Job 24881

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSAL

STATE FEDERAL AID PROJECT NO. NH-XB-7-085(140)164 (PCN-24881)

18.852 Miles

MILL AND OVERLAY

US 85, NEAR JCT ND 200 N TO JCT US 2 (WILLISTON) - NB / SB

MCKENZIE and WILLIAMS COUNTIES

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

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Project: NH-XB-7-085(140)164 (PCN-24881)

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: NH-XB-7-085(140)164 (PCN-24881)

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: NH-XB-7-085(140)164 (PCN-24881)

PROPOSAL GUARANTY

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

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

_____ Annual Bid Bond*

_____ Single Project Bid Bond

_____ Certified or Cashier's Check

*Annual Bid Bond is required when submitting proposals electronically

BID ITEMS

Project: NH-XB-7-085(140)164 (PCN-24881)

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

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						$$$$$	000	$$$$$	00
001	103	0100	CONTRACT BOND	L SUM	1.				
002	107	0100	RAILWAY PROTECTION INSURANCE	L SUM	1.				
003	107	0140	RAILROAD COORDINATION	L SUM	1.				
004	107	0145	RAILROAD FLAGGING	DAY	2,000.				
005	109	1000	E-TICKETING	L SUM	1.				
006	401	0050	TACK COAT	GAL	94,683.				
007	411	0100	MILLING PAVEMENT SURFACE	TON	52,602.				
008	411	0132	RELAYING MILLED MATERIAL	TON	1,039.				
009	430	0145	RAP - SUPERPAVE FAA 45	TON	105,204.				
010	430	0400	HMA INTELLIGENT COMPACTION	L SUM	1.				
011	430	0425	PAVER MOUNTED THERMAL PROFILER	L SUM	1.				
012	430	1000	CORED SAMPLE	EA	874.				
013	430	5818	PG 58H-34 ASPHALT CEMENT	TON	4,847.800				
014	702	0100	MOBILIZATION	L SUM	1.				
015	704	0100	FLAGGING	MHR	2,200.				
016	704	1000	TRAFFIC CONTROL SIGNS	UNIT	4,325.				

BID ITEMS

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

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						$$$$$	000	$$$$$	00
017	704	1052	TYPE III BARRICADE	EA	12.				
018	704	1060	DELINEATOR DRUMS	EA	325.				
019	704	1067	TUBULAR MARKERS	EA	490.				
020	704	1087	SEQUENCING ARROW PANEL-TYPE C	EA	2.				
021	706	0400	FIELD OFFICE	EA	1.				
022	706	0550	BITUMINOUS LABORATORY	EA	1.				
023	706	0600	CONTRACTOR'S LABORATORY	EA	1.				
024	760	0006	RUMBLE STRIPS - ASPHALT MEDIAN	MILE	17.250				
025	760	0025	SINUSOIDAL RUMBLE STRIP - ASPHALT SHOULDER	MILE	69.				
026	762	0111	EPOXY PVMT MK 12IN LINE	LF	61,549.				
027	762	0112	EPOXY PVMT MK MESSAGE	SF	2,513.				
028	762	0114	EPOXY PVMT MK 6IN LINE	LF	589,735.				
029	762	0115	EPOXY PVMT MK 8IN LINE	LF	1,565.				
030	762	0117	EPOXY PVMT MK 24IN LINE	LF	384.				
031	762	0122	PREFORMED PATTERNED PVMT MK-MESSAGE(GROOVED)	SF	240.				
032	762	0432	SHORT TERM 6IN LINE-TYPE NR	LF	609,741.				

BID ITEMS

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

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						$$$$$	000	$$$$$	00
033	762	0436	SHORT TERM 24IN LINE-TYPE NR	LF	408.				
034	762	0437	SHORT TERM 12IN LINE-TYPE NR	LF	66,667.				
035	762	0442	SHORT TERM MESSAGE-TYPE NR	SF	2,753.				
036	762	1307	PREFORMED PATTERNED PVMT MK 6IN LINE-GROOVED	LF	20,006.				
037	762	1309	PREFORMED PATTERNED PVMT MK 8IN LINE-GROOVED	LF	102.				
038	762	1315	PREFORMED PATTERNED PVMT MK 12IN LINE-GROOVED	LF	5,118.				
039	762	1325	PREFORMED PATTERNED PVMT MK 24IN LINE-GROOVED	LF	24.				
			TOTAL SUM BID						

Project: NH-XB-7-085(140)164 (PCN-24881)

Type of Work: MILL AND OVERLAY

Counties: MCKENZIE and WILLIAMS

Length: 18.8520 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 10/16/2027. 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.

Project: NH-XB-7-085(140)164 (PCN-24881)

Type of Work: MILL AND OVERLAY

Counties: MCKENZIE and WILLIAMS

Length: 18.8520 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 24881, NH-XB-7-085(140)164

Mill & Overlay

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Road Restriction Permits

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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 4 Longitudinal Joint Density

SSP 5 Limitations of Operations

SSP 8 Federal Prohibition on Certain Technological Hardware

SSP 11 Domestic Material Procurement Preferences

SSP 12 Public Liability and Property Damage Insurance

SSP 13 Federal Drone Restriction

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PSP 94(25) Permits and Environmental Considerations

Materials Pit List & Material Source Certificate

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.

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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

LONGITUDINAL JOINT DENSITY FOR HOT MIX ASPHALT PAVEMENTS

DESCRIPTION

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

ATTACHMENTS

Appendix A – Notched Wedge

CONSTRUCTION REQUIREMENTS

A. General

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

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

B. Longitudinal Joint Placement.

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

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

C. Notched Wedge Construction Option.

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

D. Coring.

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

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

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

E. Longitudinal Joint Field Density.

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

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

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

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

F. Low Density Requirements.

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

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

METHOD OF MEASUREMENT

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

BASIS OF PAYMENT

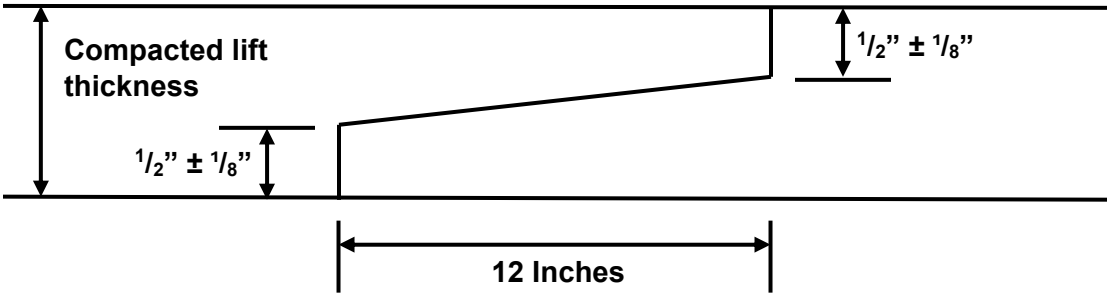
The pay adjustment for longitudinal joint density will not be used for areas constructed according to Section 430.04 I.3, “Ordinary Compaction”.

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

Table 1

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

Appendix A
Notched Wedge



NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

LIMITATIONS OF OPERATIONS

DESCRIPTION

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

108.05 LIMITATION OF OPERATIONS

A. General.

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

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

B. Holidays.

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

C. 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

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

E-TICKETING (MANDATORY)

PROJECT # 7-085(140)164 – PCN 24881

DESCRIPTION

This work consists of providing electronic material tickets (E-Ticket) for all loads of Hot Mix Asphalt (HMA) delivered to the project. For materials under 2,000 tons, a paper ticket will be accepted according to Section 109.01 J, “Weighted Materials”.

EQUIPMENT

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.

The Department will have access to its current E-Ticket portal from Haulhub until June 30, 2027 and may lose access after that date. For work performed on or before June 30, 2027 E-Tickets may be submitted via the Department’s or via a system that meets the requirements above. For work performed on or after July 1, 2027, provide the Department with access to the Contractor’s E-Ticketing application as stated above.

CONSTRUCTION REQUIREMENTS

A. General.

30 days before materials are delivered that require E-Tickets 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 and provide technical support during E-Ticket production

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

Payment for material weight delivered to the project will be based upon the eTickets marked “Delivered.”

Do not reissue or reprint tickets that have been marked “Delivered,” “Pending,” or “Rejected” without first notifying the Engineer. The Engineer may reject a reissued or reprinted ticket at their discretion. When a reissued or reprinted ticket is rejected, payment will be based upon the original ticket. When a load is rejected, the Engineer will notify the Contractor that all or a portion of the load was rejected.

The Department will not pay for any load that does not have a corresponding E-Ticket unless the cause is beyond the Contractor's control. In such circumstances paper tickets may be permitted at the discretion of the Engineer.

B. Calibration and Testing.

Conduct a test of each scale location's integration with the E-Ticketing application a minimum of 15 days before utilization of the scale.

Provide at least 5 calibration E-Tickets from each supplier to be used for the project. The calibration E-Tickets must accurately record the ticket information found in the ticket information below. Mark all categories "TEST". After the Engineer confirms the calibration E-Tickets are entered correctly into the E-Ticketing application, void the E-Ticket with the reason being "Department Calibration Test".

C. Ticket Information.

1. General Information.

Provide the following information on each E-Ticket:

1. Ticket Number
2. DOT Project Number or DOT Project Control Number (PCN);
3. Date;
4. Name of Contractor or Subcontractor;
5. Time of loading;
6. Unique Truck ID;
7. Maximum Gross Vehicle Weight;
8. Material type identified by pay item name;
9. Unit of Measurement
10. Time of Delivery
11. A place for comments
12. A running total of the material placed that day.

2. Weighted Materials.

Provide the following information for each E-Ticket for weighted materials:

1. Gross weight (if not automatic weighed).
2. Tare weight (if not automatic weighed).
3. Net weight.
4. Mix design number.

Record the weight on each ticket to the nearest 0.1 ton of material weighted.

D. Summary Sheet.

For material paid for by weigh, provided an electronic daily haul summary.

(1) NDDOT project number or NDDOT PCN (whichever is used on the weigh tickets)
(2) Delivery date
(3) Contractor and Subcontractor if applicable
(4) Pit location and owner
(5) Identification number of truck
(6) Each load's net weight and ticket number, with justification for out of sequence numbers
(7) Material type identified by pay item name
(8) Total weight of material delivered to the project

(9) Weight of material voided or “rejected” for the day
(10) Weight of the day’s production
(11) A signed statement from the Contractor attesting to the accuracy and completeness of the facts represented. A signed statement from a subcontractor or supplier attesting to the accuracy and completeness of the facts represented is required if they operate the scales. The statement shall consist of the following language: “I certify the Daily Haul Summary is true, accurate, and complete.”
(12) Blank for the Engineer’s signature. Include the following language: “I certify the Daily Haul Summary has been reviewed, corrected as necessary, and approved.”
(13) Place for comments

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Pay Item	Pay Unit
E-Ticketing	LSUM

Payment for E-Ticketing will be based on the following table:

Activity	Amount Earned
Completion of the Calibration and Testing	50%
Final Material Delivery	50%

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

RAILROAD REQUIREMENTS BNSF

Project: NHU-7-085(140)164 – PCN 24881

DESCRIPTION

This Special Provision replaces the requirements of Section 107.13 "Railroad Provisions" and outlines the Contractor's coordination requirements with Burlington Northern Santa Fe Railway Company (BNSF). Portions of the Special Provision may apply to both the prime contractor and subcontractors. It is the prime contractor's responsibility to ensure subcontractor compliance with these requirements.

A. Details of the project and the work in the Railroad Right of Way and around the crossing(s):

Project Location: From near ND 200 to near US 2

Crossing 1:

Road above Railroad Crossing: 081546H, Milepost: 126.936, Line Segment: 35, which is a crossing Owned and Operated by BNSF.

Work includes: This project includes a 2" mill and overlay and stationary striping up to 25 feet from crossing, and drive through striping (CL/Edge) up to the crossing. Work zone traffic control near the crossing.

ATTACHMENTS

Exhibit C&C1 Agreement BF-20641124

CONTRACTOR RESPONSIBILITIES

A. General.

Upon execution of the construction contract with the Department, the Contractor must coordinate with BNSF and execute the C&C1 Agreement included below prior to commencing work activities for the roadway as outlined in the C&C1 Agreement.

To obtain the Contractor's Right to Enter Agreement found in Exhibit C&C1, the Contractor must coordinate with BNSF's Permit Manager, JLL (Julie.alexander@am.jll.com). The agreement will not be fully executed until BNSF's Permit Manager, JLL, has returned the signed agreement.

In addition, the Contractor must send an email to at:

Alexis Jones, BNSF Manager of Public Projects; MN, ND, SD, Manitoba
Email: alexis.jones@bnsf.com
Phone: (901) 495-3778

At a minimum, in email to BNSF Manager of Public Projects include:

- PCN & Project Number
- Crossing Number(s), Milepost(s), and Segment(s) Locations
- What work is occurring around the crossing(s)
- Anticipated dates you will start and end work.

Submit copies of all correspondence with BNSF or JLL to the Engineer within one business day of receipt.

The Contractor must coordinate with the Engineer to arrange for a preconstruction meeting with NDDOT, BNSF and the Contractor.

Project delays incurred by the Contractor based on BNSF enforcing its authority in Exhibit C&C1 will be considered a non-excusable delay as specified in Section 108.06 B.6, “Non-Excusable Delays”. Any other delays incurred by the Contractor arising from this provision or the exhibits will be evaluated by the Engineer as either excusable, non-compensable; excusable, compensable; or non-excusable based on the circumstances of the specific delay.

Payments required by the Contractor to BNSF for train delays or damage to the railway property shall be borne by the Contractor and are not reimbursable by the Department to the Contractor.

Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the NDDOT. If the Department incurs costs from the railroad in the manner, the Department will recoup these costs from the Contractor.

B. Railroad Flagging.

BNSF will bill the Department for railroad flagging costs. The Contractor is responsible for coordinating all flagging activities with BNSF’s Roadmaster. The Contractor must submit documentation of all discussions with BNSF’s Roadmaster coordinating flagging activities to the Engineer.

Bidding Instructions

The Department has set the “Approx Quantity” of railroad flagging at 2,000. This number is the anticipated cost per day for railroad flagging. The bidder must enter the anticipated number of days of railroad flagging required to complete the work in the “Unit Price” column for railroad flagging.

The quantity entered by the bidder will be multiplied by the 2,000 in the “Approx Quantity” column, and the result will be a dollar amount. This dollar amount will be added to the bid. The “Total Sum Bid” is the sum of the regular contract items and the Railroad Flagging” item.

If additional work is added to the contract that would affect the required number of railroad flagging days, the number of days allowed under the contract will be adjusted accordingly.

C. Railroad Protective Liability Insurance.

This project crosses the BNSF Railway Company at the above crossing location. Contact the

following for all paperwork and requirements needed to obtain protective liability insurance:

Rosa Martinez Marsh USA Inc.
4400 Comerica Bank Tower 1717 Main Street
Dallas, TX 75201-7357, USA 214-303-8519
214-303-8519
Rosa.M.Martinez@marsh.com

Contractor to provide a copy of the Certificate of Insurance prior to starting work.

Obtain information regarding crossing from the Federal Railroad Administration website: http://safetydata.fra.dot.gov/Officeofsafety/

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

A. Railroad Flagging.

1. General.
The Department will track and record each day(s) that railroad flagging is requested and provided, and each day(s) railroad flagging is requested, but not cancelled in a timely manner. A day will be counted for each flagger provided.

The Department will pay the railroad company for the cost of providing railroad flagging and will deduct the amount paid to the railroad company from monies due or to become due to the Contractor.

2. Flagging Days Incurred are Less than those Bid.
On each progressive estimate, the Engineer will calculate the amount of railroad flagging the Department has been billed for and enter that quantity for railroad flagging, up to the quantity bid.

The Engineer will then process a contract price reduction for an amount equivalent to the value of the railroad flagging included on that estimate. This is performed to zero out the railroad flagging item and balance the overall estimate.

3. Flagging Days Incurred are More than those Bid.
If the quantity of railroad flagging exceeds the amount bid, the Engineer will cease entering amounts for railroad flagging bid item but will continue to process contract price reductions for the billed flagging at the rate included in the railroad flagging contract item.

4. **Bid Item.**
   Include the quantity for flagging in the contract unit price for "**RAILROAD FLAGGING**."

B. Railroad Protective Liability Insurance.
Include the cost of railroad insurance in the contract unit price for "**RAILWAY PROTECTION INSURANCE**". Upon receiving proof of approval of the policies by the railroad company, the Department will pay the Contractor the lump sum contract unit price.

C. Railroad Coordination.
Include all other costs associated with coordination with BNSF as well as compliance with the contents of this Special Provision and attachments in the contract unit price for "**RAILROAD COORDINATION**". The Department will pay for one-half of this item upon receipt of a copy of an executed Exhibit C&C1 and the remaining half upon completion of the project.

Project: NH-7-085(140)164 – PCN 24881

Exhibit C&C1 Agreement BF-20641124

Authored By: NDDOT Design Division

"CONTRACT NUMBER": BF-20641124

Details for Exhibit "C" & Exhibit "C-1" Agreements

The following information applies to the Exhibit C and Exhibit C-1 contained herein:

"THE PROJECT" is defined as:

NDDOT Project: NH-7-085(140)164 **PCN**: 24881

Location: From near ND 200 to near US 2

"WORK AT CROSSING(S)" is defined as:

Crossing 1:

Grade Separated Crossing with RR under, crossing 081546H: Milepost: 126.936, Line segment: 35, which is a crossing owned and operated by BNSF.

The average train traffic on this route is ___23___ freight trains per 24-hour period at a timetable speed __60____ MPH and ___2___ passenger trains at a timetable speed of __60____ MPH.

Work includes: This project includes a 2" mill and overlay and stationary striping up to 25 feet from crossing, and drive through striping (CL/Edge) up to the crossing. Work zone traffic control near the crossing.

"PROJECT OWNER" Is defined as:

Director - Office of Project Development
North Dakota Department of Transportation
608 East Boulevard Ave
Bismarck, ND 58505

"**NDDOT RAILROAD COORDINATOR"**
Name: Amy Davis
Phone Number: (701) 328-2589
Email: davisamy@nd.gov

"CONTRACT NUMBER": BF-20641124

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1) General

A. The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of **"THE PROJECT" and "WORK AT CROSSING(S)".**

B. The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

C. The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.

D. The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the **"PROJECT OWNER"** in writing.

E. The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to Environmental Laws (as defined below) and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

F. The Contractor must notify "**NDDOT RAILROAD COORDINATOR"** and Railway's Manager Public Projects, telephone number (901)-495-3778 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to the **BF-20641124** .

G. For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

H. Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

2) Contractor Safety Orientation

A. No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

3) Railway Requirements

A. The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.

B. The Contractor must notify the Railway's Project Engineer Railway's Division Engineer Steve Lyne at (402-304-6670) and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.

C. The Contractor must abide by the following temporary clearances during construction:

- 15'-0" Horizontally from centerline of nearest track
- 21'-6" Vertically above top of rail
- 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
- 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
- 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

D. Upon completion of construction, the following clearances shall be maintained:

- 25' Horizontally from centerline of nearest track
- 23' 6" Vertically above top of rail

E. Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **NDDOT** and must not be undertaken until approved in writing by the Railway, and until the **NDDOT** has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

F. In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.

G. The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by **NDDOT** for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

H. At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

I. Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

J. The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

4) Contractor Roadway Worker on Track Safety Program and Safety Action Plan

A. Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program

must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site **www.BNSFContractor.com**, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

B. Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

i) The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at **www.erailsafe.com**, in addition to any other applicable regulatory requirements.

ii) Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

iii) Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

iv) Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

5) Railway Flagger Services

A. The Contractor must give BNSF's Scheduling Agent (BNSFScheduling@wilsonco.com) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Scheduling Agent can make appropriate arrangements (i.e., obtain availability and cost estimate for three (3) approved vendors for selection). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Scheduling Agent ten (10) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

B. Unless determined otherwise by Railway's Project Representative, protective flagging services will be required when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

i) When, upon inspection by Railway's Representative, other conditions warrant.

ii) When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

iii) When work in any way interferes with the safe operation of trains at timetable speeds.

iv) When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

v) Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

C. Flagging services will be performed by qualified Railway flaggers.

i) Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.

ii) Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

iii) The cost of flagger services provided by the Railway will be borne by **NDDOT** and invoiced through BNSF's Scheduling Agent. The estimated cost for one (1) flagger is approximately between $1,200.00-$2,000.00 for an eight (8) hour basic day with time

and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision, scheduling and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

The cost of **inspector coordinator services** provided by the railway will be borne by **Contractor**. The estimated cost for inspector coordinator services is approximately $1,200 per day. The contractor shall reimburse the railroad for actual costs of inspection services.

6) Contractor General Safety Requirements

A. Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.

B. Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

C. Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

D. When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.

E. Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.

F. Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

G. For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.

H. All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, **www.BNSFContractor.com,** however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

I. THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.

J. Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended

on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

K. Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.

L. All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

7) Excavation

A. Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (Dan Peltier at 763-782-3495).** All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

B. The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

C. All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

D. Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

E. Excavations and restoration must be conducted in accordance with all applicable Legal Requirements and the environmental provisions of Section 8.

F. All fill materials to be imported to Railway's property shall be certified clean fill or from a Railway-approved source, and must otherwise be suitable for its intended purpose as backfill material. Supporting documentation shall be provided to Railway upon request.

G. Contractor must meet the appropriate compaction requirements for all fills and will be responsible for settlement of all fills, erosion, and embankments that may occur as a result of the placement fill.

8) Environmental Requirements:

A. Contractor must comply with all Environmental Laws (as defined below). Contractor must not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Railway Property or the right of way. Contractor will not handle, transport, release or suffer the release of Hazardous Materials (as defined below).

B. If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any release of Hazardous Materials non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release. Contractor must also give Railway prompt notice of all measures undertaken to investigate, remediate, or respond to any aforementioned condition.

C. If Railway has notice from Contractor or otherwise of a release or violation of Environmental Laws arising in any way with respect to the work which occurred or may occur during the term of this Agreement, Railway may require Contractor, at Contractor's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Railway's Property.

D. If during the construction or subsequent maintenance of the work or Structures, or any other soil-disturbing activities, soils or other materials considered to be environmentally impacted are encountered, Contractor will stop work immediately and notify Railway. After consultation with Railway, Contractor shall, at Contractor's expense, characterize any such impacted soils. Upon receiving sampling results, Contractor shall, at Contractor's expense, in consultation with Railway, manage, remove, and/or dispose any such impacted soils offsite at an appropriately-licensed facility in accordance with Environmental Laws. Soil characterization and applicable disposal requirements, shall be in accordance with applicable federal, state, and local Environmental Laws or in consultation with an agency having the capacity and authority to make such a determination.

E. All soils and materials to be removed from the Railway Property or right of way must be properly characterized, managed, transported, and disposed of at an appropriately-licensed facility, at Contractor's expense, in accordance with all Environmental Laws. Contractor shall be the "Generator" of any and all such materials and waste, as such term is defined in Environmental Laws.

F. Notwithstanding anything in this Section 1.08, Contractor understands that Railway has no duty or obligation to monitor Contractor's use of the property or right of way to determine Contractor's compliance with Environmental Laws, it being solely Contractor's responsibility to ensure that Contractor's use is compliant. Regulatory plans and a minimum of two (2) years of records/inspections shall be readily available. Contractor shall promptly provide the same to the Railroad upon request.

G. "Environmental Law(s)" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., CERCLA; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

H. “Hazardous Material(s)” shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as “hazardous chemicals,” “hazardous substances,” “hazardous materials,” “toxic substances,” or “hazardous wastes” in any Environmental Law.

9) Personal Injury Reporting

A. The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway’s Project Representative no later than the close of shift on the date of the injury.

"CONTRACT NUMBER": BF-20641124

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- ☐ Passenger on train (C)
- ☐ Non-employee (N) *(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)*
- ☐ Contractor/safety sensitive (F)
- ☐ Contractor/non-safety sensitive (G)
- ☐ Volunteer/safety sensitive (H)
- ☐ Volunteer/other non-safety sensitive (I)
- ☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- ☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- ☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID:

_____

Transmit attached information to Accident/Incident Reporting Center by:
Fax 1-817-352-7595 or by Phone 1-800-697-6736 **or email to:** Accident-Reporting.Center@BNSF.com

Officer Providing Information:

_____ _____ _____
(Name) (Employee No.) (Phone #)

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

"CONTRACT NUMBER": BF-20641124

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

Please complete this form and provide to the BNSF supervisor, who will input this information into the EHS Star system. For questions, call (817) 352-1267 or email Safety.IncidentReporting@BNSF.com.

Accident City/State: _____ Date: _____ Time: _____

County: _____ Temperature: _____ Weather: _____
(if non-BNSF location)

Name (Last/First/MI): _____

Age: _____ Gender (if available): _____

Company: _____

eRailsafe Badge Number: _____ Expiration Date: _____

BNSF Contractor Badge Number: _____ Expiration Date: _____

Injury: _____ Body Part: _____
(e.g., laceration) (e.g., hand)

Description of accident (including how accident occurred, potential cause, etc.):

_____

_____

Work activity in progress at time of accident: _____

Tools, machinery, or hazardous materials involved in accident: _____

_____

Treatment:

- ☐ First Aid Only
- ☐ Required Medical Treatment
- ☐ Other Medical Treatment: _____

Dr. Name: _____ Date: _____

Dr. Street Address: _____ City: _____ State: _____ Zip: _____

Hospital Name: _____

Hospital Street Address: _____ City: _____ State: _____ Zip: _____

Diagnosis: _____

THIS REPORT IS PART OF BNSF'S ACCIDENT REPORT PURSUANT TO THE ACCIDENT REPORTS STATUTE AND, AS SUCH SHALL NOT "BE ADMITTED AS EVIDENCE OR USED FOR ANY PURPOSE IN ANY SUIT OR ACTION FOR DAMAGES GROWING OUT OF ANY MATTER MENTIONED IN SAID REPORT…." 49 U.S.C. § 20903. See 49 C.F.R. § 225.7(b).

"CONTRACT NUMBER": BF-20641124

EXHIBIT "C-1"

Agreement Between

BNSF RAILWAY COMPANY

and the

CONTRACTOR

"CONTRACT NUMBER": _____

"THE PROJECT" a/an State or Country of Formation Type of Organization (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 20__, with **NDDOT** for the performance of certain work types in connection with the **"WORK AT CROSSING(S)"**

Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **NDDOT** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

A. Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE**

DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

B. THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

C. Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

D. In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

E. It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

A. This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability "CGL" Insurance

i) The policy will provide a minimum of $2,000,000 each occurrence and an aggregate limit of at least $4,000,000 but in no event less than the amount otherwise carried by the provider. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

(1) Bodily Injury and Property Damage

(2) Personal Injury and Advertising Injury

(3) Fire legal liability

(4) Products and completed operations

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

(1) definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILWAY's property.

(2) Waiver of subrogation in favor of and acceptable to RAILWAY; and

(3) Additional insured endorsement in favor of and acceptable to RAILWAY and include coverage for ongoing operations and completed operations; and

(4) Separation of insureds; and

(5) The policy will be primary and non-contributing with respect to any insurance carried by RAILWAY.

iii) It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

iv) No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. <u>Business Automobile Insurance</u>

i) The insurance will provide minimum coverage with a combined single limit of at least $1,000,000 per accident, and include coverage for, but not limited to the following:

(1) Bodily injury and property damage

(2) Any and all vehicles owned, used or hired

ii) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to RAILWAY;

(2) Additional insured endorsement in favor of and acceptable to RAILWAY;

(3) Separation of insureds;

(4) The policy shall be primary and non-contributing with respect to any insurance carried by RAILWAY.

C. <u>Workers Compensation and Employers Liability Insurance</u>

i) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

(1) Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

(2) Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance

i) Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage of at least $2,000,000 per occurrence and $6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

(1) Endorsed to include the Pollution Exclusion Amendment

(2) Endorsed to include the Limited Seepage and Pollution Endorsement.

(3) Endorsed to remove any exclusion for punitive damages.

(4) No other endorsements restricting coverage may be added.

(5) The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement.

(6) Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

E. Other Requirements:

i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

ii) Contractor agrees to waive its right of recovery against ***Railway*** for all claims and suits against ***Railway***. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against ***Railway*** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of

subrogation against ***Railway*** for loss of its owned or leased property or property under Contractor's care, custody or control.

iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

iv) Contractor is not allowed to self-insure without the prior written consent of ***Railway.*** If granted by ***Railway***, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all ***Railway*** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

v) Prior to commencing services, Contractor shall furnish to ***Railway*** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

vi) Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

vii) Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

viii) If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

ix) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

x) Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

xi) If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.

xii) Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

xiii) The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

xiv) In the event of a claim or lawsuit involving Railway arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

xv) These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

xvi) For purposes of this section, Railway shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

A. In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however,* that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

B. Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

C. Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) ENVIRONMENTAL

i) Contractor shall strictly comply with all Environmental Laws (as defined below). Contractor shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Railway Property or the right of way. Contractor will not handle, transport, release or suffer the release of Hazardous Materials (as defined below) on or about the Premises. Small quantities of diesel fuel, engine oil, and hydraulic fluids used in the operation of Contractor's equipment shall not be deemed a violation of this Section 5.

ii) Contractor shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on, from, or affecting the Premises. Contractor shall immediately respond to any release on or from the Premises. Any violation of Environmental Laws or any inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of the Premises must be immediately reported to Railroad at EnvironmentalLeases@bnsf.com. Contractor also shall give Railroad prompt notice of all measures undertaken on behalf of Contractor to investigate, remediate, respond to or otherwise cure a release or violation.

iii) If Railway has notice from Contractor or otherwise of a release or violation of Environmental Laws caused by Contractor or arising in any way with respect to Contractor's work which occurred or may occur during the term of this Agreement, Railway may require Contractor, at Contractor's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Railway's Property.

iv) If during the construction or subsequent maintenance of the work or Structures, or any other soil-disturbing activities, soils or other materials considered to be environmentally impacted are encountered, Contractor will stop work immediately and notify Railway. After consultation with Railway, Contractor shall characterize any such impacted soils. Upon receiving sampling results, Contractor shall, in consultation with Railway, manage, remove, and/or dispose any such impacted soils offsite at an appropriately-licensed facility in accordance with Environmental Laws. Soil characterization and applicable disposal requirements, shall be in accordance with applicable federal, state, and local Environmental Laws or in consultation with an agency having the capacity and authority to make such a determination.

v) All soils and materials to be removed from the Railway Property or right of way must be properly characterized, managed, transported, and disposed of at an appropriately-licensed facility in accordance with all Environmental Laws. Either Contractor or Agency

shall be the "Generator" of any and all such materials and waste, as such term is defined in Environmental Laws.

vi) All fill materials to be imported to Railway's property shall be certified clean fill or from a Railway approved source, and supporting documentation shall be provided to Railway upon request.
Contractor shall promptly report to Railroad in writing any conditions or activities upon the Railroad Property known to Contractor which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Contractor's reporting to Railroad shall not relieve Contractor of any obligation whatsoever imposed on it by this Agreement. Contractor shall promptly respond to Railroad's request for information regarding said conditions or activities.

vii) Notwithstanding anything in this Section 5, the parties agree that BNSF has no duty or obligation to monitor Contractor's use of the property or right of way to determine Contractor's compliance with Environmental Laws, it being solely Contractor's responsibility to ensure that Contractor's use is compliant. Regulatory plans and a minimum of two (2) years of records/inspections shall be readily available. Contractor shall promptly provide the same to the Railroad upon request.

viii) "Environmental Law(s)" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., CERCLA; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

ix) "Hazardous Material(s)" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal,

state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals," "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

6) EXHIBIT "C" CONTRACTOR REQUIREMENTS

A. The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (http://www.bnsf.com/communities/faqs/permits-real-estate/), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

7) TRAIN DELAY

A. Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

B. For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

C. Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

D. The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

E. Contractor and its subcontractors must give Railway's representative Jeff Sinnott 4-weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

F. Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

SIGNATURE PAGE FOLLOWS

"CONTRACT NUMBER": BF-20641124

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

BNSF RAILWAY COMPANY	**Account Name**
Signature:_____	Signature:_____
Printed Name:_____	Printed Name:_____
Title: Manager Public Projects	Title:_____
Date:_____	Date:_____

Accepted and effective this _____day of 20__.

Contact Person:_____

Address:_____

City:_____

State:_____ Zip:_____

Fax:_____

Phone:_____

E-mail:_____

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

PERCENT WITHIN LIMITS FOR HOT MIX ASPHALT PAVEMENTS

PROJECT # 7-085(140)164 – PCN 24881

DESCRIPTION

This provision describes the procedure for determining pavement density in the mat. This special provision modifies and adds to Section 430, “Hot Mix Asphalt (HMA)”.

ATTACHMENTS

Appendix A – Calculation Procedure

CONSTRUCTION REQUIREMENTS

A. Percent Within Limits (PWL) Locations.

This portion of the SP replaces Section 430.04 I.2.a “General”.

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

B. Mat Density.

1. General.

This portion of the SP replaces section 430.04 M.4, “Field Density”.

The Engineer will base acceptance of the density of each lot of pavement through a comparison of the average field core density to the average maximum theoretical density and a percent within limits comparison of the field cores to the density specification range for uniformity.

The density specification range for the percent within limits determination is ≥ 92.0% and ≤ 97.0% of the daily average maximum theoretical density.

A lot is equal to one day’s production, unless production is less than 2,700 tons. If production is under 2,700 tons for one day, it will be included in the previous day’s lot. If this occurs on the first day of production, the material from the first day will be included in the subsequent day’s lot.

Each lot will be divided into sublots of 900 tons of material. If a sublot is less than 450 tons, it will be included in the previous sublot.

The Engineer will designate two locations within each sublot for the acquisition of field cores.

The mix samples from each day included in a lot will be used to calculate the lot average maximum theoretical density.

2. Average Lot Density.
This metric is used to determine the general acceptability of the pavement. Quality is measured as specified in Section A.3, “Percent Within Limits – Density” of the Construction Requirements portion of this SP.

The density of a lot will be determined using the recorded average densities of the sublots contained within the lot. The recorded average densities of the sublots will be totaled and divided by the number of sublots within the lot to obtain the average density of the pavement.

If the average density of the pavement lot is at or below 88.0 percent of the average maximum theoretical density, remove and replace the pavement.

3. Percent Within Limits – Density.
This metric is used to determine the overall quality of the pavement density and is used to calculate the Compaction PWL pay factor.

For each lot of material, the Engineer will determine the Percent within Limits (PWL) for HMA in place density.

The Engineer will use the procedure in Appendix A of this special provision to determine the PWL of each lot.

BASIS OF PAYMENT

A. Contract Price Adjustment.
Replace Section 430.06 C, “Contract Price Adjustments with:

1. General
The Engineer will calculate the Combined Adjustment Factor for each lot of material placed and will use the corresponding tests and checks to determine each portion of the pay factor.

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

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

If the Combined Adjustment factor is less than 1.0, it will be subtracted from 1.0 to determine the Contract Price Adjustment Factor. This will be processed as a contract price reduction.

If the combined Adjustment Factor is greater than 1.0, 1.0 will be subtracted from it to determine the Contract Price Adjustment Factor. This will be processed as a contract price incentive.

The contract price adjustment will be determined by multiplying the Contract Price Adjustment Factor by the total tons of hot mix asphalt placed represented by the respective lot and the contract unit price for “Superpave, FAA __” or “RAP Superpave, FAA __”.

2. Aggregate Gradation Adjustment Factor.

The aggregate gradation adjustment factor will only be applied if two aggregate gradation tests in a single lot contain a sieve that is outside the Single Test Target Value Control limits specified in Table 430-07. If different sieves fall outside the limits, the adjustment factor will be applied.

If more than one sieve exceeds the Single Test Value Control Limits, the Engineer will use the largest uniformity deviation (U) when determining the adjustment factor.

When the aggregate gradation factor is applied, the Engineer will calculate the adjustment factor using the largest deviation (U) to calculate the adjustment factor.

$$Adjustment\ Factor = \frac{100 - U}{100}$$

3. Asphalt Content Adjustment Factor.

For each lot, the Engineer will apply the lowest adjustment factor determined from the average or uniformity methods.

a. Average.

The Engineer will determine average asphalt content using SFN 9988, “Mix Bitumen Cut-off Report” and apply the appropriate adjustment factor specified in Table 430-11.

If the average asphalt content deviates from the mix design by 0.40 percentage points or more, the Engineer will determine the adjustment factor in accordance with Section 105.07, “Conformance with the Contract Requirements”, or may reject the material.

Table 430-11
Average Asphalt Content

Deviation from Target (percentage points)	Adjustment Factor
0.00-0.24	1.00
0.25-0.29	0.98
0.30-0.34	0.95
0.35-0.39	0.92
≥ 0.40	Section 105.07

b. Uniformity.

The Engineer will determine the average asphalt cement content based on the totalizer readings specified in Section 430.04 E, “QC Testing” and SFN 18674, “Asphalt Content & Virgin Aggregate Determination Report”.

If the asphalt content from any random reading varies from the lot average of the readings by more than 0.24 percentage points, the Engineer will calculate the adjustment factor according to SFN 18552 “Daily Report – Hot Bituminous Pavement – Quality Control”.

$$Adjustment\ Factor = \frac{100 - [20(Deviation - 0.24)]}{100}$$

Appendix A – PF_{PWL} Calculation Procedure

1. Calculate the mean of the test values:

$$\overline{X} = \frac{\sum x}{n}$$

Where:
$\sum$ = Summation of
x = individual test values from a lot
n = total number of test values from the lot

2. Calculate the standard deviation:

$$S = \sqrt{\frac{n\Sigma(x^2) - (\sum x)^2}{n(n-1)}}$$

Where:
$\sum(x^2)$ = summation of the squares of the individual test values
$(\sum x)^2$ = summation of the individual test values squared

3. Calculate the Upper Quality Limit (Q_U) and Lower Quality Limit (Q_L):

$$Q_U = \frac{USL - \overline{X}}{S} \qquad Q_L = \frac{\overline{X} - LSL}{S}$$

Where:
USL = Upper Specification Limit (97)
LSL = Lower Specification Limit (92)

4. Determine the P_U and P_L values using Q_U, Q_L, and n for the lot using Table 1.

5. Determine the Quality Level (QL)

$$QL = (P_U + P_L) - 100$$

6. Determine the PWL pay factor:

$$PF_{PWL} = 55 + 0.5(QL)$$

Appendix A – PF_{PWL} Calculation Procedure

TABLE 1 - QUALITY LEVELS
QUALITY LEVEL ANALYSIS BY STANDARD DEVIATION METHOD

P_U or P_L Percent Within Limits for Positive Values Of Q_U or Q_L	UPPER QUALITY INDEX Q_U OR LOWER QUALITY INDEX Q_L														
	n=3	n=4	n=5	n=6	n=7	n=8	n=9	n=10 to n=11	n=12 to n=14	n=15 to n=18	n=19 to n=25	n=26 to n=37	n=38 to n=69	n=70 to n=200	n=201 to n=∞
100	1.16	1.50	1.79	2.03	2.23	2.39	2.53	2.65	2.83	3.03	3.20	3.38	3.54	3.70	3.83
99		1.47	1.67	1.80	1.89	1.95	2.00	2.04	2.09	2.14	2.18	2.22	2.26	2.29	2.31
98	1.15	1.44	1.60	1.70	1.76	1.81	1.84	1.86	1.91	1.93	1.96	1.99	2.01	2.03	2.05
97		1.41	1.54	1.62	1.67	1.70	1.72	1.74	1.77	1.79	1.81	1.83	1.85	1.86	1.87
96	1.14	1.38	1.49	1.55	1.59	1.61	1.63	1.65	1.67	1.68	1.70	1.71	1.73	1.74	1.75
95		1.35	1.44	1.49	1.52	1.54	1.55	1.56	1.58	1.59	1.61	1.62	1.63	1.63	1.64
94	1.13	1.32	1.39	1.43	1.46	1.47	1.48	1.49	1.50	1.51	1.52	1.53	1.54	1.55	1.55
93		1.29	1.35	1.38	1.40	1.41	1.42	1.43	1.44	1.44	1.45	1.46	1.46	1.47	1.47
92	1.12	1.26	1.31	1.33	1.35	1.36	1.36	1.37	1.37	1.38	1.39	1.39	1.40	1.40	1.40
91	1.11	1.23	1.27	1.29	1.30	1.30	1.31	1.31	1.32	1.32	1.33	1.33	1.33	1.34	1.34
90	1.10	1.20	1.23	1.24	1.25	1.25	1.26	1.26	1.26	1.27	1.27	1.27	1.28	1.28	1.28
89	1.09	1.17	1.19	1.20	1.20	1.21	1.21	1.21	1.21	1.22	1.22	1.22	1.22	1.22	1.23
88	1.07	1.14	1.15	1.16	1.16	1.16	1.16	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17
87	1.06	1.11	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.13	1.13
86	1.04	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08
85	1.03	1.05	1.05	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04
84	1.01	1.02	1.01	1.01	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	0.99	0.99	0.99
83	1.00	0.99	0.98	0.97	0.97	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.95	0.95	0.95
82	0.97	0.96	0.95	0.94	0.93	0.93	0.93	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
81	0.96	0.93	0.91	0.90	0.90	0.89	0.89	0.89	0.89	0.88	0.88	0.88	0.88	0.88	0.88
80	0.93	0.90	0.88	0.87	0.86	0.86	0.86	0.85	0.85	0.85	0.85	0.84	0.84	0.84	0.84
79	0.91	0.87	0.85	0.84	0.83	0.82	0.82	0.82	0.82	0.81	0.81	0.81	0.81	0.81	0.81
78	0.89	0.84	0.82	0.80	0.80	0.79	0.79	0.79	0.78	0.78	0.78	0.78	0.77	0.77	0.77
77	0.87	0.81	0.78	0.77	0.76	0.76	0.76	0.75	0.75	0.75	0.75	0.74	0.74	0.74	0.74
76	0.84	0.78	0.75	0.74	0.73	0.73	0.72	0.72	0.72	0.71	0.71	0.71	0.71	0.71	0.71
75	0.82	0.75	0.72	0.71	0.70	0.70	0.69	0.69	0.69	0.68	0.68	0.68	0.68	0.68	0.67
74	0.79	0.72	0.69	0.68	0.67	0.66	0.66	0.66	0.66	0.65	0.65	0.65	0.65	0.64	0.64
73	0.76	0.69	0.66	0.65	0.64	0.63	0.63	0.63	0.62	0.62	0.62	0.62	0.62	0.61	0.61
72	0.74	0.66	0.63	0.62	0.61	0.60	0.60	0.60	0.59	0.59	0.59	0.59	0.59	0.58	0.58
71	0.71	0.63	0.60	0.59	0.58	0.57	0.57	0.57	0.57	0.56	0.56	0.56	0.56	0.55	0.55
70	0.68	0.60	0.57	0.56	0.55	0.55	0.54	0.54	0.54	0.53	0.53	0.53	0.53	0.53	0.52
69	0.65	0.57	0.54	0.53	0.52	0.52	0.51	0.51	0.51	0.50	0.50	0.50	0.50	0.50	0.50
68	0.62	0.54	0.51	0.50	0.49	0.49	0.48	0.48	0.48	0.48	0.47	0.47	0.47	0.47	0.47
67	0.59	0.51	0.47	0.47	0.46	0.46	0.46	0.45	0.45	0.45	0.45	0.44	0.44	0.44	0.44
66	0.56	0.48	0.45	0.44	0.44	0.43	0.43	0.43	0.42	0.42	0.42	0.42	0.41	0.41	0.41
65	0.52	0.45	0.43	0.41	0.41	0.40	0.40	0.40	0.40	0.39	0.39	0.39	0.39	0.39	0.39
64	0.49	0.42	0.40	0.39	0.38	0.38	0.37	0.37	0.37	0.37	0.36	0.36	0.36	0.36	0.36
63	0.46	0.39	0.37	0.36	0.35	0.35	0.35	0.34	0.34	0.34	0.34	0.34	0.33	0.33	0.33
62	0.43	0.36	0.34	0.33	0.32	0.32	0.32	0.32	0.31	0.31	0.31	0.31	0.31	0.31	0.31
61	0.39	0.33	0.31	0.30	0.30	0.29	0.29	0.29	0.29	0.29	0.28	0.28	0.28	0.28	0.28
60	0.36	0.30	0.28	0.27	0.27	0.27	0.26	0.26	0.26	0.26	0.26	0.26	0.26	0.25	0.25
59	0.32	0.27	0.25	0.25	0.24	0.24	0.24	0.24	0.23	0.23	0.23	0.23	0.23	0.23	0.23
58	0.29	0.24	0.23	0.22	0.21	0.21	0.21	0.21	0.21	0.21	0.20	0.20	0.20	0.20	0.20
57	0.25	0.21	0.20	0.19	0.19	0.19	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18
56	0.22	0.18	0.17	0.16	0.16	0.16	0.16	0.16	0.16	0.15	0.15	0.15	0.15	0.15	0.15
55	0.18	0.15	0.14	0.14	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
54	0.14	0.12	0.11	0.11	0.11	0.11	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10
53	0.11	0.09	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08
52	0.07	0.06	0.06	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
51	0.04	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.02
50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

NOTE: For negative values of QU or QL, PU or PL is equal to 100 minus the table PU or PL. If the value of QU or QL does not correspond exactly to a figure in the table, use the next higher value.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

INTELLIGENT COMPACTION FOR HOT MIX ASPHALT (HMA)

PROJECT 7-085(140)164 – PCN 24881

DESCRIPTION

This work consists of compacting asphalt using Intelligent Compaction (IC) rollers Hot Mix Asphalt (HMA) permanently incorporated into the project. This Special Provision is in addition to the requirements of Section 430, “Hot Mix Asphalt (HMA)”.

EQUIPMENT

A. Rollers.

1. General.

Provide breakdown, intermediate, and finish rollers that meet the requirements of Section 151, “Rollers” equipped with following:

- Noncontact temperature sensor mounted to measure pavement surface in the direction of travel;
- Global Navigation Satellite System (GNSS) with the ability to connect to RTK-GPS using either:
  - Local network;
  - Ground-based stations; or
  - VRS network (only if VRS network is available throughout the project limits);
  - Connect to a RTK-GPS.
- Provide GNSS equipment with the following components:
  - Receiver;
  - Antenna; and
  - Telemetry equipment;
- Modem or Wi-Fi;
- A color monitor that is capable of the following:
  - Displaying real time color coded map with the number of passes;
  - Roller speed;
  - Surface temperature;
  - Vibration frequency;
  - Vibration amplitude;
  - Data that is transferable by USB and cellular connection; and
  - Is easily visible to the operator without obstructing normal operations.

Provide instrumented roller accuracy shown in Table 1.

Table 1

Operating Parameter	Accuracy
Speed	± 0.5 mph
Frequency	± 2 Hz
Amplitude	± 0.008 in
Temperature	± 2.7 °F

2. **Vibratory Rollers.**
   Equip vibratory rollers with accelerometers mounted according to the manufacturer's recommendations.

B. Global Positioning System (GPS).

1. **General.**
   Provide a Global Navigation Satellite System (GNSS) that has a minimum of 90% coverage for the project site.

2. **Roller GPS.**
   Provide GPS on the roller with an accuracy of ±0.2 ft in the X and Y direction.

3. **Rover GPS.**
   Provide a rover with Real Time Kinematic (RTK) GPS with accuracy of ±0.1ft.

CONSTRUCTION REQUIREMENTS

A. General.
The Department does not guarantee the accuracy and compatibility of electronic or supplemental data provided by the Department. The Plan documents, originally provided with the Contract, remain the basis of the Contract. The Contractor is responsible for any necessary conversions of the provided electronic data.

If supplemental data is not provided by the Department, create the design files that are needed.

B. IC Work Plan:
In addition to the HMA quality control plan, submit an IC Work Plan at least 2 weeks before the preconstruction conference.

Include the following information in the IC Work Plan:

- Roller Type and make;
- Roller dimensions and weight;
- IC system type including:
  - Vendor;
  - Model Number; and
  - Data output;
- Data collection method including;
  - Sampling rates;
  - Intervals; and
  - Data file types
- Temperature measurement system manufacturer;

- Number of IC rollers; and
- List of personnel trained to work on IC system including the data analysis.

C. Training.

Provide an IC system's representative for approximately 4 to 8 hours of on-site training at a location that is suitable for the needs of the training.

Include the Contractor's and the Engineer's personnel in the training. During the training cover the following:

- Background information for the IC system;
- Setup and checks for the following:
  - IC system;
  - GPS receiver;
  - Base-station; and
  - Rovers;
- Operation of the IC system on the roller
- Transferring raw IC data;
- Operation of the Vendor's software to open and view raw IC data files and exporting all data files in Veta-compatible format;
- Operation of Veta software including:
  - Importation of files;
  - Creation of maps ; and
  - Interpretation of data.

D. GPS Calibration.

The Engineer will supply 2 control points at each end of the project on opposites sides of the roadway and 1 per mile for the project corridor. Provide notice to the Engineer a minimum of two weeks before the start of construction. The control points are under the North Dakota State Plane coordinates for the appropriate region with the horizontal datum based on NAD83(2011) and vertical datum based on NAVD 88 using GEOID 12A.

Complete site calibration and site setup of the IC according to the manufacturer's instruction before beginning paving operations.

Perform one GPS calibration check on the IC rollers and the rover daily at the beginning of each workday.

E. Roller Operations.

Provide an IC manufacturer's representative or a Contractor's representative who has experience on 5 projects performing IC for the first 2 days of paving.

Operate the IC roller according to the IC manufacturer's recommendations.

F. Equipment Malfunction.

Immediately contact the Engineer when a malfunction of any IC roller or a breakdown of an IC equipped roller occurs. Provide written documentation of the failure including the following:

- Date and time;
- Location;

- Brief description of failure;
- IC or roller equipment that failed;
- Method of repair; and
- Date and time the equipment was brought back into service.

A conventional roller may replace an IC roller, but IC mapping data will continue. A minimum of 80% of the plan quantity of HMA will be mapped using IC.

G. Data Submittal.

Upload all measurement data to the cloud storage at 15 minute intervals or once per day when no cellular coverage is available.

Transfer all IC data to the Engineer at the end of each working week. The Engineer may request data any time during compaction operations.

H. Data Format.

Distinctly identify the data lots for measurements passes using the format in Table 2 and 3. Ensure that the data lot designations are digitally stored with the associated measurement pass data.

Table 2
Standardized Naming Convention for Measurement Passes Data Lots

Standardized Format*	Definition
IC-ROUTE-MATL-L#-XXX-XXX	Undivided Highways (e.g., IC-TH83-HMA-L1-12L-CL)
IC- ROUTE-MATL-L#-XXX-XXX-DT	Divided Highways (e.g., IC-TH83-HMA-L1-12L-CL-NB)

* Add an additional designation behind the ROUTE for instances where more than one site calibration is needed within the project limits (e.g., a site calibration was completed for the northern and southern limits of the project – a “N” and “S” would be added immediately behind the ROUTE [TH83N-HMA-L1-12L-CL, TH83S-HMA-L1-12L-CL]).

Table 3
Standardized Abbreviations for Measurement Passes Data Lots

Abbreviation	Definition
ROUTE	**ROUTE DESIGNATION.** Replace “ROUTE” with the route system, as designated by the following acronyms or short form, immediately followed by the route number (e.g., TH12).

Acronym or Short Form	Full Name or Meaning
TH	Trunk Highway (US or State Highway)
CR	County Road
MS	Municipal Street

Table 3
Standardized Abbreviations for Measurement Passes Data Lots

<table>
<tr><th>Abbreviation</th><th>Definition</th></tr>
<tr><td>MATL</td><td>MATERIAL/ SURFACE TYPE. The material/surface type is designated by the following acronyms or short form:

<table>
<tr><th>Acronym or Short Form</th><th>Full Name or Meaning</th></tr>
<tr><td>FDR</td><td>Full Depth Reclamation</td></tr>
<tr><td>HMA</td><td>Hot Mix Asphalt</td></tr>
<tr><td>SMA</td><td>Stone Matrix Asphalt</td></tr>
</table></td></tr>
<tr><td>L#</td><td>LIFT NUMBER. The lift number is designated by the following acronym or short form:

<table>
<tr><th>Acronym or Short Form</th><th>Full Name or Meaning</th></tr>
<tr><td>L1</td><td>Lift 1</td></tr>
<tr><td>L2</td><td>Lift 2</td></tr>
<tr><td>L3</td><td>Lift 3</td></tr>
<tr><td>…</td><td>…</td></tr>
<tr><td>Ln</td><td>Lift n</td></tr>
</table></td></tr>
<tr><td>XXX-XXX</td><td>CENTERLINE OFFSET. The location of the left and right edge of the production/compaction area with respect to the centerline, facing in the direction of increasing stationing. Stationing typically increases from West to East and South to North. Each character of the abbreviation is defined as the following:

XX (a) X (b) – XX (c) X (d)

(a) The offset distance (in feet rounded to the whole number) from the centerline to the left edge of the production area (e.g., CL, 12, 24). CL reflects the Center Line.

(b) R or L, to reflect Right (R) or Left (L) of Centerline, in the direction of increasing station numbering.

(c) The offset distance (in feet rounded to the whole number) from the centerline to the right edge of the production area (e.g., CL, 12, 24). CL reflects the Center Line.

(d) R or L, to reflect Right (R) or Left (L) of Centerline, in the direction of increasing station numbering.</td></tr>
<tr><td>DT</td><td>DIRECTION OF TRAVEL. The direction that traffic moves during non-construction conditions. The direction of travel is designated by the following acronyms or short form:

<table>
<tr><th>Acronym or Short Form</th><th>Full Name or Meaning</th></tr>
<tr><td>NB</td><td>North Bound</td></tr>
<tr><td>SB</td><td>South Bound</td></tr>
<tr><td>EB</td><td>East Bound</td></tr>
<tr><td>WB</td><td>West Bound</td></tr>
</table></td></tr>
</table>

I. Data Analysis Software.

Export all measurements into Veta which is available from the website: http://www.intelligentconstruction.com.

Provide the Engineer with user identification to access both the cloud storage, cloud computing, and the software being used.

Use Veta to create project files with the temperature, roller coverage, and reports of the HMA.

Use the Veta software to plot measurement pass data and to determine roller coverage. Produce *.VETAPROJ filenames in the **X-XXX(XXX)XXX ROUTE IC** standardized format shown in Table 4.

Table 4
Standardized Naming Convention for *.VETAPROJ Files * ‖

Abbreviation	Definition
X-XXX(XXX)XXX	**STATE PROJECT NUMBER.** Replace the "X's" with the state project numbers. Do not use any of the Letters on the project number.
ROUTE	**ROUTE NUMBER.** Replace "ROUTE" with the route system, as designated by the following acronyms or short form, immediately followed by the route number(s) mapped in the given Veta project. (e.g., TH94, TH94-34, TH94-34-56)
IC	IC reflects the intelligent compaction method, the data set contained within the Veta project file.

Acronym or Short Form	Full Name or Meaning
TH	Trunk Highway (US or State Highway)
CR	County Road
MS	Municipal Street

* Example *.VETAPROJ filename: **1-234(567)890 TH94 IC**

‖ Add the county name at the end of the Veta project file name for instances where design and alignment files were created for multiple counties. This requires creation of a Veta project per county (e.g., 1-234(567)890 TH94 IC **Barnes**; 1-234(567)890 TH94 IC **Cass**).

Provide Veta files that include the following:

1. Alignment (*.LandXML file[s]) and Design (*.kmz file[s])
2. Raw or Gridded All Passes Data (imported data)
3. Filter Groups (for all machines) per:
   a. Data lot (e.g., 1-234(456)789 TH94-HMA-L1-12L-CL),
   b. Lane and per lift (e.g., TH94-HMA-L1-12L-CL) and
   c. Lift (e.g., TH94-HMA-L1)
4. Operation Filters (for all machines) per data lot (e.g., 1-234(456)789 TH94-HMA-L1-12L-CL)
5. Override Filters per Machine ID per:
   a. Lift (e.g., TH94-HMA-L1 Machine ID) and

b. Lane and per lift (e.g., TH94-HMA-L1-12L-CL Machine ID)

Submit final Veta files to the Engineer 1 week after the paving is complete.

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Pay Item	Pay Unit
Intelligent Compaction	Lump Sum

Payment for IC will be based on the percentage of the plan quantity HMA placed on each progressive estimate.

Delays due to GPS satellite reception issues or IC roller breakdowns will not be considered justification for contract modifications or contract extensions.

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

PAVER MOUNTED THERMAL PROFILER

PROJECT 7-085(140)164 – PCN 24881

DESCRIPTION

This work consists of using the Paver Mounted Thermal Profile (PMTP) Method to continually monitor the surface temperature of the Hot Mix Asphalt (HMA) mat immediately behind the trailing edge of the paver screed during placement operations on mainline paving.

DEFINITION

AUXILIARY LANE. This provision is required only on continuous left turn lanes and passing lanes (excluding turn lanes and tapers).

DRIVING LANE. See **traffic lane**.

PAVER MOUNTED THERMAL PROFILE (PMTP) METHOD. This method uses a system that continually monitors the surface temperature readings of the mat immediately behind the paver screed during placement operations.

STANDARD DEVIATION (StDev). The sample standard deviation of the surface temperature readings. This value reflects the overall spatial variability of surface temperature measurements within the data sublot.

SURFACE TEMPERATURE READINGS. The temperatures of the mat immediately behind the trailing edge of the screed plate during placement operations.

THERMAL COVERAGE (TC). The percent of the total paving area, for the given lift and material type, where surface temperature readings are collected and stored.

THERMAL PROFILES. The surface temperature readings and associated Global Navigation Satellite System (GNSS) coordinates and time stamps.

THERMAL SEGREGATION INDEX. A composite index equally reflecting the overall variability of surface temperature measurements (StDev) and the transverse variability of surface temperature measurements (presence of longitudinal thermal streaking [TSVI]) within the data sublot.

TRAFFIC LANE. This provision is required on all traffic lanes with the exception of traffic lane tapers and roundabouts (including the traffic lane between the roundabout and mainline transition prior to and after the radius point of the roundabout).

TRANSVERSE SEMIVARIOGRAM (TSV) INDEX. This value reflects the transverse variability in surface temperature measurements (presence of longitudinal thermal streaking).

VETA. A standardized intelligent construction data management (ICDM) software that stores, maps and analyzes geospatial data resulting from intelligent compaction, thermal profiling and spot test data (e.g., density, moisture). This software can perform standardized data processing, analysis and reporting to provide Project summary results quickly in the field from various intelligent compaction and thermal profiling manufacturers. In particular, the software can provide statistics, histograms, correlations for these measurements, document coverage area and evaluate the uniformity of compaction and surface temperature measurements as part of the Project quality control operations.

EQUIPMENT

A. General.

Provide a PMTP System supplier that will provide a representative for onsite technical assistance for the following:

- Initial setup;
- Preconstruction verification; and
- Data management and processing as needed.

Provide a technical support contract for the PMTP system for the duration of the project.

B. PMTP System.

Provide the Engineer with access to the PMPT system, including the cloud storage and cloud computing, 7 days before the start of paving that requires the PMTP method until 1 year after final acceptance according to Section 105.15, “Acceptance”.

Use PMTP, capable of collecting, mapping, retaining and analyzing the mat temperature readings during placement and exporting thermal profile data meeting the requirements of this provision and supporting the following features:

(1) Filtering by surface temperature reading location (items 8 through N of Table 3).
(2) Display through a map/graph:
  (2.1) Surface temperature readings across the required width and with respect to a user defined data sublot length,
  (2.2) Paver speed and
  (2.3) Paver stops (location and duration).
(3) Provide the paving length and duration.

C. PMTP System.

1. System Requirements.

Use a PMTP system that only requires an operator to initiate the start of continuous data collection. After initializing the equipment, no operator attendance is required for continuous data collection

Calibrate and install the PMTP System according to the Manufacturers recommendations.

Provide a PMTP System that meets the requirements of Table 1 and is equipped with the following:

- Wireless method for transferring data to cloud storage.
- Onboard Documentation System with the following capabilities:

- Displays (in real-time) a map of the surface temperature readings.
- Displays the total distance, paver speed and location.
- Reports the surface temperature readings and GNSS status.
- Provides real-time statistical summaries of the surface temperature readings.
- Has the ability to manually export data using a removable media device.
- Allows the operator to define the data lot currently being placed.

Table 1
PMTP System Requirements

Parameter	Requirement
Longitudinal and Lateral Surface Temperature Readings	≤ 1-ft intervals at all paving speeds Tolerance: ± 1 in
Surface Temperature Readings Total Measurement Width	Traffic / Required Auxiliary lane(s) paved in 1 pass
Surface Temperature Readings	Range: 32°F to 480°F
	Accuracy: ± 3.6°F or 2.0% of the sensor reading, whichever is greater
GNSS	Accuracy better than ± 2 Inch in the X and Y direction

2. Thermal Profiling Data.

Encrypt and export the thermal profiling data into one of the following formats:

- As dbase ASCII or Text Format;
- Directly into Veta, if a file format compatible with Veta is available; or
- Through a direct transfer of data from cloud storage to Veta.

Verify the PMTP date and time stamp is correct for the local time zone for the mapped and exported data.

Include the information in Table 2 in the header of each data file or section. Include the fields in Table 3 with each data point.

Table 2
Required Information in Data Header

Item No.	Description	Example Data included in Header
1	State Project Number using only the numerical values	Highway 77
2	Machine Trade Name	ABC Company
3	Machine ID	1234AC78
4	Lateral Spacing between surface temperature measurements (inch)	12
5	Longitudinal Spacing between surface temperature measurements (inch)	12
6	Vertical Distance between the temperature sensor(s) and asphalt pavement mat (inch)	120

Table 2 Required Information in Data Header		
Item No.	**Description**	**Example Data included in Header**
7	Reporting resolution for independent surface temperature data – in the paver moving direction (inch)	13
8	Number of lateral surface temperature measurements/sensors	12
9	Number of surface temperature measurement data blocks	5000

Table 3
Required Fields for Each Data Block

Item No.	Date Field Name	Data Format Examples
1	Date Stamp	20080701 (YYYYMMDD)
2	Time Stamp	090504.0 (9 hr 5 min. 4.0 s.) (HHMMSS.S -military format)
3	Longitude (decimal degrees, with at least 6 significant digits)	94.859204
4	Latitude (decimal degrees, with at least 6 significant digits)	45.227773
5	Distance (feet)	1
6	Direction heading (degree angle, clockwise from the north); or calculated value, in Veta, using values from the other data blocks, ft/min	45
7	Speed (feet per minute or inches per minute)	30.0
8	Surface temperature Reading/Location 1 (°F)*	290
9	Surface temperature Reading/Location 2 (°F)*	295
…	…	…
N	Surface temperature Reading/Location N (°F)*	300

* Surface temperature readings/locations are numbered from 1 to N, left to right, in the direction of paving.

CONSTRUCTION REQUIREMENTS

A. General.

The Department does not guarantee the accuracy and compatibility of electronic or supplemental data provided by the Department. The Plan documents, originally provided with the Contract, remain the basis of the Contract. The Contractor is responsible for any necessary conversions of the provided electronic data.

If supplemental data is not provided by the Department, create the design files that are needed.

B. Field Stationing.
Match the centerline stationing from the design files to the field station markers.

C. PMTP System Setup on Paver(s).
Perform independent equipment checks on the PMTP System daily before the start of paving and verify the system is within the Tolerances shown in Table 4

Table4
Calibration of PMTP System Component

PMTP System Device	Tolerance
GNSS	± 2 Inches in the horizontal direction (XY)
Temperature	± 5 °F

If a distance measuring instrument (DMI) is utilized with the PMTP system, verify that the correct correction factor is set for accurate stationing according to the manufacturer's procedures.

Instrument all pavers that are paving the traffic and required auxiliary lanes with the PMTP System.

Ensure the installed PMTP System takes measurements within 10 ft of the trailing edge of the screed plate and does not restrict the accuracy and functionality of the GNSS.

Ensure that brackets used for pavement smoothness, that are located in the measurement area, do not affect more than 2 surface temperature readings recorded in the lateral direction (items number 8 through N in Table3). Ensure that other objects (e.g., umbrellas, lights, etc.) are not obstructing the measurements.

D. Definition of Data Lot and Data Sublot for Thermal Profiling.

1. Data Lot Establishment.
A lot for the PMTP System is all asphalt paving for a given day regardless of the following:
- Lift;
- Material type; and
- Centerline offsets.

Identify the data lots for thermal profile measurements using the standardized format shown in Tables 5 and 6.

Table 5
Standardized Naming Convention for Thermal Profile Data Lots

Standardized Format	Definition
PMTP-ROUTE-MATL-L#-XXX-XXX	Undivided Highways (e.g., PMTP-TH83-HMA-L1-12L-CL)
PMTP-ROUTE-MATL-L#-XXX-XXX-DT	Divided Highways (e.g., PMTP-TH83-HMA-L1-12L-CL-NB)

Table 6
Standardized Abbreviations for Thermal Profile Data Lots

<table>
<tr><th>Abbreviation</th><th>Definition</th></tr>
<tr><td>ROUTE</td><td>ROUTE DESIGNATION
<table>
<tr><th>Acronym or Short Form</th><th>Full Name or Meaning</th></tr>
<tr><td>TH</td><td>Trunk Highway (US or State Highway)</td></tr>
<tr><td>CR</td><td>County Road</td></tr>
<tr><td>MS</td><td>Municipal Street</td></tr>
</table></td></tr>
<tr><td>MATL</td><td>MATERIAL/ SURFACE TYPE. The material/surface type is designated by the following acronyms or short form:
<table>
<tr><th>Acronym or Short Form</th><th>Full Name or Meaning</th></tr>
<tr><td>HMA</td><td>Hot Mix Asphalt</td></tr>
<tr><td>SMA</td><td>Stone Matrix Asphalt</td></tr>
</table></td></tr>
<tr><td>L#</td><td>LIFT NUMBER. The lift number is designated by the following acronym or short form:
<table>
<tr><th>Acronym or Short Form</th><th>Full Name or Meaning</th></tr>
<tr><td>L1</td><td>Lift 1</td></tr>
<tr><td>L2</td><td>Lift 2</td></tr>
<tr><td>L3</td><td>Lift 3</td></tr>
<tr><td>…</td><td>…</td></tr>
<tr><td>Ln</td><td>Lift n</td></tr>
</table></td></tr>
<tr><td>XXX-XXX</td><td>CENTERLINE OFFSET. The location of the left and right edge of the production area with respect to the centerline, facing in the direction of increasing stationing. Stationing typically increases from West to East and South to North. Each character of the abbreviation is defined as the following:

XX X – XX X
(a) (b) (c) (d)

(a) The offset distance (in feet rounded to the whole number) from the centerline to the left edge of the production area (e.g., CL, 12, 24). CL reflects the Center Line.

(b) R or L, to reflect Right (R) or Left (L) of Centerline, in the direction of increasing station numbering.

(c) The offset distance (in feet rounded to the whole number) from the centerline to the right edge of the production area (e.g., CL, 12, 24). CL reflects the Center Line.

(d) R or L, to reflect Right (R) or Left (L) of Centerline, in the direction of increasing station numbering.</td></tr>
</table>

<table>
<tr><th colspan="2">Table 6
Standardized Abbreviations for Thermal Profile Data Lots</th></tr>
<tr><th>Abbreviation</th><th>Definition</th></tr>
<tr><td>DT</td><td>DIRECTION OF TRAVEL. The direction of travel is designated by the following acronyms or short form:

<table>
<tr><th>Acronym or Short Form</th><th>Full Name or Meaning</th></tr>
<tr><td>NB</td><td>North Bound</td></tr>
<tr><td>SB</td><td>South Bound</td></tr>
<tr><td>EB</td><td>East Bound</td></tr>
<tr><td>WB</td><td>West Bound</td></tr>
</table>
</td></tr>
</table>

2. Data Sublot Establishment Using Veta.

A sublot is defined as 150 linear ft. The Engineer will include a partial lot less than or equal to 75 linear feet in the previous lot. Lots greater than 75 linear feet are treated as an independent lot.

Set the data sublot “start” and “end” location for the given data lot in Veta to correspond with the start and end of paving, respectively. Ensure that these locations are immediately adjacent to the beginning and end of the surface temperature readings for the paving operation.

E. Thermal Profile Measurements.

Collect thermal profiles for each lift on the following lanes:

- Traffic lanes
- Continuous left turn lanes; and
- Passing lanes.

Thermal profiles are not required on the following:

- Auxiliary lane tapers;
- Ramps;
- Shoulders;
- Cross-overs;
- Non-continuous turn lanes;
- Loops;
- Bypass lanes;
- Acceleration/deceleration lanes;
- Circular roadway of roundabouts;
- Splitter Islands or chicanes of roundabouts. and
- Intersecting streets.

Thermal profiles are required only for the lifts shown in the typical sections. Any lifts to bring subcuts to the same elevation as the surrounding surface is excluded from thermal profiles.

Ensure that the PMTP system is not capturing measurements outside of the traffic and required auxiliary lanes, as all of the recorded data is used in the thermal segregation analysis. Turn the data collection and recording off when collecting thermal profiling data is not required

F. PMTP System Failure.

PMTP System failure occurs when the data is not collected or stored.

Contact the Engineer when the PMTP System has a failure and after the PMTP system becomes operational.

When failures occur, provide the Engineer with a written notification of each failure including the following:

- Date and time;
- A brief description; and
- Areas affected by the failure.

The day of PMTP system failure notification and the following 2 working days are accepted as providing a daily thermal coverage of 100 percent, for each day of this grace period. The daily thermal coverage is considered zero during the subsequent days of PMTP system failure.

Price adjustments will not be made for thermal segregation when a PMTP System failure occurs.

G. Thermal Profile Analysis Software.

Use the Veta software to plot thermal profile measurements and to determine thermal segregation and coverage. Produce *.VETAPROJ filenames in the **X-XXX(XXX)XXX ROUTE PMTP** standardized format according to Table 7.

Table 7
Standardized Naming Convention for *.VETAPROJ Files * ‖

Abbreviation	Definition
X-XXX(XXX)XXX	**PROJECT NUMBER.** Replace the "X's" with the project numbers. Do not use any of the letters on the project number.
ROUTE	**ROUTE NUMBER.** Replace "ROUTE" with the route system, as designated by the following acronyms or short form, immediately followed by the route number(s) mapped in the given Veta project. (e.g., TH94, TH94-34, TH94-34-56)
PMTP	PMTP reflects the paver mounted thermal profile method, the data set contained within the Veta project file.

Acronym or Short Form	Full Name or Meaning
TH	Trunk Highway (US or State Highway)
CR	County Road
MS	Municipal Street

* Example *.VETAPROJ filename: **1-234(567)890 TH94 PMTP**

‖ Add the **county name** at the end of the Veta project file name for instances where design and alignment files were created for multiple counties. This requires creation of a Veta project per county (e.g., 1-234(567)890 TH94 PMTP **Barnes**; 1-234(567)890 TH94 PMTP **Cass**).

Create filter groups, operation filter and data sublot names using the **LOT# MMDDYY LOTNAME** standardized format per Table 8.

Table 8
Standardized Naming convention for Veta Filter Group, Operation Filter and Data Sublot Names *

Abbreviation	Definition
LOT#	**DATA LOT NUMBER.** The data lot number is a two-digit number increasing sequentially (01, 02, 03, …, n). Create filter groups, operation filters and data sublot names in sequential order with respect to the data lot dates. Data lots containing Exceptions and/or Temporary Exceptions: ‖ Include a capital letter, in alphabetical order (A, B, …), immediately after the two-digit data lot number to designate the side of the exception, or temporary exception, that the thermal profile data reflects (e.g., 01A, 01B, 02A, 02B, …).
MM	**MONTH** (include leading zeros)
DD	**DAY** (include leading zeros)
YY	**TWO-DIGIT YEAR**
LOTNAME	**STANDARDIZED DATA LOT NAME** per Table 3

* Example Filter Group/Operation Filter Name (data lot contains no exceptions):
01 070915 TH94-HMA-L1-CL-12R, 02 071015 TH94-HMA-L1-CL-12R, …
* Example Filter Group/Operation Filter Name (data lot contains an exception):
01A 070915 TH94-HMA-L1-CL-12R, 01B 070915 TH94-HMA-L1-CL-12R,
02A 071015 TH94-HMA-L1-CL-12R, 02B 071015 TH94-HMA-L1-CL-12R,
…
‖ Temporary exceptions are areas to be paved at a later date.

Ensure Veta projects include the following:

(1) **Alignment File (*.LandXML file) and Design (*.kmz file)**
(2) **Surface Temperature Readings**
(3) **Filter Groups** per:
  (3.1) data lot (e.g., 01 090415 TH94-HMA-L1-12L-CL),
  (3.2) lane and per lift (e.g.,TH94-HMA-L1-12L-CL) and
  (3.3) lift (e.g., TH94-HMA-L1)
(4) **Operation Filters** per data lot (e.g., 01 090415 TH94-HMA-L1-12L-CL)
(5) **Data Filter** (Temperature ≥ 180°F)
(6) **Sublot Creation** per data lot (e.g., 01 090415 TH94-HMA-L1-12L-CL)
(7) **Override Filters per Machine ID** per:
  (7.1) lift (e.g., TH94-HMA-L1 Machine ID) and
  (7.2) lane and per lift (e.g., TH94-HMA-L1-12L-CL Machine ID)

Note – the override filters are used for cases where more than one paver (paving in Echelon) is instrumented with the PMTP system.

H. Veta Software Operator Certification.
Provide a certified Veta software operator who has taken a hands on course in the use of Veta and provide the certification to the Engineer.

I. Calculations.

1. Thermal Segregation.

a. General.

Perform separate thermal segregation analysis on each side of an exception for lots that extend through exceptions. (Table 8 for the standardized labeling conventions using Veta).

b. Surface Temperature Readings.

Evaluate thermal segregation using 100 percent of the recorded data for each data sublot.

The following surface temperatures readings are excluded from each sublot:

- Surface temperature readings less than 180°F; and
- Surface temperature readings for paver stops that last longer than 1 minute within the following distance:
  - 2 ft before the stop; and
  - 8 ft after the stop.

c. Thermal Segregation Index (TSI).

Calculate the Thermal Segregation Index (TSI), reported to the nearest tenth, for each data sublot, use Equations 2016-1 (AMT) and 2016-2 (AMT). Record the TSI values for each data sublot into form AMT-102, which can be found at the following website: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/UrlSearch?columns=docnumber,docname&folderid=15848128.

Equation 2016-1 (PMTP): $TSI_0 = 0.77\left[C \times \left(\frac{StDev}{StDev_{Severe\ Start}}\right) + (100 - C) \times \left(\frac{TSV}{TSV_{Severe\ Start}}\right)\right]$

Equation 2016-2 (PMTP): $TSI = \begin{cases} TSI_0\ when\ TSI_0 < 100 \\ 100\ when\ TSI_0 \geq 100 \end{cases}$

Where:

- ***TSI₀*** = the thermal segregation index value prior to capping at the upper limits of 100 (rounded to nearest tenth);
- ***TSI*** = the thermal segregation index;
- ***C*** = the percent contribution of standard deviation to the transverse semivariogram (value ranges from 0 to 100, set C = 50);
- ***StDev*** = the standard deviation (rounded to the nearest hundredth degree);
- $StDev_{Severe\ Start}$ = the standard deviation at the lower limits of the severe thermal segregation category (set $StDev_{Severe\ Start} = 9$);
- ***TSV*** = Transverse semivariogram index. As calculated in Veta rounded to the nearest hundredth; and
- $TSV_{Severe\ Start}$ = transverse semivariogram index at the lower limits of the severe thermal segregation category ($TSVI_{Severe\ Start} = 25$);

d. Thermal Segregation Category.
Categorize the surface temperature readings for each sublot according to Table 9.

Table 9 Data Sublot Thermal Segregation Index	
TSI Equation 2016-1 (PMTP)	**Thermal Segregation Category**
TSI < 30.0	Low
30.0 ≤TSI < 70.0	Moderate
TSI ≥ 70.0	Severe

2. Thermal Coverage.

a. General.
Calculate thermal coverage for each lift and material type according to Equation 2016-4 (AMT) using form AMT-101 found at the following website: MnDOT eDOCS Public Web - Url Search (state.mn.us).

b. Thermal Profile Data Lot Length Calculation.

Equation 2016-3 (AMT): Thermal Profile Data Lot Length = $\sum_{i=1}^{n} Data\ Sublot\ Length_i$

Where:
- ***Thermal Profile Data Lot Length*** = the total linear length of the surface temperature readings used for the thermal segregation analysis for the given data lot, ft (reported to the nearest whole number);
- ***n*** = the total number of data sublots; and
- **Data *Sublot Length*** = the linear length of data sublot *i*, ft (reported to the nearest whole number).

c. Thermal Profile Lift Length Calculation.

Equation 2016-4 (AMT): Thermal Profile Lift Length = $\sum_{i=1}^{n}(Thermal\ Profile\ Lot\ Length)_i$

Where:
- ***Thermal Profile Lift Length*** = the total linear length of the surface temperature readings used for the thermal segregation analysis for the entire lift, ft (reported to the nearest whole number);
- ***n*** = the total number of data lots for the entire *lift* and *material type*; and
- $(\boldsymbol{Thermal\ Profile\ Lot\ Length})_i$ = the total *linear* length of the surface temperature readings used for the thermal segregation analysis for the given data lot *i* and lift as calculated by Veta, ft (reported to the nearest whole number). (See Equation 2016-3 [PMTP])

d. Thermal Coverage Calculation.

Equation 2016-5 (AMT): Thermal Coverage = $\left(\frac{Thermal\ Profile\ Lift\ Length}{LM \times 5280}\right) \times 100$

Where:

- ***Thermal Coverage*** = % (reported to the nearest whole number);
- ***Thermal Profile Lift Length*** = see Equation 2016-4 (AMT), ft (reported to the nearest whole number); and
- ***Lane Miles (LM)*** = Total number of lane miles for the given lift and material type requiring thermal profiling, miles reported to the hundredth.

J. Submittals.

1. Thermal Profiling Data Submittal.
Upload the thermal profiling data from the PMTP System to cloud storage within 15 minutes of recording.

If cellular coverage is limited or unavailable, notify the Engineer. When cellular coverage is limited upload the thermal profiling data at least once per day. If there is no cellular coverage, transfer the thermal profiling data directly to the Engineer at the end of the days paving.

2. Veta Projects and Forms.
Submit the initial Veta project and forms PMTP-101 and PMTP-102 to the Engineer 3 days after the start of paving using PMTP System. Submit updated Veta project and forms PMTP-101 and PMTP-102 to the Engineer weekly. The Engineer may request data any time during compaction operations.

Submit the final version of Veta Project and forms AMT-101 and AMT-102 to the Engineer within 14 days of completion of paving that required usage of the PMTP System.

The Engineer will review the final versions of the submitted Veta projects and forms by following the Veta Projects and Forms Submittal Review Workflow and using form AMT-101-102-103 which can be found at the following website: MnDOT eDOCS Public Web - Url Search.

The PMTP and AMT forms are for informational purposes only.

METHOD OF MEASURMENT AND BASIS OF PAYMENT

Interruptions in the availability of network and/or satellite signals to operate this system will not result in any reduction to the daily thermal coverage or adjustment to the “Basis of Payment” for any construction items or to Contract time.

Pay Item	Pay Unit
Paver Mounted Thermal Profiler	LSum

Payment for the Paver Mounted Thermal Profiler will be based on the percentage of the plan quantity HMA placed on each progressive estimate. Total payment for the Paver Mounted Thermal Profiler will not exceed 1.0.

No price adjustment will be made based on the information received on the forms.

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

FLEXIBLE PAVEMENT SURFACE TOLERANCE

PROJECT [#] - PCN

DESCRIPTION

This provision details the surface tolerance requirements, corrective actions, performance incentives, and contract price adjustments for flexible pavement.

ATTACHMENTS

Appendix A – Existing IRI Data

CONSTRUCTION REQUIREMENTS

A. General.

Any lot with any amount of grinding done before the Engineer collects the initial profile is ineligible for incentive.

The Engineer will use the straight edge method described in Section 430.04 K, “Tolerances” with the Rolling Straightedge Module of Proval to determine the surface tolerance, including leave outs.

The Engineer will profile the finished surface to determine the pavement ride quality. All finished bituminous surfaces will be profiled with the following exceptions:

1) Bridge decks and/or approach slabs and 150 feet on either side;
2) Side roads and approaches;
3) Shoulders, ramps, and gore areas;
4) At grade railroad crossings and 150 feet on either side;
5) The beginning and end of the project and 50 feet on either side of these boundaries;
6) 50 feet from areas not receiving surfacing;
7) Areas with speed limit under 50 MPH;
8) Where safety and the roadway geometrics do not allow the proper operating speed for the profiler to collect data. The Engineer will determine the location of these areas. These locations may include, but are not limited to the following:
   - Signal controlled intersections;
   - Stop controlled intersections;
   - T intersections; and
   - Other situations that would be detrimental to safety of the traveling public or the profiler.

On surfaces exempt from the profile testing, the Engineer will determine the pavement smoothness according to section 430.04 K “Tolerances”.

B. Profiler Limitations.

The Engineer will not test the roadway in the following conditions:

- Between November 30 to May 15;
- When the air or surface temperature is below 35 °F; or
- When the roadways surface is wet or under inclement weather conditions.

C. Profiler Inputs.

1. General.

The Engineer will:

- Measure the smoothness of the roadway using the International Roughness Index (IRI) to the nearest 0.1 inch;
- Use ProVal, http://www.roadprofile.com, to calculate the IRI for the Pavement Profile (PPF);
- Apply a 250 mm filter to generate the IRI in ProVal;
- Average the IRI of the two wheel paths to calculate the Mean Ride Index (MRI); and
- Use the MRI option in ProVal for evaluation

2. Fixed Interval (Lot Smoothness) Ride Quality Module.

The Engineer will identify lot smoothness using the following inputs:

- Set the Ride Quality Index to “MRI”
- Segment Length – 528 feet
- Threshold – 75.0 in/mile

3. Rolling Straightedge Module.

Identify areas of surface deviation using the Rolling Straightedge Module within the current version of ProVal. Use the following settings in the Rolling Straightedge Module:

- Straightedge Length – 16 feet
- Deviation Threshold – 3/16 inch

D. Lot Definition.

A lot is defined as a 528 foot road segment, one lane wide. The Engineer will include a partial lot less than or equal to 370.0 feet in the previous lot. The Engineer will treat a lot greater than 370.0 feet as an independent lot.

E. Profiling.

1. General.

a. Naming Convention and Collection Points.

Discuss with the Engineer the naming convention of the lanes before profiling as well as the beginning and end points for areas of collection.

b. Timing

Notify the Engineer that the road is ready for profiling. The Engineer will coordinate a time within 5 working days of receiving that notification.

c. Physical Surface Conditions.
Remove all debris that will inhibit collection of the road profile before the profiler arrives on site for collection. Keep the lanes clear of construction activity during the time of profiling.

The Engineer will collect the profile when the pavement is dry and at a time agreed upon between the Engineer and the Contractor.

d. Profiler Data Collection.
The Engineer will use an inertial profiler to collect the profile in each wheel path of each lane.

The Engineer will trace the profile at approximately 31 and 97 inches, measured from the left edge of the lane, as determined by the direction of traffic.

Provide traffic control for 500 feet beyond the ends of the collection area to facilitate the collection of profile data and for run in and run out.

2. Initial Profile.
The Engineer will complete an initial profile to determine the MRI.

The Engineer will collect a complete initial profile after the mainline paving is complete.

3. Additional Profiles.
The Engineer will collect any additional profiles after corrective action has taken place.

The Engineer will apply a liquidated damage of $1,500 per trip for each profile collected after the second profile.

4. Final Acceptance Profile.
The Engineer will collect the final acceptance profile after the necessary corrective actions on the roadway are completed.

5. Reports.
The Engineer will provide the following information to the Contractor within 5 days of completing the profile:

- PPF files;
- The Viewer;
- The Ride Quality Report; and
- The Rolling Straightedge Report.

F. Lots With MRI Less Than 75.1
For lots with an MRI less than 75.1, the Engineer will process performance incentives and contract price adjustments for each lot as specified in Section B “Ride Quality- Lot Smoothness” of the Basis of Payment Section.

G. Lots with MRI Greater or Equal to 75.1
Lots with an MRI greater than or equal to 75.1 will require corrective action, as specified in Section H, “Corrective Action” of the Construction Requirements.

Areas that would result in a contract price adjustment may be ground to a lower MRI. If grinding occurs and results in an MRI of 48.0 or less, the Engineer will not apply a performance incentive to that lot. Only lots with an initial MRI of 48.0 or less will receive a performance incentive based on the initial readings, before grinding.

H. Corrective Action.

1. General.

Any grinding performed is considered corrective action.

Complete corrective action within 21 calendar days of final profile data collection.

2. Corrective Action Plan.

Confirm date and time, locations, equipment, and timeframes with Engineer.

Contractor may develop a detailed corrective action plan using the ProVal data. Generate grinding simulations in ProVal with multiple grinding depths, varying equipment, and multiple pass patterns. Include the grinding simulations with the corrective action plan.

Submit the plan three working days in advance of grinding.

The Engineer will review the corrective action plan.

3. Corrective Grinding.

a. General.

Grind lots to a maximum MRI of 75.0 in/mile.

Grind high shoulders to provide drainage and safety.

Grind the full width of the lane and a feather pass onto the shoulder to daylight the grinding.

Grind a minimum length of 30 feet. Join grind sections if the distance between grind sections is less than 60 feet.

b. Grinding Equipment.

Use diamond grinding head for lot corrective action that does not cause strain or damage to the underlying surface of the pavement. Do not cause excessive ravels, aggregate fractures, or spalling.

c. Grinding.

Perform grinding in the longitudinal direction so grinding begins and ends at lines normal to the pavement centerline. Do not overlap more than 2 inches between passes and ensure the depth variance between adjacent passes is less than 1/8 inch. Feather the grinding at the beginning and end of each pass.

Ensure the surface of the ground pavement has a texture consisting of grooves between 0.090 and 0.130 inches wide. Keep the peaks of the ridges approximately 1/32 inch higher than the bottom of the grooves.

d. Slurry Removal.
When grinding in areas with curb and gutter, and areas adjacent to waterways continuously collect all slurry or residue resulting from the grinding operation. Dispose of the slurry or residue as specified in Section 107.17, “Removed Material”.

4. Profiling.
The Engineer will perform additional profiling according to Section E.3 “Additional Profiles” of the Construction Requirements. The Engineer will determine if additional Corrective Action is required based on the new profile. If additional Corrective Action is required, the Engineer will provide additional profile PPF and a new Corrective Action plan is required.

BASIS OF PAYMENT

A. Liquidated Damages
If the project would be considered substantially complete, as specified in Section 108.07 B, “Failure to Complete within the Contract Time” and corrective action is required, the Engineer may suspend time charges and the assessment of liquidated damages for up to 21 calendar days after the contract time has expired. If the corrective action is not complete within 21 calendar days after the contract time has expired, the Engineer will restart time charges and will assess liquidated damages.

B. Ride Quality.
The Engineer will pay a performance incentive for ride quality based on Table 1.

Table 1
Ride Quality Performance Incentives

MRI Range	Performance Incentive per Lot
≤ 34.0	$300
34.1 to 39.0	$225
39.1 to 44.0	$150
44.1 to 48.0	$75
48.1 to 56.0	$0

The Engineer will process contract price adjustments for ride quality based on Table 2.

Table 2
Ride Quality Contract Price Adjustment

MRI Range	Contract Price Adjustment per Lot
48.1 to 56.0	$0
56.1 to 62.0	($100)
62.1 to 69.0	($200)
69.1 to 75.0	($400)
75.1 ≥	Corrective Action

C. MISCELLANEOUS

Include costs necessary to prepare the roadway for testing in the contract unit price for asphalt pavement items.

Traffic control items, including flagging and pilot cars will be paid for according to Section 109.03, “Compensation for Contract Revisions”.

Appendix A
Existing IRI Data

IRI DATA FOR PCN 24881 PROJECT NO. NH-XB-7-085(140)164							
Hwy 85, Northtbound Survey Data Collection Date = 9/15/2025							
HWY	Start-Mi	End-Mi	IRI_ Left Wheel Path	Standard Deviation	IRI_Right Wheel Path	Standard Deviation	IRI_Average
85	164.1	164.2	74.9	107.6	78.4	86.5	76.7
85	164.2	164.3	55.9	28.7	63.7	44.5	59.8
85	164.3	164.4	71.4	49.2	74.4	46	72.9
85	164.4	164.5	75.6	50.7	81.1	67.3	78.4
85	164.5	164.6	63.8	43.4	61.5	36.4	62.6
85	164.6	164.7	48.5	33.6	51.3	32.6	49.9
85	164.7	164.8	96.7	109.8	110.7	122.4	103.7
85	164.8	164.9	41.3	32.3	59.5	45	50.4
85	164.9	165	48.6	30.6	54	31.8	51.3
85	165	165.1	46.6	33.4	59.7	40.2	53.2
85	165.1	165.2	51.7	32.9	59.4	38.8	55.6
85	165.2	165.3	56.2	37.5	56.4	42.9	56.3
85	165.3	165.4	70.9	67.9	89.8	78.7	80.4
85	165.4	165.5	72.7	90	74.6	68.1	73.7
85	165.5	165.6	74.9	64.6	75.4	71.2	75.1
85	165.6	165.7	58.3	49.3	79.7	62.8	69
85	165.7	165.8	67.4	40	70.1	49	68.7
85	165.8	165.9	66.6	44.9	60.2	46.9	63.4
85	165.9	166	65.4	48	62.4	42	63.9
85	166	166.1	80.3	50.3	67.1	38.3	73.7
85	166.1	166.2	67.4	73.7	69.4	63.2	68.4
85	166.2	166.3	85.2	94.2	81.6	86.3	83.4
85	166.3	166.4	62.6	46.8	62.1	48.4	62.4
85	166.4	166.5	76.2	74.3	74.2	72.6	75.2
85	166.5	166.6	40.7	21.7	40.6	25.7	40.7
85	166.6	166.7	44.8	27.7	51.3	28.6	48
85	166.7	166.8	45.2	27.4	45	27.1	45.1
85	166.8	166.9	43.7	24.4	43.1	27.5	43.4
85	166.9	167	48.2	29.6	45.4	32.9	46.8
85	167	167.1	49	28.7	47.9	29.1	48.4
85	167.1	167.2	43.5	21.3	41.6	24.5	42.6
85	167.2	167.3	49.9	31	47.3	34.3	48.6
85	167.3	167.4	52.4	37.2	48.5	29.7	50.4
85	167.4	167.5	49.2	29.6	51.9	30	50.5
85	167.5	167.6	57.9	47.2	60.7	52.8	59.3

IRI DATA FOR PCN 24881 PROJECT NO. NH-XB-7-085(140)164							
Hwy 85, Northtbound Survey Data Collection Date = 9/15/2025							
HWY	Start-Mi	End-Mi	IRI_ Left Wheel Path	Standard Deviation	IRI_Right Wheel Path	Standard Deviation	IRI_Average
85	167.6	167.7	56.5	37.3	46.8	33.1	51.7
85	167.7	167.8	43.8	25.2	42.3	30.4	43.1
85	167.8	167.9	66.6	58.8	73.2	83.9	69.9
85	167.9	168	46.5	50.5	45.5	42.3	46
85	168	168.1	55.3	39.4	58.9	36.1	57.1
85	168.1	168.2	75	50.7	81.2	55.7	78.1
85	168.2	168.3	60.7	86	66.3	61.9	63.5
85	168.3	168.4	63.2	88.7	59.3	44.7	61.3
85	168.4	168.5	61.6	101.9	56	66.6	58.8
85	168.5	168.6	57	61.6	48.8	39.4	52.9
85	168.6	168.7	67.1	59.2	47.8	50.4	57.4
85	168.7	168.8	42.5	33.3	60.5	76.7	51.5
85	168.8	168.9	73.3	82.6	96.8	119.1	85.1
85	168.9	169	77.3	88.1	63.7	89.3	70.5
85	169	169.1	68.2	89.7	76.4	73.2	72.3
85	169.1	169.2	70.8	83.4	73.9	95.3	72.3
85	169.2	169.3	72.8	81.4	74.1	94.2	73.4
85	169.3	169.4	72.6	94.1	94.5	120.3	83.5
85	169.4	169.5	56	75.5	111.5	106.2	83.8
85	169.5	169.6	59.5	68.3	108	87.3	83.8
85	169.6	169.7	61.3	74.2	116.5	72.7	88.9
85	169.7	169.8	62.8	69.6	90.7	76.9	76.7
85	169.8	169.9	72.8	102.9	106.3	120.3	89.6
85	169.9	170	100.4	92.6	97.3	71	98.8
85	170	170.1	128	139	119.2	108.8	123.6
85	170.1	170.2	82.6	120.8	67.7	76.3	75.1
85	170.2	170.3	73.9	63	87.3	84.1	80.6
85	170.3	170.4	70.6	61	57.4	51.4	64
85	170.4	170.5	43.9	31.9	55.7	37	49.8
85	170.5	170.6	56.8	45	58.8	48.3	57.8
85	170.6	170.7	42.5	29.8	44.2	27.2	43.4
85	170.7	170.8	86.6	75.9	72.9	68	79.7
85	170.8	170.9	55.5	43.1	49.9	45.6	52.7
85	170.9	171	44.5	24.2	36	22	40.3
85	171	171.1	48.8	31	69.6	62.3	59.2
85	171.1	171.2	74.6	46.2	59.8	42	67.2
85	171.2	171.3	56.7	46.1	47.1	40.6	51.9

IRI DATA FOR PCN 24881 PROJECT NO. NH-XB-7-085(140)164							
Hwy 85, Northtbound Survey Data Collection Date = 9/15/2025							
HWY	Start-Mi	End-Mi	IRI_ Left Wheel Path	Standard Deviation	IRI_Right Wheel Path	Standard Deviation	IRI_Average
85	171.3	171.4	58	50.8	57.7	47.3	57.8
85	171.4	171.5	60.5	64.2	57.4	52.6	59
85	171.5	171.6	54.6	56.1	58.3	43.8	56.5
85	171.6	171.7	48.9	32.4	50.5	36.4	49.7
85	171.7	171.8	34	22.5	35.4	26.7	34.7
85	171.8	171.9	54	43.9	59.3	49.3	56.7
85	171.9	172	65.7	75.1	60.1	57.9	62.9
85	172	172.1	43.1	50.4	44.1	50	43.6
85	172.1	172.2	70.2	68.7	66.5	61.2	68.3
85	172.2	172.3	55.3	50	58.2	49.3	56.7
85	172.3	172.4	53.3	62.1	58.5	66.8	55.9
85	172.4	172.5	47.7	46.3	59	57.7	53.4
85	172.5	172.6	67.8	60.2	71.2	53.2	69.5
85	172.6	172.7	38.3	36.6	52.6	54.8	45.5
85	172.7	172.8	53.2	49	83.4	66.9	68.3
85	172.8	172.9	54.7	71.2	60.8	70.4	57.7
85	172.9	173	65.6	103.5	63.4	82.7	64.5
85	173	173.1	68.6	101	66.3	77.3	67.5
85	173.1	173.2	54.6	65.2	66	72.4	60.3
85	173.2	173.3	73.1	92.1	79.4	78.5	76.3
85	173.3	173.4	80.4	110.5	87.7	101.7	84
85	173.4	173.5	69.3	111	72.9	75.7	71.1
85	173.5	173.6	62.4	81.6	70.2	67.1	66.3
85	173.6	173.7	57.3	66.6	41	26.8	49.1
85	173.7	173.8	52	46	48	48.8	50
85	173.8	173.9	45	59.4	62.7	55.6	53.8
85	173.9	174	67.6	55.4	84.5	62	76.1
85	174	174.1	53.4	56.2	73.6	75.8	63.5
85	174.1	174.2	55.3	59	76.3	68.5	65.8
85	174.2	174.3	66.3	56.8	90.3	74	78.3
85	174.3	174.4	48.3	50.8	66.1	58.3	57.2
85	174.4	174.5	48	35.4	55.1	42.8	51.6
85	174.5	174.6	47.9	57.6	41.8	36.5	44.8
85	174.6	174.7	64.7	105	52.8	52.9	58.7
85	174.7	174.8	52.6	49.8	59.8	60.4	56.2
85	174.8	174.9	38.2	37.7	33.4	24.3	35.8
85	174.9	175	47.3	57.1	43	38.8	45.1

IRI DATA FOR PCN 24881 PROJECT NO. NH-XB-7-085(140)164							
Hwy 85, Northtbound Survey Data Collection Date = 9/15/2025							
HWY	Start-Mi	End-Mi	IRI_ Left Wheel Path	Standard Deviation	IRI_Right Wheel Path	Standard Deviation	IRI_Average
85	175	175.1	52	53.6	48.1	40.4	50
85	175.1	175.2	65	86.1	61.7	61.4	63.4
85	175.2	175.3	65.4	103.3	58	74.3	61.7
85	175.3	175.4	70.3	120.2	47.9	60	59.1
85	175.4	175.5	62.6	100.3	54.4	68.1	58.5
85	175.5	175.6	54.6	43.4	51.4	55.4	53
85	175.6	175.7	38.6	42.4	37.4	47.7	38
85	175.7	175.8	51.4	55.8	49	68.7	50.2
85	175.8	175.9	36.8	27.9	36.9	33.6	36.8
85	175.9	176	44.2	47.5	47.9	57.6	46.1
85	176	176.1	55.4	61.7	78.6	71.2	67
85	176.1	176.2	48.2	30.6	48.7	31.7	48.5
85	176.2	176.3	40.9	33.2	38.4	26.1	39.6
85	176.3	176.4	45	41.5	44.2	38.2	44.6
85	176.4	176.5	73.7	77	63.5	72.9	68.6
85	176.5	176.6	61	31	49.1	26.4	55
85	176.6	176.7	66.8	31.8	65.3	67.3	66.1
85	176.7	176.8	85.6	56.1	88.6	53.2	87.1
85	176.8	176.9	81.6	41.6	73.5	37.8	77.6
85	176.9	177	93.5	54.6	83.2	50.9	88.3
85	177	177.1	89.6	81	89.7	67.3	89.6
85	177.1	177.2	78.4	57.4	94.5	60.7	86.5
85	177.2	177.3	43.6	32.7	46.9	31.2	45.3
85	177.3	177.4	42.1	33.4	43.2	31.3	42.7
85	177.4	177.5	54	43.9	97.3	86.2	75.7
85	177.5	177.6	48.3	46.5	67.8	52.4	58
85	177.6	177.7	41.5	34.3	55.4	42.2	48.4
85	177.7	177.8	46.3	38.5	53.4	37.6	49.8
85	177.8	177.9	55.9	39.9	72.9	47.8	64.4
85	177.9	178	108.9	89.4	120.3	98.6	114.6
85	178	178.1	97.2	60.4	116.7	96.1	107
85	178.1	178.2	84.6	51.3	65.6	40.4	75.1
85	178.2	178.3	86.3	63.8	92.8	71.5	89.6
85	178.3	178.4	69.1	41.6	69.2	45.1	69.1
85	178.4	178.5	48.7	33.2	47.4	36.5	48
85	178.5	178.6	70.9	49.1	59.2	41.3	65
85	178.6	178.7	99.4	74.8	101.1	67.3	100.2

IRI DATA FOR PCN 24881 PROJECT NO. NH-XB-7-085(140)164							
Hwy 85, Northtbound Survey Data Collection Date = 9/15/2025							
HWY	Start-Mi	End-Mi	IRI_ Left Wheel Path	Standard Deviation	IRI_Right Wheel Path	Standard Deviation	IRI_Average
85	178.7	178.8	99.6	67.7	106.8	76.1	103.2
85	178.8	178.9	54.2	41.9	80.4	64.6	67.3
85	178.9	179	53.2	49.1	71.7	59.3	62.4
85	179	179.1	46.8	40.7	67.3	51.8	57.1
85	179.1	179.2	88.7	77	100.2	79.1	94.5
85	179.2	179.3	39.6	31.2	56.5	39.5	48.1
85	179.3	179.4	37.6	24	47.4	30.1	42.5
85	179.4	179.5	42.4	31.5	61.9	38.2	52.1
85	179.5	179.6	45.4	41.6	51.7	35	48.5
85	179.6	179.7	48.3	36.3	56.4	38.7	52.3
85	179.7	179.8	36.3	28.3	55.7	46.4	46
85	179.8	179.9	47.8	45.7	72.7	61.8	60.2
85	179.9	180	59.1	53.7	125.8	104.4	92.4
85	180	180.1	57.9	45.3	106.6	78.7	82.2
85	180.1	180.2	53.1	53.7	72.2	68.1	62.6
85	180.2	180.3	50.1	68.6	75.7	70.4	62.9
85	180.3	180.4	55	55.3	105.4	75.3	80.2
85	180.4	180.5	50.3	41.4	68.8	49.6	59.5
85	180.5	180.6	64.1	77.9	79.6	80.6	71.8
85	180.6	180.7	54.1	61.5	70.4	65	62.2
85	180.7	180.8	36	32.3	41.6	32	38.8
85	180.8	180.9	35.4	31.8	40.5	37	38
85	180.9	181	89.7	89	97.3	80	93.5
85	181	181.1	64.8	52.9	94.5	71.9	79.7
85	181.1	181.2	76.3	64.2	115	71.4	95.6
85	181.2	181.3	118.1	96.1	124.8	85.9	121.4
85	181.3	181.4	106.9	65.7	153	95.8	129.9
85	181.4	181.5	0	0	0	0	0
85	181.5	181.6	0	0	0	0	0
85	181.6	181.7	0	0	0	0	0
85	181.7	181.8	86.5	72.1	97.7	60.8	92.1
85	181.8	181.9	78.9	64.4	94.7	76.7	86.8
85	181.9	182	117.8	97.6	147.5	126.7	132.6
85	182	182.1	89.6	66.3	97.3	74.4	93.4
85	182.1	182.2	61.5	42.7	87	60.8	74.2
85	182.2	182.3	68	38.8	79.1	51.1	73.6
85	182.3	182.4	54	38.8	43.7	28	48.8

IRI DATA FOR PCN 24881 PROJECT NO. NH-XB-7-085(140)164							
Hwy 85, Northtbound Survey Data Collection Date = 9/15/2025							
HWY	Start-Mi	End-Mi	IRI_ Left Wheel Path	Standard Deviation	IRI_Right Wheel Path	Standard Deviation	IRI_Average
85	182.4	182.5	54.7	34.6	51.2	31.6	52.9
85	182.5	182.6	46.7	26.8	42.1	30.9	44.4
85	182.6	182.7	59.2	39	45.8	32.6	52.5
85	182.7	182.8	79.2	56.5	86.2	64.5	82.7
85	182.8	182.9	62.5	35.2	53.7	37.1	58.1
85	182.9	183	41.5	20.4	63.6	38.4	52.6
85	183	183.1	40.3	28.3	73.5	78.8	56.9
85	183.1	183.2	56.4	40.7	55.5	31.1	56
85	183.2	183.3	130.5	130	142.6	138.2	136.5
85	183.3	183.4	96.4	61.1	105	64.5	100.7
85	183.4	183.5	75.3	41.3	83.7	46.8	79.5
85	183.5	183.6	96.1	78.4	86.5	43	91.3
85	183.6	183.7	106.4	228.6	111.8	244	109.1
85	183.7	183.8	221.1	154.7	221	171.3	221

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

PERMITS AND ENVIRONMENTAL CONSIDERATIONS

PROJECT NUMBER: NH-XB-7-085(140)164 – PCN 24881

This Special Provision incorporates the Non-Building Floodplain Permit obtained by the North Dakota Department of Transportation (NDDOT) into the bidder's proposal.

The Contractor shall be responsible for complying with all the terms and conditions as contained in the permit(s) attached hereto. Bidders shall become familiar with all standard conditions and special conditions of the permit(s) and submit their bid for the construction of this project based on the following:

- **Floodplain Permit**
  The Non-Building Floodplain Permit issued by Williams County allows work within the FEMA mapped 100-yr floodplain. The Floodplain Permit and the Flood Insurance Rate Maps are attached.

The Contractor is responsible for preparing and submitting Permit(s) for any additional impacts not authorized by the attached Permit(s) obtained by the NDDOT. The Contractor is responsible for any delays associated with obtaining any additional Permit(s).

FLOODPLAIN DEVELOPMENT PERMIT APPLICATION
NON-BUILDING SITUATION

GENERAL INFORMATION

PERMIT APPLICATION #_____ DATE: _____

Applicant/Contact: *NDDOT/Steve Kessler* Telephone # *(701) 328-3736*

Address: *North Dakota Department of Transportation*
Attn: Engineering and Environmental Services
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Brief project description - location of proposed development - legal description:
Section 6, T153N, R101W
Work will include a 1" mill and 2" overlay on US Highway 55 from ND Highway 200 north to the junction of US Highway 2. Work will be within the FEMA mapped 100-yr floodplain of the Missouri River.

Contractor: *Contract Not Awarded*
Telephone #
Address:
Estimated Cost of project:

FLOODPLAIN DETERMINATION :

(Complete the appropriate information)

Project is located: 100-year floodplain? (Flood Fringe): *Yes*
Regulatory Floodway: *No*

Map information: FIRM Date: *November 4, 1987*
FIRM Zone: *Zone A*
BFE at Development Site:
Development will be elevated to:

DEVELOPMENT ACTIVITIES: (check all that apply and explain the activity)

__ Fill placement (fill brought in from outside the floodplain)
____ Excavation (where subgrade fill is removed from the floodplain)
____ Landscaping (cut and fill, fill borrow and placement)
____ Construction or maintenance of a dike/levee/floodwall

____ Removal of fill, embankment, or dikes
____ Watercourse alterations (river, stream, lake - channel modifications, rip-rap)
____ Road, street or bridge construction (new, repair or replacement, realignment)
____ Drainage improvements (including culvert work)
____ Mining (removal of gravel, rock, fill or other natural materials)
____ Installation of utilities (water, sewer, pipeline, gas, electric, communications)
____ Well drilling (water, oil, natural gas etc.)
____ Subdivision (new or expansion)
__X__ Other (*1" mill and 2" overlay*)

ADDITIONAL INFORMATION REQUIRED (attach additional information):
-Comments or further explanation of work:
-Copies of project description, plans, blueprints, etc.
-Wetlands - will the activity impact identified wetlands? *No*
-Will the development aggravate flooding elsewhere? *Unknown*

OTHER NOTIFICATION OR PERMITS NECESSARY:

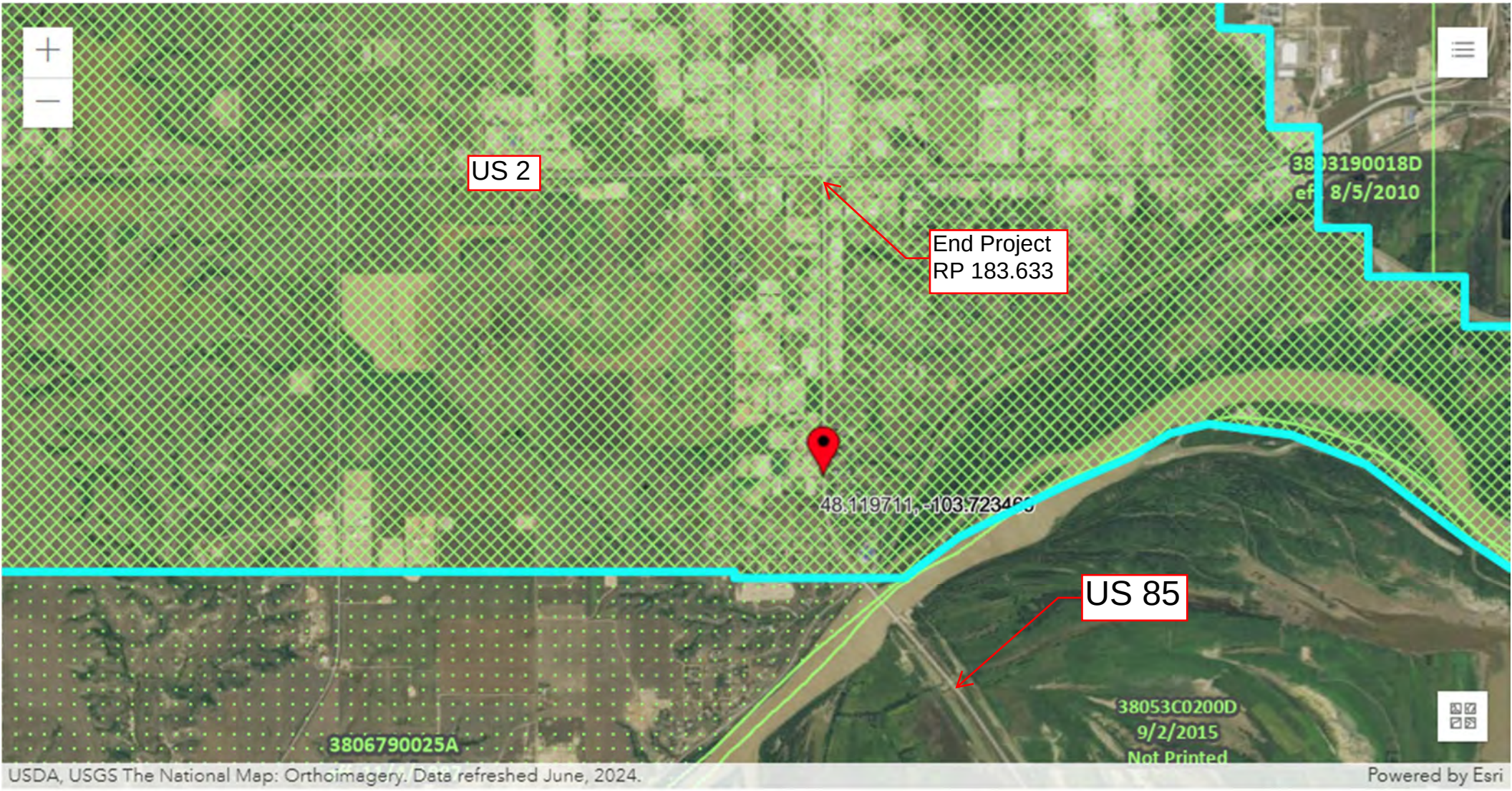
ELEVATION INFORMATION:
Attach information about the completed project elevations(s) with registered professional engineer or registered land surveyor certifications if part of the project:

ACTION / APPROVAL:
The proposed development is in conformance with applicable community floodplain standards subject to the following conditions with this approval.

PERMIT APPLICATION IS APPROVED
(Conditioned on the description provided. As-built information/certification will be available at the NDDOT District Office upon completion of construction.)

Signature (Floodplain Administrator):_____

Date: 7-13-26



PIN
- Approximate location based on user input and does not represent an authoritative property location

MAP PANELS
- Selected FloodMap Boundary
- Digital Data Available
- No Digital Data Available
- Unmapped

OTHER AREAS
- NO SCREEN Area of Minimal Flood Hazard Zone X
- Effective LOMRs
- Area of Undetermined Flood Hazard Zone D
- Otherwise Protected Area
- Coastal Barrier Resource System Area

SPECIAL FLOOD HAZARD AREAS
- Without Base Flood Elevation (BFE) Zone A, V, A99
- With BFE or Depth
- Regulatory Floodway Zone AE, AO, AH, VE, AR

OTHER AREAS OF FLOOD HAZARD
- 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
- Future Conditions 1% Annual Chance Flood Hazard Zone X
- Area with Reduced Flood Risk due to Levee. See Notes. Zone X
- Area with Flood Risk due to Levee Zone D

OTHER FEATURES
- 20.2 / 17.5 Cross Sections with 1% Annual Chance Water Surface Elevation
- Coastal Transect
- Base Flood Elevation Line (BFE)
- Limit of Study
- Jurisdiction Boundary
- Coastal Transect Baseline
- Profile Baseline
- Hydrographic Feature

GENERAL STRUCTURES
- Channel, Culvert, or Storm Sewer
- Levee, Dike, or Floodwall



KEY TO MAP

Zone Designations: ZONE C / ZONE A / ZONE C

Base Flood Elevation Line With Elevation In Feet** — 513

Base Flood Elevation in Feet Where Uniform Within Zone** — (EL 987)

Elevation Reference Mark — RM7×

Zone D Boundary

River Mile — •M1.5

**Referenced to the National Geodetic Vertical Datum of 1929

EXPLANATION OF ZONE DESIGNATIONS

ZONE	EXPLANATION
A	Areas of 100-year flood; base flood elevations and flood hazard factors not determined.
AO	Areas of 100-year shallow flooding where depths are between one (1) and three (3) feet; average depths of inundation are shown, but no flood hazard factors are determined.
AH	Areas of 100-year shallow flooding where depths are between one (1) and three (3) feet; base flood elevations are shown, but no flood hazard factors are determined.
A1-A30	Areas of 100-year flood; base flood elevations and flood hazard factors determined.
A99	Areas of 100-year flood to be protected by flood protection system under construction; base flood elevations and flood hazard factors not determined.
B	Areas between limits of the 100-year flood and 500-year flood; or certain areas subject to 100-year flooding with average depths less than one (1) foot or where the contributing drainage area is less than one square mile; or areas protected by levees from the base flood. (Medium shading)
C	Areas of minimal flooding. (No shading)
D	Areas of undetermined, but possible, flood hazards.
V	Areas of 100-year coastal flood with velocity (wave action); base flood elevations and flood hazard factors not determined.
V1-V30	Areas of 100-year coastal flood with velocity (wave action); base flood elevations and flood hazard factors determined.

NOTES TO USER

Certain areas not in the special flood hazard areas (zones A and V) may be protected by flood control structures.

This map is for use in administering the National Flood Insurance Program; it does not necessarily identify all areas subject to flooding, particularly from local drainage sources of small size, or all planimetric features outside special flood hazard areas.

Coastal base flood elevations apply only landward of the shoreline shown on this map.

INITIAL IDENTIFICATION:
NOVEMBER 4, 1987

FLOOD HAZARD BOUNDARY MAP REVISIONS:

FLOOD INSURANCE RATE MAP EFFECTIVE:
NOVEMBER 4, 1987

FLOOD INSURANCE RATE MAP REVISIONS:

Refer to the FLOOD INSURANCE RATE MAP EFFECTIVE date shown on this map to determine when actuarial rates apply to structures in the zones where elevations or depths have been established.

To determine if flood insurance is available in this community, contact your insurance agent, or call the National Flood Insurance Program, at (800) 638-6620.

APPROXIMATE SCALE IN FEET
2000 0 2000

NATIONAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP

TOWNSHIP OF
TRENTON,
NORTH DAKOTA
WILLIAMS COUNTY

ONLY PANEL PRINTED

COMMUNITY-PANEL NUMBER
380679 0025 A

EFFECTIVE DATE:
NOVEMBER 4, 1987

Federal Emergency Management Agency

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

MATERIALS PIT LIST

GENERAL NOTES

NOTES: All pit data for the **November 20, 2026** bid opening has been carefully prepared and is believed to be correct insofar as reliable preliminary pit information can reasonably be obtained. The contractors are advised to check all pit information before bidding.

It is recommended all bidders discuss pertinent pit data with the Materials and Research Engineer prior to the bid opening. Information such as field notes, field loggings, and comments may not be included in the materials pit list or boring logs. This additional information if present would be in the respective pit file at the Materials and Research Division.

Field logging by prospecting crews may list silt, clay, or silty clay. Our test hole plat will show silt-clay for those listings because the Department does not test to determine what percent is clay and what percent is silt.

Each pit shall be operated to prevent waste and to make the best use of the deposit and to produce a uniform gradation for the item of work under construction. Usually, the material will be removed to the full width and depth of the deposit. The purpose is to exhaust the portion of the pit being worked so the stripping or topsoil can be pushed into this exhausted area and smoothed, thereby eliminating the necessity of covering unused material in the pit unless the owner agrees otherwise.

In the use of pits, the contractor is required to comply with all federal, state, and local laws, regulations and permits.

In the use of department-owned or optioned pits, the contractor shall fulfill all obligations imposed on the Department under the Department's options or agreements.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
MATERIALS PIT LIST

Material	Location	Approximate Quantity	Price and Ownership
PROJECT NH-7-085(140)164 – MILLING/ASP OL<=2 – US 85 FROM NEAR JCT ND 200 TO JCT US 2 – MCKENZIE AND WILLIAMS COUNTIES			
Aggregate	SE ¼ 7-159-100	500,000+ ton	State Optioned until December 31, 2031 for 300.0¢ per cu.yd or 200.0¢ per ton. Mitchel Oyen and Lance Oyen 993 Southwell Enclave Byron, MN 55920 Telephone: 507-990-3754

NOTE: COA have just finished up on this source, and we have now started to design bore this location out. Materials and Research may have some information on this source.

NDDOT Material Source Certificate of Approval is attached at the end of this job pit list.

Interested bidders are advised to investigate all the details concerning these deposits to their own satisfaction before considering them for bidding purposes.

Aggregate	NW ¼ 28-160-100	500,000+ ton	State Optioned until December 31, 2031 for 300.0¢ per cu.yd or 200.0¢ per ton. Ricky and Cindy Foss 13685 86th St NW Alamo, ND 58830 Telephone: Home 701-694-2362 Telephone: Cell 701-570-3027

NOTE: COA have just finished up on this source, and we have now started to design bore this location out. Materials and Research may have some information on this source.

NDDOT Material Source Certificate of Approval is attached at the end of this job pit list.

Interested bidders are advised to investigate all the details concerning these deposits to their own satisfaction before considering them for bidding purposes.

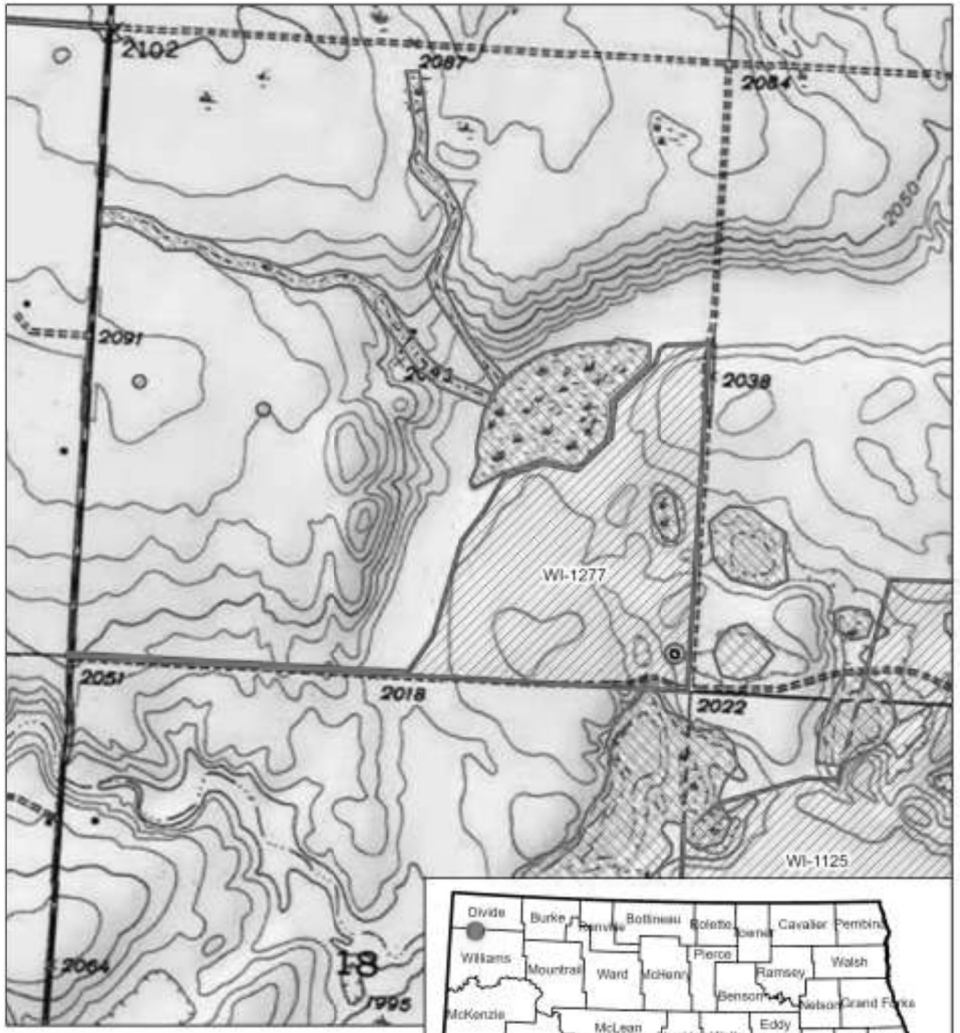
Aggregate	NW ¼ 4-159-100	500,000+ ton	State Optioned until December 31, 2031 for 300.0¢ per cu.yd or 200.0¢ per ton. Edward Nelson 425 15th Ave W Williston, ND 58801 Telephone: 701-770-2526

NOTE: COA have just finished up on this source, and we have now started to design bore this location out. Materials and Research may have some information on this source.

NDDOT Material Source Certificate of Approval is attached at the end of this job pit list.

Interested bidders are advised to investigate all the details concerning these deposits to their own satisfaction before considering them for bidding purposes.

NDDOT Material Source Certificate of Approval



WI-1277

Pit Name:
Oyen

SE1/4 & SE1/4 of NE1/4 S. 7 T. 159 N, R 100 W

County: Williams

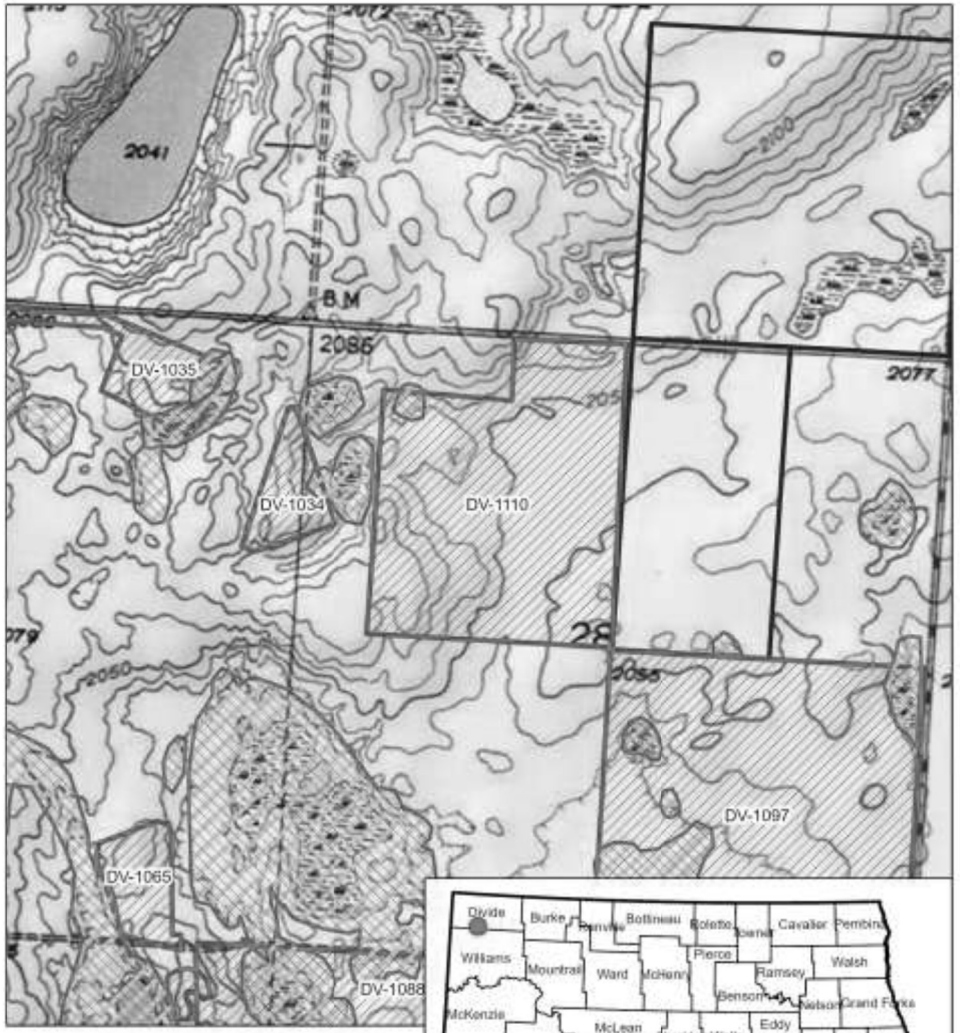
Conditions:

This location is approved for use, provided all avoidance areas shown on the map are avoided and all Conditions listed above and below are complied with.

NDDOT advises that all applicants (contractors or their representatives) may be subject to meeting certain legal responsibilities pursuant to one or more of the following authorities administered by the USFWS: Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.); Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.); and Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250). It is the responsibility of the applicants and/or any individual conducting activities at any approved site to fulfill the requirements of these Acts. The contractor will be responsible obtaining all applicable permits outlined in Section 107 of the Standard Specifications for Road and Bridge Construction (SSRBC). Additionally, contractor will be responsible for any impacts to wetlands, including permitting those impacts and mitigating the loss of the wetlands. As with all projects, if cultural artifacts and/or features (e.g., stone tools, fire hearths, stone circles, burials) are encountered, provisions outlined in Section 107.06 of SSRBC shall be followed.

This approval does not imply landowner permission to acquire material at this location. An agreement with the landowner is still necessary. If you have any questions regarding material sources please email materialsource@nd.gov

NDDOT Material Source Certificate of Approval



DV-1110

Pit Name:
Foss

NW1/4 S. 28 T. 160 N, R 100 W

County: Divide

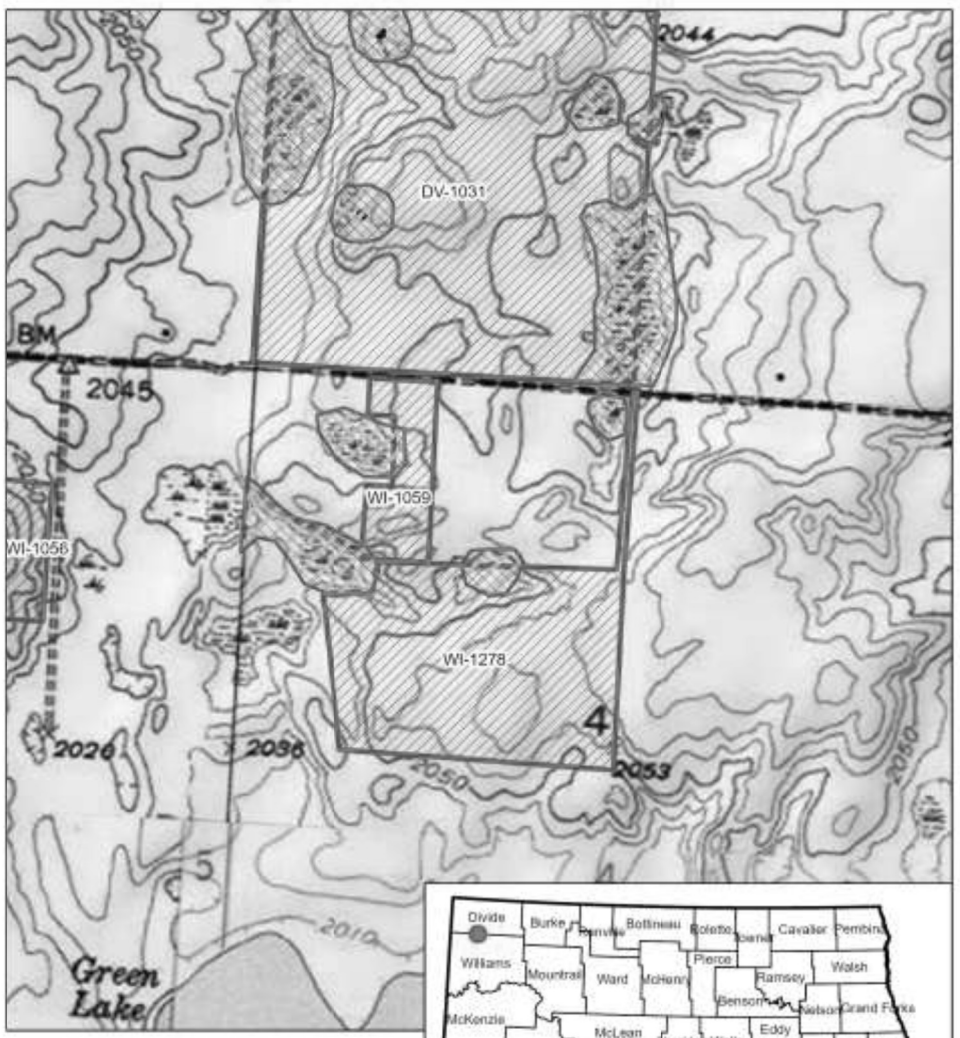
Conditions:

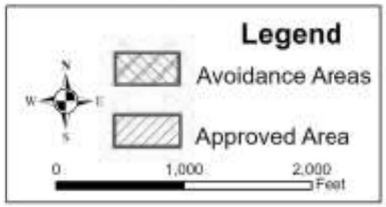
This location is approved for use, provided all avoidance areas shown on the map are avoided and all Conditions listed above and below are complied with.

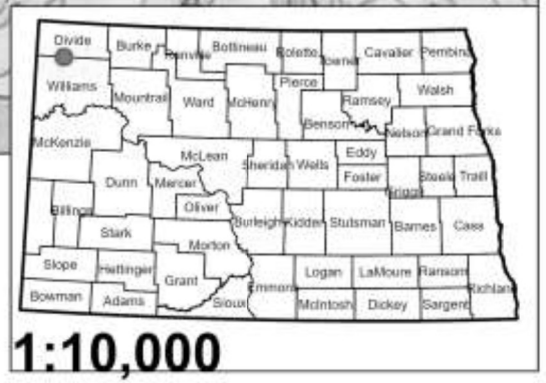
NDDOT advises that all applicants (contractors or their representatives) may be subject to meeting certain legal responsibilities pursuant to one or more of the following authorities administered by the USFWS: Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.); Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.); and Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250). It is the responsibility of the applicants and/or any individual conducting activities at any approved site to fulfill the requirements of these Acts. The contractor will be responsible obtaining all applicable permits outlined in Section 107 of the Standard Specifications for Road and Bridge Construction (SSRBC). Additionally, contractor will be responsible for any impacts to wetlands, including permitting those impacts and mitigating the loss of the wetlands. As with all projects, if cultural artifacts and/or features (e.g., stone tools, fire hearths, stone circles, burials) are encountered, provisions outlined in Section 107.06 of SSRBC shall be followed.

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NDDOT Material Source Certificate of Approval







WI-1278

Pit Name:
Nelson

NW1/4 S. 4 T. 159 N, R 100 W

County: Williams

Conditions:

This location is approved for use, provided all avoidance areas shown on the map are avoided and all Conditions listed above and below are complied with.

NDDOT advises that all applicants (contractors or their representatives) may be subject to meeting certain legal responsibilities pursuant to one or more of the following authorities administered by the USFWS: Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.); Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.); and Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250). It is the responsibility of the applicants and/or any individual conducting activities at any approved site to fulfill the requirements of these Acts. The contractor will be responsible obtaining all applicable permits outlined in Section 107 of the Standard Specifications for Road and Bridge Construction (SSRBC). Additionally, contractor will be responsible for any impacts to wetlands, including permitting those impacts and mitigating the loss of the wetlands. As with all projects, if cultural artifacts and/or features (e.g., stone tools, fire hearths, stone circles, burials) are encountered, provisions outlined in Section 107.06 of SSRBC shall be followed.

This approval does not imply landowner permission to acquire material at this location. An agreement with the landowner is still necessary. If you have any questions regarding material sources please email materialsource@nd.gov

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)	