of the preconstruction meeting minutes to the TERO office.

E. Will not allow a contractor or subcontractor to commence work until the contractor's or subcontractor's compliance plan has been approved and the Engineer has received a copy of the approved compliance plan or verbal or written notification of approval by the TERO Office.

CONTRACTOR RESPONSIBILITIES

A. The contractor and subcontractor will give preference in employment opportunities under this contract to qualified Indian applicants who can perform the work required regardless of race, color, creed, age, sex, religion, national origin, disability, or tribal affiliation to the extent set out in the paragraphs below.

B. The contractor and subcontractor will not use pre-employment standards, qualifications, criteria, or other personnel requirements as barriers to Indian employment except when such criteria or standards are required by business necessity. The contractor and subcontractor have the burden of showing that such criteria or standards are required by business necessity.

C. The contractor and subcontractor agrees that Indians will be given preference for at least seventy percent (70%) of the project work force provided that sufficient qualified Indian applicants are available. The phrase "work force" will not include "core crew employees".

D. The contractor and subcontractor are required to complete a compliance plan and submit the compliance plan to the TERO office at least two (2) weeks prior to beginning work. Prior to commencing work, contractors and subcontractors are expected to contact the Sisseton-Wahpeton Oyate TERO office concerning an identified core crew, project work force needs, and (sub)contractor/TERO interface. No contractor or subcontractor will begin work until the compliance plan has been approved by the TERO office. The contractor and any subcontractor must submit a copy of the approved compliance plan to the Engineer prior to commencing work unless arrangements are made for the TERO office to provide the copy of the compliance plan directly to the Engineer. In lieu of a copy of the approved compliance plan, the Engineer may seek approval directly from the TERO office.

E. The contractor will provide the TERO Director at least forty-eight hours' notice to locate and refer a qualified Indian applicant for any vacancy or new position except when circumstances require that the position be filled within a shorter period of time. If the TERO Office is unable to fill the vacancy, the contractor and subcontractor may recruit and hire workers from whatever sources are available and by whatever process, provided that the contractor and subcontractor notifies the TERO Office of any job vacancies, positions, or any negotiated positions.

F. The contractor and subcontractor will provide for maintenance of records and be prepared to furnish such periodic reports documenting compliance under this Special Provision as the Department determines necessary. The contractor and subcontractor will submit the following information on a weekly basis to the Tribal TERO Office:

    1. Weekly TERO Employment Report which includes the following data (forms for the weekly TERO Employment Report available from the TERO Office):
        a) Wage and hour reports
        b) New hires or terminations, and disciplinary action taken
        c) Promotions
    2. Copies of official payrolls.

G. The contractor and subcontractor agree that all qualified Indian employees will be adequately trained for the position for which they are hired. The contractor and subcontractor will evaluate and pay all Indian employees in accordance with current company policies and contract provisions.

H. Nothing in this Special Provision will be construed to interfere with the contractor's ability to dismiss any employee for cause including, but not limited to, lack of adequate skills or training, inability to perform by virtue of state or federal law, or breach of the contractors standards of conduct.

OTHER PROVISIONS

This Special Provision supplements but does not replace the existing equal employment opportunity and disadvantaged business enterprise requirements, which may be included in this Agreement.

The Tribal TERO Office will maintain a Job Skills Bank, listing available Indians by job classification based on skill level as indicated on their TERO application. The contractor and subcontractors agree to utilize the Tribal TERO Office to locate qualified applicants.

The contractor is authorized to include in the bid an amount necessary to cover the five and a half percent (5.5%) employment rights fee, which is applicable to this project, based on the portion of the project located within the historic boundaries of the Lake Traverse Reservation. The Department has determined that Fifty percent (50%) of the project is within those boundaries; therefore, the contractor is authorized to include a TERO fee amount based on 2.8% of the total contract dollar amount.

Contractors should be aware that the Sisseton-Wahpeton Oyate has a Business License Ordinance (Chapter 53, Tribal Code) which the Tribe contends is applicable to contractors working on this project. For further information contact the Tribal Tax Office at Tribal Headquarters, Agency Village, SD at 605-698-3911.

ENFORCEMENT

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

The TERO Special Provision will apply to an entire project and not just the portion located within the historic exterior boundaries of the Lake Traverse Reservation with the exception of the TERO fee that is calculated based on the portion located within historic reservation boundaries**.**

It is the intent of all parties that this Special Provision be implemented on a cooperative basis without regard to jurisdictional issues. It is agreed that nothing in this Special Provision will prevent the Tribe, the Department, or any contractor from instituting any litigation pertaining to any jurisdictional issue with regard to the employment rights code or any other matter.

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

PERMITS AND ENVIRONMENTAL CONSIDERATIONS

NON-REPORTING NATIONWIDE 3 SECTION 404 PERMIT MAINTENANCE

This Special Provision incorporates a Non-Reporting US Army Corps of Engineers (USACE) Nationwide 3 Section 404 Permit. A Non-Reporting Nationwide 3 Section 404 Permit is utilized in situations where USACE jurisdictional water impacts meet specific criteria allowing maintenance activities in jurisdictional waters of the US without preconstruction notification (permit application). To use the Non-Reporting Permit the conditions listed in the attached Fact Sheets and Regional Conditions must be followed.

The Contractor shall be responsible for complying with all the terms and conditions as contained in the attached Fact Sheets and Regional Conditions. Bidders shall become familiar with all standard conditions and special conditions when submitting their bid for this project. The Fact Sheet and Regional Conditions for a Nationwide 3 Section 404 Permit are attached.

- **Nationwide 3 Non-Reporting Section 404 Permit**
  The Non-Reporting Nationwide 3 USACE 404 Permit authorizes maintenance activities to previously authorized structures or fills resulting in temporary impacts to jurisdictional waters of the US. All temporarily impacted areas will be restored to original contours.

The contractor shall be responsible for obtaining permits for impacts not authorized by this Non-Reporting Nationwide 3 Permit.

US Army Corps of Engineers
Omaha District

Nationwide Permit 3: Maintenance

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Sections 10 and 404))

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

US Army Corps of Engineers
Omaha District

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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

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

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

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

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

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

US Army Corps of Engineers
Omaha District

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

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

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction, efforts using techniques (e.g., soil reaeration techniques) to break up the compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.

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

13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: http://www.rivers.gov/.

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife.

Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal permittee should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.nmfs.noaa.gov/pr/species/esa/ respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects on properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects on any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on historic

properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects on historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activities authorized by NWPs, must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

US Army Corps of Engineers
Omaha District

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, because streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate

number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-federal applicants to demonstrate that the structures comply with

established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed activity which may result in any discharge from a point source into waters of the United States must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by the certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed activity which may result in any discharge from a point source into waters of the United States in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed activity which may result in any discharge from a point source into waters of the United States is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge into waters of the United States, the permittee must submit a copy of the certification to the district engineer. The discharge into waters of the United States is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied (i.e., by the issuance of a water quality certification or a waiver and completion of the Section 401(a)(2) process).

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) The total acreage loss of waters of the United States for a single and complete project cannot exceed the acreage limit of the NWP with the highest specified acreage limit when multiple NWPs are used to authorize an activity.

(b) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States for that single and complete project cannot exceed that specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14 (which has an acreage limit of 1/3 acre in tidal waters), with associated bank stabilization authorized by NWP 13 (which does not have a specified acreage limit), the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(c) If two or more of the NWPs used to authorize the single and complete project have specified acreage limits, the acreage loss of waters of the United States authorized by each of those NWPs cannot exceed the

specified acreage limits of each of those NWPs. For example, if a commercial development is constructed under NWP 39 (which as a 1/2-acre limit), and the single and complete project includes the filling of a ditch authorized by NWP 46 (which has a 1-acre limit), the maximum acreage loss of waters of the United States for the construction of the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States caused by the combination of the NWP 39 and NWP 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____

(Transferee)

_____

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The successful completion of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized

by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) *Timing*. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification*: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

US Army Corps of Engineers
Omaha District

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate. For NWP 27 activities that require PCNs because of other general conditions or regional conditions imposed by division engineers, see Note 2 of that NWP;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the compensatory mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

US Army Corps of Engineers
Omaha District

(c) *Form of Pre-Construction Notification*: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination*: (1) The district engineer will consider any comments from federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases where the prospective permittee is not a federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

E. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

US Army Corps of Engineers
Omaha District

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. Nationwide Permit Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic ecosystem restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on: (1) the structure, functions, and dynamics of an aquatic ecosystem type or a riparian area type that currently exists in the region; (2) the structure, functions, and dynamics of an aquatic ecosystem type or riparian area type that existed in the region in the past; and/or (3) indigenous and local ecological knowledge that apply to the aquatic ecosystem type or riparian area type (i.e., a cultural ecosystem). Cultural ecosystems are ecosystems that have developed under the joint influence of natural processes and human management activities (e.g., fire stewardship). An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

US Army Corps of Engineers
Omaha District

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Nature-based solutions: Actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction

notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

US Army Corps of Engineers
Omaha District

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. The substrate may also be comprised, in part, of organic matter, such as large or small wood fragments, leaves, algae, and other organic materials. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

US Army Corps of Engineers®
Omaha District

2026 Nationwide Permits
Final Regional Conditions
Omaha District
State of North Dakota

The following Nationwide Permit (NWP) regional conditions will be used in the State of North Dakota. The issuance of the 2026 NWPs was announced in the June 18, 2025, publication of the Federal Register (90 FR 26100); the final action was published in the Federal Register (91 FR 768) on January 8, 2026. Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

A. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO ALL NWPs

For all NWPs, permittees must notify the Corps in accordance with General Condition 32 Preconstruction Notification (PCN) requirements for regulated activities located within or comprised of the following:

1. Aquatic Resources of Special Concern:

Aquatic resources of special concern are resources that are difficult to replace, unique, and/or have high ecological function. PCN required for any regulated activity located in aquatic resources of special concern that fall into the categories listed below. The District Engineer may authorize activities under NWPs only after determining that the impacts to the following aquatic resources of special concern will be no more than minimal:

a. **Wetlands classified as peatlands:** For purposes of this condition, peatlands are permanently or seasonally waterlogged areas with asurface accumulation of peat (organic matter) 30 centimeters (12 inches) or more thick. Under cool,anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay.Any peat-covered areas, including fens, bogs, and muskegs, are all peatlands.

   i. PCN required for NWP 3, 5, 6, 20, 27, 32, 38 and 45.

   ii. All NWPs not listed above are revoked for use in peatlands.

b. **Natural Springs:** Within 100 feet of the water source in natural spring areas. For the purpose of this condition, a spring water source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source of waters. Springs do not include drain tile outlets.

c. **Specific Waters:** Occuring in or under the Missouri River, including LakeSakakawea and Lake Oahe. In addition, a PCN is required for any activity occurring in an offchannel area (e.g. marinas and bays) of any of these waterways.

2. Tribal Reservations and Tribal Trust Lands:

PCN required for any regulated activity located within Tribal Reservations and Tribal Trust Lands. The following link provides a map showing Tribal Reservations and Tribal Trust Lands: https://onemap-bia-geospatial.hub.arcgis.com/apps/718497a94a15450d8d48b51625dc330f/explore

3. **Bank Stabilization Activities (verified under any NWP):**

   PCN required for any regulated activity that involves bank stabilization impacting an area greater than 3/100 of an acre (1,306.8 square feet) below the Ordinary High-Water Mark or includes features that extend out from the existing bank line greater than 25% of the bankfull channel width.

B. CONSTRUCTION PRACTICES:

1. **Suitable Material:**

   Permittees are reminded of General Condition No. 6 which prohibits use of unsuitable material. A list of materials prohibited or restricted as fill material in waters of the United States within the Omaha District can be found at: http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/12320/ prohibited-restricted-materials.aspx

2. **Revegetation of Disturbed Areas:**

   All jurisdictional waters disturbed by construction shall be revegetated with appropriate perennial, native grasses and forbs and maintained in this condition. Seed mixes shall not include invasive or noxious species. The following link provides information and resources on invasive species: https://www.invasivespeciesinfo.gov/us

3. **Culvert Countersinking:**

   For all NWPs in streams with relatively permanent flow and a stable stream bed, culvert stream crossings shall be installed with the bottom of the culvert set below the natural stream channel flow line. This regional condition does not apply in instances where the lowering of the bottom of the culvert would allow a headcut to migrate upstream of the project into an unaffected stream reach or result in lowering the elevation of the stream reach.

   a. The stream's flow line (or the main path of the water) will be determined by calculating the average elevation along the streambed during periods when the stream is at its lowest flow levels.

   b. The slope of the culvert should be parallel to the slope of the stream flow line.

   c. Riprap inlet and outlet protection shall be placed to match the height of the bottom of the culvert.

4. **Intake Structures:**

In USFWS identified Pallid Sturgeon waterways (https://ipac.ecosphere.fws.gov/), any intake structure shall meet the following criteria to protect the pallid sturgeon:

a. Intake screens with a maximum mesh opening of 1/4-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed 1/2-foot per second.

b. Pumping plant sound levels will not exceed 75 dB at 50 feet.

c. Intakes located in Lake Sakakawea, above river mile 1519, and on the Yellowstone River, are subject to the following conditions:

   i. The intakes shall be floating.

   ii. At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.

   iii. If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.

   iv. If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to 1/4-foot per second.

d. Intakes located in Lake Sakakawea, below river mile 1519, and the Missouri River below Garrison Dam are subject to the following conditions:

   i. The intakes shall be submerged.

   ii. At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.

   iii. The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.

   iv. If the 20-foot depth is not attainable, then the intake velocity shall be limited to ¼-foot per second with intake placed at the maximum practicable attainable depth.

e. Intakes and associated utility lines that are proposed to cross sandbars in areas designated as piping plover critical habitat are prohibited.

f. Any temporary open trench associated with utility lines are to be closed within 30 days of excavation. This time limit may be extended by notifying the North Dakota Regulatory Office and receiving a written response that the extension is acceptable.

5. **Boat Docks:**

To ensure that the work or structure shall not cause unreasonable obstruction to the free navigation of Section 10 navigable waters, the following conditions are required:

a. No boat dock shall be located on a sandbar or barren sand feature. The farthest point riverward of a dock shall not exceed a total length of 30 feet from the Ordinary High Water Mark. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.

b. Any boat dock shall be anchored to the top of the high bank.

c. Any boat dock located within an excavated bay or marina that is off the main river channel may be anchored to the bay or marina bottom with spuds.

d. Section 10 Waters located in the State of North Dakota are:

i. Bois de Sioux River

ii. James River

iii. Missouri River

iv. Red River of the North

v. Upper Des Lacs Lake

vi. Yellowstone River

US Army Corps of Engineers
Omaha District

2026 Nationwide Permits
Regional Conditions
State of North Dakota
Section 401 Water Quality Certification

The following Nationwide permit (NWP) regional conditions pertaining to Section 401 Water Quality Certification (WQC) will be used in the State of North Dakota for NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51,52, 53, 54, 55, 57, 58, 59, and 60.

The Environmental Protection Agency is responsible for providing WQC for activities that occur on Indian Lands in the State of North Dakota.

The North Dakota Department of Environmental Quality is responsible for providing WQC for Section 404 activities that occur in the State of North Dakota, excluding Indian Lands.

WQC by NWP follows:

- **NWP 1 – Aids to Navigation**
  -Certification not required (Section 10 Only)

- **NWP 2 – Structures in Artificial Canals**
  -Certification not required (Section 10 Only)

- **NWP 3 – Maintenance**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities**
  -EPA waived certification for all activities.
  -NDDEQ certified for all activities.

- **NWP 5 – Scientific Measurement Devices**
  -EPA certified without conditions.
  -NDDEQ certified for all activities.

- **NWP 6 – Survey Activities**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 7 – Outfall Structures and Associated Intake Structures**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 8 – Oil and Gas Structures on the Outer Continental Shelf**
  -Not applicable in North Dakota

- **NWP 9 – Structures in Fleeting and Anchorage Areas**
  -Certification not required (Section 10 Only)

- **NWP 10 – Mooring Buoys**
  -Certification not required (Section 10 Only)

- **NWP 11 – Temporary Recreational Structures**
  -Certification not required (Section 10 Only)

- **NWP 12 – Oil and Natural Gas Pipeline Activities**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 13 – Bank Stabilization**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 14 – Linear Transportation Projects**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 15 – U.S. Coast Guard Approved Bridges**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 16 – Return Water From Upland Contained Disposal Areas**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 17 – Hydropower Projects**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 18 – Minor Discharges**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 19 – Minor Dredging**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 20 – Response Operations for Oil or Hazardous Substances**
  -EPA certified without conditions.
  -NDDEQ certified for all activities.

- **NWP 21 – Surface Coal Mining Activities**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 22 – Removal of Vessels**
  -EPA waived certification for all activities.

-NDDEQ certified for all activities.

- **NWP 23 – Approved Categorical Exclusions**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 24 – Indian Tribe or State Administered Section 404 Programs**
  -Not applicable in North Dakota.

- **NWP 25 – Structural Discharges**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities**
  -EPA certified without conditions.
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 28 – Modifications of Existing Marinas**
  -Certification not required (Section 10 Only)

- **NWP 29 – Residential Developments**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 30 – Moist Soil Management for Wildlife**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 31 – Maintenance of Existing Flood Control Facilities**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 32– Completed Enforcement Actions**
  -EPA certified without conditions.
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 33 – Temporary Construction, Access, and Dewatering**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 34 – Cranberry Production Activities**
  -EPA waived certification for all activities.
  -NDDEQ N/A

- **NWP 35 – Maintenance Dredging of Existing Basins**
  -Certification not required (Section 10 Only)
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 36 – Boat Ramps**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 37 – Emergency Watershed Protection and Rehabilitation**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 38 – Cleanup of Hazardous and Toxic Waste**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 39 – Commercial and Institutional Developments**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 40 – Agricultural Activities**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 41 – Reshaping Existing Drainage Ditches**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 42 – Recreational Facilities**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 43 – Stormwater Management Facilities**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 44 – Mining Activities**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 45 – Repair of Uplands Damaged by Discrete Events**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 46 – Discharges in Ditches**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 48 – Commercial Shellfish Mariculture Activities**
  -EPA waived certification for all activities.
  -NDDEQ certified for all activities.

- **NWP 49 – Coal Remining Areas**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 50 – Underground Coal Mining Activities**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 51 – Land-Based Renewable Energy Generation Facilities**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 52 – Water-Based Renewable Energy Generation Pilot Projects**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 53 – Removal of Low-Head Dams**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 54 – Living Shorelines**
  -EPA waived certification for all activities.
  -NDDEQ N/A

- **NWP 55 – Seaweed Mariculture Activities**
  -EPA neither certified nor waived certification
  -NDDEQ N/A

- **NWP 57 – Electric Utility Line and Telecommunications Activities**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 58 – Utility Line Activities for Water and Other Substances**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

- **NWP 59 – Water Reclamation and Reuse Facilities**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified for all activities.

- **NWP 60 – Activities to Improve Passage of Fish and Other Aquatic Organisms**
  -EPA certified with conditions (see EPA certification following this listing).
  -NDDEQ certified with conditions (see NDDEQ certification following this listing).

EPA and NDDEQ certification follows.

November 24, 2025

Benjamin Soiseth
Chief, North Dakota Section U.S.A.C.E.
3319 University Drive
Bismarck, ND 58504

Re: Nationwide Permits – 2026 Reissuance

Dear Mr. Soiseth:

The North Dakota Department of Environmental Quality (department) has completed reviewing the proposed 2026 Nationwide Permits (NWPs) for compliance with Standards of Quality for Waters of the State and for Certification under § 401 of the Clean Water Act.

The department has Clean Water Act § 401 authority for North Dakota. Under that authority the department certifies, certifies with conditions, or denies select 2026 NWPs. Certification, certification with condition, and denials are issued to ensure that the water quality requirements as defined in the Standards of Quality for Waters of the State, North Dakota Administrative Code (NDAC) Chapter 33.1-16-02.1 are supported as intended by the Clean Water Act (CWA) § 301, 303, 306, 307 and the 40 Code of Federal Regulations (CFR) Part 121 and the North Dakota Century Code (NDCC) § 61-28-04.

Activities that impact waters of the state that are not waters of the United States are required to comply with state law and state water quality standards. The department maintains jurisdiction over waters of the state as outlined in NDAC Chapter 33.1-16-02.1 (WQ-Standards) and can enforce conditions in waters of the state. "Waters of the state" consist of all waters within the limit of the state and defined as waters on the surface and underground of the earth, including surface waters (lakes, ponds marshes, and waters flowing in well-defined channels), underground waters (flowing in defined subterranean channels or diffused percolating underground water) and artificial waters (residual waters from beneficial use appropriation and artificially drained) pursuant to NDCC § 61-01-01.

If a project is unable to meet the enclosed conditions, or if the certification is denied for an applicable NWP, the applicant may request individual certification from the department. An individual certification request must follow the requirements outlined in § 121.5 of EPA's CWA § 401 Certification Rule, effective November 27, 2023.

The department may inspect any authorized activity to determine compliance with the terms and conditions (§ 121.3(a)).

General Conditions

1) Nationwide Permits that authorize dredging activities involving the removal and subsequent upland storage of material for dewatering purposes that may result in a discharge (33 CFR § 323.2(d)) to waters of the state defined under the WQ-Standards will require a temporary discharge permit through the department's National Pollution Discharge Elimination System Program compliance with NDAC Chapter 33.1-16-01 as promulgated under NDCC Chapter 61-28. Temporary Discharge Permit information can be found at (https://deq.nd.gov/WQ/2_NDPDES_Permits/9_TempDischarges/TD.aspx)

2) Nationwide Permits that authorize the discharge of dewatered dredged material as backfill for beneficial reuse purposes into Class I, IA, II, and III rivers and streams and classified lakes listed in the Appendices I and II of the WQ-Standards may require testing for contaminants and trace elements using elutriate methods to verify that the dredged material does not pose a risk of violating NDAC Chapter 33.1-16-02.1 Standards of Quality for Waters of the State. Federal and non-federal permittees shall provide a preconstruction notification (PCN) to the department so that the department can ascertain whether the Standards of Quality for Waters of the State are being supported.

    a. The permittee must prepare and submit a Sampling and Analysis Plan (SAP) for the elutriate sampling method used, analytes measured and proposed beneficial reuse purpose. Proponents can follow the U.S. EPA and U.S.A.C.E inland testing guidelines.

3) Projects that disturb one acre or more, singularly or cumulatively, will need to apply for a general construction permit and develop a Stormwater Pollution Prevention Plan (SWPP) to minimize pollution from soil erosion and other sources pursuant to NDAC 33.1-16 under NDCC Chapter 61-28. General Construction Permit information can be found at (https://deq.nd.gov/WQ/2_NDPDES_Permits/8_Stormwater/StW.aspx)

Under § 401 of the CWA this department grants certification to the following NWPs as the discharge(s) will comply with water quality requirements:

1) NWPs Not Applicable: No. 8, 24, 34, 54, and 55.

2) NWPs Clean Water Certified: Number 1, 2, 4 , 5, 6, 9, 10, 11, 14, 18, 20, 21, 22, 25, 28, 30, 36, 38, 41, 43, 44, 45, 46, 48, 49, 50, 51, 53, 57, 59

Under § 401 of the CWA, the department grants certification with conditions (40 CFR 121.7(d)) to the following Nationwide Permits, as with these conditions the department is sure that the discharge(s) will comply with the state's WQ-Standards.

3) **NWPs 3, 19, 31, and 33:** Nationwide Permits 3, 19, 31 and 33 are granted under § 401 Clean Water Certification with the condition that all projects involving the removal and subsequent upland storage of material for dewatering purposes that may discharge to Waters of the State defined under the WQ-Standards will require a temporary discharge permit through the department's National Pollution Discharge Elimination System Program under § 402 of the CWA and follow all procedures therein. Projects that plan to place dewatered dredge material back below the ordinary highwater mark in Class I, IA, II, and Class III rivers and streams, and classified lakes listed in Appendices I and II of the WQ-Standards will require testing for contaminants and trace elements using elutriate methods to verify that the dredged material does not pose a risk of violating the Standards of Quality for Waters of the State NDAC Chapter 33.1-16-02.1.

   40 CFR 121.7(d)

   (i) Dewatering activities associated with dredged materials that result in a discharge is considered a point source discharge. Products of dewatering activities such as dredged spoil, solid waste, or elutriate have the potential to leech or carry pollutants into receiving surface waters of the state and infiltrate through the soil profile and into groundwater sources.

   (ii) Dredged materials often carry pollutants that are particulate bound to the sediment, which has the propensity to be liberated from that material and become bioavailable within the water column.

   (iii) Point source discharges are regulated under § 402 of the CWA by the department under the National Pollution Discharge Elimination System (NPDES) program.

   (iv) Waters of the state under NDCC § 61-28-04 are defined in and protected by the NDAC Chapter 33.1-16-02.1 which includes rivers, streams, lakes, reservoirs, wetlands, and groundwater. Conditioning of NWP 3, 19, 31 and 33 ensures support for § 301, 302, 303, 306, and 307 of the CWA.

4) **NWPs 7, 13, 16, 32, 35 and 52:** Nationwide Permits 7, 13, 16, 32, 35 and 52 are granted under CWA § 401 Clean Water Certification with the condition that all projects, (including Federal and Non-Federal Permittees), provide preconstruction notification (PCN) for projects in, over or under Class I, IA, II, and Class III rivers and streams, and classified lakes listed in Appendices I and II of the WQ-Standards.

   40 FR 121.7(d)

(i) A PCN requirement for Federal and Non-Federal Permittees provides the department with the means to ascertain if the WQ-Standards are being supported and to confirm if the action was implemented as permitted. Projects under NWP 16 must follow general condition 1 and 2 for the state to determine that the quality of the return water is compliant with state WQ-Standards. Both are required under 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.3(a) [When a certifying authority reviews a request for certification, the certifying authority shall evaluate whether the activity will comply with applicable water quality requirements. The certifying authority's evaluation is limited to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation].

(ii) NWPs that utilize nature-based solutions must do so in a way that does not compromise the structural integrity of the project, be able to withstand the hydraulic energies of the water, destabilize food web dynamics (*e.g.* evasive habitat for invasive species, alteration of trophic cascades). Ensuring these metrics can be obtained with nature-based solutions assures that the WQ-Standards for aquatic life use can be maintained in all waters of the state.

(iii) Without a PCN the department and the USACE regulator will be blind to any violations, preventing the requirements of 40 CFR 121.3(a). Without a PCN, § 301, 302, 303, 306 and 307 of the CWA cannot be supported.

41 **NWPs 15 and 17:** NWPs 15 and 17 are granted under CWA § 401 Clean Water Certification except those in, on or over Class I, IA, II rivers and streams listed in Appendix I of the WQ-Standards

40 CFR 121.7(d)

(i) Bridges and hydropower dams sequester sediments and other pollutants from runoff and riverine transportation, as well as modify the flow velocities in waters of the state. Maintaining natural, or pre-construction, morphological characteristics of the stream reduces the potential to destabilize and degrade the river/stream.

Drainage directly from hydropower surfaces and bridge decks may cause erosion due to control flow enhancing velocities, and introduce anthropogenic pollutants such as oil, gas, and particulate bound constituents during sediment transport. Directing bridge deck drainage into constructed runoff water quality control systems will help prevent erosion and keep pollutants from directly entering the waterway.

The placement of a structure within the ordinary highwater mark alters the hydrologic characteristics of the waterbody leading to increased erosional forces due to turbulent forces enhancing velocity. The increase in velocity and turbulence around structures, like bridge piers, cause scour and erosion which can undermine the structure itself and increase sediment loading to the waterbody.

(ii) All streams are waters of the state under NDCC § 61-28-04 and protected by NDAC Chapter 33.1-16-02.1 for beneficial uses, which include municipal, domestic, aquatic life, recreation, agriculture, and industrial use for the specified classified streams and rivers. In order to ensure that state law is supported, bridges and hydropower projects need project and specific conditions and allow inspections during and after construction (40 CFR 121.3(a)).

(iii) Authority for the state to certify NWP 15 and 17 is in accordance with 40 CFR 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.3(a) [When a certifying authority reviews a request for certification, the certifying authority shall evaluate whether the activity will comply with applicable water quality requirements. The certifying authority's evaluation is limited to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation]. Conditioning of NWP 15 and 17ensure that § 301, 302, 303, 306, and 307 of the CWA are supported.

42 **NWP 23:** Nationwide Permit 23 is granted § 401 Clean Water Certification with the condition that the project is associated with a Linear Transportation Project. Any projects that are not associated with Linear Transportation Projects that will result in stream or lakeshore bank loss exceeding 0.03-acre or are in, under or over Class I, IA, II and III streams or classified lakes listed in Appendices I and II of the WQ-Standards will require individual certification. Projects that fail to meet this condition under NWP 23 will require individual certification.

40 CFR 121.7(d)

(i) Projects exceeding the 0.03-acre requirement for stream bank or lakeshore impacts have the capacity to remove the biological, disrupt hydraulic and geomorphic riverine or lacustrine function, fragment watershed connectivity in rivers, and disrupt in-lake physiochemical dynamics.

(ii) Waters of the state under NDCC § 61-28-04 are defined in and protected by the NDAC Chapter 33.1-16-02.1. Conditioning of NWP 23 ensures support for § 301, 302, 303, 306, and 307 of the CWA.

43 **NWP 27:** NWP 27 is granted under CWA § 401 Clean Water Certification with the following conditions: (1) Projects in Class I, IA, II, III rivers and streams, and classified lakes listed in Appendices I and II of the WQ-Standards must provide a preconstruction notification to the department that identifies the ecological reference in which the project is restoring to and (2) limit the human dimension in restoring aquatic ecosystems on Class I, IA, II, and III rivers or streams listed in Appendix I of the WQ-Standards unless carried out in a way that the streams current assimilative capacity for WQ-Standards and aquatic life passage are maintained.

40 CFR 121.7(d)

(i) NWP 27 can be used to enhance ecosystem function in aquatic systems. However, it is difficult to objectively determine a past ecological reference as a target metric. A PCN is required to ensure appropriate conditions are applied during and after construction to protect aquatic life passage, existing beneficial uses and prevent construction in ecological settings that may pose a risk to currently impaired waters.

(ii) Authority for the state to certify NWP 27 is in accordance with 40 CFR 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.3(a) [When a certifying authority reviews a request for certification, the certifying authority shall evaluate whether the activity will comply with applicable water quality requirements. The certifying authority's evaluation is limited to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation]. Conditioning of NWP 27 ensures that § 301, 302, 303, 306, and 307 of the CWA are supported.

44 **NWP 29:** NWP 29 is granted under CWA § 401 Clean Water Certification under the condition that the project will not result in a stream bank loss exceeding 0.03-acre in Class I, IA, II, and III streams. Projects that cannot meet the conditions under NWP 29 will require individual certification.

40 CFR 121.7(d)

(i) Projects exceeding the 0.03-acre requirement for stream banks have the capacity to remove the biological, disrupt hydraulic and geomorphic stream function, disconnect and fragment the watershed and potentially result in the total loss of a stream.

(ii) Waters of the state under NDCC § 61-28-04 are defined in and protected by the NDAC Chapter 33.1-16-02.1 for the general beneficial uses of municipal, domestic, aquatic life, recreation, agriculture, and industry. Conditioning of NWP 29 ensures support for § 301, 302, 303, 306, and 307 of the CWA.

45 **NWP 53:** NWP 53 is granted under CWA § 401 Clean Water Certification with the condition that (1) all projects, (including Federal and Non-Federal Permittees), provide PCN for projects in, over or under Class I, IA, II, and Class III rivers and streams in Appendix I of the WQ-Standards, (2) all dredged material during excavation be maintained in an upland staging area with the appropriate temporary discharge and dewatering permit and (3) appropriate best management practices are implemented to ensure that the quantity of sediment and sediment-associated contaminant transport does not impact WQ-standards.

40 CFR 121.7(d)

(i) Sediment buildup behind low head dams can be significant overtime. When the dams are removed, the release of this built-up sediment can exacerbate downstream water quality turbidity, smother aquatic organisms in sensitive life stages, and deliver particulate bound contaminants downstream, which can be resuspended and made bioavailable under conducive conditions. A PCN outlining the appropriate removal and BMPs implemented, as well as preliminary characterization of the chemical profile of accreted sediment if material is to be dredged and used as backfill in the water, is necessary to ensure the maintenance of beneficial uses and WQ-Standards.

(ii) Authority for the state to certify NWP 53 is in accordance with 40 CFR 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.3(a) [When a certifying authority reviews a request for certification, the certifying authority shall evaluate whether the activity will comply with applicable water quality requirements. The certifying authority's evaluation is limited to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation]. Conditioning of NWP 53 ensures that § 301, 302, 303, 306, and 307 of the CWA are supported.

46 **NWPs 39, 40 and 42:** NWPs 39, 40 and 42 is granted under CWA § 401 Clean Water Certification under the condition that the project will not result in loss or relocation of 150 linear feet of any stream or river. Projects that cannot meet the conditions under Nationwide Permit 39, 40, and 42 will require individual certification.

40 CFR 121.7(d)

(i) North Dakota has many intermittent and perennial streams with bed widths of less than four (4) feet. Projects with large footprints (*e.g.* Commercial, Industrial, Agricultural, and Recreational) that remove ≥150 linear feet of stream bank have the capacity to remove the capability, singularly or cumulatively, of the biological,

assimilative, hydraulic and geomorphic stream function, disconnect and fragment the watershed and enhance in stream channelization.

(ii) All streams are waters of the state under NDCC § 61-28-04 and protected by NDAC Chapter 33.1-16-02.1 for the beneficial uses of municipal domestic, aquatic life, recreation, agriculture and industry. Conditioning of NWPs 39, 40, and 42 ensure support of § 301, 302, 303, 306, and 307 of the CWA.

47 **NWP 57:** NWP 57 is granted under CWA § 401 Clean Water Certification except those in, on or over Class I, IA, and III rivers and streams and classified lakes listed in Appendices I and II of the WQ-Standards.

40 CFR 121.7(d)

(i) NWP 57 authorizes the construction of access roads which allow for the development of culverts, which can have negative erosion effects on stream beds and banks due to velocity and increased scour. NWP 57 also authorizes the remediation of inadvertent returns of drilling fluids (*e.g.* bentonite clay, polymers, surfactants) which will require post-remediation monitoring of select analytes to ensure WQ-Standards are maintained.

NWP 57 also authorizes the construction and maintenance of foundations for overhead utility lines in waters of the state. A PCN is required to ensure that all construction and maintenance of these foundations meet WQ-Standards for all waters of the state.

(ii) All streams are waters of the state under NDCC § 61-28-04 and protected by NDAC Chapter 33.1-16-02.1 for the beneficial uses of municipal domestic, aquatic life, recreation, agriculture and industry. Authority for the state to certify NWP 57 is in accordance with 40 CFR 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.3(a) [When a certifying authority reviews a request for certification, the certifying authority shall evaluate whether the activity will comply with applicable water quality requirements. The certifying authority's evaluation is limited to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation]. Conditioning of NWP 57 ensures support for 301, 302, 303, 306, and 307 of the CWA.

48 **NWP 58:** NWP 58 is granted under CWA § 401 Clean Water Certification with the condition that they do not carry oil and gas production water, or brine water, collectively called saltwater pipelines in, over or under Class I, IA, II, and class III rivers and streams, and classified lakes listed in Appendices I and II of the WQ-Standards. Projects that fail to meet this condition will require an individual CWA § 401 Clean

Water Certification with conditions based on the specific waterbody, location on the water, type of construction, and safety controls applied prior, during and after construction.

40 CFR 121.7(d)(2)

(i) Discharge by saltwater pipelines is in violation of NDAC Chapter 33.1-16-02.1, the CWA § 301 and 302 (40 CFR 121). Three hundred and ninety-five (395) pipeline releases/failures have been reported in North Dakota from October 2021 to September 2025, a 39.1% reported increase in pipeline spills from January 1, 2016, to October 1, 2020 (284).

(ii) Saltwater pipelines in, over or under Class I, IA, II, and Class III rivers and streams, and classified lakes listed in Appendices I and II of the WQ-Standards need to be conditioned as appropriate specific to the waterbody, location of the pipeline on the waterbody, type of construction/installation of the pipeline, and safety controls applied prior, during and after construction in accordance with the type of substance being transported.

(iii) Pipelines carrying oil or gas production water, produced water, or brine water can be constructed to minimize discharge and failure potential through appropriate permit conditions. The following information will be required by the project proponent when submitting for individual CWA § 401 Clean Water Certification: 1) pipeline construction type, 2) engineering design, 3) water crossing type (subterranean; above ground), 4) pre- and post-monitoring of water quality, 5) safety controls installed, 6) spill response procedures/plans (including BMPs), 7) identification of toxicant or pollutant being transported.

(iv) Specific locational information to assess the ecological impacts of spills/releases will be required to prescribe appropriate conditions for each individual CWA § 401 Clean Water Certification: 1) geologic and geomorphic conditions at the construction site to determine likelihood of point source releases from construction activities such as the common frac-out of directional drilling fluids (slurry water mixtures, bentonite clay, polymers, surfactants) and the toxicity values of those fluids, 2) the location of the project to inspect during and after construction to ensure compliance and enforce conditions (40 CFR 121.3(a)) [When a certifying authority reviews a request for certification, the certifying authority shall evaluate whether the activity will comply with applicable water quality requirements. The certifying authority's evaluation is limited to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation]. There is a physical requirement to ensure that all saltwater pipelines are installed at depths below any scour line to protect them from the hydraulic energies of the water.

(v) Class I, IA, II and III rivers and stream under 40 CFR 131.10 and NDCC § 61-28-04 have federally and state defined beneficial uses. These include the CWA 101(a)(2) beneficial sues of *"wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983"*. These uses include, in addition to aquatic life use and recreation under the CWA 101(a)(2) uses, are municipal, domestic, agricultural and industrial uses. Pollutant releases into state waters may occur during and after construction of production, produced and brine water (saltwater) pipelines. Releases will violate § 301, 302, 303 and 306 of the CWA and WQ-Standards.

49 **NWP A:** NWP A is granted under CWA § 401 Clean Water Certification with the condition that all projects, (including Federal and Non-Federal Permittees), provide PCN for projects in, over or under Class I, IA, II, and Class III rivers and streams and Classified lakes in Appendices I and II of the WQ-Standards.

40 CFR 121.7(d)

(i) NWP A would allow the construction of structures to improve fish passage and other aquatic organisms, which, during certain times of critical low flow periods along exposed unstable banks may increase pollutant loadings from construction activities. All equipment used in such projects shall be inspected for leaks of fuel, petroleum products and anti-freeze before operating within, or near, waters of the state.

(ii) Authority for the state to certify NWP A is in accordance with 40 CFR 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.3(a) [When a certifying authority reviews a request for certification, the certifying authority shall evaluate whether the activity will comply with applicable water quality requirements. The certifying authority's evaluation is limited to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation]. Conditioning of NWP A ensures that § 301, 302, 303, 306, and 307 of the CWA are supported.

Under § 401 of the CWA, the department denies (40 CFR 121.7(e)(2)) Clean Water Certification of the following NWPs as the discharge(s) will not comply with water quality requirements:

50 NWP 12: Oil and natural gas related projects in Class I, IA, II and Class III rivers and streams, and classified lakes listed in Appendices I and II of the WQ-Standards are denied under CWA § 401 Water Quality Certification.

Denied 40 CFR 121.7(e)(2)

(i) Discharge by oil and natural gas pipelines is in violation of NDAC Chapter 33.1-16-02.1, the CWA § 301 and 302 (40 CFR 121). Two hundred and twenty (220) pipeline releases/failures have been reported in North Dakota from October 2021 to September 2025, a 20.2% reported increase in oil spill from January 1, 2016, to October 1, 2020 (183).

(ii) Oil and natural gas pipelines in, over or under Class I, IA, II, and Class III rivers and streams, and classified lakes listed in Appendices I and II of the WQ-Standards need to be conditioned as appropriate to the specific waterbody, location of the pipeline on the waterbody, type of construction/installation of the pipeline, and safety controls applied prior, during and after construction in accordance with the type of substance being transported.

(iii) Pipelines carrying oil or natural gas can be constructed to minimize discharge and failure potential through appropriate permit conditions. The following information will be required by the project proponent when submitting for individual CWA § 401 Clean Water Certification: 1) pipeline construction type, 2) engineering design, 3) water crossing type (subterranean; above ground), 4) pre- and post-monitoring of water quality, 5) safety controls installed, 6) spill response procedures/plans (including BMPs), 7) identification of toxicant or specific pollutant being transported.

(iv) Specific locational information to assess the ecological impacts of spills/releases will be required to prescribe appropriate conditions for each individual CWA § 401 Clean Water Certification: 1) geologic and geomorphic conditions at the construction site to determine likelihood of point source releases from construction activities such as the common frac-out of directional drilling fluids (slurry water mixtures, bentonite clay, polymers, surfactants) and the toxicity values of those fluids, 2) the location of the project to inspect during and after construction to ensure compliance and enforce conditions (40 CFR 121.3(a) [When a certifying authority reviews a request for certification, the certifying authority shall evaluate whether the activity will comply with applicable water quality requirements. The certifying authority's evaluation is limited to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation]. There is a physical requirement to ensure that all oil and natural gas pipelines are installed at depths below any scour line to protect them from the hydraulic energies of the water.

(v) Class I, IA, II and III rivers and stream under 40 CFR 131.10 and NDCC § 61-28-04 have federally and state defined beneficial uses. These include the CWA 101(a)(2) beneficial sues of *"wherever attainable, an interim goal of water quality which*

provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983". These uses include, in addition to aquatic life use and recreation under the CWA 101(a)(2) uses, are municipal, domestic, agricultural and industrial uses. Pollutant releases into state waters may occur during and after construction of oil and natural gas pipelines. Releases will violate § 301, 302, 303 and 306 of the CWA and WQ-Standards.

(vi) The department has a legal obligation to ensure the protection of the beneficial uses: municipal, domestic, industry, agriculture, recreation and fish and aquatic life by ensuring the NDCC § 61-28-04 is supported by the WQ-Standards as determined by the CWA § 301, 302, 303, 306 and 307.

The WQ-Standards may be found at https://ndlegis.gov/information/acdata/pdf/33.1-16-02.1.pdf. Within the WQ-Standards are the Authority 33.1-16-02.1-01, Beneficial use definitions under "Definitions" 33.1-16-02.1-04, Narrative standards under "General Water Quality Standards" 33.1-16-02.1-08, Numeric standards under "Surface Water Classifications, Mixing Zones, and Numeric Standards" 33.1-16-02.1-09, Stream Classifications (Appendix I), Lake and Reservoir Classifications (Appendix II), and Antidegradation Procedure (Appendix IV).

Sincerely,

Marty Haroldson
Director
Division of Water Quality

U.S. Environmental Protection Agency Region 8's Clean Water Act Section 401 Certification of the 2026 Nationwide Permits in the State of North Dakota

December 16, 2026

Clean Water Act (CWA) Section 401 requires applicants for Federal licenses or permits to conduct any activity which may result in any discharge into waters of the United States to obtain a certification or waiver from the certifying authority where the discharge originates or will originate. Where no state or Tribe has authority to give such certification, the U.S. Environmental Protection Agency is the certifying authority. 33 U.S.C. 1341(a)(1). In this case, the Sisseton-Wahpeton Oyate; Spirit Lake Tribe; Standing Rock Sioux Tribe; Mandan, Hidatsa and Arikara Nation; and Turtle Mountain Band of Chippewa Indians do not have the authority to provide CWA Section 401 certification for projects occurring on their reservations, or any other Indian country lands[1], within the State of North Dakota. Therefore, the EPA is making the CWA Section 401 certification decision for the 2026 Nationwide Permit reissuance in Indian Country in the state of North Dakota. Additionally, the state of North Dakota does not have authority to provide CWA section 401 certification for project within lands of exclusive federal jurisdiction in relevant respects.[2] Therefore, EPA is making the certification decision for the 2026 NWP reissuance for projects within lands of exclusive federal jurisdiction in relevant respects that may be authorized under the 2026 NWPs.

Project Description

On June 18, 2025, the Corps proposed to reissue 56 NWPs and 1 new NWP that would expire in March 2026. 90 FR 26100 (June 18, 2025). The purpose of the NWPs is to authorize categories of activities under CWA Section 404 and Section 10 of the Rivers and Harbors Act of 1899 that have no more than minimal individual and cumulative adverse environmental impacts. For more details see: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/

[1] Indian country in North Dakota generally includes (1) lands within the exterior boundaries of the following Indian reservations located within North Dakota: the Fort Berthold Indian Reservation, the Spirit Lake Reservation, the Standing Rock Sioux Reservation, and the Turtle Mountain Reservation; (2) any land held in trust by the United States for an Indian Tribe (including but not limited to the Sisseton-Wahpeton Oyate Tribe); and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151.

[2] An inventory report compiled by the U.S. General Services Administration for federal properties as of 1962 identifies properties that may contain exclusive federal jurisdiction. This document is accessible at https://www.congress.gov/116/meeting/house/110088/documents/HHRG-116-II13-20191017-SD044.pdf. The EPA notes that this inventory report is not all-inclusive and that the information contained within it has not been recently confirmed and/or updated. Please contact EPA Region 8 at R8CWA401@epa.gov with questions regarding the jurisdictions where this certification decision applies.

The EPA's Public Notice Process

On June 18, 2025, the EPA received a request for certification from the project proponent. On July 2, 2025, the EPA issued a public notice regarding the proposed project and provided the opportunity for the public to submit comments until August 2, 2025. EPA received no public comments during the public notice period.

General Information

The general information provided in this section does not constitute a certification condition(s).

General Applicability

- The Corps did not request for certification for NWPs 1, 2, 8, 9, 10, 11, 24, 28, 35 and 55, and as such, the certification process did not begin and EPA neither certified nor waived certification. Consequently, if any activity authorized by this NWP may result in a discharge into a water of the United States, on lands that EPA acts as the certifying authority, the Corps must seek CWA 401 certification from EPA.
- If a project proposal does not meet either the general or NWP-specific certification conditions, or if certification is denied for a specific NWP, the project proponent must request an individual certification from EPA Region 8.

Documentation Recommendations

- Project proponents for potential projects authorized under the NWPs should retain this certification in their files with the applicable NWPs as documentation of EPA's certification decisions for the above-referenced proposed NWPs. This certification is specifically associated with the proposed NWPs described above and expires when those NWPs expire, five years from Corps issuance date, or are otherwise superseded by subsequent reissuance if less than five years.
- Copies of this certification should be kept on the job site and made readily available for reference.

Contact Information

- The project proponents for potential projects authorized under an NWP are encouraged to contact EPA Region 8 during the project planning phase if there are any questions about relevant best management practices (e.g., bioengineering techniques, biodegradable erosion control measures, revegetation using native plant species, suitable fill materials, and disposal of debris/construction materials preventing runoff) and resources that can assist with compliance.
- Prior to work commencing, EPA recommends that project proponents notify the appropriate Tribal Environmental Office, if applicable.
- In the case of a spill, EPA recommends that the project proponent notify EPA Region 8 within 8 hours from discovery. For emergency spills, EPA recommends that the project proponent contact the EPA's National Response Center at 1-800-424-8802 as well as the appropriate personnel identified in the project's Spill Prevention Control and Countermeasures, or similar plan, if applicable.
- If you have any questions regarding this certification, please contact R8CWA401@epa.gov.

Waiver of Certification

EPA Region 8 is expressly waiving its authority to act on the CWA § 401 request for certification for NWPs 4, 22, 34, 48, and 54.

Grants of Certification without Conditions

EPA is granting certification without conditions for NWPs 5, 20, 27, and 32. For NWPs that EPA grants certification without conditions, EPA has determined that the activity will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA; any Federal and State or Tribal laws or regulations implementing those sections; and any other water quality-related requirement of State or Tribal law.

Grants of Certification with Conditions

EPA is granting certification with conditions for NWPs 3, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 25, 29, 30, 31, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 57, 58, 59, and A. For NWPs that EPA grants certification with conditions, EPA has determined that the activity will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA; any Federal and State or Tribal laws or regulations implementing those sections; and any other water quality-related requirement of State or Tribal law, subject to the conditions listed under the NWP below, pursuant to CWA Section 401(d).

Condition #1: Plan Development and Implementation for Projects that require Pre-Construction Notification (PCN)

Prior to construction for projects that require a PCN, the project proponent shall develop a plan that includes a copy of the PCN and the following information (if not already included in the PCN):

- Time stamped photo-documentation of the baseline conditions (i.e., 50 feet upstream of the project area, within the project area, and 100 feet downstream of the project area).
- Identifies on a site map, as applicable:
  - Project site with all waters of the U.S. demarcated. Identify all locations where the project will cross jurisdictional waterbodies and identify the ordinary high-water mark and/or wetland boundaries; the planned work area where wetlands/aquatic resources will be removed, disturbed, and/or protected; buffer zones; and areas to be restored/reclaimed, as well as site access points and other approved work areas.
  - Staging areas and stockpiling of materials and equipment, including locations for containment booms and/or absorbent materials, and/or hazardous materials. Stockpiles (e.g., sediment, soil, or other construction materials) shall be stored at least 50 feet from where it may enter waters of the U.S.
  - Construction access points.
  - Disturbance limits.
  - Locations where site dredging and placement of dredged material activities will occur.

- Locations where dewatering activities will occur including as applicable locations of cofferdams, temporary berms, piling, and/or dikes.
- Locations of undergrounding or directional drilling (including bore pits).
- Locations where hazardous materials are stored. Identify where containment booms and/or absorbent materials are located for corrective action if needed. Hazardous materials shall be stored in leak-proof containers with appropriate secondary containment measures (e.g., spill berms, dikes, spill containment pallets, absorbent materials).
- Any silt/sediment fencing.
- Photo-reference sites. The project proponent shall indicate the directional view and location where photos were taken on the site map.

- A description of how the site will be restored to pre-construction conditions, as applicable, including measures that will be used to promote and maintain:
  - Stream hydrology and stability.
  - Aquatic resource composition.
  - Diversity of native species existing on site and as introduced via restoration activities.
  - Stability of soils.
  - Establishment of vegetation at the same percent cover as pre-construction activities.
- The timeframe/schedule for revegetation following completion of construction. Revegetation should occur at the earliest practicable date following completion of construction. Drill seeding is the preferred method, where applicable.
- Non-native and invasive species shall not be used for restoration activities.
- Includes the following, as applicable:
  - Cofferdams, temporary berms, pilings, and/or dikes: Describe installation and maintenance practices for any cofferdams, temporary berms, pilings, and/or dikes.
  - Dredging: Describe how contaminated materials will be managed (e.g., sediment testing data and information to identify whether sediments are clean or contaminated), if included in the project dredged area. Describe methods for minimizing dredging impacts (i.e., sedimentation resuspension) in the water column.
  - Erosion and sediment control: Identify the types and locations of sediment and erosion control features that shall be used onsite, including sediment control fences, haybales, heavy mud mats, and/or other structures. Biodegradable blankets and/or loose-weave mesh shall be used for erosion control matting. If using velocity dissipation structures (e.g., riprap aprons, check dams etc.), structures shall be constructed to include both peak flow rates and total stormwater volume, and provide protection from the erosive potential of high-velocity flows to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. The project proponent shall ensure all erosion and sediment control measures are in place prior to the onset of construction.
  - Bank stabilization and channel modification: If the project requires bank stabilization or stream channel modification, include pre-construction cross sections. If the project includes steep bank slopes of 3:1 or greater, include revetment cross sections. Bioengineering techniques suitable for steep slope disturbances are preferred (e.g., vegetated toe, bioengineered boulder toe, etc.) Slopes of disturbed banks shall be designed and installed to not reduce the bottom width of the stream.

- Dewatering: Work shall be completed in the dry unless coordinated with EPA Region 8. Describe methods for dewatering, including the equipment that would be used to conduct the dewatering activities. Identify the locations and timing, including length of time the area is to be dewatered. Explain removal method of the temporary structures and/or fill and what measures will be taken to minimize downstream turbidity and adaptive management measures that will be taken and employed to prevent the draining of waters of U.S., including wetlands.
- Ditching and trenching: Explain ditching/trenching and material placement techniques and stabilization methods to be employed, as well as timing. In wetlands, the top 6 to 12 inches of the ditch/trench shall be backfilled with topsoil from the trench, unless other techniques are approved. Include activity timing needs for ditching and stabilization.
- Undergrounding or directional drilling: Describe measures taken to prevent, contain and cleanup any inadvertent return of drilling fluid to the surface (i.e., "frac-outs").

- Submit the plan to EPA Region 8 at R8CWA401@epa.gov at least 30 days prior to commencing construction activities.

During construction for projects that require a PCN, the project proponent shall:

- Visually inspect construction activities daily.
- Prevent sediment, debris, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes from entering waters of the U.S. The discharge of unset cement, concrete, grout, or water that has contacted uncured concrete or cement, or related washout to waters of the U.S. is prohibited.
- Maintain documentation onsite that all equipment was cleaned of dirt, mud, and other materials prior to arriving on the project site.
- Inspect all equipment daily and prior to entering any waters of the U.S. for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. If the project proponent detects a leak from any equipment, they shall immediately remove the equipment from waters of the U.S.; and within 24 hours of detection of a leak, repair the equipment in a staging area or move it offsite.
- Limit vegetation clearing and disturbance to waters. Limit the clearing and grubbing of vegetation and disturbance to areas demarcated on the site map submitted as part of the vegetation restoration and monitoring plan. The boundaries of vegetation to protect shall be flagged in the field prior to beginning construction activities.
- Limit restoration of the channel bed to pre-existing contours and conditions. Any proposed deviations must be specified in advance. For example, if any improvements will be made using natural channel design.
- Photo-document any failures or increased turbidity due to construction activities.
  - Within 24 hours of observing a failure or marked increase in turbidity associated with construction, the project proponent shall remedy and implement any additional adaptive management measures to stabilize the activity and prevent further unauthorized discharges into waters of the U.S. The project proponent shall photo-document the failure (i.e., 50 feet upstream of failure, at the incident site, and at least 100 feet downstream of the failure) and the adaptive management measures taken

immediately following implementation. The project proponent shall take remediation condition photos at the same location(s) and direction(s) as in the failure condition photos.
    - Within 48 hours of observing any failure, the project proponent shall provide EPA Region 8 with the required photo-documentation, and descriptions of all observed failures and implemented remedies.
    - Within three weeks of observing a failure, the project proponent shall provide EPA Region 8 with a description of the impacts and effectiveness of the employed adaptive management measures.
- Carry out as applicable:
    - Erosion control: Inspect sediment and erosion control measures daily during project implementation and within 12 hours of precipitation events. After construction is complete, remove sediment and erosion control structures once vegetation is established to the same percent cover as pre-construction conditions, unless they are needed for long term stabilization purposes.
    - Dewatering: Assess all dewatering measures within 24 hours after a severe storm event.

Post construction for projects that require a PCN, the project proponent shall, as applicable:

- Submit a post-construction report, as defined below, within 90 days of completing construction activity to EPA Region 8 at R8CWA401@epa.gov or, if the Corps requires a post-construction report for the project activity, the applicant may submit that report to EPA to fulfill this post-construction requirement. The project proponent shall include the following items in the post-construction report:
    - Construction dates.
    - As-built drawings.
    - Documentation of site restoration activities using photographs and any field data sheets showing that the site was restored to pre-existing conditions or better. Include photographs of the site restoration areas on a map.
    - Any water quality data gathered before, during, and post-construction and associated maps showing the sample locations.
    - A description of any adaptive management strategies that were employed during construction, with a focus on strategy effectiveness.
    - Details on the removal of any sediment and erosion control structures, unless they are needed for long term stabilization purposes.
    - Effectiveness of the plan developed and implemented as required under this condition, and recommendations to remedy any deficiencies in plan development and implementation where employed measures were ineffective.
- For activities that require dredging, submit a copy of the as-builts and a post dredged and disposal report within 45 days of each dredging or disposal event to EPA Region 8 at R8CWA401@epa.gov. The project proponent shall include the following items in the post-dredged and disposal report:
    - Dredging and disposal dates.
    - Updated site map displaying the disposal location(s).
    - Dredging and disposal volumes.

- Water quality monitoring data.
- Post-dredged bathymetry.
- Updated site maps displaying any new ditches, spoil piles, widths, and depths.

Why these conditions are necessary: This condition is necessary to minimize suspended particulates /turbidity caused by construction activities and is necessary to ensure water quality is not degraded by toxic pollutants in toxic amounts, including construction materials, oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project, or discharges from dust abatement activities as well as contaminants in dredged material. This condition also appropriately minimizes impacts from access roads, staging areas, and stockpiling to further ensure that construction activities will result in no more than minimal individual and cumulative adverse environmental effects. This condition will protect water quality because it ensures that the project proponent is using planning and construction practices that will maintain the integrity of the site hydrology and maintain the aquatic resource functions and values and ensures that appropriate revegetation measures are used to re-establish riparian/wetland vegetation to minimize the adverse impacts of discharges of sediment and pollutants that enter waterways. Limiting the amount of vegetation that is disturbed will minimize the adverse environmental impacts of any potential discharges. Monitoring for at least three growing seasons, or until replanted areas meet monitoring success criteria, will provide an adequate indication that the restoration effort is able to demonstrate restoration is successful.

The general conditions in the Corps' NWP package do not address concerns about resuspension and turbidity caused by construction and dredging activities, thereby justifying the inclusion of this condition. GC 32 only requires agency coordination in certain circumstances. Additionally, GC 11 (equipment), GC 12 (soil erosion and sediment controls), and GC 13 (removal of temporary structures and fills) provide some aquatic resource protections, but greater specificity is needed to determine what measures are suitable to comply with applicable water quality requirements.

Citations: 33 U.S.C. 1341(a)(4); 40 CFR 230.10(c)-(d);40 CFR 230.10(d); 40 CFR 230.21(a); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.72; 40 CFR 230.74; 40 CFR 230.75; Tribal Water Quality Requirements[3]

Condition #2: Special Aquatic Resources

Projects or activities expected to have potential discharges into the below special aquatic resources areas are not covered by this certification and applicants must

[3] Three Affiliated Tribes: Antidegradation Policy, Narrative Water Quality Criteria (a)(1-5), and Oil and Gas Pipeline Safety Ordinance. Spirit Lake Tribe: Water Quality Code Sections 4-8 (Antidegradation Policy, Narrative Water Quality Criteria, Narrative Biological Criterion, Water Quality Standards for Wetlands, and Designated Uses). Sisseton-Wahpeton Oyate: Title III Water Quality Section 61-03-08 (Antidegradation Policy and Narrative WQS).

request a project-specific CWA Section 401 certification from EPA Region 8 consistent with 40 CFR 121.5.

- **Wetlands classified as peatlands**: For the purposes of this condition, peatlands are permanently or seasonally waterlogged areas containing organic soils classified as a Histosol with a specific thickness of an accumulation of peat (i.e., organic matter) and include fens, bogs and muskegs.[4]
- **Natural Springs**: Within 100 feet of the water source in natural spring areas. For the purposes of this condition, a spring water source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Some examples of spring-fed wetlands are hanging gardens. Some examples of spring-fed headwater slopes are peat-accumulating wet meadows and fens (see above). These resources may be identified using U.S. Fish and Wildlife Service's online digital National Wetland Inventory maps, or other aquatic resource mapping tools.
- **Riffle and Pool Complexes**: For the purposes of this condition, riffle and pool complexes are steep gradient sections of streams recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a steaming flow, a smooth surface, and a finer substrate.
- **Wild rice (*Manoomin/Manomin*) Waters:** Wild rice is especially sensitive to changes in water quality, hydrology changes, competition with invasive plants, and habitat loss.[5]

Why this condition is necessary: This condition is necessary to ensure a case-by-case review of any point source discharges into waters of the United States that are proposed in these specific aquatic resource site types which are inherently difficult to replace and have important ecological functions and values. Discharges into these

---

[4] It is a general rule that a soil is classified as an organic soil (Histosol) if more than half of the upper 80 cm (32 inches) of the soil is organic or if organic soil material of any thickness rests on rock or on fragmental material having interstices filled with organic materials. Generally, organic soil materials have organic carbon content by weight of 12 percent or more. See the following for more information on what constitutes "organic soil material", limits between Histosols and soils of other orders, problematic hydric soils situations, and other indicators to identify peatlands: Soil Survey Staff. 1999. Soil taxonomy: A basic system of soil classification for making and interpreting soil surveys. 2nd edition. Natural Resources Conservation Service. U.S. Department of Agriculture Handbook 436. https://www.nrcs.usda.gov/resources/guides-and-instructions/soil-taxonomy; United States Department of Agriculture, Natural Resources Conservation Service. 2025. Hydric soils of problematic conditions and altered materials, Version 1.0. https://usace.contentdm.oclc.org/utils/getfile/collection/p266001coll1/id/11824; United States Department of Agriculture, Natural Resources Conservation Service. 2024. Field Indicators of Hydric Soils in the United States, Version 9.0. https://www.nrcs.usda.gov/sites/default/files/2024-09/Field-Indicators-of-Hydric-Soils.pdf.

[5] https://plants.usda.gov/DocumentLibrary/plantguide/pdf/pg_ZIAQ.pdf, last visited 11 Dec 2025.

systems have the potential to alter water circulation patterns and hydroperiods, release nutrients causing shifts in native to non-native species composition, release chemicals that adversely impact biota (plants and animals), increase turbidity levels, reduce light penetration and photosynthesis, or otherwise change the capacity of these systems to support aquatic life uses and other beneficial uses of these special aquatic sites, including impairing their diverse and unique communities of aquatic organisms, including fish, wildlife and the habitats upon which they depend. Project specific information is needed to ensure compliance with water quality requirements.

Citations: 40 C.F.R. 230.1(d); 40 C.F.R. 230.10(a)(3); 40 C.F.R. 230.10(c); 40 C.F.R. 230.10(d); 40 C.F.R. 230.20-24; 40 C.F.R. 230.21-22; 40 CFR 230.41; 40 C.F.R. 230.45; 40 C.F.R. 230.75(c); Tribal Water Quality Requirements[6]

Condition #3: Specific Condition for Bridges for NWPs 3, 14, 15, 57, 58 and A

Project proponents shall use an established bridge analysis and hydraulic design tool when designing and constructing bridges (e.g., HEC-RAS, FHWA, etc.). Bridges shall be constructed in a manner such that stormwater does not drain directly into the waterbody. Bridges shall span greater than or equal to 1.2 times the bankfull width and adjacent wetlands of the affected waterbody, where feasible. Crossings shall be placed perpendicular to the direction of the stream flow where possible and account for potential future lateral migration in the stream, unless the project proponent can document that this would result in increased impacts to aquatic resources or compromise the safety of the structure.

Why this condition is necessary: This condition is necessary to ensure that discharges associated with bridge design and placement minimally affect water quality and aquatic resource functions and values. Perpendicular stream crossings minimize the impacts of bank erosion and scouring from length of stream bed and bank impacts for a project. Drainage directly from the bridge decks may cause erosion and scouring, and introduce additional pollutants, such as oil, gas, sediment, and toxics. Directing bridge deck drainage into constructed runoff water quality control systems will help prevent erosion and keep pollutants from directly entering the waterway. This condition will ensure that physical habitat and hydrologic characteristics of waters are not degraded, will maintain the habitat and biology of the waters and will ensure the hydrogeomorphology is not negatively impacted by the project.

Citation: 40 CFR 230.10(d); 40 CFR 230.72; 40 CFR 122.26; Tribal Water Quality Requirements[7]

Condition #4: Specific condition for NWP 7

[6] Three Affiliated Tribes: Antidegradation Policy, Narrative Water Quality Criteria (a)(1-5), and Oil and Gas Pipeline Safety Ordinance. Spirit Lake Tribe: Water Quality Code Sections 4-8 (Antidegradation Policy, Narrative Water Quality Criteria, Narrative Biological Criterion, Water Quality Standards for Wetlands, and Designated Uses). Sisseton-Wahpeton Oyate: Title III Water Quality Section 61-03-08 (Antidegradation Policy and Narrative WQS).

[7] Ibid.

Outfall design and placement shall include an appropriate energy dissipation structure (e.g., rip rap aprons) and shall be sized to prevent high pressure discharge. For intake structures, project proponents shall use an intake screen that reduces the size of aquatic organisms that can be entrained (e.g., a Johnson-type screen/intake), where feasible. Intake velocities shall not exceed 0.5 feet per second.[8]

Why this condition is necessary: This condition is necessary to ensure that outfall structures and intakes are constructed such that they provide localized erosion control at the point(s) of discharge while minimizing habitat degradation and assimilative capacity of the waterbody. Erosion from outfall structures due to improperly designed and placed structures increases sedimentation that alters stream and wetland hydrology (e.g., scouring and deposition) and uncontrolled stormwater contaminants harm aquatic organisms and habitat. Impingement controls for intake structures reduce the size of aquatic organisms that can be entrained and minimize impacts to aquatic species.

Citations: 40 CFR 230.10(c)-(d); 40 CFR 230.30; 40 CFR 230.70; 40 CFR 230.73; 40 CFR 230.74; 40 CFR 230.75; Tribal Water Quality Requirements[9]

Condition #5: Specific Condition for NWP 13

For projects using gabions, the project proponent shall visually inspect and repair any damage to gabions and the gabion installation area after construction is completed at least once a year after spring flows.

Why this condition is necessary: This condition is necessary to reduce the individual and cumulative adverse environmental effects caused by hard bank stabilization structures on aquatic biodiversity, habitat, and aquatic resource functions and services. This condition is also necessary to minimize the potential for gabion failure and corresponding water quality impacts. Gabion failure leads to erosion and sediment release, which can significantly affect aquatic ecosystem diversity, productivity and stability, and can potentially release wire into the environment that can impact aquatic habitat. Rock released from damaged gabions can impact channel flow, which can interfere with aquatic habitat processes and infrastructure.

Citations: 40 CFR 230.10(c)-(d); 40 CFR 230.72; 40 CFR 230.74; Tribal Water Quality Requirements[10]

---

[8] Additional guidance on water intakes is available from the U.S. Fish and Wildlife Service: https://www.fws.gov/sites/default/files/documents/water-intake-recommendations.pdf

[9] Three Affiliated Tribes: Antidegradation Policy, Narrative Water Quality Criteria (a)(1-5), and Oil and Gas Pipeline Safety Ordinance. Spirit Lake Tribe: Water Quality Code Sections 4-8 (Antidegradation Policy, Narrative Water Quality Criteria, Narrative Biological Criterion, Water Quality Standards for Wetlands, and Designated Uses). Sisseton-Wahpeton Oyate: Title III Water Quality Section 61-03-08 (Antidegradation Policy and Narrative WQS).

[10] Ibid.

Condition #6: Specific Condition for NWP 16

The project proponent shall provide EPA Region 8 with a description of the return water from the upland disposal area prior to discharge, including a description of the nature of the dredged material and a description of any contaminants present in the discharge. The project proponent shall also provide an analysis of how the return water may impact the physiochemical conditions of the receiving water prior to discharge, including a description of how the project proponent will ensure controls are in place to ensure compliance with applicable water quality requirements.

Why this condition is necessary: This condition is necessary to ensure any return water meets applicable water quality requirements and does not degrade receiving waters. Dredged material from industrial and urban areas, stormwater and agricultural runoff, as well as from areas of natural deposits of minerals and other natural substances, often contain contaminants from these sources and may have the potential to alter the chemistry of receiving waters, including but not limited to, nutrients, metals, organic carbon, and invasive species. To ensure that all appropriate and practicable measures to minimize harm to the aquatic ecosystem from contaminants are addressed, the project proponent should consider the unique nature of dredged material and the related contaminant pathway to understand the physicochemical conditions of each disposal site under consideration.

Citation: 40 CFR 230.10(b)-(d); 40 CFR 230.11; 40 CFR 230.12; 40 CFR 230.22; 40 CFR 230.31; 40 CFR 230.32; 40 CFR 230.61; Tribal Water Quality Requirements[11]

Condition #7: Specific Condition for NWP 40

The project proponent shall ensure that any return water flows back into waters of the U.S. does not contain levels of toxic and priority pollutants in excess of effluent limitation guidelines established under Section 307 of the Clean Water Act.

Why these conditions are necessary: This condition is necessary to ensure that return water to waters of the U.S. meets water quality requirements. Agricultural runoff can degrade receiving waters due to contaminants, including toxic and priority pollutants that are subject to effluent limitations pursuant to Section 307 of the Clean Water Act. Project specific information is needed to consider the contaminants proposed for discharge and the aquatic environment at the proposed discharge site to ensure that all appropriate and practicable measures to minimize harm to the aquatic ecosystem are addressed.

Citations: 33 U.S.C. 1317(a)(1); 40 CFR 401.15; 40 CFR 230.10(c); 40 CFR 230.31; 40 CFR 230.32; Tribal Water Quality Requirements[12]

[11] Ibid.
[12] Ibid.

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)	