

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSAL

STATE FEDERAL AID PROJECT NOS. SS-2-999(064) (PCN-23419) and IM-2-094(194)260
(PCN-23577)

0.514 Miles

STRUCTURE REPLACEMENT, APPROACH SLABS, GUARDRAIL, CONCRETE PAVEMENT RECONSTRUCTION, &
ROAD CLOSURE GATES

I-94, .5 MI E OF JCT US 281 (HOSPITAL ROAD & JAMES RIVER STRUCTURES)- JAMESTOWN and I-94, JCT I-94
BUSINESS LOOP INTERCHANGE - JAMESTOWN

STUTSMAN COUNTY

DBE Race Conscious Goal - 8.00%

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 December 08, 2023.**

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

Proposal Form of:

(Firm Name)

(Address, City, State, Zipcode)

(For official use only)

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Projects: SS-2-999(064) (PCN-23419) and IM-2-094(194)260 (PCN-23577)

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

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

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

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

NON-COLLUSION AND DEBARMENT CERTIFICATION

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

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

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

Projects: SS-2-999(064) (PCN-23419) and IM-2-094(194)260 (PCN-23577)

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

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

Explanation: _____

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

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

BID LIMITATION (Optional)

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

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

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

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

OR

that exceed a total number of _____ projects.

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

Projects: SS-2-999(064) (PCN-23419) and IM-2-094(194)260 (PCN-23577)

PERMISSIBLE DISCOUNT (optional)

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

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

Space for Offering Discounts:

Item No: _____

Description: _____

Unit: _____

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

Item No: _____

Description: _____

Unit: _____

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

Item No: _____

Description: _____

Unit: _____

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

TOTAL DISCOUNT _____

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

Projects: SS-2-999(064) (PCN-23419) and IM-2-094(194)260 (PCN-23577)

PROPOSAL GUARANTY

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

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

_____ Annual Bid Bond*

_____ Single Project Bid Bond

_____ Certified or Cashier's Check

*Annual Bid Bond is required when submitting proposals electronically

BID ITEMS

Projects: SS-2-999(064) (PCN-23419) and IM-2-094(194)260 (PCN-23577)

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	0121	RAILWAY PROTECTION INSURANCE - COMPANY A	L SUM	1.				
003	107	0122	RAILWAY PROTECTION INSURANCE - COMPANY B	L SUM	1.				
004	107	0141	RAILROAD COORDINATION - COMPANY A	L SUM	1.				
005	107	0142	RAILROAD COORDINATION - COMPANY B	L SUM	1.				
006	107	0153	RAILROAD FLAGGING - COMPANY B	L SUM	1.				
007	107	0162	RAILROAD FLAGGING - COMPANY A	DAY	2,000.				
008	201	0330	CLEARING & GRUBBING	L SUM	1.				
009	202	0105	REMOVAL OF STRUCTURE	L SUM	1.				
010	202	0136	REMOVAL OF PAVEMENT	TON	11,244.				
011	202	0174	REMOVAL OF PIPE ALL TYPES AND SIZES	LF	288.				
012	202	0310	REMOVAL OF CHAIN LINK FENCE	LF	438.				
013	203	0101	COMMON EXCAVATION-TYPE A	CY	1,045.				
014	203	0109	TOPSOIL	CY	2,859.				
015	203	0140	BORROW-EXCAVATION	CY	6,446.				
016	203	0195	EMBANKMENT SPECIAL	L SUM	1.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
017	210	0099	CLASS 1 EXCAVATION	L SUM	1.				
018	210	0201	FOUNDATION PREPARATION	EA	1.				
019	216	0100	WATER	M GAL	215.				
020	251	0200	SEEDING CLASS II	ACRE	3.800				
021	251	2000	TEMPORARY COVER CROP	ACRE	2.800				
022	253	0101	STRAW MULCH	ACRE	6.100				
023	255	0201	TRM TYPE 1	SY	100.				
024	261	0112	FIBER ROLLS 12IN	LF	7,457.				
025	261	0113	REMOVE FIBER ROLLS 12IN	LF	4,101.				
026	302	0120	AGGREGATE BASE COURSE CL 5	TON	9,119.				
027	401	0060	PRIME COAT	GAL	4,968.				
028	430	0500	COMMERCIAL GRADE HOT MIX ASPHALT	TON	988.				
029	550	0310	10IN NON REINF CONCRETE PVMT CL AE-DOWELED	SY	10,428.				
030	602	0130	CLASS AAE-3 CONCRETE	CY	469.600				
031	602	1130	CLASS AE-3 CONCRETE	CY	359.400				
032	602	1133	CONCRETE BRIDGE APPROACH SLAB	SY	226.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$\$	000	\$\$\$\$\$	00
033	602	1135	BRIDGE APPROACH SLAB-REMOVE & REPLACE	SY	320.100				
034	602	1250	PENETRATING WATER REPELLENT TREATMENT	SY	4,199.				
035	602	1260	BRIDGE DECK CRACK SEALING	LF	2,400.				
036	602	2000	REMOVE AND RESET ANCHOR BOLTS	EA	2.				
037	602	7000	SPECIAL SURFACE FINISH	SF	6,251.				
038	604	9610	PRESTRESSED BOX BEAM-27IN	LF	1,701.				
039	612	0115	REINFORCING STEEL-GRADE 60	LBS	31,551.				
040	612	0116	REINFORCING STEEL-GRADE 60-EPOXY COATED	LBS	85,035.				
041	616	7500	BEARING MODIFICATION	EA	6.				
042	622	0040	STEEL PILING HP 12 X 53	LF	870.				
043	622	0060	STEEL PILING HP 14 X 73	LF	1,560.				
044	624	3005	CONNECTION PLATE MODIFICATION	EA	2.				
045	630	0110	SAND BLASTING & SPOT PAINTING	SF	114.				
046	650	0805	DECK SPALL REPAIR	SF	116.				
047	702	0100	MOBILIZATION	L SUM	1.				
048	704	0100	FLAGGING	MHR	1,050.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
049	704	1000	TRAFFIC CONTROL SIGNS	UNIT	2,602.				
050	704	1045	ATTENUATION DEVICE-TYPE B-75	EA	3.				
051	704	1052	TYPE III BARRICADE	EA	31.				
052	704	1060	DELINEATOR DRUMS	EA	189.				
053	704	1067	TUBULAR MARKERS	EA	258.				
054	704	1072	FLEXIBLE DELINEATORS	EA	199.				
055	704	1081	VERTICAL PANELS-BACK TO BACK	EA	18.				
056	704	1087	SEQUENCING ARROW PANEL-TYPE C	EA	2.				
057	704	1090	FLASHING BEACON	EA	2.				
058	704	1500	OBLITERATION OF PAVEMENT MARKING	SF	2,132.				
059	704	3511	STATE FURNISHED MEDIAN BARRIER	LF	1,290.				
060	706	0400	FIELD OFFICE	EA	1.				
061	706	0500	AGGREGATE LABORATORY	EA	1.				
062	706	0600	CONTRACTOR'S LABORATORY	EA	1.				
063	709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	11,870.				
064	710	0410	REMOVAL OF TEMP CONNECTION	EA	2.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
065	714	4090	PIPE CONDUIT 12IN	LF	68.				
066	714	4100	PIPE CONDUIT 18IN	LF	148.				
067	714	4105	PIPE CONDUIT 24IN	LF	72.				
068	748	0141	CURB & GUTTER-TYPE 1 SPECIAL	LF	81.				
069	752	0600	FENCE CHAIN LINK	LF	100.				
070	752	0993	FENCE TERMINAL	EA	4.				
071	752	3100	CORNER ASSEMBLY CHAIN LINK	EA	4.				
072	754	0110	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	137.				
073	754	0112	FLAT SHEET FOR SIGNS-TYPE IV REFL SHEETING	SF	23.				
074	754	0149	RESET DELINEATOR	EA	5.				
075	754	0206	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	70.				
076	754	0210	GALV STEEL POST-STANDARD PIPE	LF	109.				
077	754	0214	GALV STEEL POSTS-W-SHAPE POSTS(TWO OR MORE)	LF	66.				
078	754	0534	PANEL FOR SIGNS-TYPE IV REFLECTIVE SHEETING	SF	15.				
079	754	0557	INTERSTATE MILE POSTS-TYPE C	EA	1.				
080	754	0592	RESET SIGN PANEL	EA	1.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
081	754	0801	OBJECT MARKERS - TYPE I	EA	2.				
082	754	0803	OBJECT MARKERS - TYPE III	EA	1.				
083	754	1100	CLASS AE CONCRETE-SIGN FOUNDATIONS	CY	3.				
084	754	1104	REMOVE SIGN FOUNDATION	EA	5.				
085	754	8015	VEHICLE SPEED FEEDBACK SIGN	EA	2.				
086	762	0200	RAISED PAVEMENT MARKERS	EA	6,313.				
087	762	0430	SHORT TERM 4IN LINE-TYPE NR	LF	20,729.				
088	762	0432	SHORT TERM 6IN LINE-TYPE NR	LF	14,470.				
089	762	1104	PVMT MK PAINTED 4IN LINE	LF	25,276.				
090	762	1108	PVMT MK PAINTED 8IN LINE	LF	647.				
091	762	1305	PREFORMED PATTERNED PVMT MK 4IN LINE-GROOVED	LF	19,292.				
092	764	0107	REMOVE HIGH TENSION GUARDRAIL	LF	1,510.				
093	764	0109	RESET HIGH TENSION GUARDRAIL	LF	1,510.				
094	764	0131	W-BEAM GUARDRAIL	LF	1,576.				
095	764	0145	W-BEAM GUARDRAIL END TERMINAL	EA	9.				
096	764	0151	REMOVE W-BEAM GUARDRAIL & POSTS	LF	2,195.				

BID ITEMS

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
097	764	1050	RESET W-BEAM GUARDRAIL	LF	325.				
098	764	1059	RESET W-BEAM GUARDRAIL END TERMINAL	EA	1.				
099	764	2081	REMOVE END TREATMENT & TRANSITION	EA	5.				
100	772	2110	FLASHING BEACON-POST MOUNTED	EA	2.				
101	900	0700	FLEXIBLE GROWTH MEDIUM	SY	1,696.				
102	910	0565	CONTROLLED DENSITY BACKFILL	CY	2.500				
103	930	3000	BRIDGE BENCH MARKS	SET	1.				
104	930	7012	ROADWAY CANOPY	L SUM	1.				
105	930	8671	CONCRETE SLEEPER SLAB	SY	156.				
106	930	8700	3 IN EXPANSION JOINT	LF	233.				
107	930	9505	BRIDGE REPAIR-BEARING	L SUM	1.				
108	930	9537	ABUTMENT UNDERDRAIN SYSTEM	EA	3.				
109	930	9612	SPALL REPAIR	SF	80.				
110	930	9660	ABUTMENT REPAIR	L SUM	1.				
111	950	8673	EXPANSION JOINT MODIFICATION	LF	61.700				
112	980	0811	VERTICAL ROAD CLOSURE GATE-28FT	EA	2.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$\$	000	\$\$\$\$\$	00
			TOTAL SUM BID						

Projects: SS-2-999(064) (PCN-23419) and IM-2-094(194)260 (PCN-23577)

Type of Work: STRUCTURE REPLACEMENT, APPROACH SLABS, GUARDRAIL, CONCRETE PAVEMENT RECONSTRUCTION, & ROAD CLOSURE GATES

County: STUTSMAN

Length: 0.5140 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 10/26/2024. The Department provides a minimum of NA working days. The Department will begin charging working days beginning NA or the date work begins on the project site, whichever is earlier.

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Type of Work: STRUCTURE REPLACEMENT, APPROACH SLABS, GUARDRAIL, CONCRETE PAVEMENT RECONSTRUCTION, & ROAD CLOSURE GATES

County: STUTSMAN

Length: 0.5140 Miles

UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISE (DBE):

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

CONTRACT EXECUTION:

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

AFFIDAVIT:

STATE OF _____)
) **ss.**
COUNTY OF _____)

The undersigned bidder, being duly sworn, does depose and say that they are an authorized representative of _____
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 23419, SS-2-999(064) & IM-2-094(194)260

Structure Replacement, Approach Slabs, Guardrail, Concrete Pavement Reconstruction
& Road Closure Gates

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Hot Line Notice

Price Schedule for Miscellaneous Items dated February 15, 2023 (PS-1)

SP DBE Program - Race Conscious dated March 1, 2022

E.E.O. Affirmative Action Requirements dated March 15, 2014

Required Contract Provisions Federal Aid Construction Contracts
(Form FHWA 1273 Rev. October 23, 2023)

SP Certified Payrolls, dated 9-6-17

SP Project Payment Reporting

NOTICE – Bridge Painter

Labor Rates from U.S. Department of Labor dated November 3, 2023 (Mod. No. 1)

On-The-Job Training Program 2023

SSP 1 Temporary Erosion & Sediment Best Management Practices

SSP 2 Federal Migratory Bird Treaty Act

SSP 5 Limitations of Operations

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SP Fuel Cost Adjustment Clause dated September 8, 2006

NOTICE

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

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

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

ROAD RESTRICTION PERMITS

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

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

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

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

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

2/15/2023

**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	\$48.50 per MHR
100	9951	216.04	Water	Water	\$33.00 per M Gal
100	9952	430.04 G & I.3	HMA – Bituminous Materials	Patching – Machine	\$155.00per Ton
100	9952	430.04 G & I.3	HMA – Bituminous Materials	Patching – Hand Placed	\$175.00 Per Ton
100	9954	302.04 B	Aggregate Base and Surface Course	Aggregate Base CL 13	\$27.00 per Ton ¹
100	9955	203.01 C	Rock Excavation	Rock Excavation	\$14.75 per CY
100	9956	203.01 D	Shale Excavation	Shale Excavation	\$6.50 per CY
100	9957	203.01 E	Muck Excavation	Muck Excavation	\$9.85 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	\$25.00 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.

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION SPECIAL PROVISION:
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
PROJECTS SS-2-999(064) (PCN-23419) and IM-2-094(194)260 (PCN-23577)**

RACE/GENDER CONSCIOUS GOAL The DBE goal for this project is: **8.00%**

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

PURPOSE

These provisions:

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

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

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

QUOTES:

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

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

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

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

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

REQUIREMENTS FOR ALL BIDDERS:

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

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

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

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

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

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

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

GOOD FAITH EFFORTS

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

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

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

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

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

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

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

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

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

Either method of advertisement must:

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

that may affect a price quote.

9) Did you sign-in?

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

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

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

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

EVALUATION OF GOOD FAITH EFFORTS

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

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

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

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

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

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

Administrative Reconsideration 49 CFR § 26.53 (d)

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

POST-AWARD REQUIREMENTS

FEDERAL AUTHORITY

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

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

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

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

PRIME CONTRACTOR'S MONITORING, RESPONSIBILITIES, REPORTING

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

The prime is responsible to:

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

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

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

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

The Department's contract includes a provision stating:

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

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

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

EXCEPTION FOR REPLACEMENTS DUE TO PUBLIC NECESSITY

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

TERMINATION FOR CAUSE

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

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

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

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

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

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

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

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

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

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

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

UNFULFILLED OBLIGATIONS

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

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

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

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

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

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

NON-COMPLIANCE, FAILURE TO PERFORM, AND SANCTIONS

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

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

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

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

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

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

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

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

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

NDDOT MONITORING AND ENFORCEMENT MECHANISMS

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

COMMERCIALLY USEFUL FUNCTION

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

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

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

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

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

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

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

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

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

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

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

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

Bulk Items 49 CFR 26.55 (e)(ii)

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

Specialty Products

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

March 15, 2014

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

APPENDIX A

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

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:
 - a. Goals for Female Participation in Each Trade – Statewide6.9%
 - b. Goals for Minority Participation in Each Trade by County:
Barnes, Cass, Dickey, Eddy, Foster, Griggs, LaMoure, Logan,
McIntosh, Ransom, Richland, Sargent, Steele, Stutsman, Traill0.7%
 - Grand Forks1.2%
 - Benson, Cavalier, Nelson, Pembina, Ramsey, Towner, Walsh2.0%
 - Burleigh, Morton0.4%
 - Adams, Billings, Bowman, Dunn, Emmons, Golden Valley, Grant,
Hettinger, Kidder, Mercer, Oliver, Sheridan, Sioux, Slope, Stark, Wells . . .1.3%
 - Bottineau, Burke, Divide, McHenry, McKenzie, McLean, Mountrail,
Pierce, Renville, Rolette, Ward, Williams4.4%

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

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

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

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

Notification should be sent to:

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

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

APPENDIX B

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

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

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

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

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

the sources compiled under 7b above.

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

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

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

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

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

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Assurances Required:

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

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

1. Minimum wages (29 CFR 5.5)

a. *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 V, 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 procurement 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

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

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 IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to 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 FHWA-1273 in any subcontracts, 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](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) 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 IV 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 procurement 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.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

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

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

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.

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

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

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

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

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

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

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

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

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

* * * * *

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.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

After award, the Prime Contractor (Prime) must:

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

09/06/2017

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

A. DESCRIPTION

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

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

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

B. PROMPT PAYMENT REQUIREMENTS

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

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

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

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

C. REPORTING REQUIREMENTS

1. General.

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

2. Utilization Plan.

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

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

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

a. Non-Account Holders.

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

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

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

b. Additional Payees.

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

3. Payments.

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

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

4. Payment Discrepancies.

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

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

5. Certification and Compliance System Assistance.

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

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

01242023

NOTICE

The Labor Rates from U.S. Department of Labor for this project does not include a job classification and wage rate for **Bridge Painters**. Therefore, the classification and wage rate must be conformed after contract award pursuant to the Code of Federal Regulations, Title 29, Part 5, Subpart A, Section 5.5(a)(1)(ii).

This means the contractor performing the work to which the **Bridge Painter** job classification applies must submit a Request for Authorization of Additional Classification and Rate (SF 1444) to this division for those individuals involved in bridge painting (available at the following link):

<http://www.gsa.gov/portal/forms/download/115906>

The requests should be submitted prior to commencement of work on the project. If the requests are submitted after work has started, the regulations require that each individual employed in the job classifications, or their representatives, **sign Block 16 of the form and check whether they agree or disagree with the proposed additional classification and rate (including any amounts designated for fringe benefits).**

For assistance or questions concerning the conformance process, contact:

Civil Rights Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700
Phone: 701-328-2563 Email: civilrights.nd.gov

Submit the completed Requests for Authorization of Additional Classification and Rate to:

Ramona Bernard, Director
Civil Rights Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

The U.S. Department of Labor's policy in conforming a job classification and wage rate is:

If the proposed classification is a skilled craft, the proposed rate **cannot be less than** the lowest rate already established for a skilled job classification in the wage determination.

Exceptions to the skilled job classifications are the Power Equipment Operator, Truck Driver, and Electrician groups.

If the established rate for a skilled job classification includes a fringe benefit amount, the

proposed rate does not have to specify an amount for fringe benefits. The fringe benefit amount could be added to the hourly wage. In other words, the proposed rate must be equal to or higher than the total of the established hourly rate plus the amount designated for fringe benefits.

NOTE: The lowest rate already established for a skilled job classification in the wage determination for highway construction in North Dakota is Carpenters and Cement Masons/Finishers. The Labor Rates from U.S. Department of Labor associated with this project can be found in this proposal.

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

U.S. DEPARTMENT OF LABOR

<small>STATE</small> NORTH DAKOTA	<small>COUNTY</small> STATEWIDE	ND20230006 Page 1 <small>DATE OF DECISION</small> 10-06-23 Revised 11/03/2023(Mod No.1)
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CARPENTERS

CEMENT MASONS/FINISHERS

LINE CONSTRUCTION:

- Lineman
- Cable Splicer
- Line Equipment Operator
- Groundman

ELECTRICIANS:

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

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

- Electrician
 (Cass County)

WELDERS:

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

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$35.85	\$ 7.60
35.85	7.60
49.68	8.30 + 29.5%
49.68	8.30 + 29.5%
42.18	8.30 + 29.5%
28.12	8.30 + 19.5%
49.68	8.30 + 29.5%
49.68	8.30 + 29.5%
48.00	7.80 + 29.5%
49.68	8.30 + 29.5%
35.35	16.32

LABOR RATES

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LABORERS:

Group 1

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

Group 2

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

Group 3

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

Group 4

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

POWER EQUIPMENT OPERATORS:

Group 1

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

Group 2

All Cranes 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.

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$27.65	\$ 3.15
27.90	3.15
28.05	3.15
28.80	3.15
34.05	20.65
32.65	20.65

LABOR RATES

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POWER EQUIP.OPERATORS: (CONT.)

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 (Surface Planer) 43" and over; Scraper Operator; Slip Form Concrete Paving Operator; Tandem Pushed Quad 9 or similar; Tractor with Boom Attachment; Trenching Machine Operator 100 H.P. and over.

Group 4

Articulated/Off Road Hauler; Asphalt Dump Person(Controls the spread of asphalt); Asphalt Paving 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.

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 Machine Operator up to and including 5"; Roller (on other than hot mix asphalt

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$32.40	\$20.65
32.25	20.65

LABOR RATES

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POWER EQUIP.OPERATORS: (CONT.)

Group 5 (CONT.)

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

Group 6

Assistant/Apprentice Operator; Brakeman or Switchman; Dredge or Tugboat Deckhand; Drill Truck Gravel/Testing Operator; Form Trench Digger (Power); 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.

TRUCK DRIVERS:

Single-Axle Truck

Tandem- and Tri-Axle Truck

Tandem- and Tri-Axle Semi, Lowboy

Off Road Heavy Duty End Dumps 20 Yards and Under

Euclid, Over 20 Yards

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$31.40	\$20.65
30.60	20.65
31.97	16.90
32.09	16.90
32.40	16.90
32.40	16.90
33.92	16.90

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

LABOR RATES

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HIGHWAY CONSTRUCTION PROJECTS

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

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022: Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing the contract in 2023.

If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022: Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

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

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

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.

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

IV. FUNDING

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

V. ONLINE RESOURCES

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>

SFN 62136 On-The-Job Training (OJT) Program Dependent Child Care Reimbursement:
<https://www.dot.nd.gov/forms/sfn62136.pdf>

Davis-Bacon and Related Acts (DBRA) Handbook:

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."

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

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

VII. NDDOT'S RESPONSIBILITIES

- A. The NDDOT OJT supportive services (OJTSS) consultant will monitor excerpts from the weekly certified payrolls or LCP Tracker for NDDOT projects submitted with the monthly vouchers for reimbursement. On contracts where certified payrolls are not required and not available for supporting documentation, contractors may enter trainee wages, hours in training, and the project control number(s) (PCN) in a spreadsheet to support their reimbursement vouchers. In this case, contractors should work with OJTSS to assure that all information required for payment is provided.
- B. The OJTSS will review Daycare Reimbursement Forms and make recommendations to CRD on approvals. CRD approves any reimbursements and the OJTSS will process any payments. OJTSS tracks funds available/expended in order to stay within the limit of available funds that season/year. OJTSS Daycare reimbursements are made using OJTSS funding, which may be limited or unavailable year to year.
- C. The OJTSS consultant will assess when the trainees have completed the specified number of hours and their wages are increased accordingly. The OJTSS consultant will also assure that applicable fringe benefits are paid either directly to the trainees or for the trainee into approved plans, funds, or programs.

- D. The OJTSS consultant is charged with visiting trainees and monitoring their progress under the OJT Program. To facilitate the on-site visits, the OJTSS consultant will contact contractors for the location of the trainees weekly.

VIII. CONTRACTOR'S RESPONSIBILITIES

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

Minimum number of hours required:

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

Class B Truck Driver to Class A = 200 hrs.

Depending on the variety of experience the trainee has gained under the previous curriculum, the difference in the hours may be deducted from the actual operation of the piece of equipment or truck. The contractor will need to review the trainee's past performance 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 80 hours of work on highway construction projects.

Reimbursement for classroom training will be limited to 60 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/divisions/civilrights/laborcompliance.htm>
- 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/divisions/civilrights/laborcompliance.htm>
- 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.

E. Daycare Reimbursement Program:

Approved trainees may apply for the OJT Daycare Reimbursement Program and be eligible for up to \$3,500 in reimbursement of daycare costs. The trainee must be the legal primary custodial guardian of the dependent(s) they are requesting reimbursement for. Dependent(s) must reside at the same address as the trainee for

more than 50% of the calendar year. Proof of cost and other documentation will be required to be submitted with the OJT Dependent Child Care Reimbursement Form.

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

XII. BASIS OF PAYMENT

- E. Contractors will be paid \$4.00 for each hour of training in accordance with the OJT Program Manual.
- F. Reimbursement will be made directly to the contractor. Complete SFN 51023 Voucher for On-the-Job Training Program Hourly Reimbursement for each trainee. LCPTracker must be utilized on NDDOT projects for reporting certified payrolls. The OJTSS consultant will be verifying hours submitted on NDDOT projects through this online reporting system. For non-NDDOT projects the firm must attach excerpts from the weekly certified payrolls showing the trainee's hours, rate of pay, and how applicable fringe benefits were paid. Vouchers without excerpts from payrolls will not be paid until the excerpts are provided. If the excerpts from the payrolls are not provided within one week, the voucher will not be paid, and the trainee's hours will not be credited toward completion.
- G. On contracts where certified payrolls are not required and not available for supporting documentation, contractors may enter trainee wages, hours in training, and the project control number(s) (PCN) in a spreadsheet to support their reimbursement vouchers. In this case, contractors should work with OJTSS to assure that all information required for payment is provided.
- H. Submit completed vouchers to CRD for approval and processing by the fifteenth (15th) calendar day of every following month the trainee is employed under the OJT Program.

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

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

- A. The contractor is required to consistently demonstrate efforts to recruit, hire, and train candidates for the OJT Program.
- B. If the contractor does not show in a timely manner good faith efforts to recruit, hire, and train candidates in the targeted group, the Department may withhold progress payments

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

XIV. UNFILLED OR INCOMPLETE TRAINEE POSITIONS

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES

1. GENERAL

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

Definitions:

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

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

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

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

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

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

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

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

2. CONSTRUCTION REQUIREMENTS

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

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

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

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

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

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

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

Coordinate temporary erosion and sediment ESCMs with the construction of permanent erosion and sediment ESCMs to provide continuous erosion control. Do not install

temporary erosion and sediment ESCMs when permanent erosion and sediment ESCMs are able to be installed. Once the permit is terminated or transferred to the Department, the maintenance of the permanent erosion and sediment ESCMs becomes the responsibility of the NDDOT.

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

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

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

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

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

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

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

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

3. Erosion and Sediment Control Supervisor.

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

B. Qualifications. The supervisor shall be:

1. An employee of the Prime Contractor;
2. Familiar with installation, maintenance, and removal of ESCMs and the requirements of the erosion and sediment control plans, applicable permit requirements, specifications, plans and this provision;
3. Competent to supervise personnel in erosion and sediment control operations; and
4. Certified through the NDDOT ESCC Certification Training and maintain that training throughout the term of the contract. The EPA construction inspection course cannot take the place of the NDDOT ESCCC. No other certifications may take the place of this requirement.

C. Duties. The supervisor shall:

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

4. Erosion And Sediment Control Inspector for EPA Construction General Permit

For projects covered by EPA Construction General Permit, provide individuals conducting the Erosion and Sediment Control Inspections that have taken the EPA Construction inspection course developed for this permit. These individuals must have passed the exam or hold a valid construction inspection certification or license from an equivalent program.

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

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

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

5. PERFORMANCE

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

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

These actions will be applied until deficiencies have been corrected.

6. BASIS OF PAYMENT

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

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

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

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

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

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

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

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

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION
FEDERAL MIGRATORY BIRD TREATY ACT

GENERAL

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

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

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

PREVENTATIVE MEASURES

General

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

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

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

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

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

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

SURVEY REQUIREMENTS

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

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

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

BASIS OF PAYMENT

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

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

LIMITATIONS OF OPERATIONS

DESCRIPTION

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

108.05 LIMITATION OF OPERATIONS

A. General.

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

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

B. Holidays.

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

C. Night-time Operations and Extended Hours.

1. General.

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

2. Nighttime Operations.

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

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

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

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

3. Extended Hours.

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION

FEDERAL PROHIBITION ON CERTAIN TECHNOLOGICAL HARDWARE

DESCRIPTION

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

CONTRACT REQUIREMENTS

A. Technological Equipment Prohibitions.

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

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

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

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

B. Contractor Certification.

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

Project Number(s): _____

PCN(s): _____

Company Name: _____

Signatory Name (printed): _____

Signature: _____

Date: _____

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

E-Ticketing

DESCRIPTION

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

CONTRACT REQUIREMENTS

A. Material Accepted by Weight.

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

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

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

B. Concrete Batch Plants.

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

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

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

BASIS OF PAYMENT

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

BUY AMERICA

DESCRIPTION

Replace Section 106.08, "Buy America", with the following:

BUY AMERICA

A. General.

Provide materials from domestic sources when products are permanently incorporated into the work.

The requirements of this SP are not applicable to equipment, tools, and temporary items, including materials left in place at the Contractor's convenience.

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 single category of Buy America requirements will apply to an item.

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.

2. Iron and Steel.

An item will be considered iron or steel if it is predominantly composed of iron or steel.

3. Manufactured Products.

A waiver exists for Manufactured Products and are therefore currently not subject to Buy America requirements; however, they are included in this Special Provision to maintain the category definition and consistency with Federal language.

An item will be considered a manufactured product if:

- It consists of two or more of the materials identified as construction materials in Section C.4 of this provision; or
- It consists of at least one of the materials identified as construction materials in Section C.4 of this provision and a material not listed.

4. Construction Materials.

The category of construction materials excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

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);
- lumber; or
- drywall.

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 that are permanently incorporated into the work 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 permanently incorporated into the work that are not listed in Table 1, submit a manufacturer's Certificate of Compliance as specified in Section 106.01 C, "Certificate of Compliance" and the following information:

- a. A signed mill test report.
- b. A signed certification from each fabricator and manufacturer that has handled the steel and iron products affirming that all processes performed on the steel and iron products were conducted in the United States.
- c. Material descriptions, quantities, and a means of material identification (lot number, bin number, heat number, or factory identification) for each process performed on the steel and iron products.

Each certification shall contain the material identification from all previous fabricators and manufacturers in the process.

3. Foreign or Uncertified Products.

These requirements allow the use of steel and iron products produced and manufactured outside the United States, or products that cannot be certified as originating 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 originating in the United States.

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

E. Manufactured Products

A waiver exists for Manufactured Products and are therefore currently not subject to Buy America requirements; however, they are included in this Special Provision to maintain the category definition and consistency with Federal language.

Provide manufactured products produced in the United States.

A manufactured product is acceptable under this provision if:

- The manufactured product was manufactured in the United States; and
- The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product.

F. Construction Materials

Ensure the final manufacturing process and the immediately preceding manufacturing process for construction materials occur within 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

SPECIAL PROVISION

RAILROAD REQUIREMENTS

Project # IM-2-094(194)260– PCN 23577

DESCRIPTION

This Special Provision incorporates the Construction and Maintenance Agreement (CMA) entered into, by, and between the North Dakota Department of Transportation (NDDOT) and the Burlington Northern Santa Fe (BNSF). It shall be understood that any requirements of the Contractor, as listed in the CMA, shall be adhered to as part of the contract documents. Therefore, bidders shall become familiar with all the provisions of the CMA and submit their bid for the construction of this Project based on a plan for construction which will meet all applicable requirements as contained in the contract documents and the CMA attached hereto. If there are any discrepancies between the contract plans and Exhibit "A" of the CMA, the contract plans shall govern.

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 (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.

The Contractor shall be responsible for coordinating all flagging activities with BNSF's Roadmaster. Coordinate with the Engineer to arrange for a preconstruction meeting with NDDOT, BNSF and the Contractor. The Contractor shall submit a weekly schedule of work activities and documentation of all discussions with BNSF's Roadmaster coordinating flagging activities to the Engineer.

The "Railroad Cost Estimate" (Exhibit G) of the CMA is for information only and should not be construed as a basis for bidding. It is the responsibility of the Contractor to determine the extent of flagging necessary based on the requirements contained herein, the Contractor's operations and planned schedule of work. Any costs for I/C services as shown in Exhibit G will be billed by BNSF to the NDDOT and paid directly. The costs for I/C services will not be billed back to the Contractor or deducted from monies due or to become due to the Contractor.

ATTACHMENTS

CMA – Agreement between BNSF Railway Company and NDDOT

Exhibit "C" & "C-1" – Agreement Between BNSF Railway Company and the Contractor

CONTRACTOR RESPONSIBILITIES

A. General.

Upon execution of the construction contract with the Department, coordinate with BNSF as outlined in Exhibit "C" and execute a copy of the agreement found in Exhibit "C-1". The Contractor will not be allowed to work within railroad right of way without an executed

agreement.

Coordinate with the Engineer to arrange for a preconstruction meeting with NDDOT, BNSF and the Contractor. Submit a weekly schedule of work activities and documentation of all discussions with BNSF's Roadmaster and Manager of Public Projects to the Engineer. Submit copies of all correspondence with BNSF to the Engineer within one business day of receipt.

Project delays incurred by the Contractor based on BNSF enforcing its authority under Section 1.01.04 of Exhibit "C" 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.

Section 1.03.01 of Exhibit "C" states: "*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.*" If the Department incurs costs from the railroad in this manner, the Department will recoup these costs from the Contractor.

B. Construction Submittals.

Section 3.01 of Exhibit H in the CMA requires Contractor submittals for various construction activities. Submit information in the following order: from the Contractor to the Agency, to the I/C Consultant, to the BNSF Project Engineer, (PE), and to BNSF Structures with responses back through the same communication chain. **BNSF will not accept submittals directly from the Contractor.** Any changes to the work governed by a submittal requires that the submittal be re-accepted by BNSF before the work commences.

**Please note that some submittals are required to be stamped by a PE and that BNSF requires up to 4 to 6 weeks for review, depending on the submittal.

**Operationally critical work activities may take up to six (6) weeks for review. Operationally critical work includes any activities which may impact the safe operation of trains. Follow the same procedure for revised submittals as the initial submittal.

The required construction submittals need to be reviewed and approved prior to construction activity within the BNSF right-of-way. Send construction submittals to the Engineer for review. The Engineer's initial review will be a minimum of seven (7) working days. After initial review, the Engineer will forward the construction submittals to the I/C, if applicable, or BNSF for final review and approval.

Specific requirements for the construction submittals are included in the following guidelines:

"BNSF RAILWAY COMPANY GUIDELINES FOR PREPARATION OF BRIDGE DEMOLITION & REMOVAL PLAN OVER THE BNSF RAILWAY": Section I-VIII provides all applicable requirements, including but not limited to, coordination of track windows, track protection, demolition and bridge removal which can be found at:

<https://www.bnsf.com/in-the-community/pdf/bnsf-demolition-guideline.pdf>

“UNION PACIFIC RAILROAD-BNSF GUIDELINES FOR RAILROAD GRADE SEPARATION PROJECTS”: Section 1-4 provides all applicable requirements, including but not limited to, shoring, falsework, demolition, erection, erosion control, and construction phasing plans which can be found at:

https://www.up.com/cs/groups/public/documents/document/pdf_rr_grade_sep_projects.pdf

C. Railroad Flagging.

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.

D. Railroad Protective Liability Insurance.

The NDDOT is replacing the existing eastbound (0094-260.125 R) bridge. Direct inquiries regarding protective liability insurance to:

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

Obtain information regarding crossing number 966535T from the Federal Railroad Administration website at <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.

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 in 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.

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 and 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" and Exhibit "C-1" and the remaining half upon completion of the project.

NDDOT Contract No. 25231230
BNSF File No. BF-20265947

North Dakota Department of Transportation
CONSTRUCTION AND MAINTENANCE AGREEMENT
Project No. IM-2-094(194)260, PCN 23577

NDDOT Bridge No. 0094-260.131 R
Interstate 94 over BNSF Railway in Jamestown, ND

This agreement is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and BNSF Railway Company, hereinafter referred to as the Railroad, whose address is 80 - 44th Avenue NE, Minneapolis, Minnesota 55421

WITNESSETH:

WHEREAS, NDDOT is removing and replacing the existing eastbound overpass structure 0094-260.125 R [DOT 966535T] (Project), which carries Interstate 94 traffic over BNSF Railway in Jamestown, North Dakota, and

WHEREAS, the parties desire the Project to be constructed in accordance with plans and specifications to be prepared by NDDOT, and

WHEREAS, in connection with the highway construction, the Project will be constructed within the existing permanent easement from the railroad, and

WHEREAS, NDDOT will undertake the construction of said Project, using federal funds, the Railroad will agree to the execution of NDDOT's Project upon the terms and conditions herein stated, and

NOW, THEREFORE, in consideration of the premises and the mutual dependent promises hereafter contained, the parties agree as follows:

I.

The Railroad, by signature of this agreement, accepts the proposed bridge plans as shown in Exhibit "A", attached hereto and made a part hereof.

II.

NDDOT shall submit to Railroad prior to the commencement of any work, plans and specifications of the work to be done on Railroad's right-of-way. No work shall be commenced on Railroad's right-of-way before a notice to proceed is given by Railroad's Manager Public Projects, to NDDOT.

Nothing provided in this agreement with respect to plans and specifications shall be construed or deemed to be a ratification or an adoption by Railroad of plans and specifications as its own.

III.

NDDOT (by its contractors) (each, a "Contractor") and Railroad shall perform the various items

of work to the satisfaction of the Railroad and in accordance with the plans and specifications as agreed to by Railroad and NDDOT.

A. WORK TO BE PERFORMED BY NDDOT'S CONTRACTOR AT EXPENSE OF NDDOT.

1. Except as provided by this agreement, furnish all plans, engineering supervision (including construction surveying), labor, materials, supplies, and equipment necessary to complete the Project.
2. Remove existing bridge and construct new bridge and roadways as shown on the plans in Exhibit "A".
3. Perform all other work, not specifically mentioned as work to be performed by the Railroad, necessary to complete the Project in accordance with the plans and specifications.
4. Coordinate all work with the Railroad's Roadmaster and Manager, Public Projects. Phone numbers and contact information are provided in the plans.
5. NDDOT will cause its Contractors to comply with all Railroad safety and other requirements as specified in Exhibits "C", "C-1" and "H", all of which are incorporated herein. All NDDOT Contractors must execute "C-1" before commencing any work on BNSF property.

B. WORK TO BE PERFORMED BY RAILROAD

1. Furnish engineering and inspection as required in connection with the construction of the Project as specified in Exhibit "G".
2. The estimated cost of various items of work to be performed by Railroad under this agreement is shown on the estimate attached hereto and marked Exhibit "G".

IV.

All work to be done by NDDOT or its Contractor on Railroad's right-of-way or in the vicinity of Railroad's tracks shall be done in a manner satisfactory to Railroad and shall be performed at such a time and in such manner as not to interfere with the movement of trains or traffic upon the tracks of Railroad. NDDOT will require its Contractor to use all care and precaution necessary to avoid accident or damage to, or interference with, Railroad's tracks or trains, and to notify Railroad's Roadmaster and Manager, Public Projects 30 days in advance whenever the Contractor is about to perform work on or adjacent to Railroad's right of way and tracks to enable Railroad to furnish protective services and devices as in Railroad's judgment may be necessary to ensure safety of railroad operation. Wherever safeguarding of trains or traffic of railroad is mentioned in this agreement, it is intended to cover and include all users of Railroad's tracks having permission for such use.

NDDOT will reimburse Railroad directly for all costs incurred for protective services/devices furnished. Bills for protective services and devices ascertained in accordance with the provisions of 23 CFR 646-B and 23 CFR 140-1 and other pertinent instructions issued by the Federal Highway Administration, Department of Transportation, will be submitted by Railroad to NDDOT.

BNSF agrees to observe and comply, and to require any of its contractors or subcontractors to

observe and comply with Federal laws attached in Exhibit "E", to the extent such laws may apply to work to be performed by BNSF under this agreement. Where compliance is not applicable none of BNSF, its contractors or subcontractors will be required to comply with such requirements.

Railroad will submit complete billing for protective services and devices within one hundred twenty (120) days after completion of the Project. NDDOT will review all billings and pay all accepted billings within 90 days from the date the billing is received by the NDDOT.

V.

BNSF will give NDDOT notice in advance of awarding any contracts for any of the work to be performed by Railroad hereunder in excess of \$50,000. NDDOT may request an audit of any Railroad invoice for which Railroad has incurred expenses and is seeking reimbursement within three (3) years of the date of such invoice. Railroad shall reasonably cooperate with all such audit requests timely made.

VI.

NDDOT shall require that should the contractor in any way interfere with Railroad operations or damage property during construction operations over Railroad's tracks and right-of-way, the Contractor shall stop his work to allow the Railroad to investigate and make necessary repairs at Contractors' sole cost and expense. No work will proceed until authorized by the Railroad.

VII (Intentionally Deleted.)

VIII.

The Railroad agrees to observe and comply with all applicable laws; provided, however, that nothing in this agreement is intended to waive, nor shall it waive, the preemptive effect of Federal law as to railroad.

IX.

Upon completion of the items of work, NDDOT shall require its Contractor to leave the Railroad right-of-way in a condition satisfactory to the Railroad.

X.

Upon completion of the Project, neither party shall do or permit anything to be done to reduce the horizontal or vertical clearances provided by plans; provided, however, that the Railroad reserves the right to make such ballast raises to its existing and future tracks as may be justified, and further reserves the right to make changes or additions to its facilities within the limit of the overpass. In the event any changes in, or additions to the tracks or other facilities of the Railroad, NDDOT, or City are made in the future, the usefulness of the overpass for the purpose of grade separation shall not be impaired.

The parties mutually agree that neither construction activities for the Project, nor future maintenance of the structure once completed, will be permitted during the fourth quarter of each calendar year, unless approved in advance in writing by Railroad. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

XI.

NDDOT shall own, maintain, repair, and reconstruct, as necessary and at its own expense, the overpass bridge structure; excluding rail, ballast, ties and the railroad approaches to the bridge structure which will be owned by the Railroad; provided, however, that any such reconstruction must be performed by a Contractor and not by NDDOT's own forces. NDDOT agrees that as to any maintenance, repair or reconstruction, it will comply with the following:

- A. Cause its Contractor to comply with Exhibit "C" and to execute Exhibit "C-1" with Railroad.
- B. Require its Contractor to carry regular contractor's public liability and property damage insurance as then specified by NDDOT Spec. 107.14 or any subsequent NDDOT specification for limits equal to those then required of public contractors performing work under contract with NDDOT; and
- C. Reimburse the Railroad for all costs and expenses related to the maintenance or reconstruction of the structure incurred by the Railroad in connection with such maintenance, repair, or reconstruction.
- C. Agency with its own personnel may perform the following routine maintenance and delamination surveys without providing advance notice to BNSF or coordinating with BNSF's Public Projects group; however Agency shall comply with BNSF's applicable rules and regulations in performing any of such items.
 - Routine snow and ice control
 - Repairing or replacing expansion joints at the ends of the bridge
 - Applying penetrating water repellent to bridge deck or crack sealing bridge deck
 - Flushing or washing the deck of the bridge
 - Repairing or replacing guard rails on the approaches leading up to the bridge
 - Delamination surveys

Agency with its own personnel may perform inspections of the bridge; provided, however, Agency must first furnish notice to BNSF's Manager, Public Projects and must comply with BNSF's applicable rules and regulations.

Should Agency wish to perform other maintenance or repair activities not listed above with its own personnel, Agency understands an additional agreement may be necessary and will coordinate with BNSF's Manager, Public Projects.

XII.

In the event the overpass shall cease to be used for highway purposes, the NDDOT shall notify the Railroad of such abandonment, and at NDDOT's expense, remove the overpass and approaches located upon the property of the Railroad except and unless it is mutually agreed, within 120 days following NDDOT's notification of abandonment, that portions of all the overpass and approaches are to be left in place. Removal and cleaning up of the Railroad's property shall be done to the satisfaction of the Railroad.

XIII.

Other Agreements. This agreement shall supersede any and all other agreements, arrangements, or understandings between the signatory jurisdictions covering, in whole or in part, any of the matters covered in this agreement.

XVI.

This agreement shall be for the benefit of and be binding upon the parties hereto, their successors, and assigns.

EXECUTED the date last below signed.

WITNESS:

Alexander Fiorini

NAME (TYPE OF PRINT)

Alexander Fiorini

SIGNATURE

THE BNSF
RAILWAY COMPANY

Richard Scott

OFFICERS NAME (TYPE OR PRINT)

SIGNATURE

Richard Scott Assistant Director Public Projects

TITLE

09/26/23

DATE

Executed by the North Dakota Department of Transportation, the date last signed below:

WITNESS:

Laureen Martin

(TYPE OR PRINT)

Laureen Martin

SIGNATURE

NORTH DAKOTA DEPARTMENT OF
TRANSPORTATION

Ronald Henke

DIRECTOR (TYPE OR PRINT)

Ronald Henke
SIGNATURE

10/03/23

DATE

APPROVED AS TO SUBSTANCE BY:

Jason Thorenson

BRIDGE ENGINEER (TYPE OR PRINT)

Jason Thorenson

SIGNATURE

09/28/23

DATE

ATTORNEY GENERAL
APPROVED as to Execution

Clint Morgenstern

10/03/23

Special Asst Attorney General

EXHIBIT "A"

CONTRACT BRIDGE PLANS

Prepared by

NDDOT

DESIGN DATA			
Traffic	Average Daily		
Current 2022	Pass: 2,700	Trucks: 1,485	Total: 4,185
Forecast 2042	Pass: 3,485	Trucks: 1,920	Total: 5,405
Clear Zone Dist. 38 ft	Design Speed: 75 mph		
Minimum Sight Dist. for Stopping: 820 ft	Bridges: HL-93 Design Loading		
Full Control of Access, No Point of Access Other Than at Interchange Ramps			
Pavement Design Life 30 (years)			
Design Accumulated One-way Rigid ESALs: 19,339,100			

Traffic Data provided is for EB I-94 only



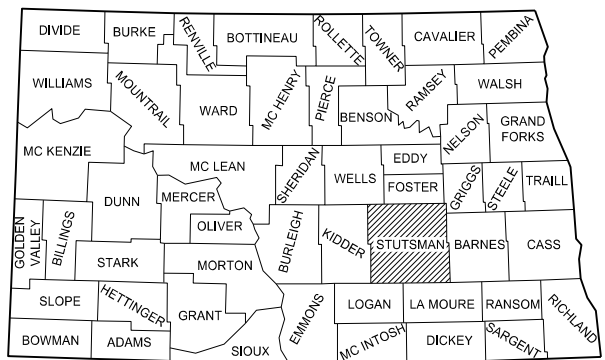
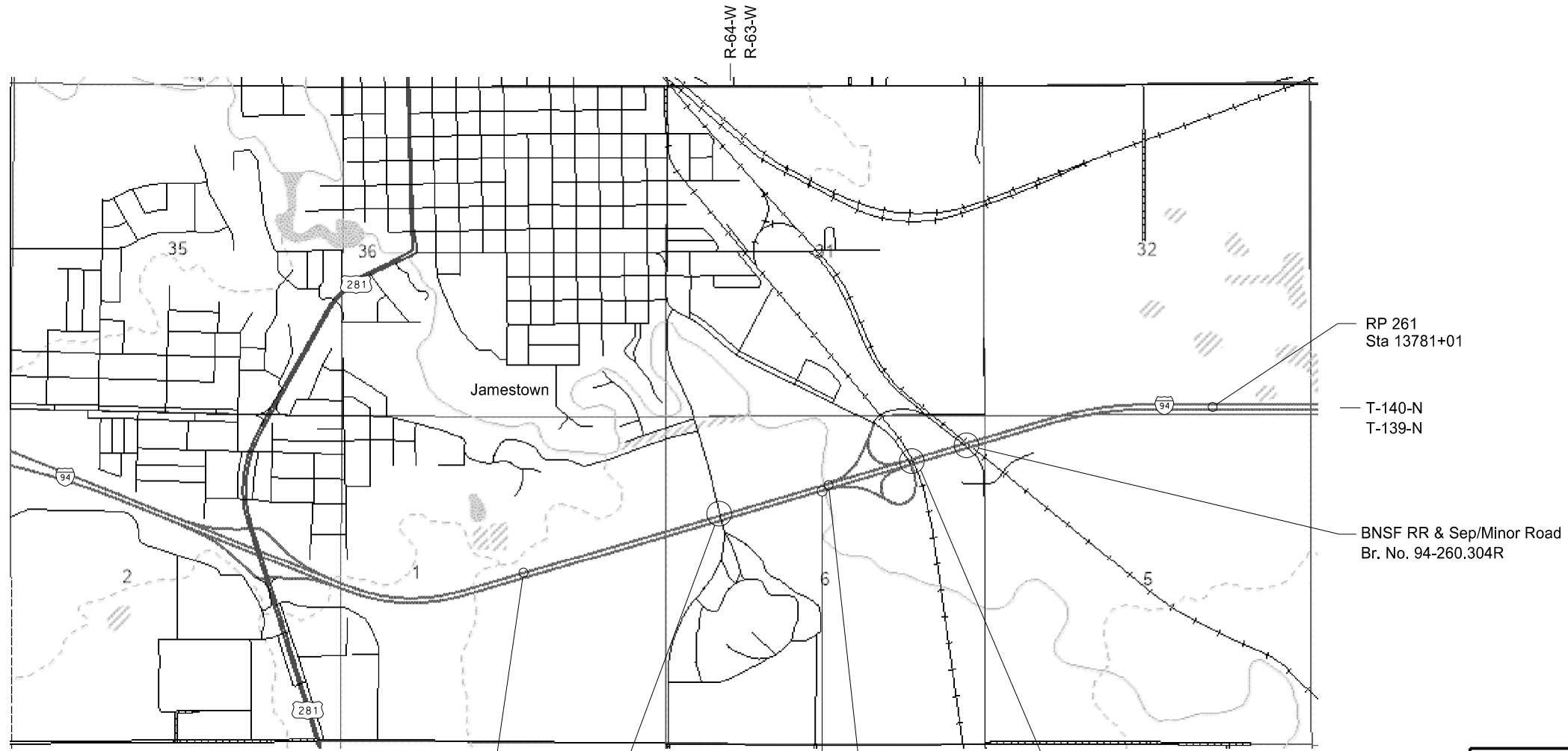
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

IM-2-094(194)260
SS-2-999(064)
 Stutsman County
 Hospital Road Separation, James River,
 BNSF RR & SE Jamestown Interchange and BNSF RR Sep/Minor Road
 Structure Replacement, Approach Slabs, Guardrail,
 Concrete Pavement Reconstruction & Road Closure Gates

STATE	PROJECT NO.	PCN	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	23577	1	1
	SS-2-999(064)	23419		

GOVERNING SPECIFICATIONS	Date Published and Adopted by the North Dakota Department of Transportation
Standard Specifications	4/1/2023
Supplemental Specifications	NONE

PROJECT NUMBER \ DESCRIPTION	NET MILES	GROSS MILES
IM-2-094(194)260	0.413	0.413
SS-2-999(064)	0.101	0.514



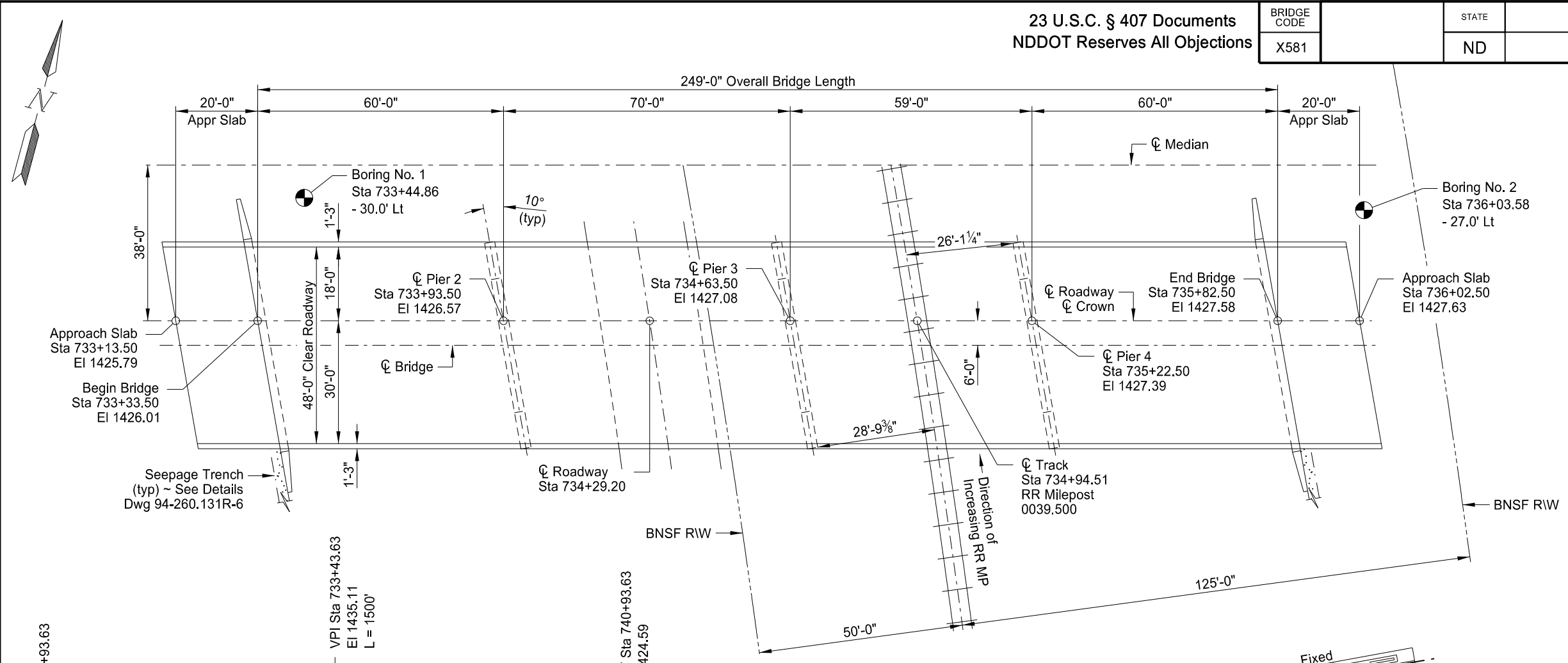
STATE COUNTY MAP

BRIDGE DIVISION

ND DEPARTMENT OF TRANSPORTATION
OFFICE OF PROJECT DEVELOPMENT

23 U.S.C. § 407 Documents
 NDDOT Reserves All Objections

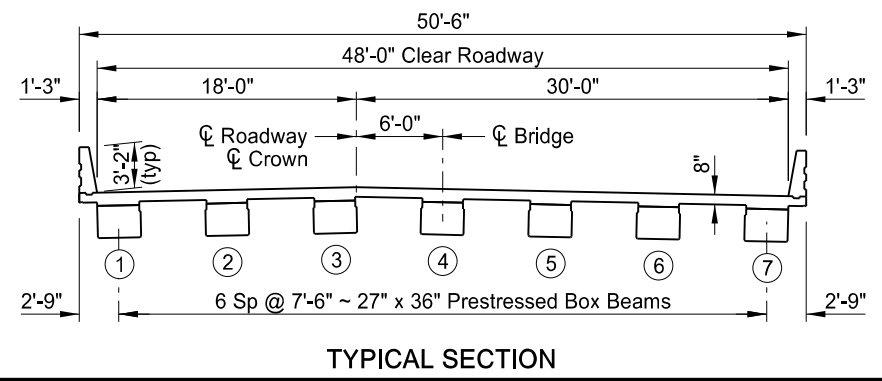
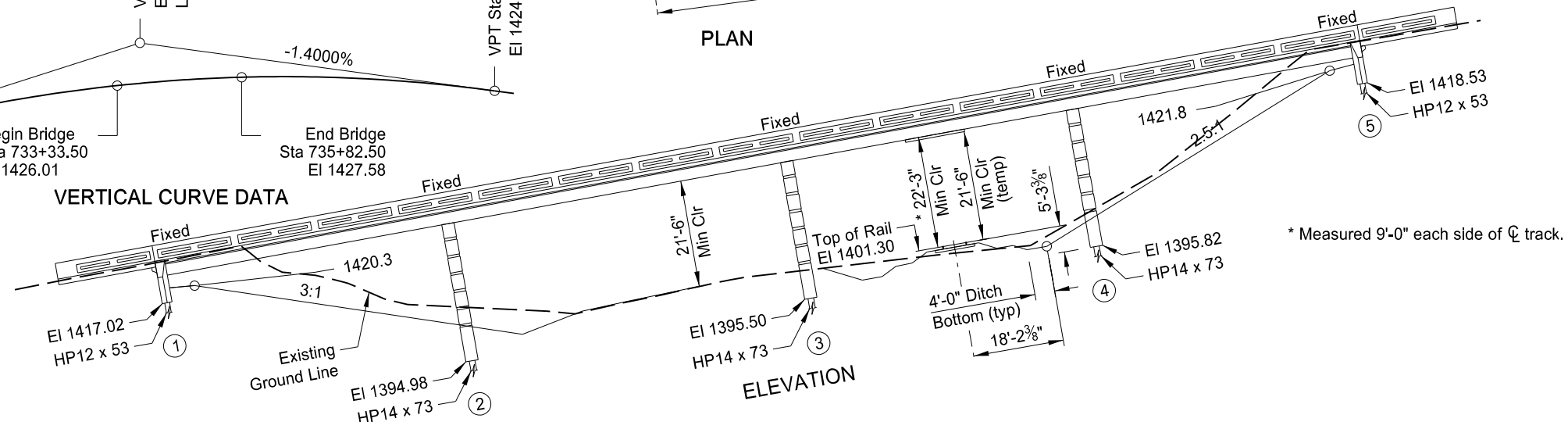
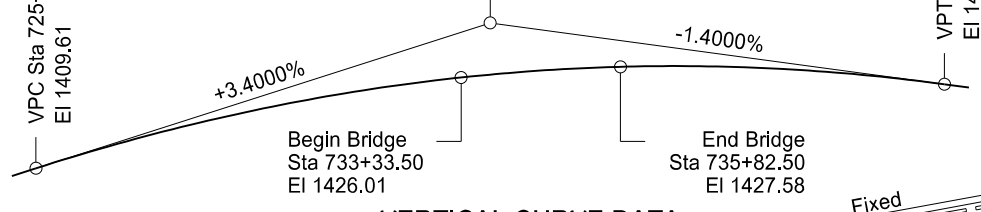
BRIDGE CODE	STATE	PROJECT NO.	SECTION NO.	SHEET NO.
X581	ND	IM-2-094(194)260	170	16



DESIGN STRENGTHS:

f'c = 3,000 psi ~ Class AE-3 Concrete
 f'c = 4,000 psi ~ Class AAE-3 Concrete
 f'c = 5,600 psi ~ Prestressed Beam Concrete
 f'c = 6,500 psi ~ Prestressed Beam Concrete
 fy = 60,000 psi ~ Reinforcing Steel

Load & Resistance Factor Design



SURVEY CONTROL POINTS			
POINT	NORTHING	EASTING	ELEVATION
RTK 3003	451,507.98	2,424,689.00	1408.01
RTK 3004	451,369.47	2,424,941.41	1407.83

SPECIAL PROVISIONS	
SSP 2	MIGRATORY BIRD TREATY ACT
SP 53 (23)	RAILROAD REQUIREMENTS
STANDARD DRAWINGS	
D-622-1, D-714-18, D-900-1	
F.W.S. 15 PSF	
HL-93 DESIGN LOADING	
BNSF RR & SE JAMESTOWN INTERCHANGE DOT CROSSING # 966535T	
LS 287, MP 0039.500, KLOSE-JAMESTOWN SUB LATITUDE 46.8897800, LONGITUDE -98.675950	
BRIDGE LAYOUT STA 734+58.00	
ND DEPARTMENT OF TRANSPORTATION BRIDGE DIVISION	
DRAWING NO.	94-260.131R-1

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	17

NOTES

- 100 SCOPE OF WORK: This project consists of removing an existing bridge and building a new 4-span prestressed concrete spread box beam bridge with a bridge slab length of 249'-0" and a bridge slab width of 50'-6".
- 100 GENERAL: Include the cost of furnishing and placing preformed expansion joint filler, concrete inserts, rebar couplers, silicone sealant, waterproof membrane, and other miscellaneous items in the price bid for Class AE-3 and AAE-3 concrete.
- 105 BNSF FOURTH QUARTER CONSTRUCTION MORATORIUM: BNSF has the right to shut down all construction activities on BNSF property during the fourth quarter of each year (October 1 to December 26) to accommodate BNSF's peak holiday shipping season. However, the Contractor can request a waiver (sent to the BNSF Project Engineer assigned to the project) from this moratorium by identifying the type of work to be performed, distance from BNSF track(s), and work timeframe. BNSF can choose to waive some or all of the moratorium (construction shut down during November 1 to December 26 only, for example) if BNSF determines that the construction activities will not have any impacts on BNSF peak train traffic. Minor work is often permitted adjacent to BNSF track(s), but major work (e.g. overhead bridge work) is typically not permitted by BNSF during the fourth quarter construction moratorium.
- 202 REMOVAL OF STRUCTURE: The existing structure is an 4-span prestressed concrete girder bridge, 221'-0" long with a clear roadway width of 49'-8", and concrete substructures. The substructures are supported on treated timber piling. Remove Pier 3 and Pier 4 substructures so there is no movement of railroad track ballast as determined by the railroad. Include all costs for the removal of the bridge in the contract unit price for "Removal of Structure".
- Provide a minimum 4 week notice prior to the removal of substructures within the railroad right-of-way to:
- Dan Peltier
Manager Engineering
763-782-3495
Daniel.Peltier@BNSF.com
- 210 EXCAVATION: Include the excavation costs at the abutments, as shown in the "Detail at Abutment", and the excavation costs at the piers in the lump sum bid item, "Class 1 Excavation."
- 210 FOUNDATION PREPARATION: Include all work to excavate and shape the slopes at the front face of each abutment in the Lump Sum price bid for "Foundation Preparation". Approximately 700 CY of material will need to be removed at Abutment 1 and 1,600 CY of material will need to be removed at Abutment 5. Suitable material removed from the abutments as part of the work for Foundation Preparation may be used as roadway embankment if approved by the Engineer.
- 602 CLASS AE-3 AND AAE-3 CONCRETE: The strength requirements of Section 802.01 A.2 "Class AE and AAE Mixes" are revised to develop a design compressive strength of 3,000 psi (AE-3) and 4,000 psi (AAE-3) at 28 days.
- 602 DIAPHRAGMS AND ENDWALLS: Place the intermediate diaphragm concrete before the deck concrete and allow the diaphragms to cure at least 72 hours before deck placement. Place the pier diaphragm and endwall concrete at the same time as the deck concrete.
- 602 DECK PLACEMENT: Place the deck concrete at a minimum rate of 40 CY per hour.
- 602 CRACK SEALING: After the penetrating water repellent has been applied and is dry, the Engineer will perform a visual inspection of the bridge deck and approach slabs to determine the need for crack sealing. Mark and repair all visible cracks appearing on the top surface 0.007" or greater in width at its widest segment or as directed by the Engineer.
- Immediately before applying the sealer, clean the cracks by removing all dust and debris with compressed air. Seal the cracks with a two-part epoxy in accordance with the manufacturer's recommendations. Chase crack with the sealant application to limits of crack, including those portions that are narrower than 0.007" wide. Use Paulco TE-2501 (Viking Paints, Inc.), Dural 50 LM (Euclid Chemical Co.), TK-9000 or TK-2110 (TK Products), or an approved equal epoxy sealer. Include all work and materials associated with the bridge deck and approach slab crack sealing in the price bid for the Class AAE-3 concrete and approach slab bid items.
- 602 SPECIAL SURFACE FINISH: Apply TexCote XL 70 BridgeCote with Silane on all exposed substructure surfaces, the outside edges of the pier diaphragms, the fascia of the exterior beams, the outside edges of the deck, the underside of the deck overhangs, the exposed endwall areas outside of the exterior beams, and to all bridge and approach slab barrier surfaces. Seal all cracks in accordance with the manufacturer's recommendations prior to applying the TexCote special surface finish. Include all special surface finish costs in the unit price bid for Class AE-3 and AAE-3 concrete.
- Use a medium textured finish. Use brown surface finish color number 30475 meeting AMS-STD-595 for the back face of the barriers, excluding the recessed areas. Use gray surface finish color number 36424 meeting AMS-STD-595 for all other surfaces.
- Submit to the Engineer a 1' x 1' sample of the brown surface finish.
- 602 WEATHER LIMITATIONS: All requests in accordance with 602.04 C.4 "Weather Limitations" require approval from the NDDOT Bridge Division.

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	18

NOTES

604 PRESTRESSED BEAMS: Set prestressed beams on bearing seats without field bending substructure or beam reinforcing steel.

622 PILING: Drive pier piling with a diesel hammer with an operational energy of at least 78,836 foot-pound-tons (minimum ram weight of 5,000 pounds) computed by the formula:

$$W(E-22,176) + 0.711E$$

Drive abutment piling with a diesel hammer with an operational energy of at least 47,848 foot-pound-tons (minimum ram weight of 4,000 pounds) computed by the formula:

$$W(E-16,016) + 0.598E$$

W = Weight of the ram (tons)
E = Operational hammer energy

Run the hammer at an energy that produces a penetration at bearing between ½" and 3 inches in the last 10 blows.

If the pile has not reached bearing 10 feet beyond the estimated depth, stop driving the pile and wait 24 hours to allow pile setup to occur. After 24 hours warm the hammer with a minimum of 20 blows by striking the ground or timber mats. Restrike the pile with 10 blows to determine if bearing has been achieved. If bearing was not achieved during restrike, continue to drive the pile until bearing is achieved.

930 ROADWAY CANOPY: Construct canopies beneath the existing structure, and beneath the new structure, to protect traffic from falling material. Construct the canopies over the traveled roadway and the railroad tracks that cross beneath the structure. The canopies are added safeguards and do not relieve the Contractor from any responsibility for the safety of the public. Submit the canopy details, including materials that will be used, to the Engineer for review.

Construct the canopies over the railroad tracks to provide a minimum vertical clearance of 21'-6" above the top of the railroad tracks. Extend the canopy a minimum distance of 5'-0" beyond the outside edge of the bridge deck and a minimum distance of 10'-0" in each direction from the centerline of the railroad tracks beneath the structure.

Construct the canopies over the roadway to provide a minimum vertical clearance of 15'-6" above the top of the roadway. Extend the canopy a minimum distance of 5'-0" beyond the outside edge of the bridge deck and a minimum distance of 5'-0" beyond the edge of the driving lanes beneath the structure.

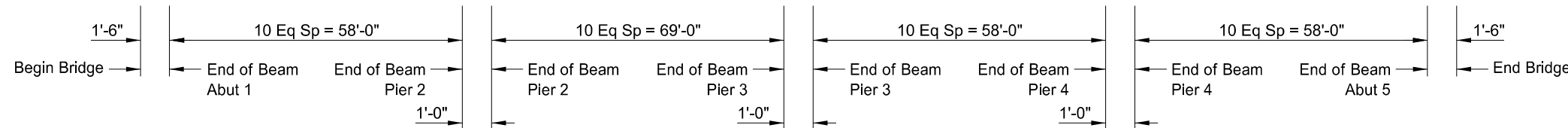
Construct the canopies beneath the existing structure before removing the concrete superstructure. Construct the canopies beneath the new structure before installing formwork for the new bridge deck. The canopies may be supported from the ground or suspended from the girders. Complete the installation of the canopies in a minimum amount of time and with the least inconvenience to the public.

Maintain the canopies beneath the new structure during construction of the bridge superstructure and remove the canopies after construction of the bridge superstructure is complete. Include all costs for construction, maintenance, and removal of the canopy systems for the new structure and the existing structure in the contract unit price for "Roadway Canopy."

23 U.S.C. § 407 Documents
NDDOT Reserves All Objections

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	19

☉ BEAM 7	☉ BEAM 6	☉ BEAM 5	☉ BEAM 4	☉ BEAM 3	☉ BEAM 2	☉ BEAM 1
1425.46	1425.61	1425.75	1425.89	1425.97	1425.80	1425.63
1425.48	1425.62	1425.76	1425.91	1425.99	1425.82	1425.65
1425.56	1425.71	1425.85	1425.99	1426.07	1425.90	1425.73
1425.64	1425.79	1425.93	1426.07	1426.15	1425.98	1425.82
1425.72	1425.86	1426.00	1426.15	1426.23	1426.06	1425.89
1425.78	1425.93	1426.07	1426.22	1426.30	1426.13	1425.96
1425.84	1425.99	1426.13	1426.27	1426.36	1426.19	1426.02
1425.89	1426.04	1426.18	1426.32	1426.41	1426.24	1426.07
1425.93	1426.08	1426.22	1426.36	1426.45	1426.28	1426.11
1425.96	1426.11	1426.25	1426.40	1426.48	1426.31	1426.14
1425.99	1426.13	1426.28	1426.42	1426.51	1426.34	1426.17
1426.01	1426.16	1426.30	1426.45	1426.53	1426.36	1426.20
1426.02	1426.17	1426.31	1426.46	1426.54	1426.37	1426.20
1426.13	1426.27	1426.42	1426.56	1426.65	1426.48	1426.31
1426.22	1426.37	1426.52	1426.66	1426.75	1426.58	1426.41
1426.31	1426.46	1426.60	1426.75	1426.83	1426.67	1426.50
1426.39	1426.53	1426.68	1426.83	1426.91	1426.74	1426.58
1426.44	1426.59	1426.74	1426.88	1426.97	1426.80	1426.64
1426.48	1426.63	1426.78	1426.93	1427.01	1426.84	1426.68
1426.51	1426.66	1426.80	1426.95	1427.04	1426.87	1426.70
1426.52	1426.67	1426.81	1426.96	1427.05	1426.88	1426.72
1426.52	1426.67	1426.81	1426.96	1427.05	1426.88	1426.72
1426.58	1426.73	1426.87	1427.02	1427.11	1426.95	1426.78
1426.63	1426.78	1426.93	1427.08	1427.17	1427.00	1426.84
1426.68	1426.83	1426.98	1427.13	1427.22	1427.05	1426.89
1426.73	1426.88	1427.03	1427.17	1427.26	1427.10	1426.93
1426.76	1426.91	1427.06	1427.21	1427.30	1427.13	1426.97
1426.79	1426.94	1427.09	1427.24	1427.32	1427.16	1427.00
1426.80	1426.95	1427.10	1427.25	1427.34	1427.18	1427.01
1426.81	1426.96	1427.11	1427.26	1427.35	1427.19	1427.02
1426.81	1426.96	1427.11	1427.26	1427.35	1427.19	1427.03
1426.81	1426.96	1427.11	1427.26	1427.35	1427.19	1427.03
1426.82	1426.97	1427.12	1427.27	1427.36	1427.19	1427.03
1426.86	1427.02	1427.17	1427.32	1427.41	1427.24	1427.08
1426.91	1427.06	1427.21	1427.36	1427.45	1427.29	1427.13
1426.95	1427.10	1427.25	1427.40	1427.49	1427.33	1427.17
1426.98	1427.13	1427.28	1427.44	1427.53	1427.36	1427.20
1427.00	1427.16	1427.31	1427.46	1427.55	1427.39	1427.23
1427.02	1427.17	1427.32	1427.47	1427.56	1427.40	1427.24
1427.02	1427.18	1427.33	1427.48	1427.57	1427.41	1427.25
1427.02	1427.17	1427.33	1427.48	1427.57	1427.41	1427.25
1427.01	1427.16	1427.32	1427.47	1427.56	1427.40	1427.24
1427.00	1427.15	1427.31	1427.46	1427.55	1427.39	1427.23
1427.00	1427.16	1427.31	1427.46	1427.55	1427.39	1427.23



Beam 1 is the north beam.
SCREED ELEVATIONS

BRIDGE BID ITEMS

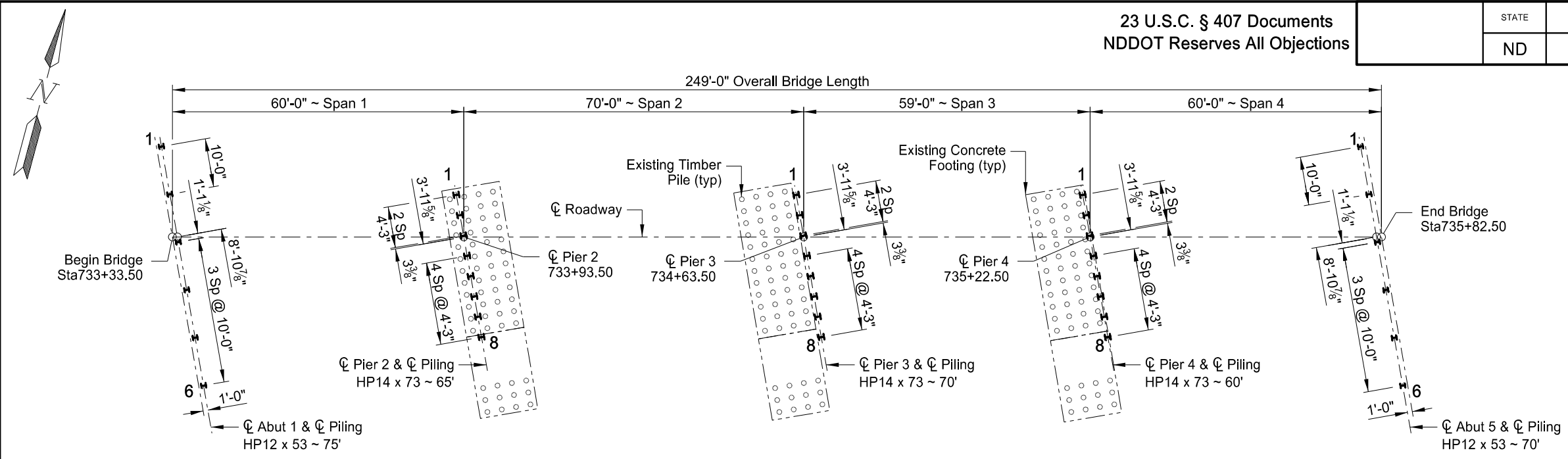
SPEC	CODE	ITEM DESCRIPTION	UNIT	QUANTITY
107	0100	RAILWAY PROTECTION INSURANCE	L SUM	1
107	0140	RAILROAD COORDINATION	L SUM	1
107	0151	RAILROAD FLAGGING	L SUM	1
202	0105	REMOVAL OF STRUCTURE	L SUM	1
210	0099	CLASS 1 EXCAVATION	L SUM	1
210	0201	FOUNDATION PREPARATION	EA	1
602	0130	CLASS AAE-3 CONCRETE	CY	450.1
602	1130	CLASS AE-3 CONCRETE	CY	359.4
602	1133	CONCRETE BRIDGE APPROACH SLAB	SY	226
602	1250	PENETRATING WATER REPELLENT TREATMENT	SY	1,541
604	9610	PRESTRESSED BOX BEAM-27IN	LF	1,701
612	0115	REINFORCING STEEL-GRADE 60	LBS	31,551
612	0116	REINFORCING STEEL-GRADE 60-EPOXY COATED	LBS	81,281
622	0040	STEEL PILING HP 12 X 53	LF	870
622	0060	STEEL PILING HP 14 X 73	LF	1,560
930	3000	BRIDGE BENCH MARKS	SET	1
930	7012	ROADWAY CANOPY	L SUM	1
930	9537	ABUTMENT UNDERDRAIN SYSTEM	EA	2

BNSF RR & SE JAMESTOWN INTERCHANGE

SCREED ELEVATIONS
BID ITEM QUANTITIES

DRAWING NO. 94-260.131R-4

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	20



NOTE:

For double acting or single acting diesel hammers, calculate the bearing resistance of piles by the following formula:

$$\Phi R_n = \frac{4.5E}{S + 0.2} \times \frac{W + 0.2M}{W + M}$$

Where:

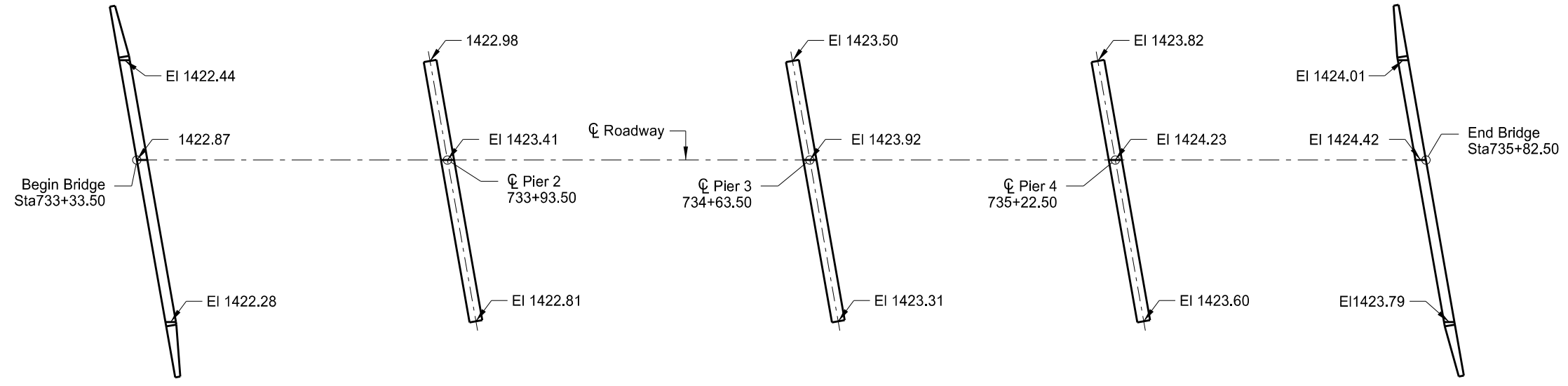
ΦR_n = Nominal pile bearing resistance, in pounds. The Φ factor is included in equation.
 W = Weight of striking parts (ram), in pounds.
 M = Weight of parts being driven, in pounds. Includes pile weight, anvil (if any), driving cap, etc.
 E = Energy per blow, in foot-pounds.
 S = Average penetration of pile in inches per blow for last ten blows.

For single acting hammers, calculate E by multiplying observed stroke (ft) and W (lbs).

Drive the HP12 x 53 Pile to 130 tons.
 Drive the HP14 x 73 Pile to 180 tons.

PILING LAYOUT

PILE COORDINATES			
	PILE	NORTHING	EASTING
ABUT 1	1	451,379.08	2,424,713.16
	6	451,334.80	2,424,736.38
PIER 2	1	451,388.03	2,424,774.06
	8	451,361.68	2,424,787.88
PIER 3	1	451,409.28	2,424,840.76
	8	451,382.93	2,424,854.58
PIER 4	1	451,427.19	2,424,896.97
	8	451,400.84	2,424,910.79
ABUT 5	1	451,454.06	2,424,948.47
	6	451,409.78	2,424,971.70



Elevations shown are to top of finished concrete.

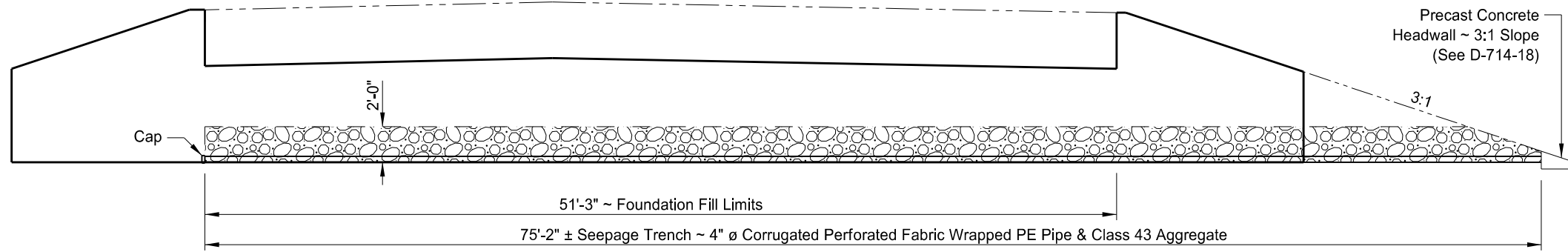
BEARING ELEVATIONS

BNSF RR & SE JAMESTOWN INTERCHANGE

PILING LAYOUT & BEARING ELEVATIONS

DRAWING NO. 94-260.131R-5

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	21

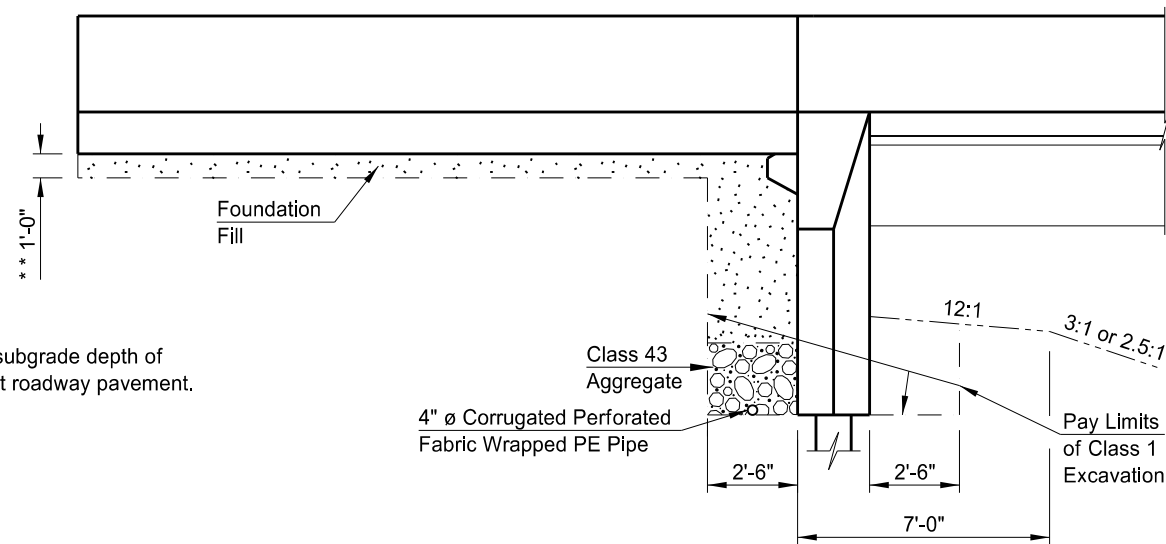


BACK FACE OF ABUTMENT

NOTES:

Use corrugated perforated fabric wrapped PE pipe that meets the requirements of Section 830.03 A.4. Provide fabric wrapping for the pipe that meets the requirements of Section 858.01 for D3 or D4 drainage fabric. Provide aggregate that meets the requirements of Section 816.03, Class 43. Provide foundation fill that meets the requirements of Section 210. Compact the foundation fill beneath the approach slab according to section 714.04 A.10.

Include the cost to furnish and place the foundation fill, aggregate, corrugated perforated pipe and headwalls in the pay item "Abutment Underdrain System."



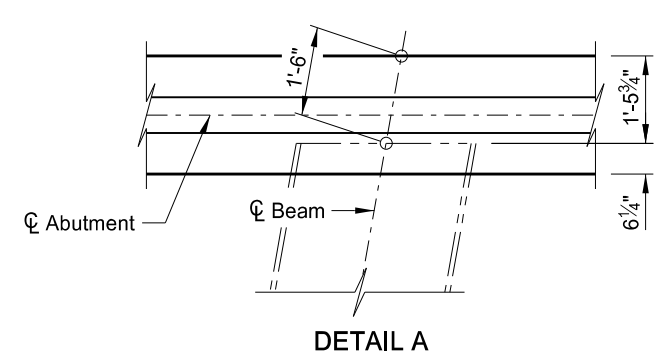
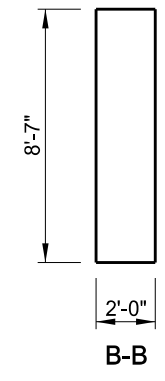
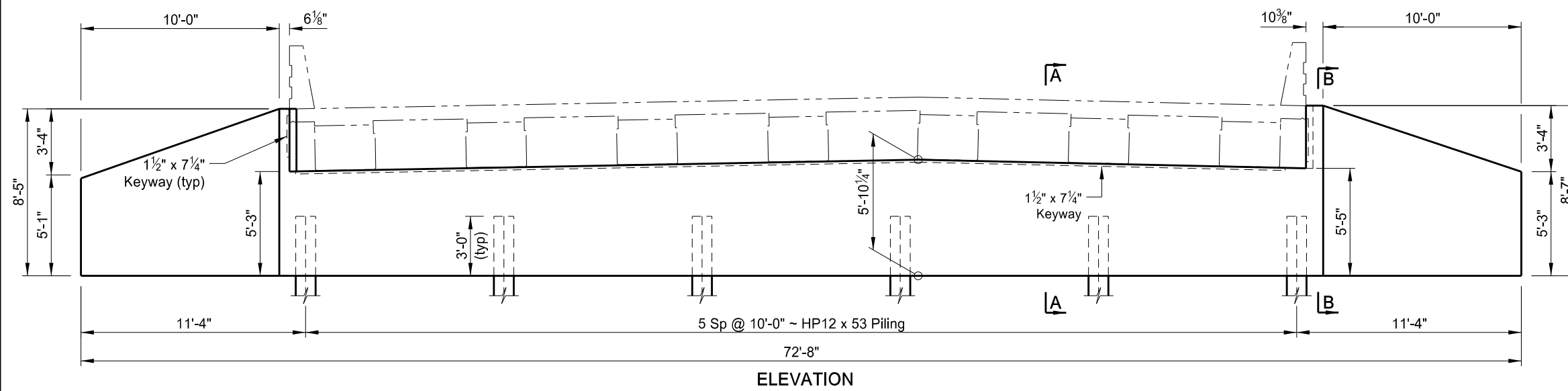
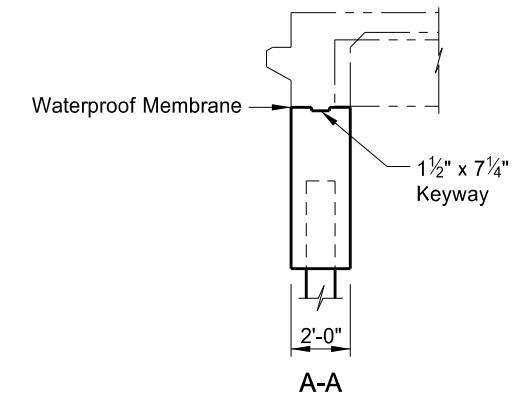
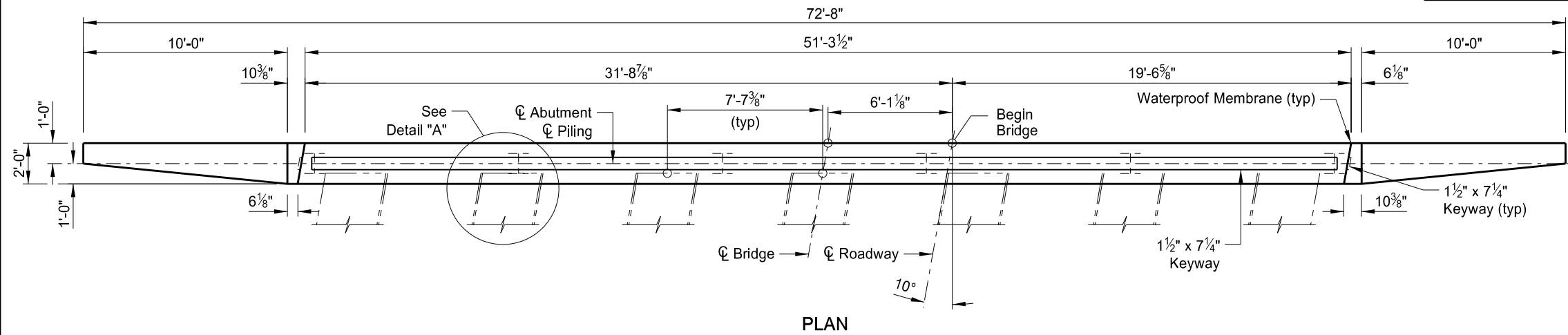
** Match subgrade depth of adjacent roadway pavement.

DETAIL AT ABUTMENT

BNSF RR & SE JAMESTOWN INTERCHANGE	
ABUTMENT UNDERDRAIN & EXCAVATION DETAILS	
DRAWING NO.	94-260.131R-6

23 U.S.C. § 407 Documents
 NDDOT Reserves All Objections

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	22

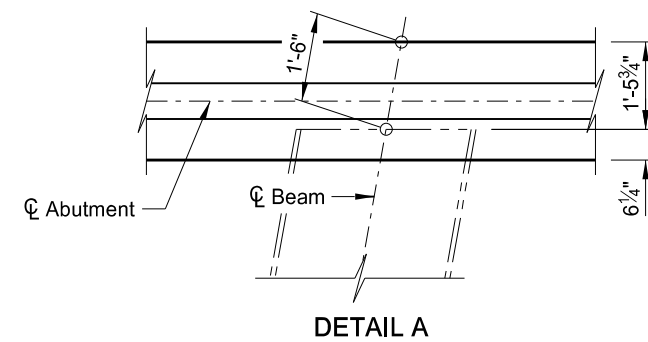
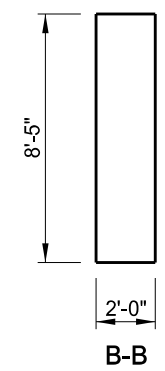
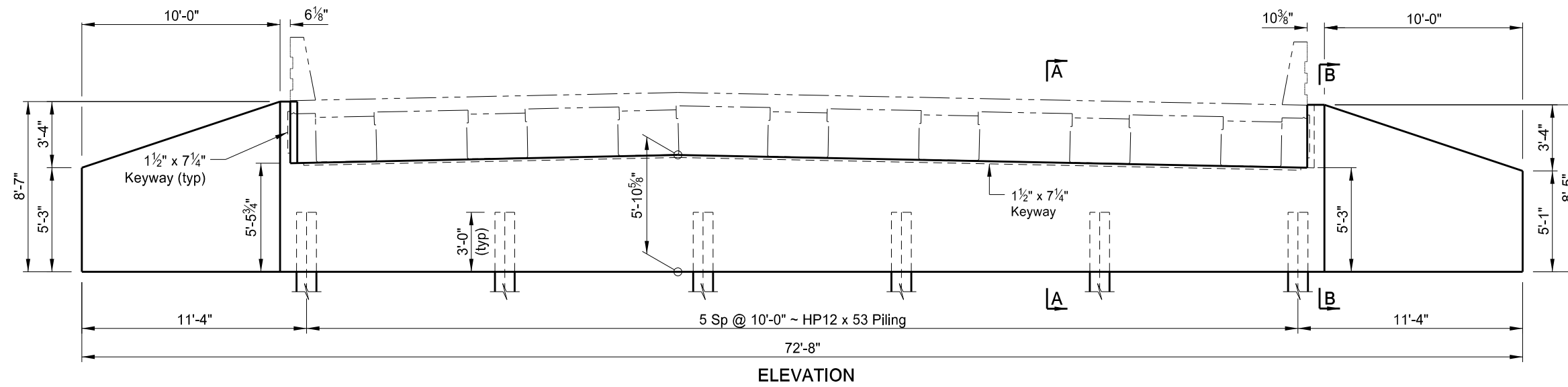
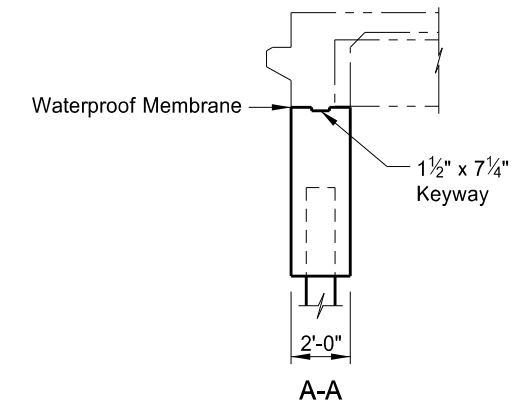
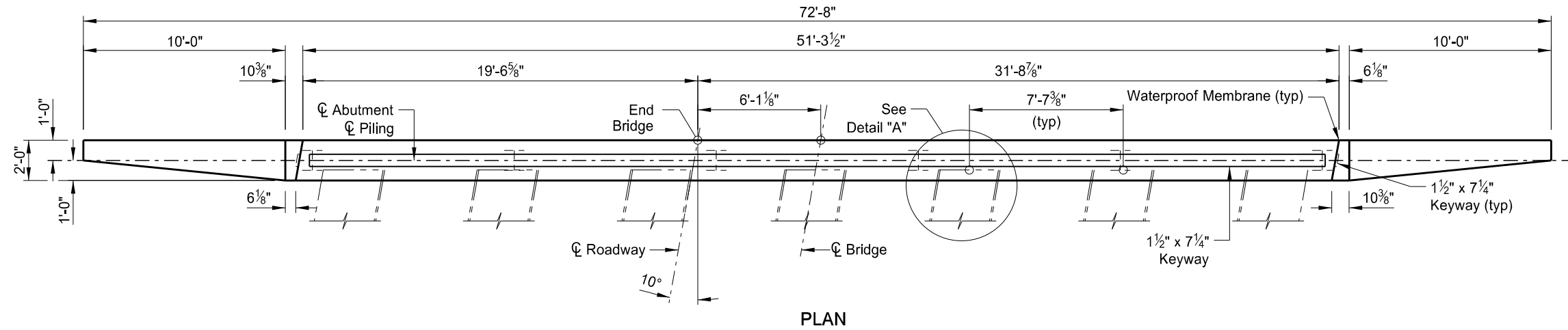


NOTE:
 Use waterproof membrane that meets the requirements of Section 602.03 B. Center the waterproof membrane (1'-0" minimum width) on the joint.

QUANTITIES	
SEE DWG 94-260.131R-9	
BNSF RR & SE JAMESTOWN INTERCHANGE (SHOWING DIMENSIONS) ABUTMENT 1 DETAILS	
DRAWING NO.	94-260.131R-7

23 U.S.C. § 407 Documents
 NDDOT Reserves All Objections

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	23



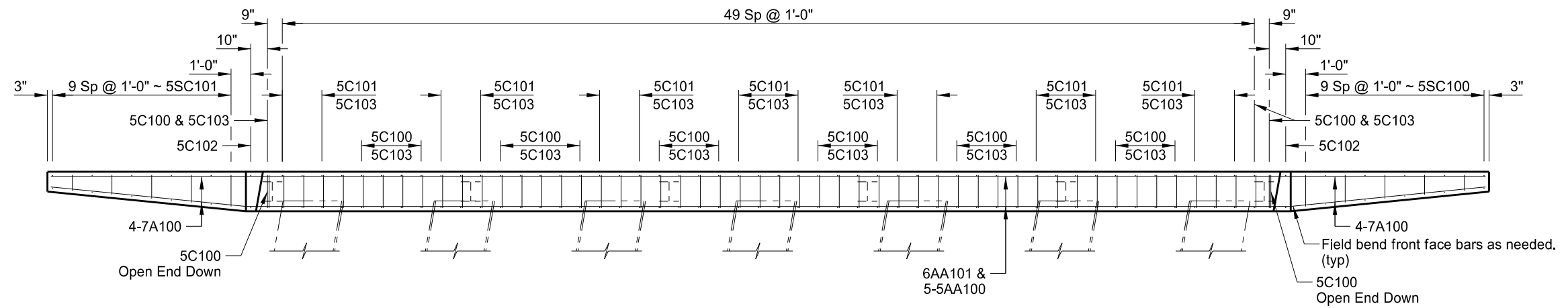
NOTE:

Use waterproof membrane that meets the requirements of Section 602.03 B. Center the waterproof membrane (1'-0" minimum width) on the joint.

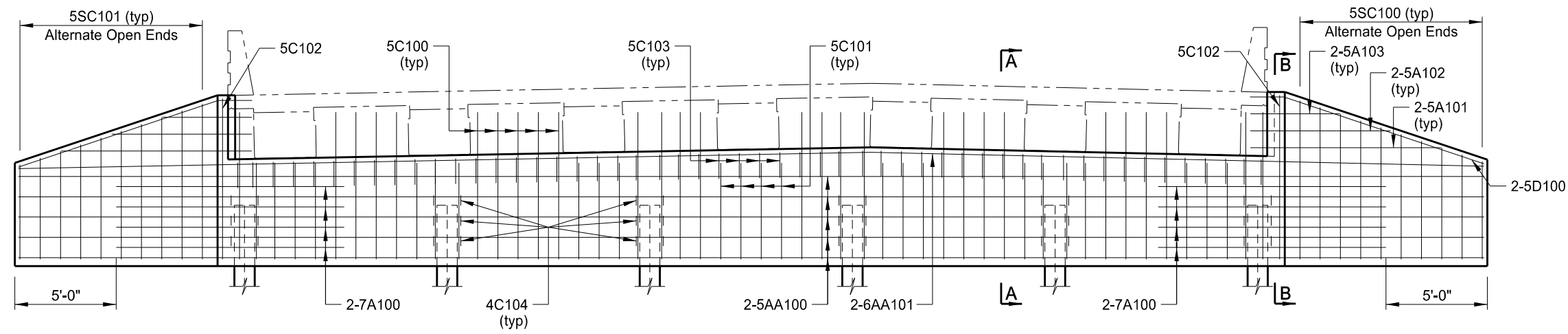
QUANTITIES	
SEE DWG 94-260.131R-9	
BNSF RR & SE JAMESTOWN INTERCHANGE (SHOWING DIMENSIONS) ABUTMENT 5 DETAILS	
DRAWING NO.	94-260.131R-8

23 U.S.C. § 407 Documents
NDDOT Reserves All Objections

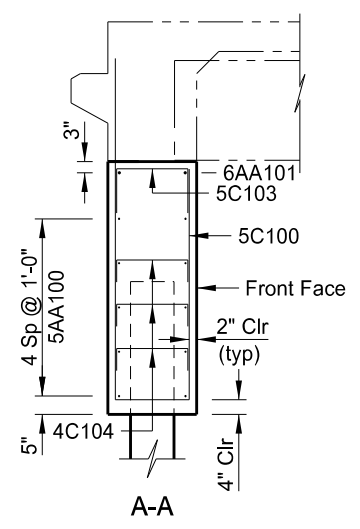
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	24



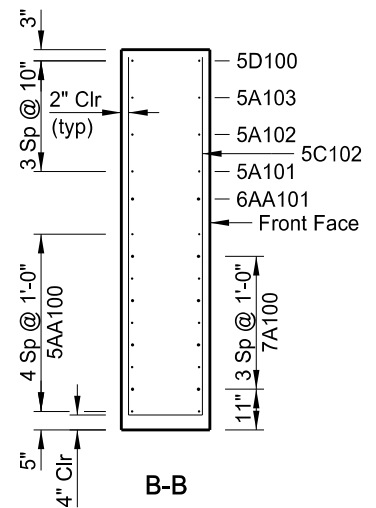
PLAN



ELEVATION



A-A



B-B

NOTE:
Abutment 1 shown.
Abutment 5 similar.

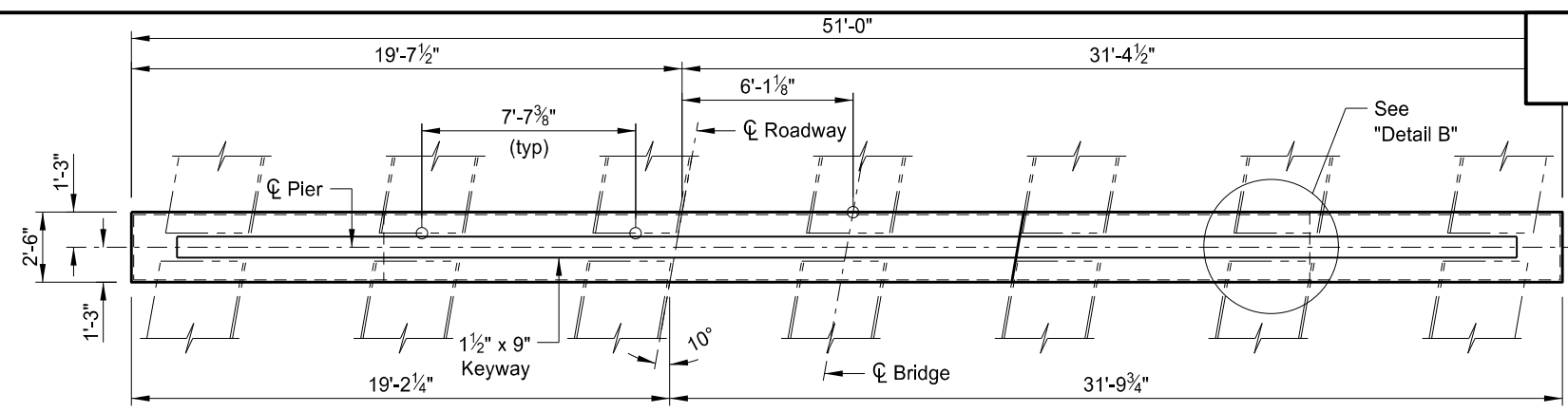
QUANTITIES		
ABUT 1	CLASS AE-3 CONCRETE	29.6 CY
	REINFORCING STEEL	2,940 LBS
ABUT 5	CLASS AE-3 CONCRETE	29.6 CY
	REINFORCING STEEL	2,940 LBS

BNSF RR & SE JAMESTOWN INTERCHANGE
(SHOWING DIMENSIONS)
ABUTMENT 1 DETAILS

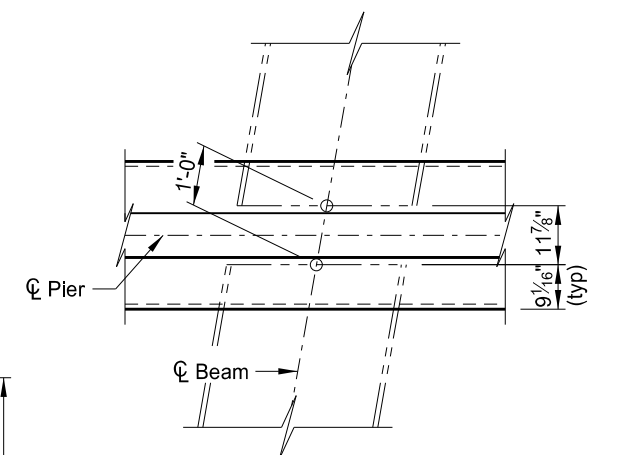
DRAWING NO.	94-260.131R-9
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STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	25

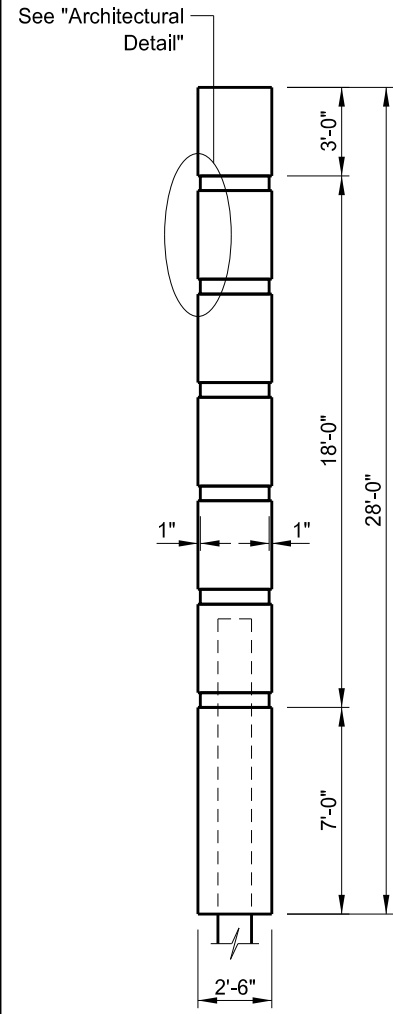
23 U.S.C. § 407 Documents
NDDOT Reserves All Objections



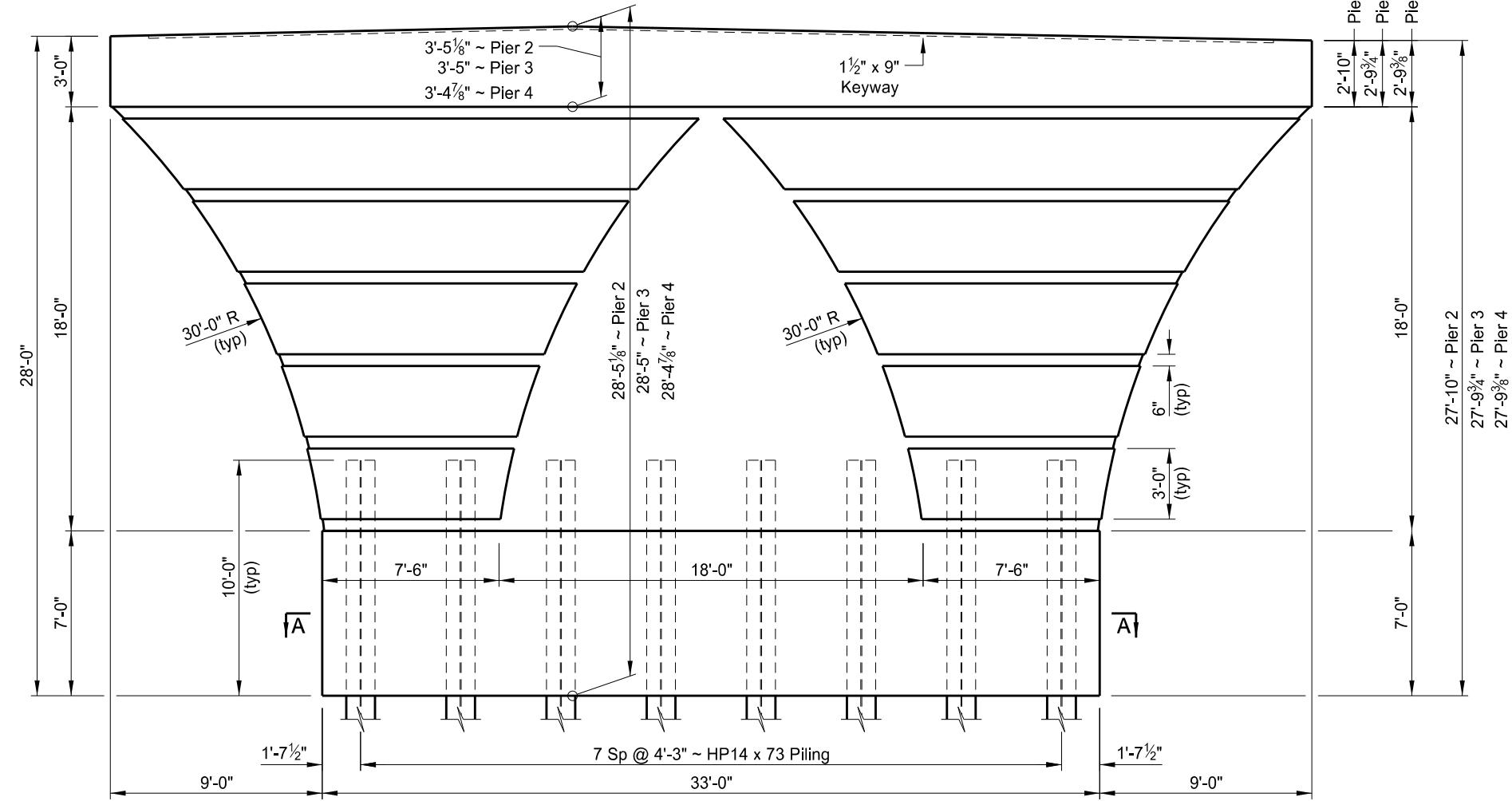
PLAN



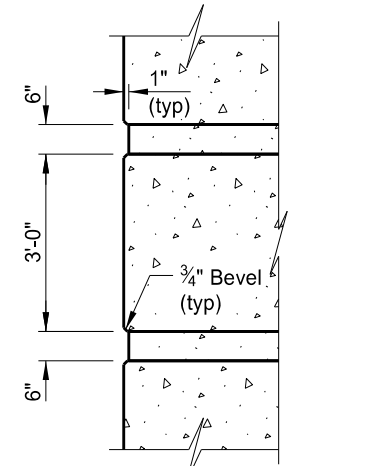
DETAIL B



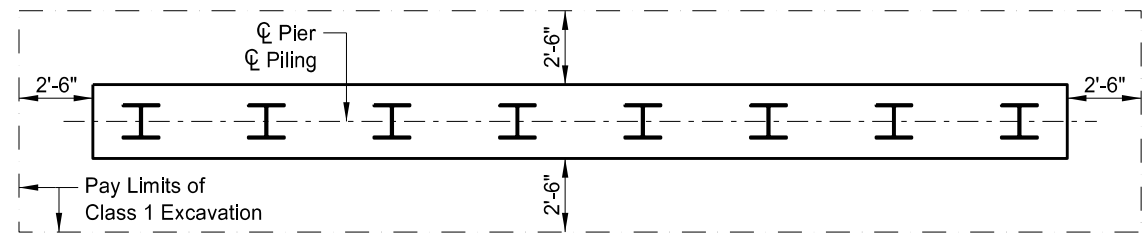
END VIEW



ELEVATION



ARCHITECTURAL DETAIL

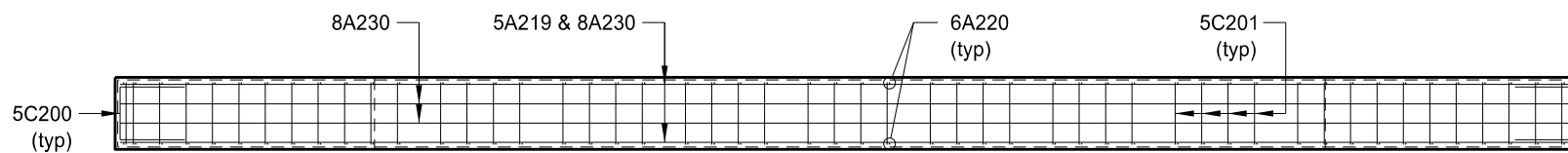


A-A

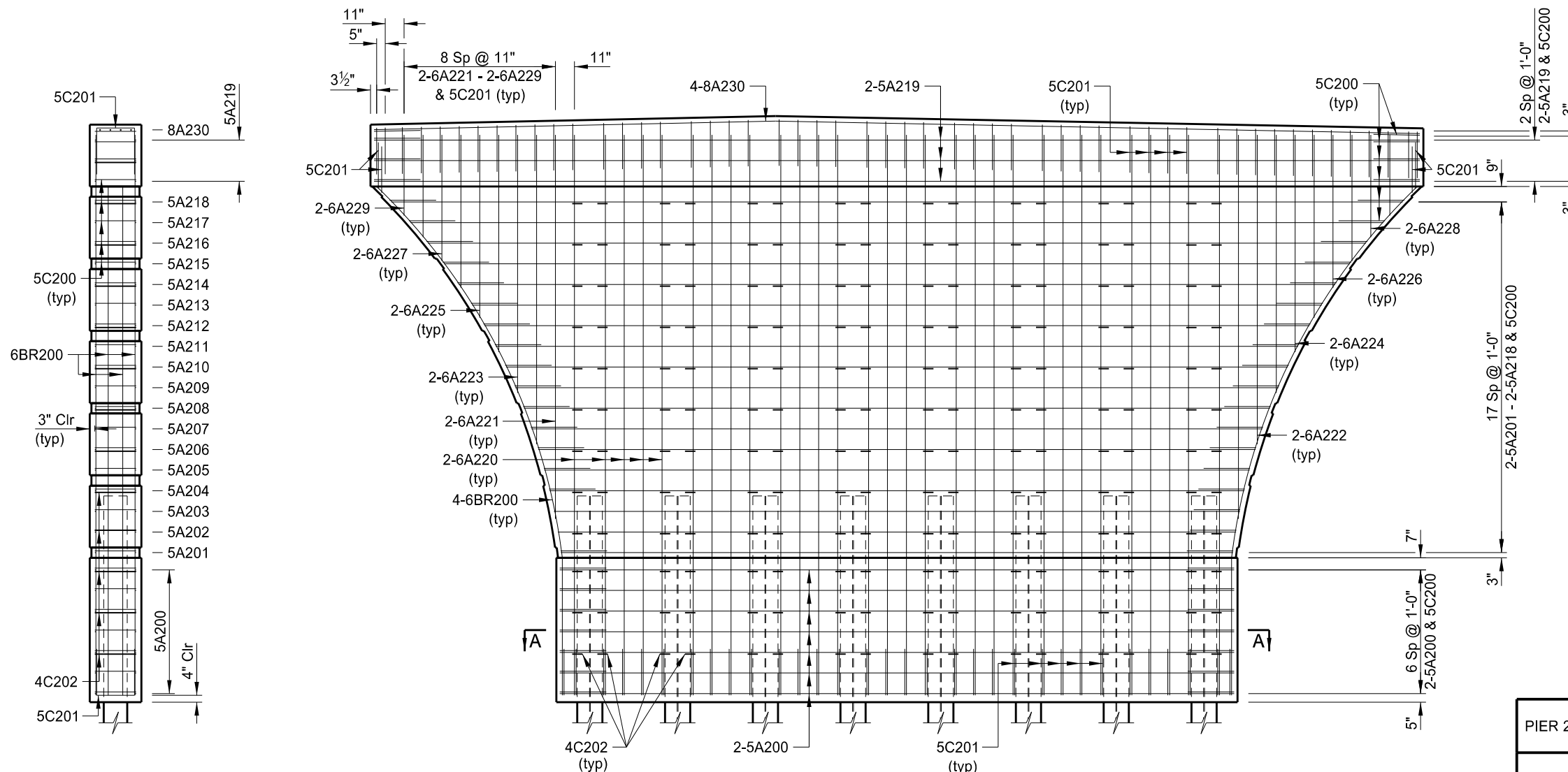
QUANTITIES	
SEE DWG 94-260.131R-11	
BNSF RR & SE JAMESTOWN INTERCHANGE (SHOWING DIMENSIONS) PIER DETAILS	
DRAWING NO.	94-260.131R-10

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	26

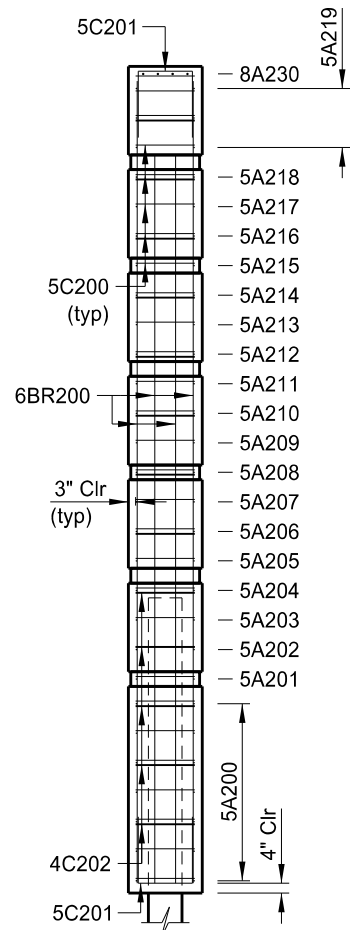
23 U.S.C. § 407 Documents
NDDOT Reserves All Objections



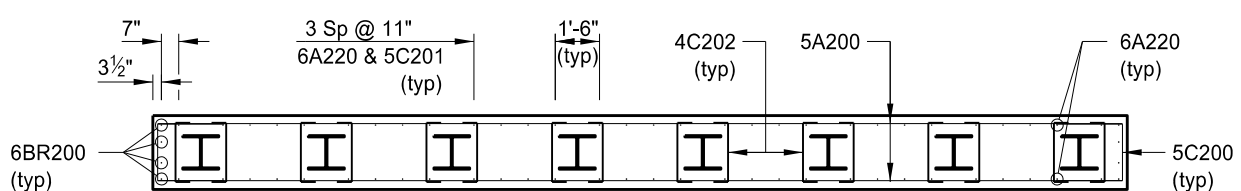
PLAN



ELEVATION



END VIEW



A-A

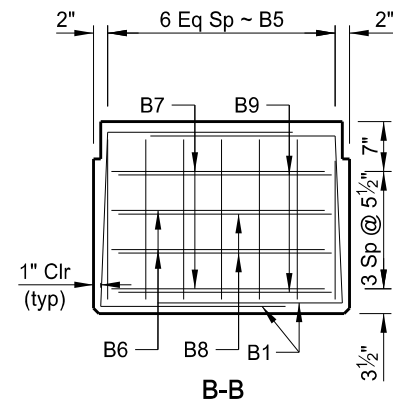
QUANTITIES		
PIER 2	CLASS AE-3 CONCRETE	100.1 CY
	REINFORCING STEEL	7,446 LBS
PIER 3	CLASS AE-3 CONCRETE	100.1 CY
	REINFORCING STEEL	7,446 LBS
PIER 4	CLASS AE-3 CONCRETE	100.0 CY
	REINFORCING STEEL	7,446 LBS

BNSF RR & SE JAMESTOWN INTERCHANGE
(SHOWING REINFORCING)
PIER DETAILS

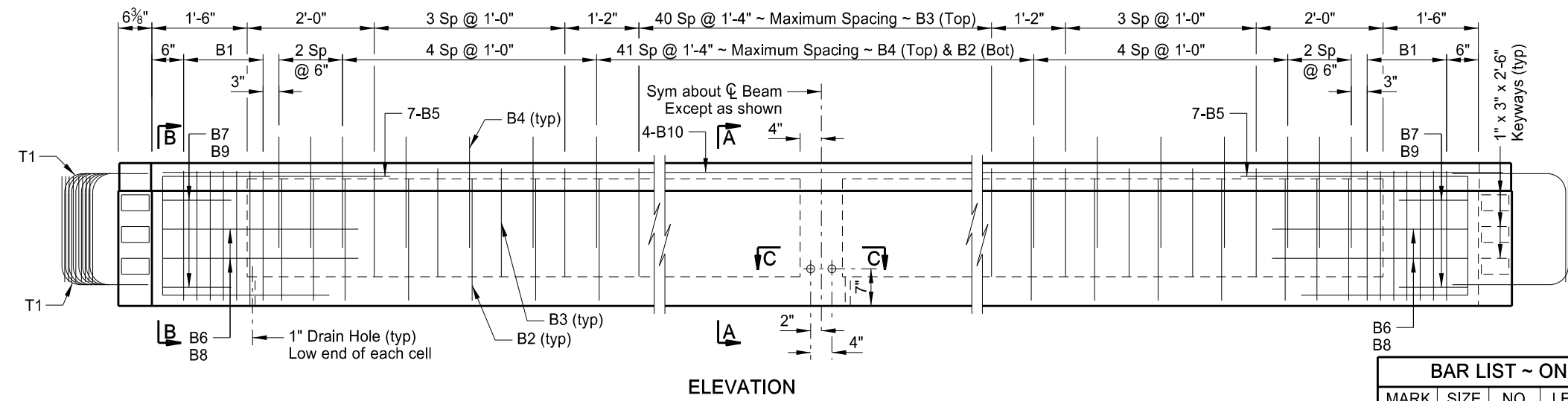
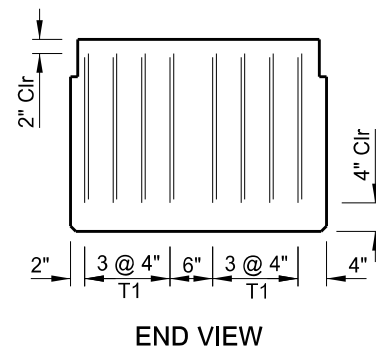
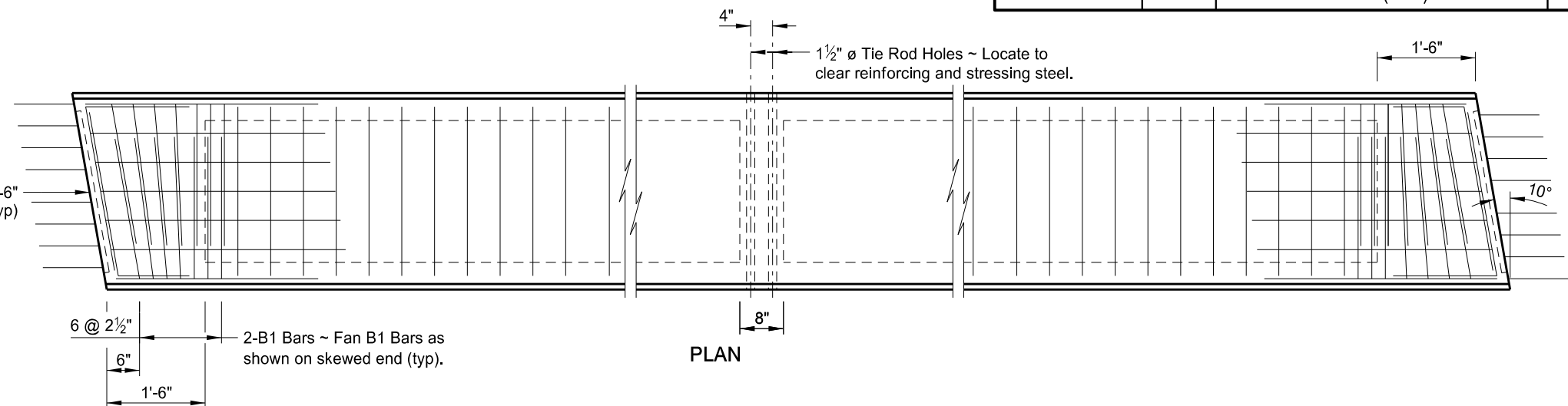
DRAWING NO.	94-260.131R-11
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23 U.S.C. § 407 Documents
NDDOT Reserves All Objections

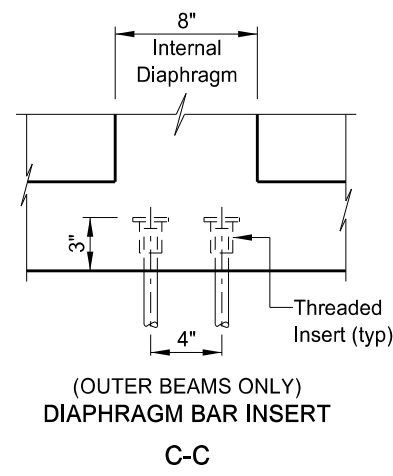
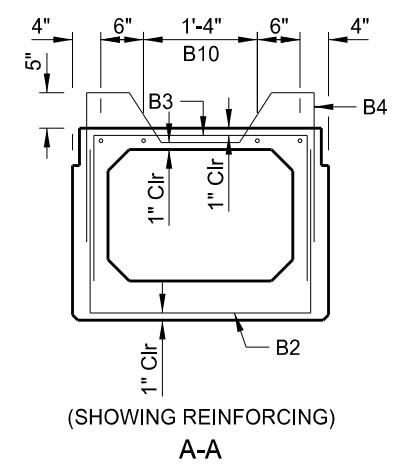
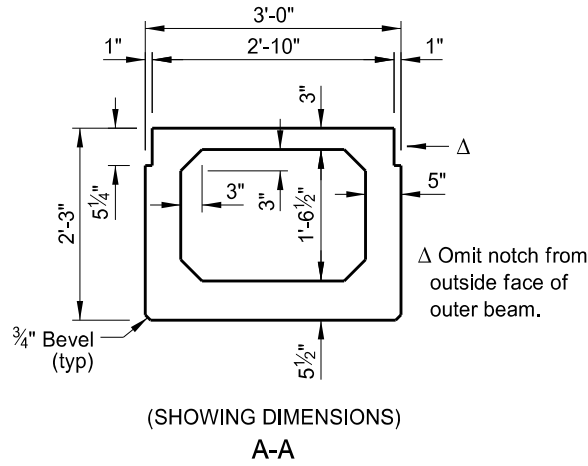
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	27



3 - 1" x 3" x 2'-6" Keyways (typ)



BAR LIST ~ ONE BEAM				
MARK	SIZE	NO.	LENGTH	SHAPE
B1	4	28	6'-5"	BENT
* B2	4	54	6'-5"	BENT
* B3	4	49	6'-0"	BENT
*** B4	4	54	6'-9"	BENT
B5	5	14	8'-1"	BENT
B6	4	4	5'-7"	BENT
B7	4	4	3'-7"	BENT
B8	4	4	6'-1"	BENT
B9	4	4	4'-1"	BENT
B10	4	8	35'-10"	STR
** T1	4	32	4'-6"	STR



*** B4 bars to be epoxy coated.

** Field bend as shown (Grade 40).

* Welded Wire Reinforcing with minimum circumferential steel area of 0.15 sq in per ft may be substituted for B2 and B3 bars in the region designated as 1'-4" maximum spacing.

BEAM SECTION DATA	
WT =	536.6 LBS/FT + 2091 LBS
CROSS SECTIONAL AREA =	498.5 IN ²
C.G. (FROM BOTTOM) =	12.11 IN
I =	43,612 IN ⁴
S _B =	3,601 IN ³

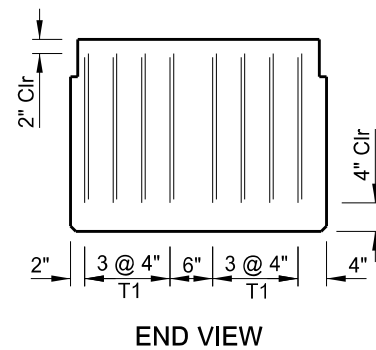
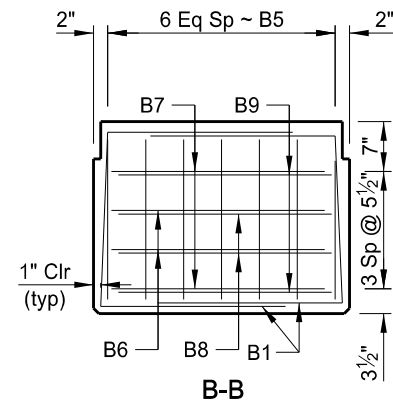
QUANTITIES (ONE BEAM)	
BEAM LENGTH	69.0 LF

BNSF RR & SE JAMESTOWN INTERCHANGE
PRE-TENSIONED 27" X 36" PRESTRESSED SPEED BOX BEAM

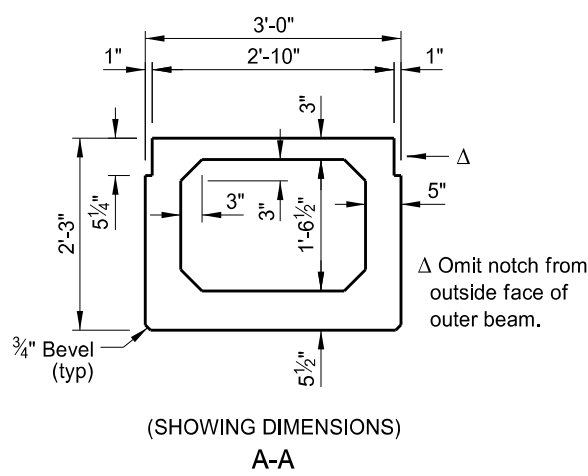
DRAWING NO.	94-260.131R-12
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23 U.S.C. § 407 Documents
 NDDOT Reserves All Objections

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	28

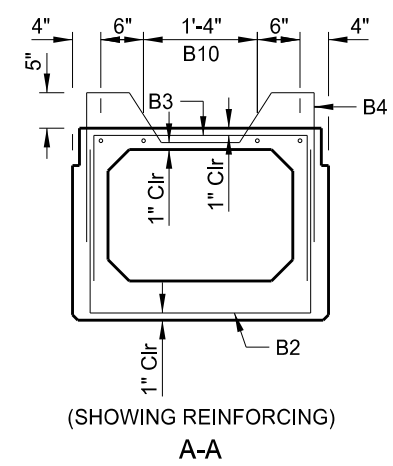


END VIEW



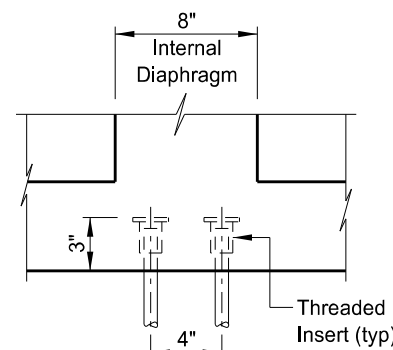
(SHOWING DIMENSIONS)
 A-A

*** B4 bars to be epoxy coated.



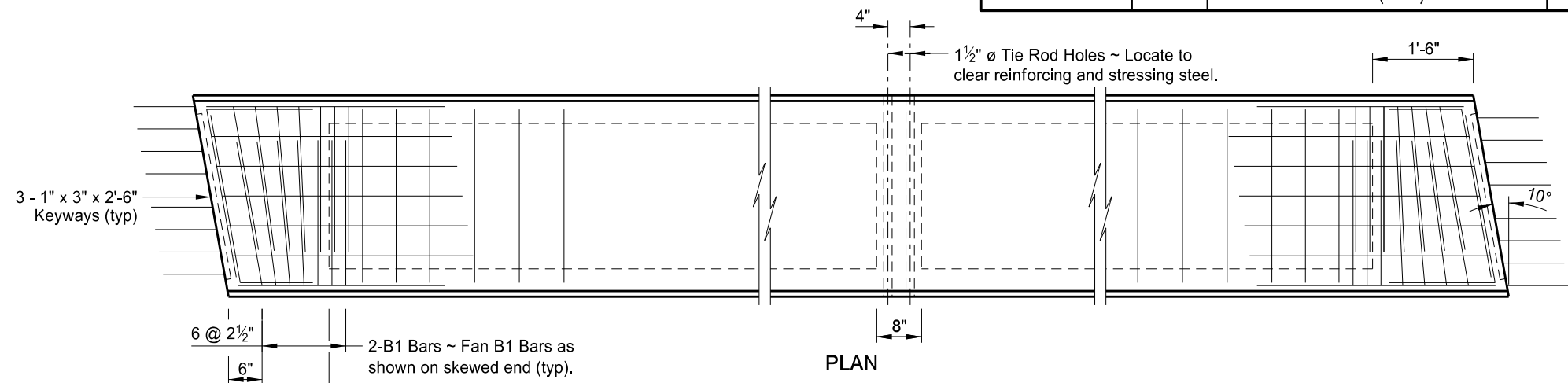
(SHOWING REINFORCING)
 A-A

** Field bend as shown (Grade 40).

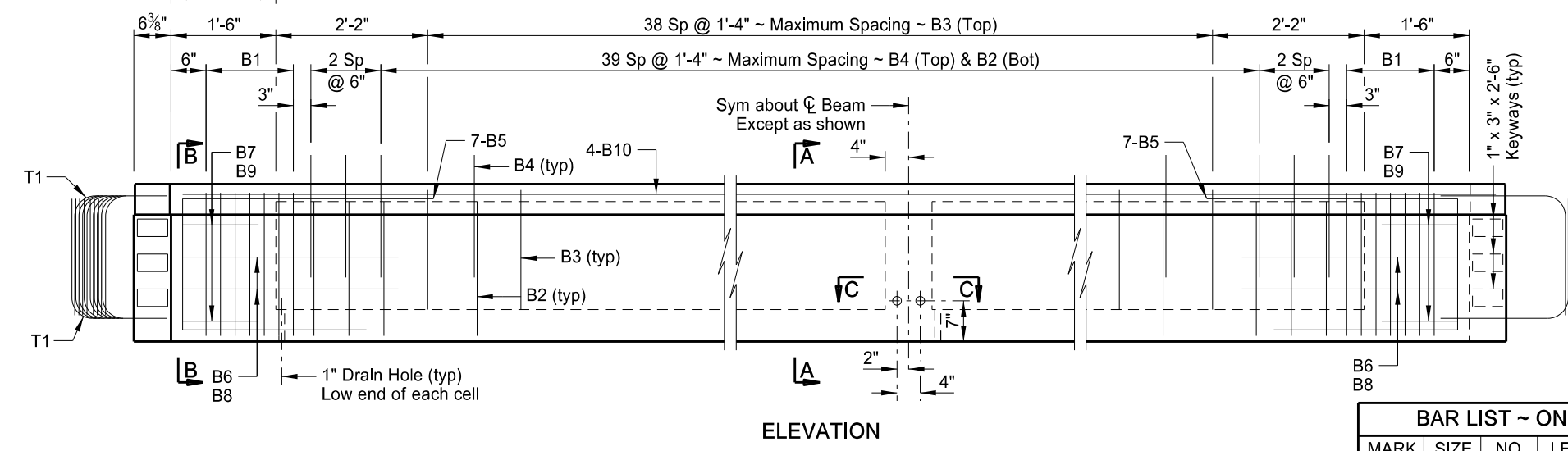


(OUTER BEAMS ONLY)
 DIAPHRAGM BAR INSERT
 C-C

* Welded Wire Reinforcing with minimum circumferential steel area of 0.15 sq in per ft may be substituted for B2 and B3 bars in the region designated as 1'-4" maximum spacing.



PLAN



ELEVATION

BAR LIST ~ ONE BEAM				
MARK	SIZE	NO.	LENGTH	SHAPE
B1	4	28	6'-5"	BENT
* B2	4	44	6'-5"	BENT
* B3	4	39	6'-0"	BENT
*** B4	4	44	6'-9"	BENT
B5	5	14	8'-1"	BENT
B6	4	4	5'-7"	BENT
B7	4	4	3'-7"	BENT
B8	4	4	6'-1"	BENT
B9	4	4	4'-1"	BENT
B10	4	8	30'-4"	STR
** T1	4	32	4'-6"	STR

QUANTITIES (ONE BEAM)	
BEAM LENGTH	58.0 LF

BEAM SECTION DATA	
WT =	536.6 LBS/FT + 2091 LBS
CROSS SECTIONAL AREA =	498.5 IN ²
C.G. (FROM BOTTOM) =	12.11 IN
I =	43,612 IN ⁴
S _B =	3,601 IN ³

BNSF RR & SE JAMESTOWN INTERCHANGE	
PRE-TENSIONED 27" X 36" PRESTRESSED SPEED BOX BEAM	
DRAWING NO.	94-260.131R-13

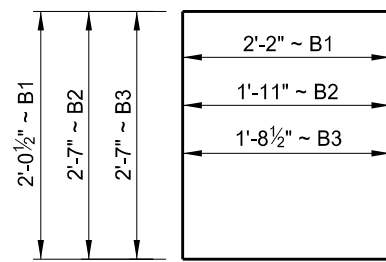
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	29

NOTES:

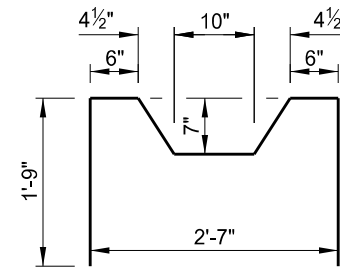
Select the final prestress force (remaining after all losses have been accounted for) and its corresponding center of gravity, from those on a curve determined by the three values shown in the "Prestressing Data" table.

Provide holes and inserts in the beams at locations shown to accommodate the diaphragm bars.

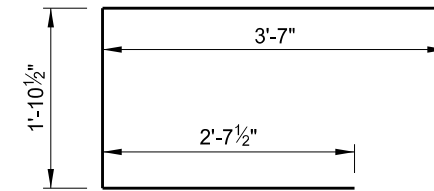
Minor changes to the shape of the beam and to reinforcing steel may be made to accommodate the forms of various contractors and their construction methods with the approval of the Engineer.



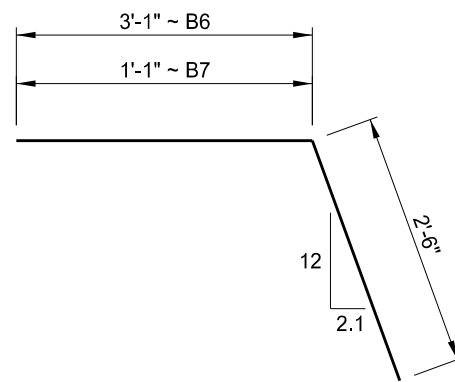
B1, B2 & B3



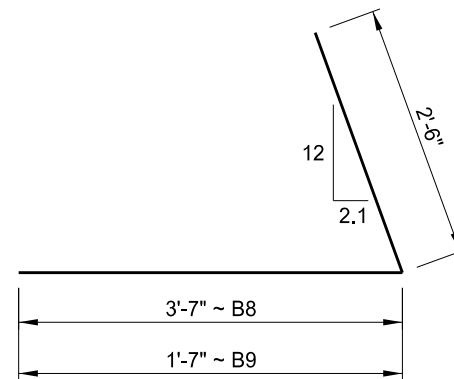
B4



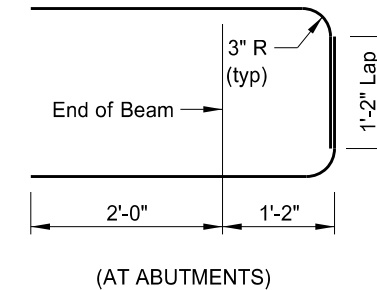
B5



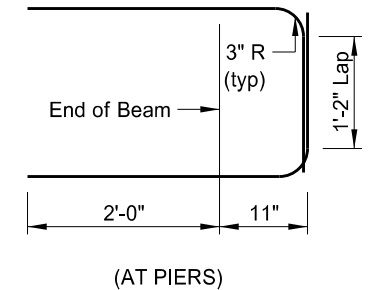
B6 & B7



B8 & B9



(AT ABUTMENTS)

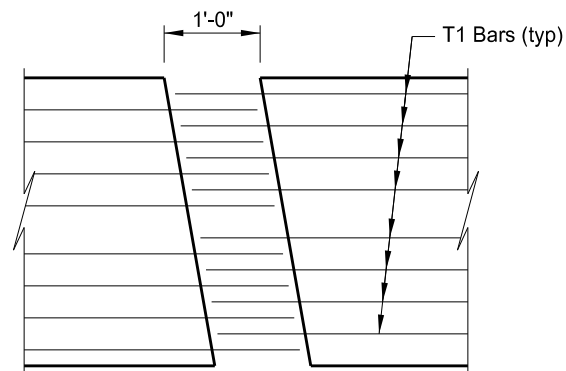


(AT PIERS)

T1

(DIMENSIONS SHOWN ARE OUT TO OUT)

BENT BAR DETAILS



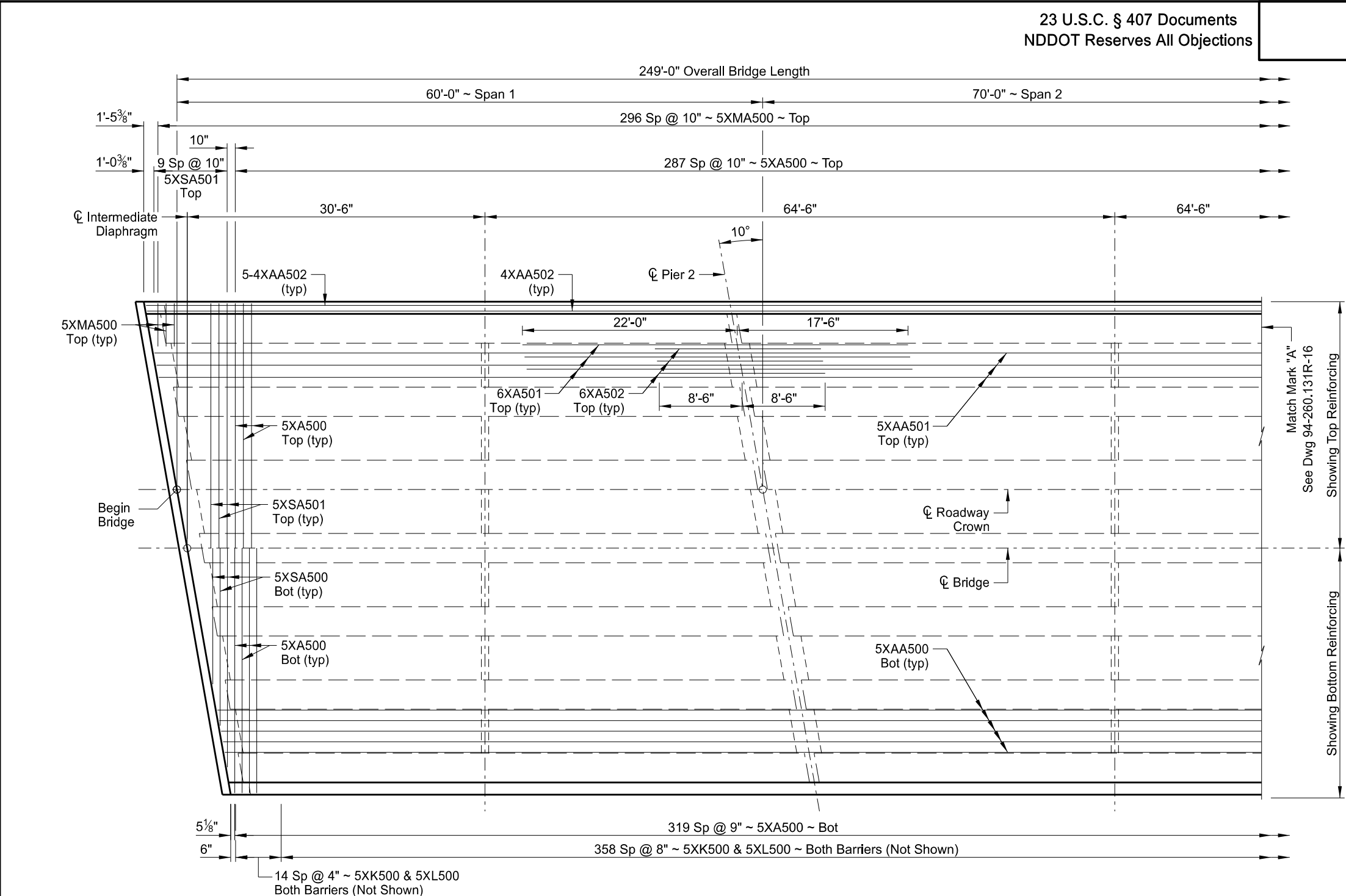
BEAM END PLAN AT PIER

PRESTRESSING DATA					
C.G.	FINAL FORCE	DETENSION STRENGTH	ACCEPTANCE STRENGTH	WEIGHT (TONS)	BEAM LENGTH
4.00"	880.7 k	6,500 psi (Min)	6,500 psi (Min)	19.6	69'-0"
4.25"	895.3 k				
4.50"	910.4 k				
4.00"	627.2 k	5,600 psi (Min)	5,600 psi (Min)	16.6	58'-0"
4.25"	637.6 k				
4.50"	648.4 k				

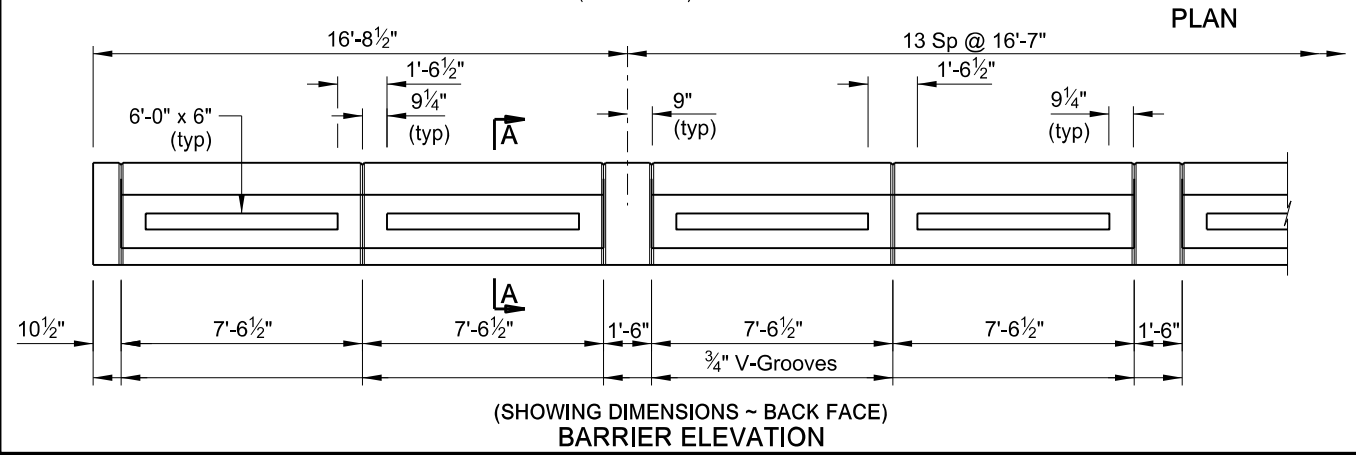
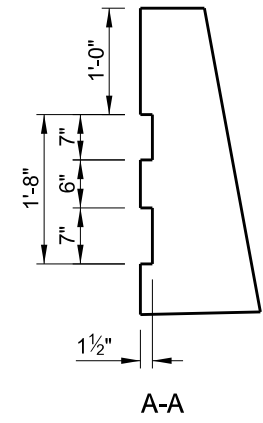
BNSF RR & SE JAMESTOWN INTERCHANGE	
PRE-TENSIONED 27" X 36" PRESTRESSED SPEED BOX BEAM	
DRAWING NO.	94-260.131R-14

23 U.S.C. § 407 Documents
 NDDOT Reserves All Objections

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	30



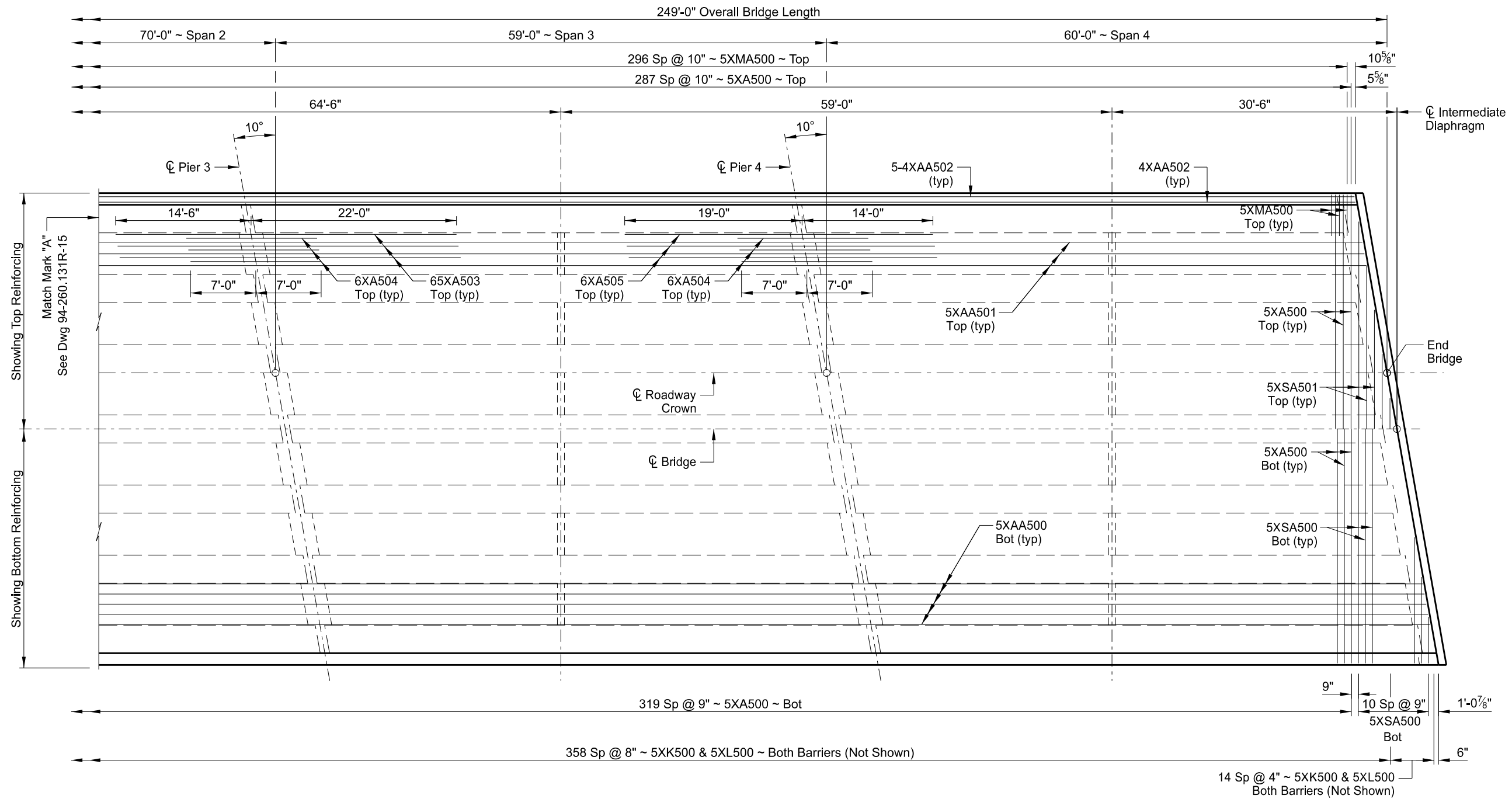
Showing Top Reinforcing
 See Dwg 94-260.131R-16
 Showing Bottom Reinforcing



QUANTITIES	
SEE DWG 94-260.131R-20	
BNSF RR & SE JAMESTOWN INTERCHANGE	
HALF SLAB LAYOUT	
DRAWING NO.	94-260.131R-15

23 U.S.C. § 407 Documents
 NDDOT Reserves All Objections

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	31

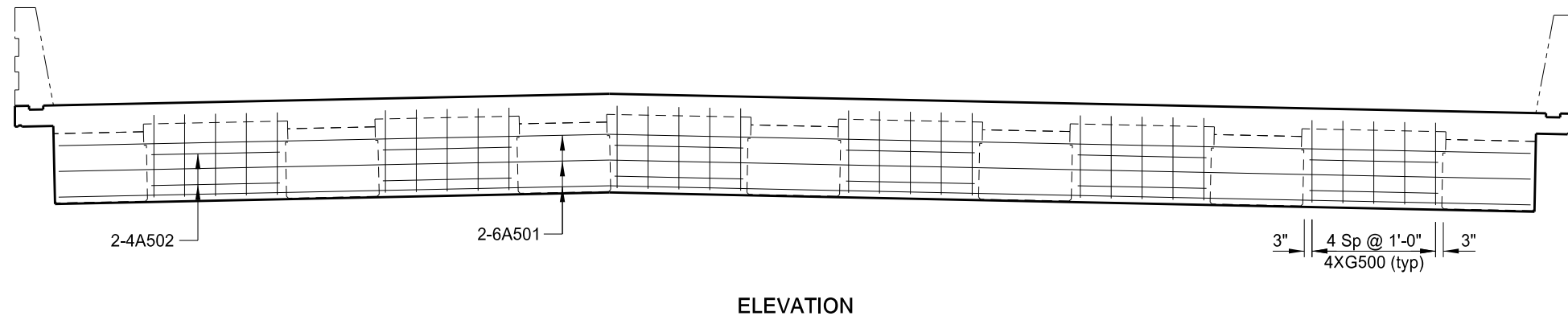
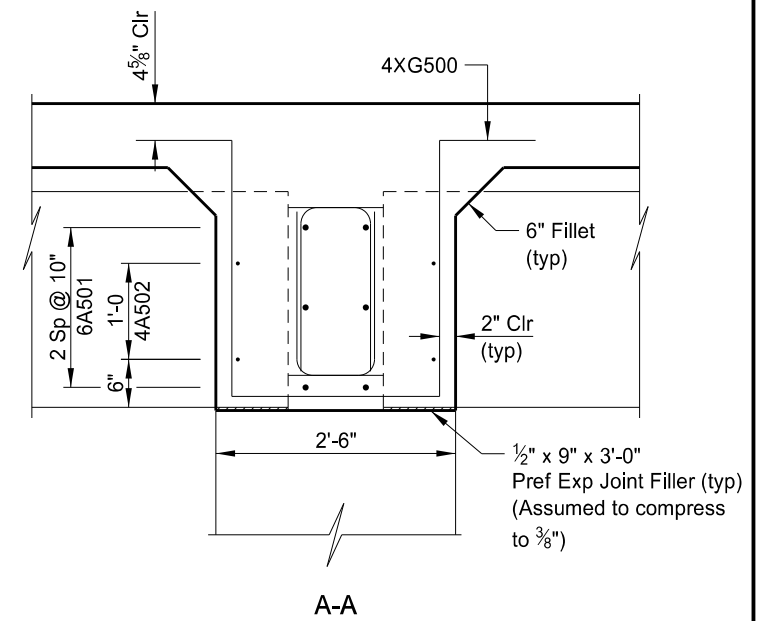
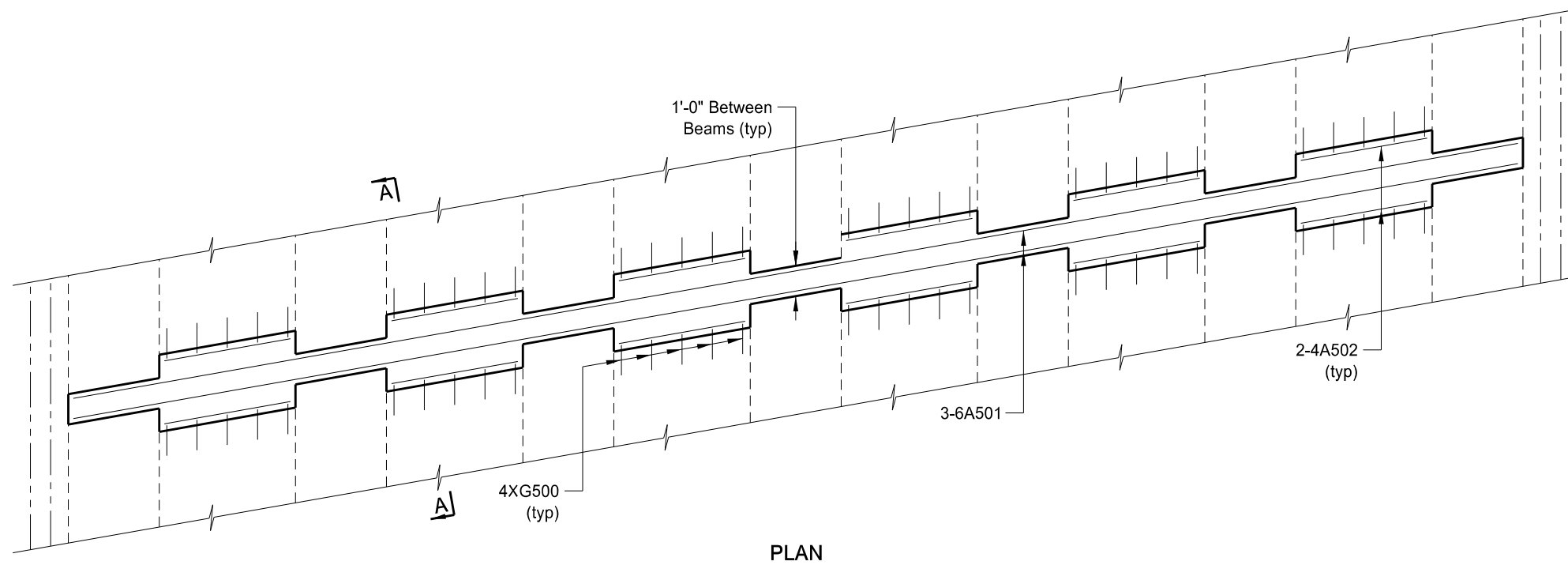


PLAN

QUANTITIES	
SEE DWG 94-260.131R-20	
BNSF RR & SE JAMESTOWN INTERCHANGE	
SLAB LAYOUT	
DRAWING NO.	94-260.131R-16

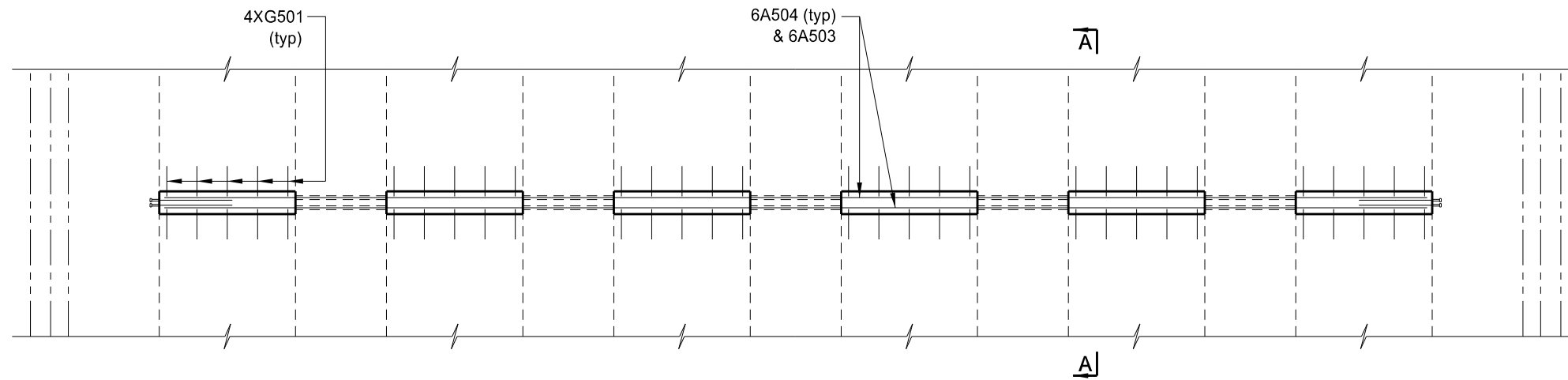
23 U.S.C. § 407 Documents
 NDDOT Reserves All Objections

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	32

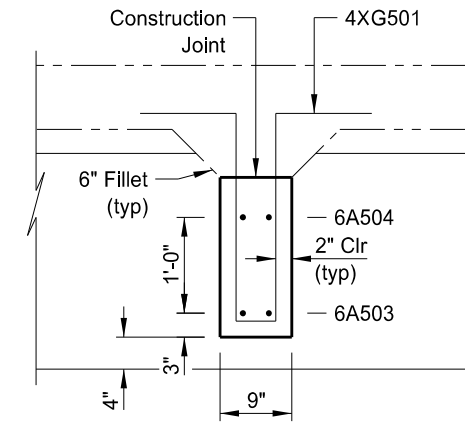


QUANTITIES	
SEE DWG 94-260.131R-20	
BNSF RR & SE JAMESTOWN INTERCHANGE	
PIER DIAPHRAGM DETAILS	
DRAWING NO.	94-260.131R-17

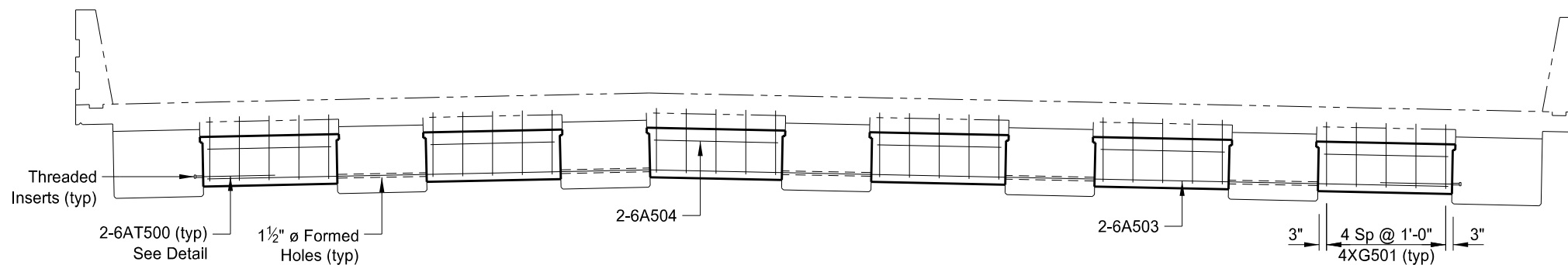
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	33



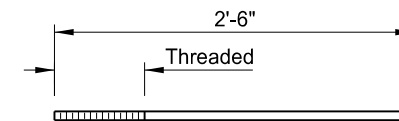
PLAN



A-A



ELEVATION



No. 6 Reinforcing Steel ~ Include in the Prestressed Beam bid item.

6AT500 DETAIL

QUANTITIES

SEE DWG 94-260.131R-20

BNSF RR & SE JAMESTOWN INTERCHANGE

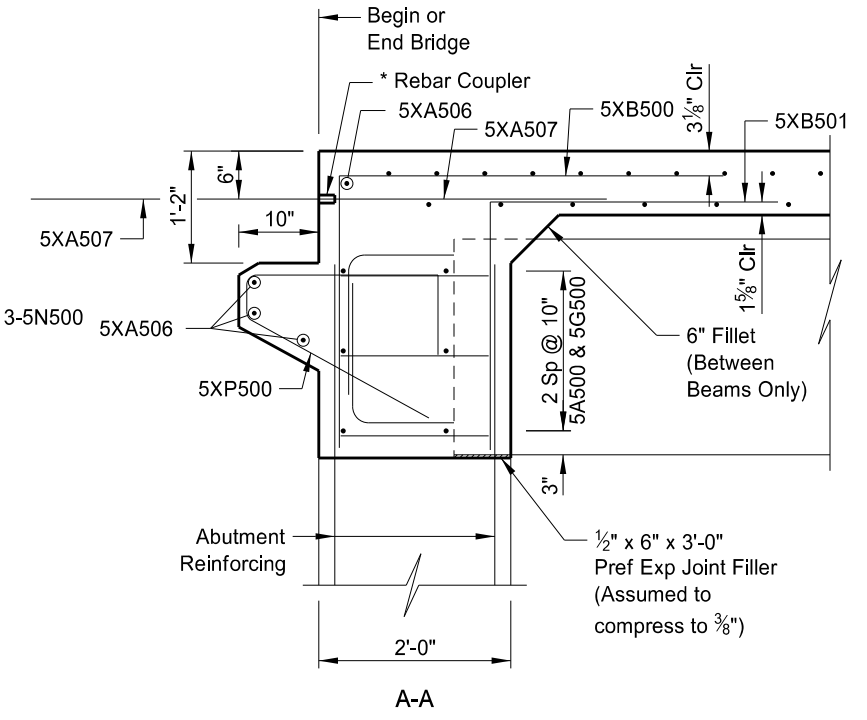
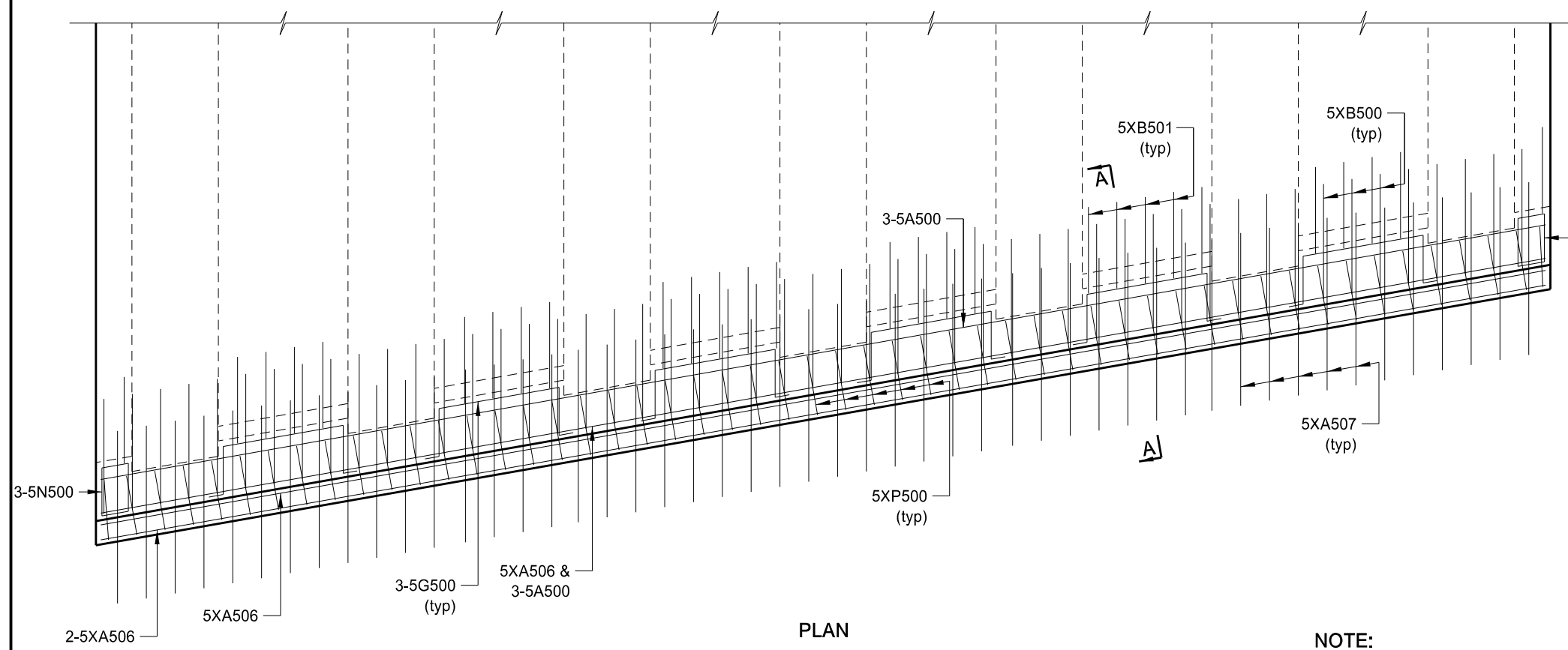
INTERMEDIATE DIAPHRAGM DETAILS

DRAWING NO.

94-260.131R-18

23 U.S.C. § 407 Documents
 NDDOT Reserves All Objections

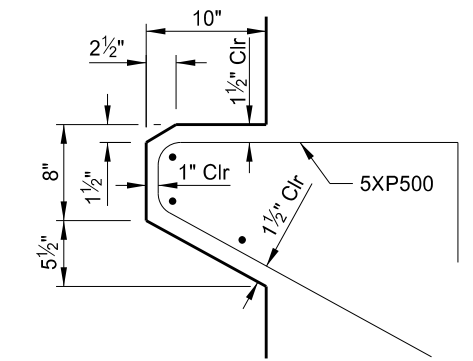
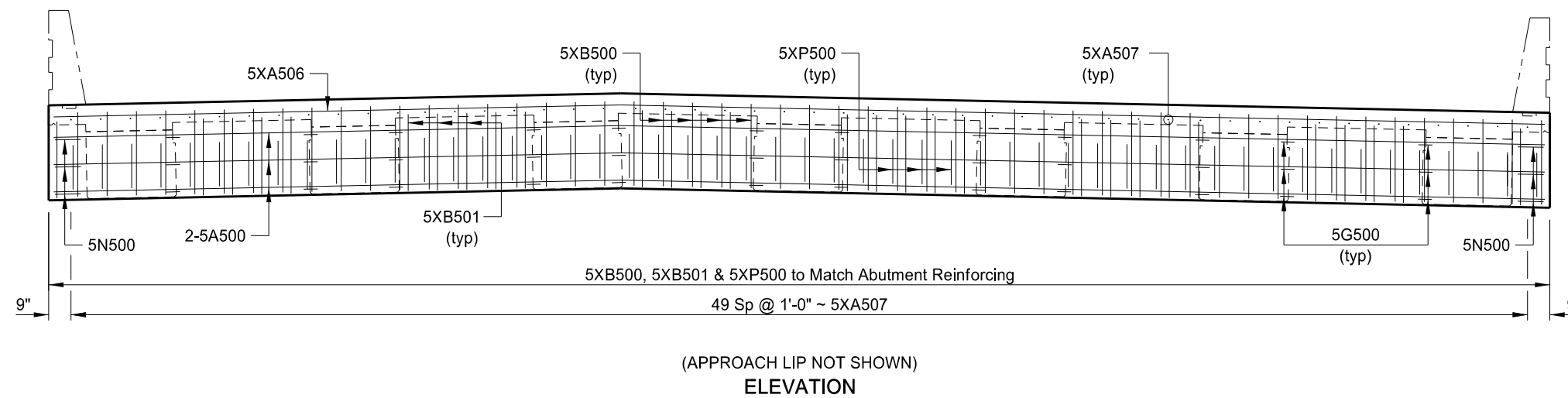
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	34



* Use mechanical connectors for the couplers capable of developing 125% of the reinforcing steel specified yield strength. Provide epoxy coated couplers according to Section 836.02 A and repair any damaged epoxy coating according to Section 612.04 E.

NOTE:

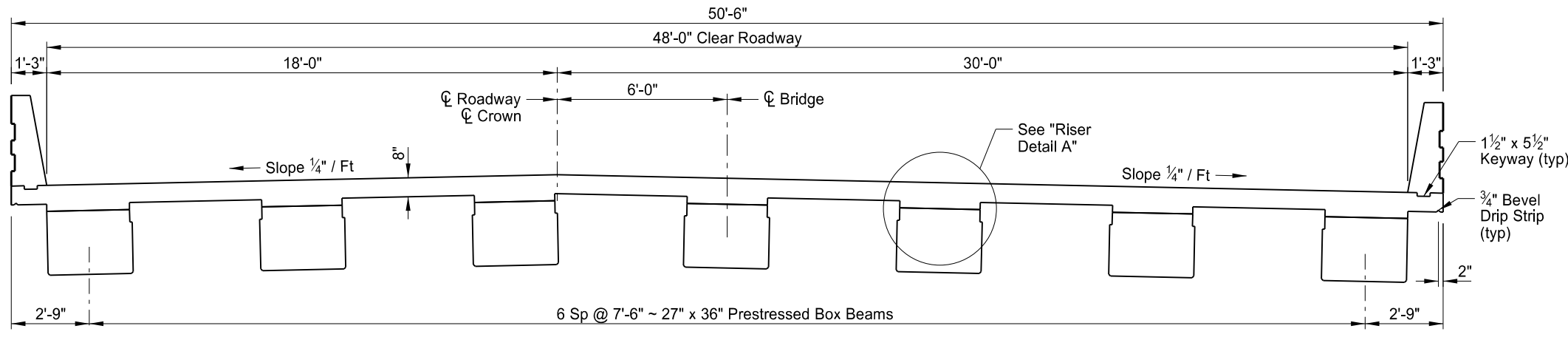
Do not install the 5XA507 bars into the approach slab until all of the foundation fill is in place.



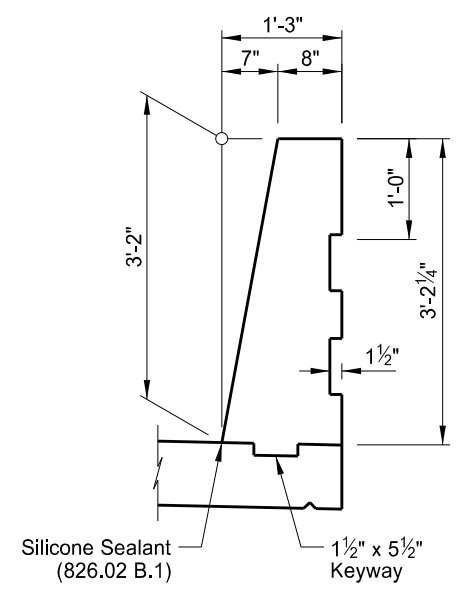
QUANTITIES	
SEE DWG 94-260.131R-20	
BNSF RR & SE JAMESTOWN INTERCHANGE	
ENDWALL DETAILS	
DRAWING NO.	94-260.131R-19

23 U.S.C. § 407 Documents
NDDOT Reserves All Objections

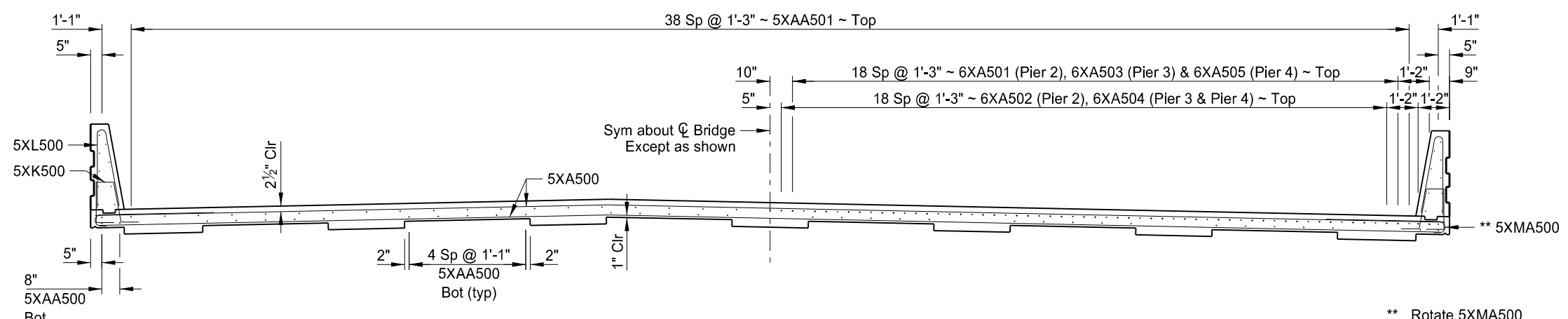
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	35



(SHOWING DIMENSIONS)
SLAB SECTION



SHOWING DIMENSIONS

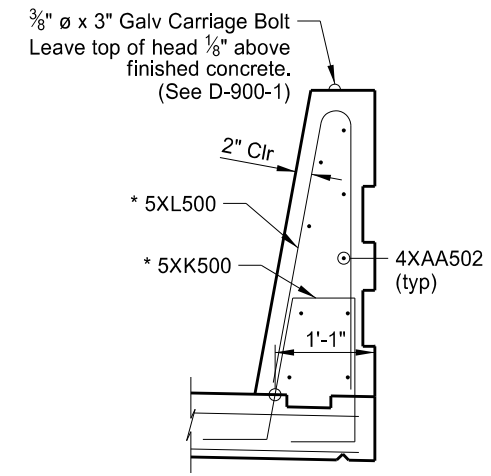


(SHOWING REINFORCING OVER PIERS)

SLAB SECTION

(SHOWING REINFORCING BETWEEN SUPPORTS)

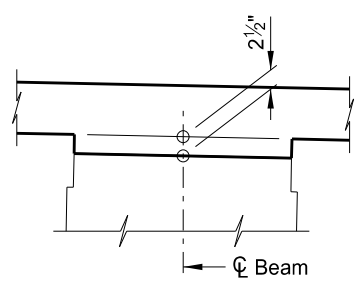
** Rotate 5XMA500 reinforcing steel to provide 1" clear from hook to bottom of slab.



* Provide a 2" clearance from the front face to the barrier reinforcing.

SHOWING REINFORCING

BARRIER DETAIL



RISER DETAIL A

The 2 1/2" dimension shown is located at the supports. The anticipated midspan riser is 1 3/4" for Span 1, 3 & 4 and 1 1/8" for Span 2. Adjust the riser to maintain the 8" slab thickness.

QUANTITIES	
CLASS AAE-3 CONCRETE	450.1 CY
REINFORCING STEEL	3,333 LBS
REINFORCING STEEL (EPOXY)	81,281 LBS

BNSF RR & SE JAMESTOWN INTERCHANGE

SLAB SECTION

DRAWING NO.	94-260.131R-20
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BILL OF REINFORCING STEEL, GRADE 60
LETTER PREFIX OF BAR MARK DENOTES SHAPE ~ SEE BAR DETAILS

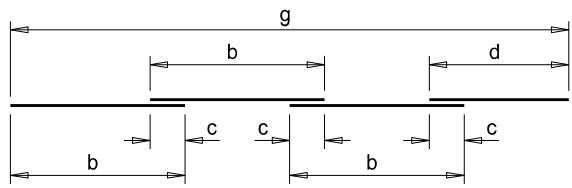
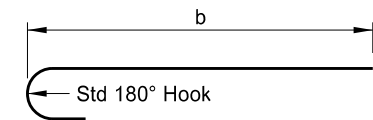
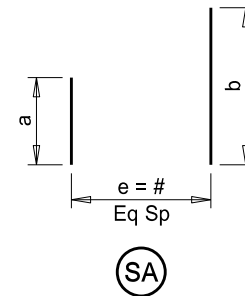
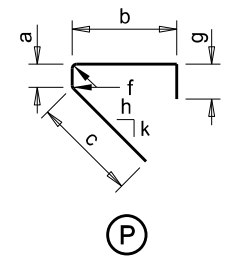
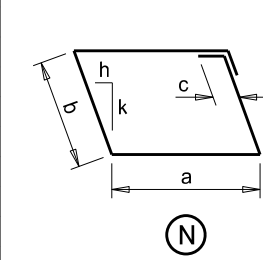
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	37

LOC-A-TION	SIZE	MARK	NO. EACH /SET	NOMINAL LENGTH	DETAILING DIMENSIONS								LOC-A-TION	SIZE	MARK	NO. EACH /SET	NOMINAL LENGTH	DETAILING DIMENSIONS								
					a	b	c	d	e	f	g	h						k	a	b	c	d	e	f	g	h
REGULAR	5	A500	12	50'- 11"											50'- 11"											
	6	A501	18	48'- 4"											48'- 4"											
	4	A502	72	4'- 2"											4'- 2"											
	6	A503	8	41'- 8"											41'- 8"											
	6	A504	48	4'- 2"											4'- 2"											
	5	G500	36	8'- 4"	1'- 7"	4'- 2"	1'- 7"	6"															12	2.1		
	5	N500	12	6'- 0"	1'- 7"	11"	6"																2.1	12		
	5	XA500	608	50'- 2"											50'- 2"											
	6	XA501	40	39'- 6"											39'- 6"											
	6	XA502	40	17'- 0"											17'- 0"											
6	XA503	40	36'- 6"											36'- 6"												
6	XA504	80	14'- 0"											14'- 0"												
6	XA505	40	33'- 0"											33'- 0"												
5	XA506	8	50'- 11"											50'- 11"												
5	XA507	200	3'- 0"											3'- 0"												
SUPERSTRUCTURE	5	XB500	104	6'- 10"			2'- 10"	4'- 0"																		
	5	XB501	58	5'- 7"			2'- 7"	3'- 0"																		
	4	XG500	90	9'- 4"	2'- 7"	2'- 2"	2'- 7"	1'- 0"															12	0		
	4	XG501	120	6'- 7"	2'- 1"	5"	2'- 1"	1'- 0"																12	0	
	5	XK500	774	4'- 11"	1'- 6"	7"			10"														8"	2.2	12	
	5	XL500	774	5'- 11"	9"	2'- 9"	5"		1.25"															2.2	12	
	5	XMA500	594	5'- 0"		4'- 5"																				
	5	XP500	104	5'- 6"	5"	2'- 1"	2'- 2"		1.25"														10"	12	6.5	
	5	XAA500	34	260'- 8"			60'- 0"	3'- 0"	20'- 8"	4															248'- 8"	
	5	XAA501	41	258'- 8"			60'- 0"	2'- 6"	18'- 8"	4																248'- 8"
4	XAA502	18	258'- 8"			60'- 0"	2'- 6"	18'- 8"	4																248'- 8"	
5	XSA500	2	287'- 10"	4'- 10"	47'- 6"				10																	
5	XSA501	2	259'- 7"	4'- 8"	47'- 3"				9																	

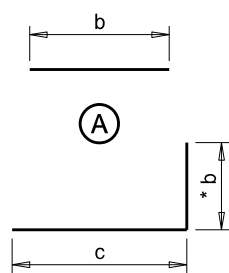
23 U.S.C. § 407 Documents
 NDDOT Reserves All Objections

NOTES:

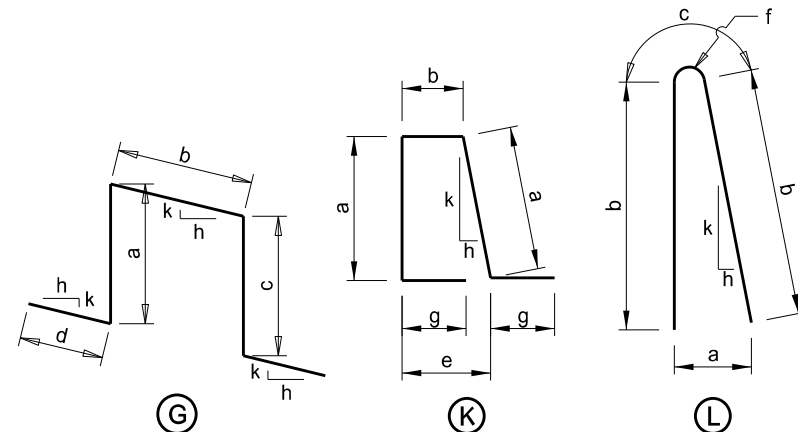
1. All dimensions are out to out of bars.
2. Nominal length of each bent bar or cut bar is the sum total of the detailing dimensions for that bar, unless otherwise noted.
3. Turn adjacent "AA" bars end for end so that the splice locations are staggered.
4. The "f" dimension indicates the inside radius unless otherwise noted.
5. An "X" preceding a bar designation indicates an epoxy coated bar.
6. Verify the quantity, size, and shape of the bar reinforcement against the structure drawings and immediately notify the Engineer of any discrepancies. Discrepancies in the bar list will not be cause for adjustment of the unit price.



c = Lap Splice (typ)
 e = # of "b" Length Pieces in a Set
 Total Length per Set = e x b + d



* b = Vertical Leg for XB500 and XB501



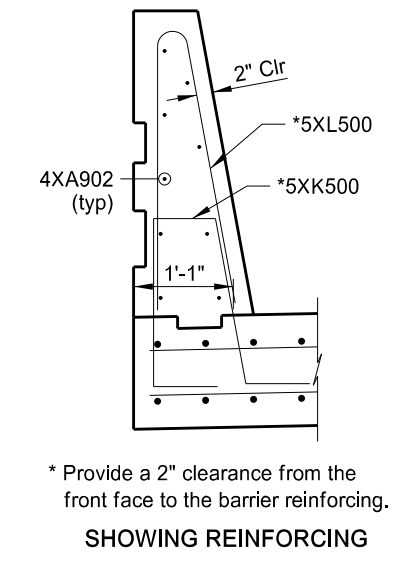
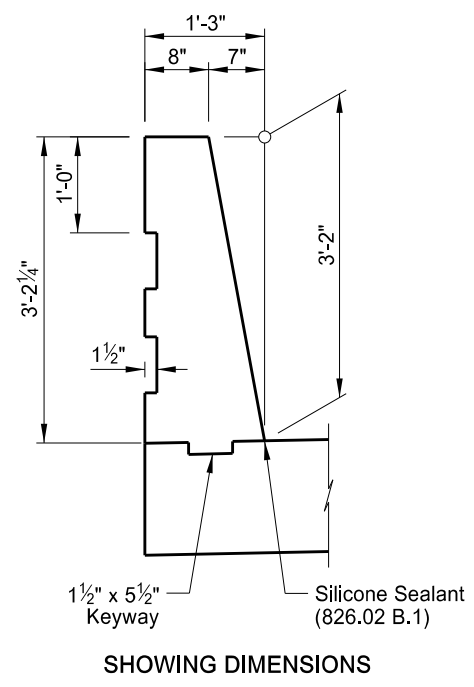
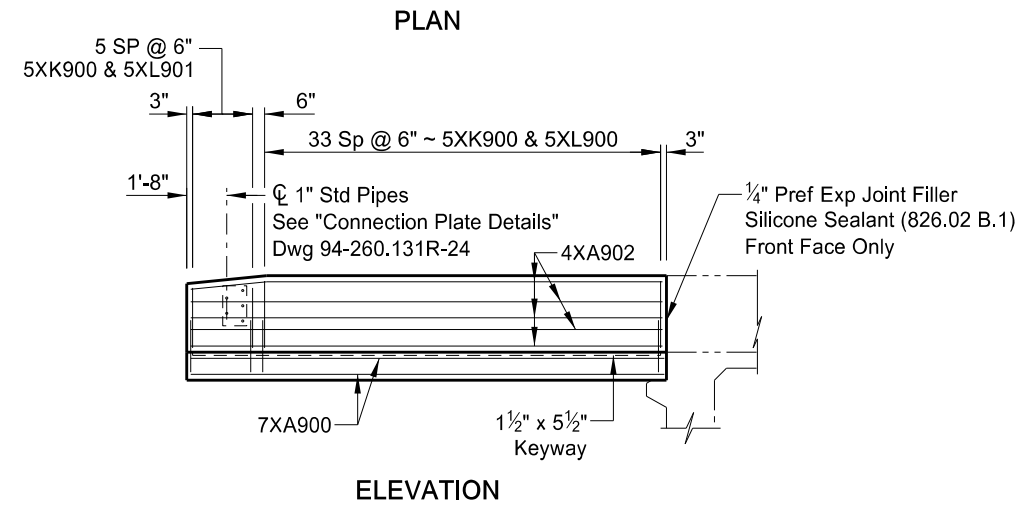
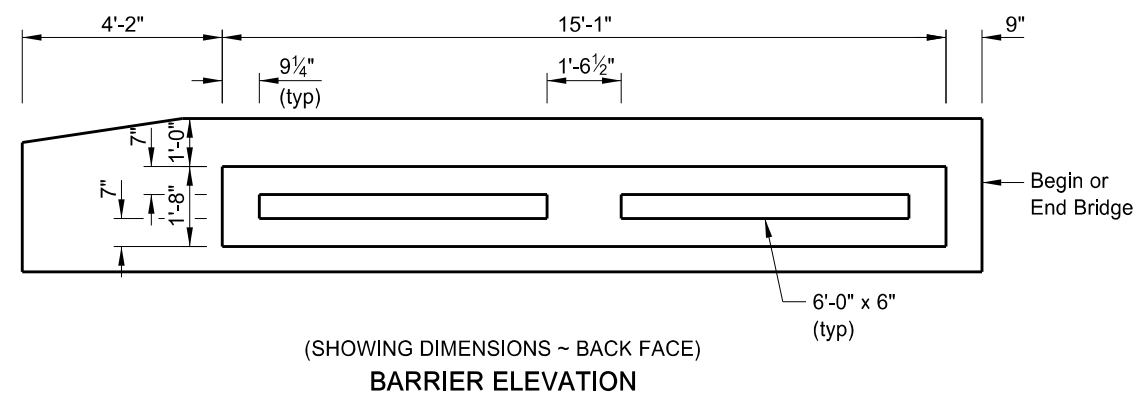
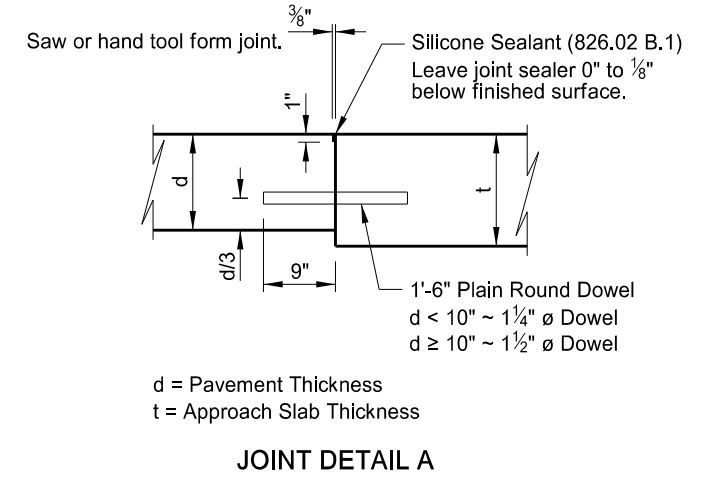
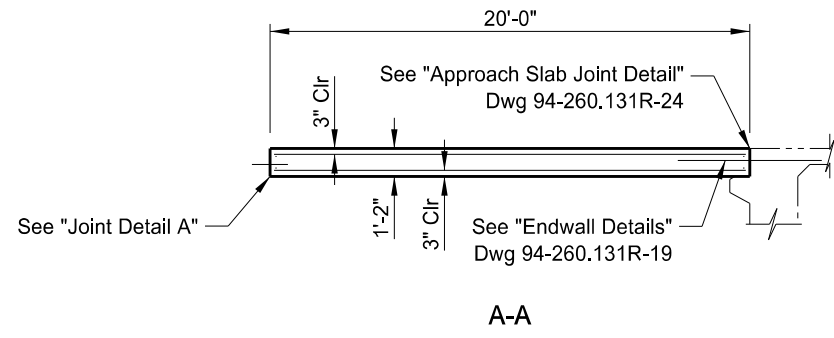
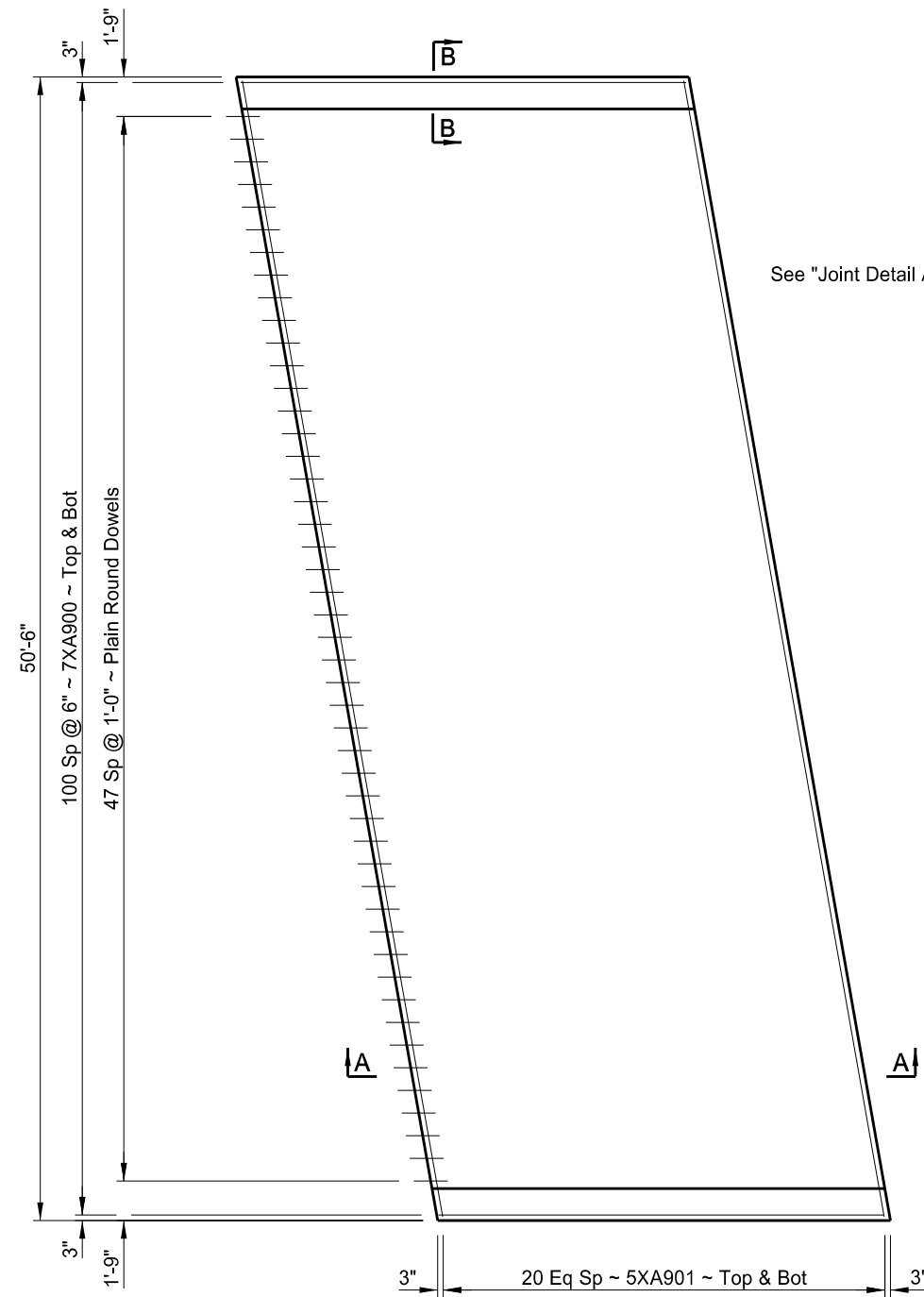
BNSF RR & SE JAMESTOWN INTERCHANGE

REINFORCING BAR LIST & DETAILS

DRAWING NO. 94-260.131R-22

23 U.S.C. § 407 Documents
NDDOT Reserves All Objections

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	38



SKEW ANGLE = 10°

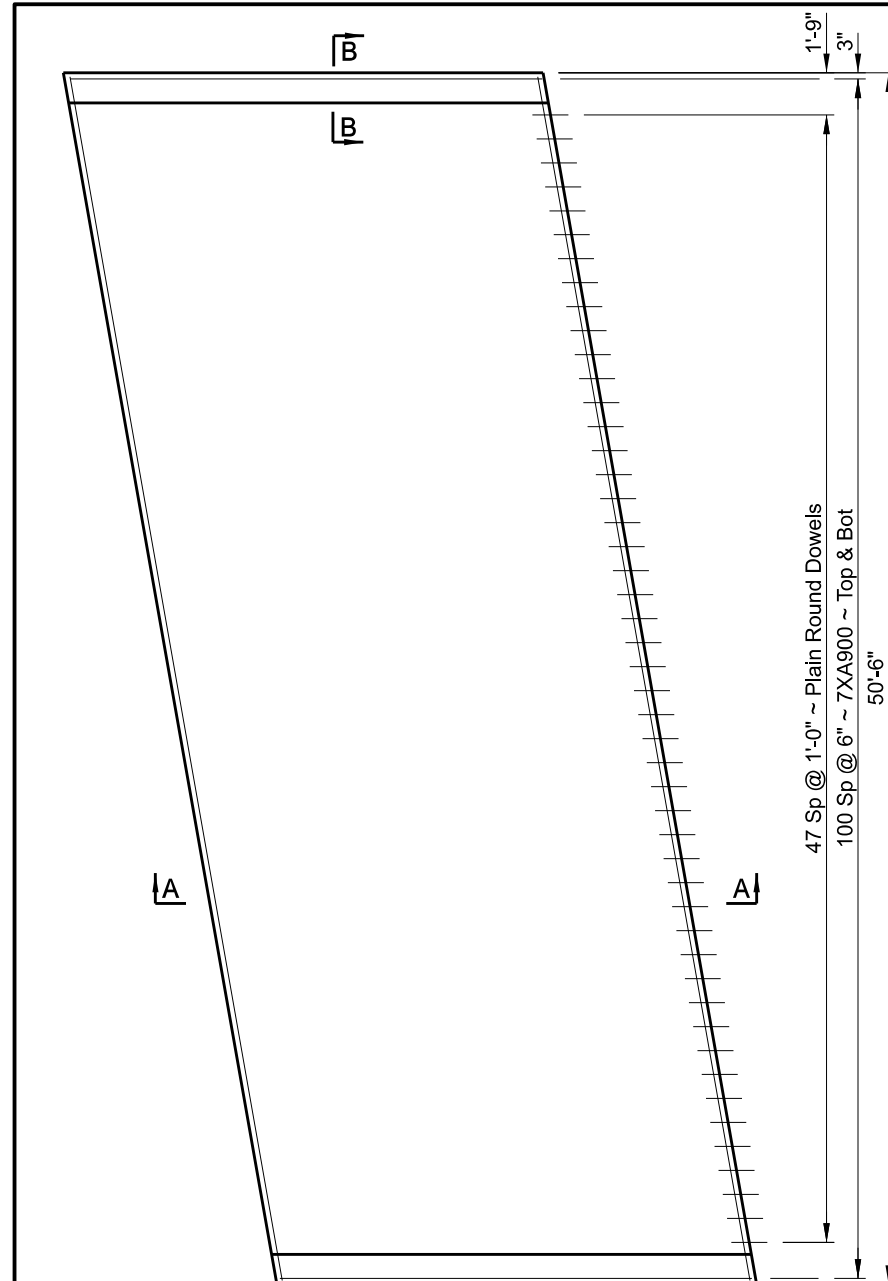
BAR LIST - ONE END			
SIZE	MARK	NO.	LENGTH
7	A900	202	19'- 8"
5	A901	42	50'- 11"
4	A902	18	19'- 8"
5	XK900	80	5'- 7"
5	XL900	68	5'- 11"
5	XL901	12	5'- 3"

ESTIMATED MATERIAL QUANTITIES	
REINFORCING STEEL (LBS)	CONCRETE (CY)
11,538	48.0

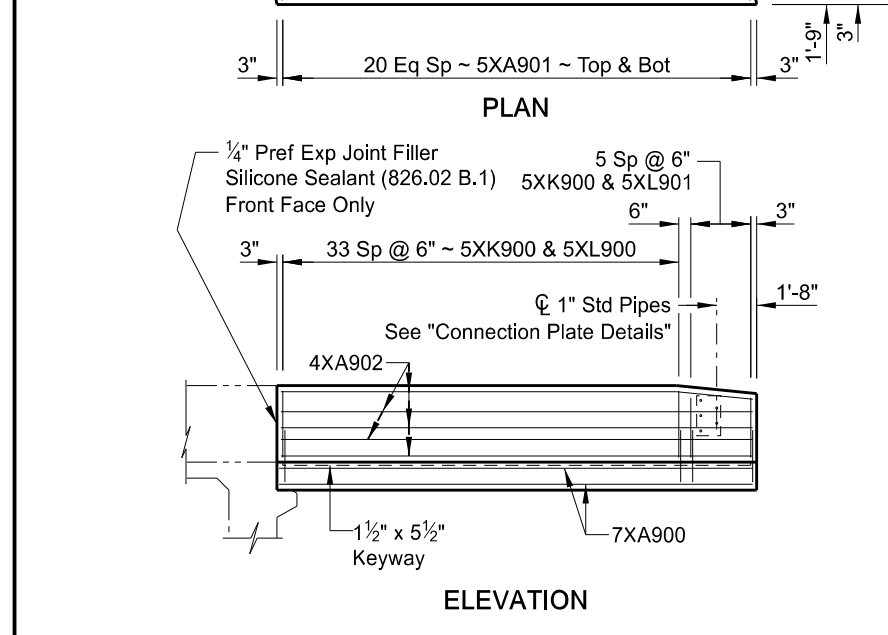
NOTES:
See Dwg 94-260.131R-24 for notes and bent bar details.

QUANTITIES (WEST END)	
APPROACH SLAB	113.0 SY
BNSF RR & SE JAMESTOWN INTERCHANGE	
APPROACH SLAB DETAILS	
DRAWING NO.	94-260.131R-23

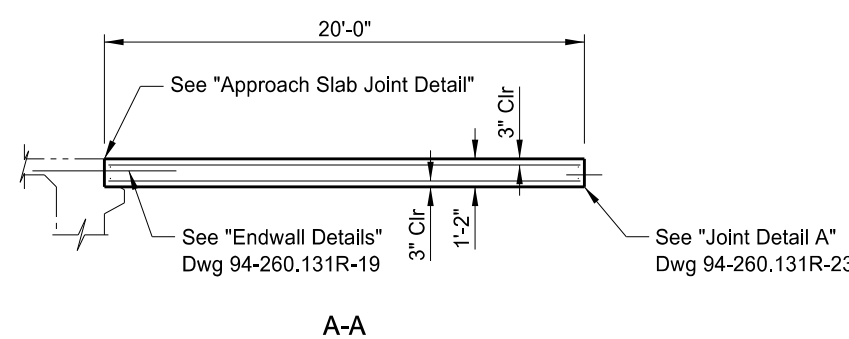
STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	IM-2-094(194)260	170	39



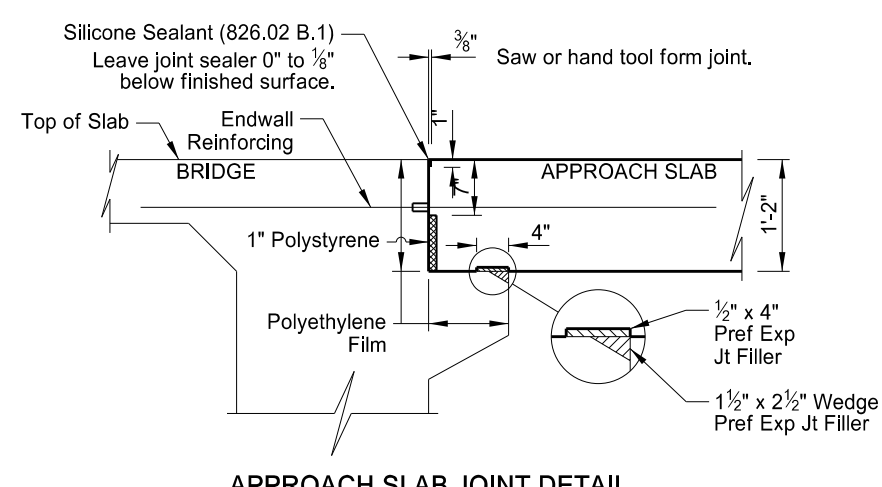
PLAN



ELEVATION



A-A

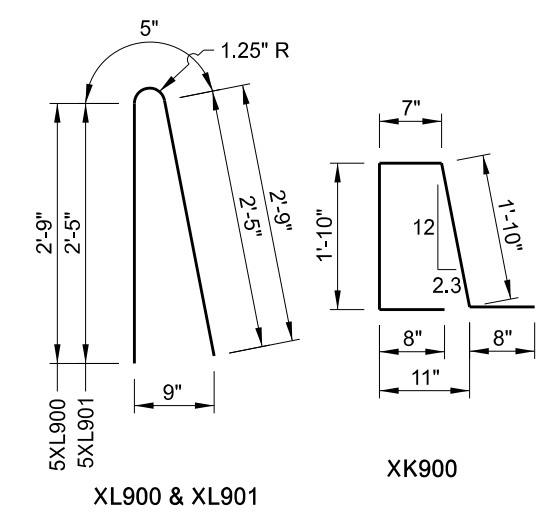


APPROACH SLAB JOINT DETAIL

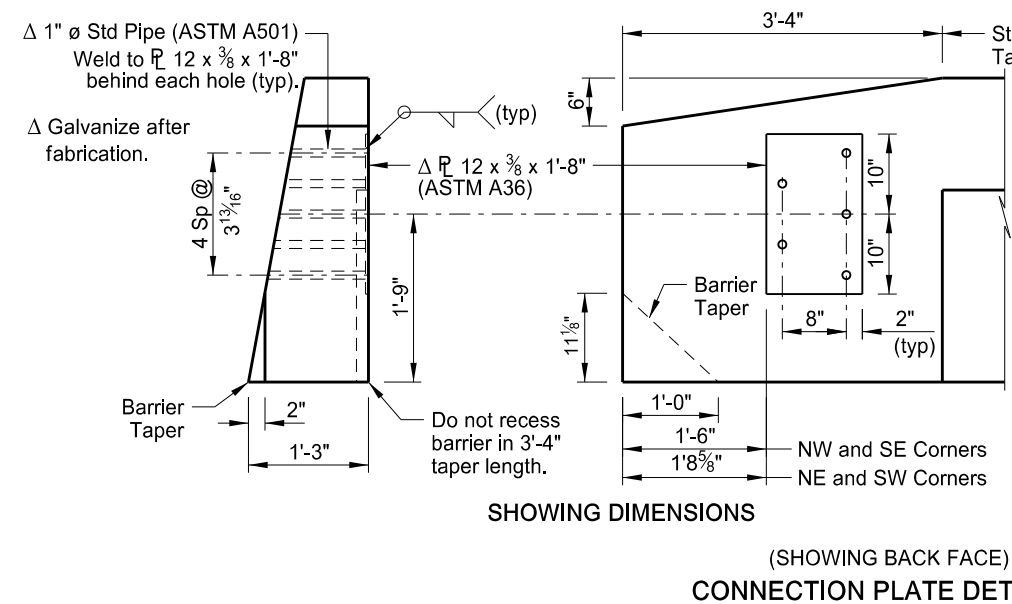
NOTES:

The estimated material quantities shown are for information purposes only. Include the concrete, reinforcing bars, polyethylene film, preformed joint filler, polystyrene, silicone sealant, connection plates and pipes, and labor required to build the approach slabs and barriers in the pay item "Concrete Bridge Approach Slab." Use Class AAE-3 concrete and Grade 60 reinforcing steel. Provide reinforcing steel that meets the requirements of Section 612. Use polyethylene film that meets the requirements of ASTM C171.

The bar marks beginning with an "X" indicate an epoxy coated bar. The dimensions shown in the "Bent Bar Details" are out to out.

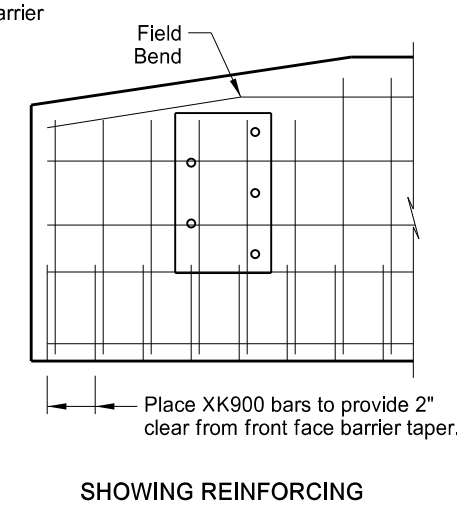


BENT BAR DETAILS



SHOWING DIMENSIONS

(SHOWING BACK FACE)
CONNECTION PLATE DETAILS



SHOWING REINFORCING

SKEW ANGLE = 10°

BAR LIST - ONE END			
SIZE	MARK	NO.	LENGTH
7	A900	202	19'- 8"
5	A901	42	50'- 11"
4	A902	18	19'- 8"
5	XK900	80	5'- 7"
5	XL900	68	5'- 11"
5	XL901	12	5'- 3"

ESTIMATED MATERIAL QUANTITIES	
REINFORCING STEEL (LBS)	CONCRETE (CY)
11,538	48.0

NOTES:

See Dwg 94-260.131R-23 for Section B-B.

QUANTITIES (EAST END)	
APPROACH SLAB	113.0 SY

BNSF RR & SE JAMESTOWN INTERCHANGE
(EAST EXIT END)
APPROACH SLAB DETAILS

DRAWING NO.	94-260.131R-24
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EXHIBIT "E"

NONDISCRIMINATION CLAUSES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts. Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Exhibit E

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT "G"

RAILROAD COST ESTIMATE

The cost to complete the work performed by the railroad as identified in Section IIIB is as follows:

1. Providing engineering and inspection as required in connection with the construction of the Project=Estimated \$66,660
2. Providing Flagging services in connection with the construction of the Project=Estimated \$169,472

Payment to the Railroad will be made by the NDDOT upon receipt of a request for payment from the Railroad. The request for payment shall be made to:

North Dakota Department of Transportation
Jason Thorenson, State Bridge Engineer
608 East Boulevard Avenue
Bismarck ND 58501-0700

**EXHIBIT "H"****BNSF PROCESS REQUIREMENTS FOR DESIGN & CONSTRUCTION OF GRADE SEPARATION PROJECTS BY A PUBLIC AGENCY ON BNSF RIGHT OF WAY, WHICH IMPACT BNSF PROPERTY OR OPERATIONS****1.01 General:**

- C. 1.01.01 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 replacement of 0094-260.125 R [DOT 966535T] for State of North Dakota, I-94 overpass structures at railroad Line Segment 287, Mile Post 0039.500.
- D. 1.01.02 Definitions:
1. **Operationally Critical, (OC):** defined as Work that requires a submittal and acceptance by BNSF, which impacts, or could impact BNSF operations, on BNSF right-of-way or adjacent to it.
 2. Acceptance: **BNSF's response to plan submittals indicating a notice to proceed with work in the field;** Disclaimer for Acceptance: *BNSF has reviewed these submittals and no exceptions are taken with regard to BNSF's ability to use or accommodate the project as intended. BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design or execution of the project.
 3. **Inspector/Coordinator, (I/C):** A third party consultant which BNSF hires to assist in the coordination of the project on BNSF's behalf. When referenced, "I/C" refers to the I/C team consisting of I/C-I, I/C-II, and the Resident Engineer (RE). The I/C team's role is to ensure the project is constructed per accepted* plans and specifications for that portion of the project on BNSF right of way, as it affects BNSF. The I/C will monitor construction activities to ensure that improvements used by BNSF meet all requirements of BNSF, and accommodate railroad operations.
- E. 1.01.03 The following submittals and actions are required by BNSF prior to Operationally Critical, (OC) Work being performed on BNSF property or above tracks being operated by BNSF Railway:

2.01 Submittals and Actions Required During the Project Design Phase:

- F. 2.01.01 The Agency shall be the main contact for BNSF throughout the project. Agency shall be included on all correspondence relating to BNSF.
- G. 2.01.02 Required Design Submittals: (Allow for 4 weeks for BNSF to review design submittals)



Agency shall refer to the requirements of the UP/BNSF Guidelines on Grade Separation Projects when designing a grade separation which will impact BNSF Railway. Agency will be required to submit plans for BNSF review and comment. Plans shall not be labeled "final" until all comments have been addressed and BNSF has accepted* the plans.

Examples of required design submittals may be, but are not limited to:
Concept, vertical profile of Top of Rail, 30% plans and final plans

The following submittals will require a Professional Engineer, (PE) stamp:

1. Overpass design
2. Underpass design
3. Hydraulic study
4. Any non-standard design of a structure which will carry train loading

Work covered by a submittal shall not be performed in field without receiving Acceptance from BNSF. Work windows will not exceed 6 hours, so project should be designed accordingly. The following Disclaimer applies to BNSF acceptance of Agency design plans:

**BNSF has reviewed these submittals and no exceptions are taken with regard to BNSF's ability to use or accommodate the project as intended. BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design or execution of the project.*

3.01 Submittals and Actions Required During the Construction Phase:

- H. 3.01.01 The Agency shall be the main contact for BNSF throughout the project. Agency shall be included on all correspondence relating to BNSF. **BNSF will NOT accept submittals directly from the Agency's Contractor.**
- I. 3.01.02 BNSF will hire a consultant team to perform the duties of an Inspector/Coordinator, (I/C) on behalf of BNSF for the duration of the field construction of the project. The cost of the I/C will be reimbursable to BNSF by the Agency or their Contractor.

BNSF requires the I/C team be involved in the project throughout the construction phase to represent BNSF.

The I/C has authority to remove a contractor's employee from BNSF property if that employee fails to comply with the BNSF safety policy, does not have proper PPE or otherwise ignores instructions regarding work on BNSF right-of-way. The I/C has authority to shut down work on BNSF right-of-way if the contractor works in a manner that is in violation of BNSF's safety policy or FRA regulations.

Anytime instructions to the contractor by BNSF or the I/C are not complied with, the project may be shut down. All equipment and personnel will be removed from BNSF property until issues causing the shutdown are resolved to BNSF's satisfaction.

- J. 3.01.03 Agency must hold a pre-construction meeting with contractor and BNSF prior to work beginning on BNSF property.

The Pre-Construction meeting shall not be held until 30 days after I/C has been selected – this allows time for the I/C to become familiar with the project.



Recommend scheduling two weeks prior to construction commencing to allow for adjustment to work plans, if needed.

K. 3.01.04 Required Construction Submittals: (Allow for 4 weeks for BNSF to review submittals)

All submittals should flow from the Contractor to the Agency, to the I/C Consultant, to the BNSF Project Engineer, (PE), and to BNSF Structures with responses back through the same communication chain. **BNSF will not accept submittals directly from the Contractor.**

Any changes to the work governed by a submittal requires that the submittal be re-accepted* by BNSF before the work commences.

Examples of construction submittals required include but are not limited to: Contractors Safety Action Plan, Fire Prevention Plan, Proposed Project Schedule, Demolition, Shoring, Falsework and Lifting of Materials.

The following submittals will require a Professional Engineer, (PE) stamp:

1. Critical Pick Plan (75% of capacity of crane, or multi-crane pick)
2. Lifted Material Plan (Placement or Removal) – When lift is within temporary construction clearances and when lift is within 25' of the centerline of the nearest track
3. Demolition Plan
4. Temporary Shoring Plan
5. Bracing Design Plan (non-standard only per DOT)

For overpasses, Agency shall submit as-built plans of the structure, including final clearance dimensions to the I/C. Vertical clearance must be measured from the Top of Rail, horizontal clearance must be measured from the nearest track centerline.

OPERATIONALLY CRITICAL WORK AND SUBMITTALS: (4 to 6 weeks review timeline) All OC work requires a submittal and acceptance* by BNSF.



6. Operationally Critical (OC) submittals are those that have the potential to affect the safe operation of trains and will need to be reviewed carefully. Work must be monitored to ensure it conforms to the submitted/accepted* plan.
7. In-person safety review meetings will be required with BNSF representative, I/C, Contractor and Agency representative for all OC work and must be documented. The purpose of the meeting is to ensure all parties understand BNSF requirements and are following the applicable submittals. When a track work window is required the meeting shall occur at least 48 hours in advance of work starting.
8. Submittals must meet the requirements of the UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects. Submittals must also follow the requirements outlined in BNSF Review Comment Sheets, Use of Cranes & Lifting of Materials Submittal Schedule, BNSF Guidelines for Preparation of Bridge Demolition & Removal Plan and the BNSF-UPRR Guidelines for Temporary Shoring. **Some submittals are required to be sealed by a licensed professional engineer.**
 - See Table 3-1 for Overhead Structures in UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects
 - See Table 3-2 for Underpass Structures UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects
 - Examples of OC submittals included in the above are:
 - Shoring (Follow BNSF-UPRR Guidelines for Temporary Shoring)
 - Falsework
 - Demolition (Need plans for substructure and superstructure. Follow BNSF Guidelines for Preparation of Bridge Demolition & Removal Plan)
 - Erection (overhead and underpass structures)
 - Construction Phasing Plans
 - Additional OC submittals required, but not included in the Guidelines are:
 - All work plans that remove tracks from service (track outage windows require a detailed Gantt chart when greater than 2 hours)
 - Contingency plans
 - Additional OC submittals may be required on a project by project basis.

For underpasses and other railroad bridges, as required in Sections 4.11 and 4.12 of the UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects, a RE will be on site full-time during construction, at the cost of the project. At the discretion of the RE, as accepted by BNSF, an I/C-I or I/C-II may be assigned for field duties where the work is not critical to ensuring the bridge is built to accepted project plans and specification.

- BNSF requires temporary and new track and railroad bridges be inspected by an FRA qualified BNSF employee prior to being placed into service. Two-week advanced notice to BNSF structures department is

required. For underpasses, all pile driving records are to be provided within 3-days of driving to the BNSF PE.

- Agency shall submit an as-built survey of shoo-fly final alignments. Alignments must conform to BNSF Shoo-fly procedures.

L. 3.01.05 Prior to any work commencing on BNSF right of way: Contractors C/C-1 or Right of Entry must be fully executed and their insurance must be approved before they can perform work on BNSF property. Proof of Contractors insurance approval must be produced to the BNSF PE and the I/C.

M. 3.01.06 Contractor must adhere to all other BNSF policies and procedures not specifically mentioned in this agreement.

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EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** 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 replacement of Interstate 94 overpass structure 0094-260.125 R [DOT 966535T] in Stutsman County, ND, **Project IM-2-094(194)260, PCN 23577**.
- **1.01.02** 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 Rosa.M.Martinez@marsh.com at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** 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 following individual in writing:

Jason Thorenson, PE
NDDOT State Bridge Engineer
608 E Boulevard Ave
Bismarck, ND 58505-0780
701-328-4760 jthorens@nd.gov



- **1.01.05** 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 and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), 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.
- **1.01.06** The Contractor must notify (NDDOT) at 701-328-4446 and Railway's Manager Public Projects, telephone number (763) 782-3476; Alexander.fiorini@bnsf.com at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file BF-20222263.
- **1.01.07** 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, snooper trucks, 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.
- **1.01.08** 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.



1.02 Contractor Safety Orientation

- **1.02.01** 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.

1.03 Railway Requirements

- **1.03.01** 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 NDDOT.
- **1.03.02** The Contractor must notify the Railway's Division Engineer Bill Shulund at 701-667-2235 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.
- **1.03.03** 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
- **1.03.04** Upon completion of construction, the following minimum clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- **1.03.05** 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.

- **1.03.06** 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 NDDOT.
- **1.03.07** 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.
- **1.03.08** 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.
- **1.03.09** 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.
- **1.03.10** 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.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** 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.

- **1.04.02** 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.

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.eVerifile.com, in addition to any other applicable regulatory requirements.

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.

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.

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.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's **Roadmaster Dustin Marquez (telephone 701-253-3535)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). 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 Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.



- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger 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:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** 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.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** 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.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** 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.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - **1.05.03c** The cost of flagger services provided by the Railway will be borne by **NDDOT. NDDOT will then deduct these costs from the Contractor through the provisions in the NDDOT contract.** 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 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.

- **1.05.03d** The average train traffic on this route is 1 freight trains per 24-hour period at a timetable speed 10 MPH and N/A passenger trains at a timetable speed of N/A MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** 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.
- **1.06.02** 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 Railroad 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).
- **1.06.03** 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.
- **1.06.04** 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.
- **1.06.05** 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.
- **1.06.06** 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.



- **1.06.07** 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.
- **1.06.08** 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.)**
- **1.06.09** **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.**
- **1.06.10** 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)
- **1.06.11** 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.
- **1.06.12** 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.

1.07 Excavation:



- **1.07.01** Before excavating, the Contractor must determine whether any underground pipelines, 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 763-782-3495, Daniel.Peltier@BNSF.com)**. 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.**
- **1.07.02** 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.
- **1.07.03** 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.
- **1.07.04** 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.

1.08 Hazardous Waste, Substances and Material Reporting:

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any 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.

1.09 Personal Injury Reporting



- **1.09.01** 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.



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



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

I. Accident City/St: _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather: _____
(if non BNSF location)

Mile Post / Line Segment: _____

5. Driver's License No (and state) or other ID: _____ **SSN (required):** _____

6. Name (last, first, mi): _____

7. Address: _____ City: _____ St: _____ Zip: _____

8. Date of Birth: _____ and/or Age: _____ Gender: _____
(if available)

Phone Number: _____ Employer: _____

9. Injury: _____ 10. Body Part: _____
(i.e., Laceration, etc.) (i.e., Hand, etc.)

11. Description of Accident (To include location, action, result, etc.): _____

12. Treatment:

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

13. Dr. Name: _____ Date: _____

14. Dr. Address: _____
Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name: _____

16. Hospital Address: _____
Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis: _____



EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: BF-20265941

NDDOT Project: Project IM-2-094(194)260, PCN 23577

_____ (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 2023, with NDDOT for the performance of certain work in connection with the following project: IM-1-094(194)260, PCN 23577. 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

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.**

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.

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.

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.**

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

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 insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

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

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

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.

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. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired



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

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ 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.
- ◆ 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.

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

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the Railway as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the Railway prior to performing any work or services under this Agreement
- ◆ 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.



Other Requirements:

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

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.

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

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.

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

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

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.

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.



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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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) EXHIBIT "C" CONTRACTOR REQUIREMENTS

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.

6) TRAIN DELAY

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.



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.

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.

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.

Contractor and its subcontractors must give Railway's representative (Alex Fiorini – Manager Public Projects; Alexander.fiorini@bnsf.com) (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.

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



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.

Contractor Legal Name

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____

Manager Public Projects

Title: _____

Accepted and effective this _____ day of 20__.

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

MEMO TO: Ronald J. Henke
Director

FROM: Jason Thorenson.

DATE: 09/11/2023

SUBJECT: Construction and Maintenance Agreement with BNSF for Jamestown
Project - PCN 23577

Construction and Maintenance Agreement for Flagging and Inspection

Jason Thorenson - Bridge Engineer

25/js


Certificate Of Completion

Envelope Id: C06435C238404B748A9ADEF96512B12	Status: Completed
Subject: Please DocuSign Contract #25231230: Cost Participation Agreement	
Contract Number: 25231230	
PCN: 23577	
Source Envelope:	
Document Pages: 62	Signatures: 6
Certificate Pages: 4	Initials: 0
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Joyce Schmidt
Time Zone: (UTC-06:00) Central Time (US & Canada)	608 E Boulevard Ave
	Bismarck, ND 58505
	jaschmid@nd.gov
	IP Address: 165.234.92.5


Record Tracking

Status: Original	Holder: Joyce Schmidt	Location: DocuSign
9/12/2023 2:17:28 PM	jaschmid@nd.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD	Location: DocuSign


Signer Events

Signer Events	Signature	Timestamp
Richard Scott richard.scott2@bnsf.com assistant director public projects BNSF Railway Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 170.49.113.19	Sent: 9/12/2023 3:03:10 PM Viewed: 9/13/2023 10:08:56 AM Signed: 9/26/2023 11:21:53 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Alexander Fiorini Alexander.Fiorini@BNSF.com Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 170.49.113.17	Sent: 9/26/2023 11:22:02 AM Viewed: 9/26/2023 11:37:41 AM Signed: 9/26/2023 11:38:34 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Jason Thorenson jthorens@nd.gov Carahsoft OBO North Dakota Department of Transportation CLOUD Security Level: Email, Account Authentication (None), Authentication	 Signature Adoption: Uploaded Signature Image Using IP Address: 165.234.253.7	Sent: 9/26/2023 11:38:41 AM Resent: 9/28/2023 9:01:54 AM Resent: 9/28/2023 9:25:44 AM Viewed: 9/28/2023 9:26:21 AM Signed: 9/28/2023 9:26:58 AM
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Authentication Details

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Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 9/28/2023 9:02:53 AM
Phone: +1 701-955-0652

Signer Events**Signature****Timestamp****SMS Auth:**

Transaction: d548f5f9-3e87-4ae4-8f7c-3b5a78453f4d
Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 9/28/2023 9:19:36 AM
Phone: +1 701-955-0652

SMS Auth:

Transaction: eed79653-4d03-49f1-a4ba-65eaa31450e2
Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 9/28/2023 9:21:27 AM
Phone: +1 701-955-0652

SMS Auth:

Transaction: 946ba7db-9ffc-4098-bce6-375bdeb78012
Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 9/28/2023 9:26:11 AM
Phone: +1 701-955-0652

SMS Auth:

Transaction: 7edea2c3-7acf-4a43-9b77-94582acb483f
Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 10/3/2023 11:31:42 AM
Phone: +1 701-955-0652

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Clint Morgenstern

cdmorgenstern@nd.gov

Clint Morgenstern - SAAG

Security Level: Email, Account Authentication
(None), Authentication



Signature Adoption: Pre-selected Style
Using IP Address: 165.234.92.2

Sent: 9/28/2023 9:27:08 AM

Viewed: 10/3/2023 9:53:23 AM

Signed: 10/3/2023 10:01:46 AM

Authentication Details**SMS Auth:**

Transaction: 7fe5bcb8-ff6c-4943-ba4c-a3904bcf7822
Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 10/3/2023 9:53:18 AM
Phone: +1 701-213-0588

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Ronald Henke

rhenke@nd.gov

ND Department of Transportation

Security Level: Email, Account Authentication
(None), Authentication



Signature Adoption: Uploaded Signature Image
Using IP Address: 165.234.253.8

Sent: 10/3/2023 10:01:58 AM

Viewed: 10/3/2023 11:00:44 AM

Signed: 10/3/2023 11:01:46 AM

Authentication Details**SMS Auth:**

Transaction: f3186656-2764-401c-a50a-ccd47f64ef12
Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 10/3/2023 11:00:26 AM
Phone: +1 701-299-8269

Electronic Record and Signature Disclosure:

Signer Events	Signature	Timestamp
Not Offered via DocuSign		
Laureen Martin lmartin@nd.gov Security Level: Email, Account Authentication (None), Authentication	<i>Laureen Martin</i> Signature Adoption: Pre-selected Style Using IP Address: 165.234.253.8	Sent: 10/3/2023 11:01:55 AM Viewed: 10/3/2023 11:30:11 AM Signed: 10/3/2023 11:30:44 AM

Authentication Details

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Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 10/3/2023 11:30:06 AM
Phone: +1 701-426-3251

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Joyce Schmidt jaschmid@nd.gov Carahsoft OBO North Dakota Department of Transportation CLOUD Security Level: Email, Account Authentication (None)	VIEWED Using IP Address: 165.234.253.7	Sent: 9/12/2023 2:18:04 PM Viewed: 9/13/2023 8:29:26 AM Completed: 9/12/2023 3:03:09 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Legal Admin dotlegaladmin@nd.gov Security Level: Email, Account Authentication (None)	COPIED	Sent: 9/28/2023 9:27:06 AM Viewed: 9/28/2023 9:32:19 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Legal Admin dotlegaladmin@nd.gov Security Level: Email, Account Authentication (None)	COPIED	Sent: 10/3/2023 10:01:56 AM Viewed: 10/3/2023 10:05:15 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	9/12/2023 2:18:04 PM
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Envelope Summary Events	Status	Timestamps
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Envelope Updated	Security Checked	9/12/2023 3:03:09 PM
Envelope Updated	Security Checked	9/12/2023 3:03:09 PM
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Envelope Updated	Security Checked	9/12/2023 3:05:52 PM
Envelope Updated	Security Checked	9/28/2023 9:17:36 AM
Envelope Updated	Security Checked	9/28/2023 9:24:14 AM
Envelope Updated	Security Checked	9/28/2023 9:24:14 AM
Envelope Updated	Security Checked	9/28/2023 10:01:47 AM
Certified Delivered	Security Checked	10/3/2023 11:30:11 AM
Signing Complete	Security Checked	10/3/2023 11:30:44 AM
Completed	Security Checked	10/3/2023 11:30:44 AM
Payment Events	Status	Timestamps

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

COMMERCIAL GRADE HOT MIX ASPHALT

PROJECT 2-094(194)260 – PCN 23577

DESCRIPTION

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

MATERIALS

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

F. Commercial Grade Hot Mix Asphalt.

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

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

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

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

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

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

If a previously approved mix design is not available, submit a new mix design to the Engineer at least 10 calendar days before placement of material. The Engineer will request materials to use in mix design verification before approving the mix design.

CONSTRUCTION REQUIREMENTS

A. Contractor Personnel.

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

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

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

B. Engineer's Acceptance Testing:

Replace Section 430.04 M "Acceptance" with the following:

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

Table 1	
Testing Frequencies	
Test/Assessment	Minimum Testing Requirements
ND T 11 Materials Finer than No. 200 Sieve	1 per production day.
ND T 27 Sieve Analysis of Fine and Coarse Aggregate	1 per production day
ND T 304 Fine Aggregate Angularity	1 per production day
ND T 166 Bulk Specific Gravity of Compacted Asphalt Mixtures Using Saturated Surface-Dry Specimens	1 per project
ND T 209 Theoretical Maximum Specific Gravity and Density of Hot Mix Asphalt	1 per project

The Engineer will determine the percentage of air voids when determining the maximum theoretical density. Provide mix with between 2 and 6 percent air voids, when calculated on the Maximum Density Worksheet (SFN 50289).

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Pay Item	Pay Unit
Commercial Grade Asphalt Hot Mix Asphalt	Ton

Include the cost of aggregate, asphalt cement, prime coat, class 44 blotter sand, tack coat and fog coat in the contract unit price for "Commercial Grade Asphalt."

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

VEHICLE SPEED FEEDBACK SIGN

PROJECT 2-094(194)260 – PCN 23577

DESCRIPTION

This work consists of installing temporary Vehicle Speed Feedback Signs (VSFS).

EQUIPMENT

A. General.

Provide VSFS that meets the following requirements:

- Complies with the MUTCD;
- Operates 24 hours a day, 7 days a week;
- Weatherproof;
- Capable of operating between -20° F to 130° F within a humidity range of 0% to 100%; and
- Is not equipped with strobes or flashing lights. If strobes or flashing lights are equipped, disable the strobes and flashing lights.

The Contractor will retain ownership of the VSFS at the end of the project.

B. Power.

Provide a solar powered VSFS with 10 days of battery reserve.

C. Static Sign Sheeting.

Provide 6-inch-tall letters on the static sign sheeting that are black on fluorescent orange meeting the requirements to Section 894.02 E, "Type XI Retroreflective Sheeting".

D. Radar and Programming

Use radar to monitor the advancing vehicle speed. Provide radar that is accurate to ± 1 mph. Supply radar that is K band, single direction Doppler radar, and FCC part 15 compliant, requiring no license.

Program the sign with the posted speed limit. When programmed, operate the device in the following conditions:

1. No speed detected, the dynamic display is blank or black
2. When the speed is equal or less than the speed limit, the dynamic display shows the speed.
3. When a speed greater than the speed limit, the dynamic display shows the speed and flashes at a rate of 50 to 60 cycles per minute.

E. Dynamic Components

House the dynamic components in a NEMA 3R rated housing. Display an 18 inch or larger 2-digit LED Legend. Disable any other messages or graphics.

Equip the display background with an opaque black. Allow the display to adjust automatically for ambient light conditions.

Use yellow or amber LEDs that have a wavelength between 580-596 nanometers. Do not use secondary LED displays.

F. Post mounted

Provide a breakaway support that meets NDDOT requirements.

G. Trailer mounted.

Provide a trailer that can be leveled.

CONSTRUCTION REQUIREMENTS

A. General.

Program the signs before operations begin and perform any required maintenance for the duration of the installation.

Mount VSFS a minimum of 5 feet from the bottom of the sign to the driving lane surface.

Follow the manufacturer's recommendations for angling the sign to detect oncoming traffic.

Maintain VSFS in place for the duration of time that the crossovers are active.

B. Post Mounted.

Do not install post mounted VSFS in pavement. Install post mounted VSFS before crossovers begin carrying traffic.

C. Trailer Mounted.

Level the trailer and secure the trailer without damaging the pavement. Install trailer mounted VSFS immediately after crossovers begin carrying traffic.

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Pay Item	Pay Unit
Vehicle Speed Feedback Sign	EA

The Engineer will pay 50% of the Vehicle Speed Feedback Sign after they are installed and active and 50% after they are no longer needed.

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

BRIDGE PAINT: REHABILITATION PAINTING AND CONTAINMENT (SPOT PAINTING)

PROJECT 2-999(064) – PCN 23419

DESCRIPTION

This work consists of furnishing all paints and paint materials; providing a containment system, preparing surfaces to be painted; removing paint from the structure, applying, protecting, and drying paint materials.

Portions of the steel's surface will be prepared and repainted with a three-coat paint system according to the requirements of this Special Provision.

The existing steel is painted with a lead-based paint. The lead may be in concentrations high enough to produce hazardous waste during and after removal. During removal operations, high concentrations of airborne particulate will occur. Refer to OSHA regulations to determine the degree of worker protection required.

CONTRACTOR QUALIFICATIONS

The painting Contractor shall possess current SSPC QP1 and SSPC QP2 certification at the time of the bid and shall maintain certified status throughout the duration of the paint removal and painting work under the contract. The Contractor shall be familiar with and comply with all applicable state and federal regulations pertaining to the handling of lead-based materials.

Submit the Contractor's SSPC QP1 and SSPC QP2 certification to the Construction Services Division of NDDOT within 10 business days of the Bid Opening.

MATERIALS

Item	Section
Three Coat Organic Zinc Rich Paint System	852.02

CONSTRUCTION REQUIREMENTS

A. Lead Paint Removal.

1. Submittals.

Submit the following to the Engineer:

- A written Containment Plan detailing the methods to contain and collect debris generated during the paint removal;
- A sampling and testing plan describing the methods to determine if the waste generated is classified as hazardous or non-hazardous. (Guidelines for this plan can be found in SSPC Guide 7);

- A 3" x 5" Color Chip card with a declaration of conformity; and
- A Quality Control Plan identifying the following:
 - The instrumentation that will be used;
 - A schedule of required measurements and observations;
 - Identifies the Quality Control Personnel that is separate from the production supervisor;
 - Procedures for correcting unacceptable work; and
 - Procedure for improving surface preparation and painting as a result of quality control findings.

The Engineer's review of the submittals does not relieve the Contractor from the responsibility for the plans' accuracy or feasibility. Such review does not expressly or impliedly warrant, acknowledge or admit the reasonableness of the logic, manpower, or equipment of the plans.

2. Containment System.

a. General.

Contain all debris from the paint removal and surface preparation process.

Construct entryways with doorways capable of being repeatedly sealed or overlapping door tarpaulins to minimize dust escaping.

b. Containment Material.

Provide a containment system that is impervious to water, dust, and air. Enclose the work area by draping all sides, top, and floor with tarpaulins. Use tarpaulins that are free of holes or openings, suitable for suppressing blast residue without rupturing, and that are impervious to blast residue.

c. Treatment of Joints.

Seal all mating joints between the containment walls, top and floor. Sealing methods include:

- Overlapping seams and stitching seams when using flexible material;
- Taping;
- Caulking; or
- Other approved sealing measures.

d. Ventilation.

Feasible engineering controls must be used as necessary to reduce airborne lead exposures according to OSHA regulations for lead in construction (29 CFR 1926.62). Consult SSPC Guide 6 for minimum specified air movement velocities.

e. Support.

Provide a containment structure capable of supporting the blast debris, wind load, and personnel. Design the containment connection to the structure to fail in high winds before structural members experience failure. For the purpose of calculating wind-design loads, consider all containment materials as air impenetrable.

3. Treatment of Lead Waste.

Remove the debris from the containment system daily. Place debris in leak-proof containers at a temporary storage area. Secure and sign the temporary storage area in accordance with federal guidelines.

Collect a 500-gram sample from each storage container, in the presence of the Engineer. Select an independent certified laboratory to test samples in accordance with EPA requirements for determining hazardous waste. The Contractor will send the samples to the selected laboratory and will have the results sent to the Engineer and the Contractor.

Haul debris to an approved disposal facility within 7 days after the following conditions have been met:

- All required EPA tests have been completed;
- All tests results have been received by the Engineer and Contractor; and
- The transportation paperwork has been completed.

Provide the Engineer with documentation of proper disposal of the waste material.

B. Surface Preparation.

Clean the metal to a commercial condition as specified in SSPC SP-10, "Near-white Blast Cleaning." Compare the surface in accordance with SSPC-VIS 1.

Use a thoroughly mixed abrasive blasting media with Blastox (or other approved product) added at a rate that yields non-hazardous waste by-products.

Before the application of the prime coat, prepare the bare steel to a surface profile in compliance with the paint manufacturer's recommendations. The prepared surface will be verified by ASTM D4417 Method A, B, or C.

Do not apply the paint system until the Engineer has reviewed the surface preparation and masking of areas not being painted is complete.

Do not clean a larger area than can be prepared and primed within a 24-hour period. If the prepared area is not primed within 24 hours, the area will be blasted and cleaned again.

C. Painting.

1. General.

Submit the paint manufacturer's Material Safety Data Sheets before usage.

2. Quality Control Records.

Submit quality control records that include the following for each coating layer:

- Paint material certification;
- Batch numbers used;
- Date and Time of Application;
- Ambient Air Temperature;
- Humidity;
- Dew Point;
- Surface Temperature of the Steel;
- Surface Profile Measurements; and

- DFT Readings.

3. Mixing and Thinning Paint

Thoroughly mix all paint system components so the pigment is completely in suspension and the consistency is uniform. Strain the zinc primer over a sieve having openings no larger than a No. 50 sieve and continuously agitate until application is completed.

Thinners may be used if they are part of the paint manufacturer's instructions. Follow the manufacturer's instructions regarding the quantity and type of thinner used.

4. Paint System Application.

Apply paint according to SSPC PA 1 and the manufacturer's recommendations.

Apply a stripe coat of the Organic Zinc Rich Primer, Epoxy Intermediate Coat, and Polyurethane Finish Coat.

Apply coating in a uniform, even manner working into all corners and crevices. On surfaces inaccessible to spray, the coating may be applied with a brush.

Do not apply subsequent layers of the paint system until the Engineer has reviewed the previous application.

Apply each layer of the paint system with a DFT that meets the manufacturer's recommendations. Follow the procedure described in SSPC PA 2, including all appendixes, for full DFT determination. If a layer of the system does not meet the manufacturer's recommendations, obtain written instructions from the manufacturer to perform corrective action.

METHOD OF MEASUREMENT

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

BASIS OF PAYMENT

Include the cost of the containment system in the contract unit price of the Sand Blasting and Spot Painting

Spec	Code	Pay Item	Pay Unit
630	0110	Sand Blasting & Spot Painting	SF

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

Project # SS-2-999(064) – PCN 23419

DESCRIPTION

This Special Provision and attachments replace the requirements of Section 107.13 “Railroad Provisions” and outlines the Contractor’s coordination requirements with Red River Valley and Western Railroad (RRVW). Portions of the attachments may apply to both the prime contractor and subcontractors. It is the prime contractor’s responsibility to ensure subcontractor compliance with the requirements.

ATTACHMENTS

Temporary Occupancy Permit Sample

CONTRACTOR RESPONSIBILITIES

A. General.

Upon execution of the construction contract with the Department, coordinate with RRVW to execute a Temporary Occupancy Permit. Submit copies of all correspondence with RRVW to the Engineer within one business day of receipt.

Project delays incurred by the Contractor based on RRVW enforcing its authority under Section 7 of the Temporary Occupancy Permit 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 agreement 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 RRVW 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.

B. Railroad Flagging.

Railroad flagging will be provided by RRVW railway and billed directly to the Contractor.

Coordinate all flagging activities and work windows with the RRVW Maintenance of Way Manager, Jamie Martin (telephone 701-261-0842).

Include the cost of flagging in the contract unit price for “Railroad Flagging”. NDDOT will provide progressive payments to the Contractor during prosecution of work with the total lump sum amount paid upon completion of the project.

C. Railroad Protective Liability Insurance.

This project crosses the RRVW at railroad MP 2.37. The type of work that will be performed within the railroad right of way is bridge deck spall repairs, barrier repair, and resetting of bearings at Pier 4. Direct inquiries regarding protective liability insurance to:

JILL KVIDERA
Administrative Assistant
Red River Valley & Western Railroad
P.O. Box 608
Wahpeton, ND 58074
701-642-8257
jill.kvidera@rrvw.net

Obtain information regarding crossing number 103725N from the Federal Railroad Administration website: <http://safetydata.fra.dot.gov/Officeofsafety/>

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

A. Railroad Flagging.

Include the cost of flagging in the contract unit price for "Railroad Flagging". NDDOT will provide progressive payments to the Contractor during prosecution of work with the total lump sum amount paid upon completion of the project.

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 flagging and coordination with RRVW and 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 Temporary Occupancy Permit and the remaining half upon completion of the project.

**RED RIVER VALLEY & WESTERN RAILROAD COMPANY
TEMPORARY OCCUPANCY PERMIT**

RED RIVER VALLEY & WESTERN RAILROAD COMPANY, hereinafter called **Railroad**, for and in consideration of \$10 to be paid by Grantee to Railroad and other good and valuable consideration and the covenants herein contained to be performed by _____, hereinafter called **Grantee**, hereby grants permission to said Grantee, solely for its accommodation to occupy temporarily the following: that portion of the Third Subdivision of Railroad's premises located in or near Mooreton, North Dakota, for the sole and only purpose of _____, and related work. The area to which this permit applies is sometimes called the premises or the premises of the Railroad.

This permit is granted on the following terms and conditions to which both parties consent and agree:

1. Said occupancy of the premises shall continue for the period from _____, until _____ unless mutually extended by the parties; however, the liability herein assumed by Grantee shall continue for so long as Grantee or Grantee's property occupies said premises.
2. **Grantee shall contact the dispatcher for Railroad at 218-643-4994 at least 24 hours before entering Railroad's property and inform the dispatcher of the exact dates, times, location and purpose of the temporary occupancy and associate work. Alternatively, Grantee may operate under the direct observation of Railroad employees for protection of Railroad property and personnel.**
3. Grantee agrees that:
 - (a) the use made of said premises permitted herein shall not damage the railroad or structures of Railroad or the property of other persons, companies, or corporations, their successors and assigns located upon the premises of Railroad;
 - (b) the use of said premises shall not be a menace to the safety of Railroad's operations or any other operations conducted on or in the vicinity of said premises;
 - (c) the Grantee shall not violate any federal, state or municipal laws, ordinances or regulations while exercising the rights permitted under this agreement.
 - (d) Grantee may not bring on or store on the premises any hazardous substances as that term may be defined in environmental statutes, rules and regulations promulgated by any local, state or federal government or regulatory body.
4. Grantee agrees that it will not take any action with respect to use of the premises that would result in any lien or other encumbrance against such property or otherwise create doubt as to the true ownership of such property.
5. Grantee hereby releases, indemnifies, and holds harmless Railroad, its successors and assigns and any other person, company or corporation occupying Railroad's premises with Railroad's consent, from and against all loss, damages, claims, demands, actions, causes of action, costs, and expenses of every kind or character which directly and proximately result from the acts, omissions, or negligence of Grantee under this agreement or any loss or damage to the extent proximately caused by, the acts, omissions, or negligence of Grantee under this agreement. In the event that any such claim or action is brought by a third party, Railroad shall give Grantee the opportunity to assume the defense against such claim or action. Said release, indemnification and hold harmless applies to any injury to or death of any person whomsoever, including, but not limited to, employees,

officers, invitees and agents of the parties hereto, and to any loss of or damage to property of any kind or nature to whomsoever belonging, including, but not limited to, property owned by or in the care, custody and control of the parties hereto.

Grantee will be required to pay premium for a RPLI policy, to be sourced by Railroad (unless otherwise arranged), limits of \$2/\$6 million, with Railroad specified as NAMED insured. Grantee will name Railroad as additional insured on Grantee's public liability insurance policy to the extent of the indemnification provided hereunder, which policy shall be in an amount not less than \$1,000,000.00 per occurrence and an aggregate cap of \$2,000,000. Grantee may also be required to show proof of property insurance insuring against all hazards and casualties with respect to all property stored on the premises, in an amount not less than the full insurable value of the property stored. All insurance procured by Grantee and required by this agreement shall contain a waiver of subrogation clause. Any exclusion regarding work on Railroad property must be removed by endorsement. Before this permit shall be effective, written proof of said insurance shall be provided by Grantee to Railroad.

6. Grantee has inspected the property, and Grantee takes the property in its present condition, AS IS, with no warranties, express or implied. Grantee shall at any times that it is actually on the premises keep said premises in a clean, safe and sanitary condition. Railroad shall not be held responsible for any degradation in condition or quality of, or damage to, any of Grantee's property used on the premises and Grantee releases and holds Railroad harmless in that regard. Upon termination of this agreement, Grantee shall remove all of its property from the premises and return the premises to the same condition that said premises was in prior to the execution of this agreement.

7. Any party may terminate this permission and agreement in the event of a breach of this Agreement by the other party which is not cured within ten (10) days after written notice thereof to the other party. RRVW reserves the right to cancel the agreement on a 30 day notice for reasons related to alternative commercial development or any other reason at RRVW's discretion. Grantee shall give its notice to the Railroad by United States Mail addressed to Railroad at Post Office Box 608, Wahpeton, ND 58074. Railroad may give notice in the same manner to Grantee, or may serve same personally on Grantee.

8. At the termination of this permission Grantee shall remove all of its property from said premises and upon failure to do so within ten business days after written request by Railroad, Railroad may do so at Grantee's expense or may appropriate it to its own use, or dispose of the same, without compensation.

9. This agreement binds the parties hereto and all successors and assigns. This agreement may not be assigned by the Grantee without the express, written permission of the Railroad. This agreement contains the entire agreement between the parties and may only be amended by a separate instrument signed by both parties. Each party represents to the other party that there are no other written or oral promises, representations or agreements between the parties concerning the subject matter of this agreement, except as stated herein.

10. The parties hereto agree that Grantee shall not be regarded as an employee or agent of Railroad in any regard.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the _____ day of _____, 2020.

Red River Valley & Western Railroad Company

Grantee

By: _____

By: _____

Title: VP – Econ Dev. & Comm. Affairs

Title: _____

Sample

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**SPECIAL PROVISION****PERMITS AND ENVIRONMENTAL CONSIDERATIONS****PROJECT NUMBER: NH-2-999(064) – PCN 23419**

This Special Provision incorporates the Nonreporting Nationwide 3 404 Permit and Floodplain Permit obtained by the North Dakota Department of Transportation (NDDOT) into the bidder's proposal.

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

- **Nationwide 3 Non-Reporting Section 404 Permit**

A Non-Reporting Nationwide 3 Section 404 Permit is utilized in situations where USACE jurisdictional water impacts meet specific criteria allowing maintenance activities to previously authorized structures or fills in jurisdictional waters of the US without preconstruction notification (permit application). To use the Non-Reporting Permit the conditions listed in the attached Fact Sheets and Regional Conditions must be followed. All temporarily impacted areas will be restored to original contours.

- **Floodplain Permit**

The Floodplain Permit issued by the city of Jamestown, permit number 202300139, allows work within the FEMA mapped 100-yr floodplain. The Floodplain Permit and the Flood Insurance Rate Map are attached.

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

Nationwide Permit 03: Maintenance

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

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



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

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

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

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

General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more



NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of [33 CFR 330.1](#) through 330.6 apply to every NWP authorization. Note especially [33 CFR 330.5](#) relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation.

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

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

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

2. Aquatic Life Movements.

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

3. Spawning Areas.

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

4. Migratory Bird Breeding Areas.

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

5. Shellfish Beds.

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

6. Suitable Material.

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

7. Water Supply Intakes.

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

8. Adverse Effects From Impoundments.

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

9. Management of Water Flows.

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

10. Fills Within 100-Year Floodplains.

The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment.

Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls.

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

13. Removal of Temporary Structures and Fills.

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

14. Proper Maintenance.

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

15. Single and Complete Project.

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

16. Wild and Scenic Rivers.

(a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the



appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

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

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

17. Tribal Rights.

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

18. Endangered Species.

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See [50 CFR 402.02](#) for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as [50 CFR 402.17](#), which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”



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

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



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

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

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

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

19. Migratory Birds and Bald and Golden Eagles.

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

20. Historic Properties.

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

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

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal

representative, as appropriate, and the National Register of Historic Places (see [33 CFR 330.4\(g\)](#)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see [36 CFR 800.3\(a\)](#)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under [36 CFR 800.2\(c\)](#) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

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

(e) Prospective permittees should be aware that section 110k of the NHPA ([54 U.S.C. 306113](#)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to



occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts.

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

22. Designated Critical Resource Waters.

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

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



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

23. Mitigation.

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

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

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

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

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-



specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see [33 CFR 332.3\(e\)\(3\)](#)).

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

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

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the

NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see [33 CFR 332.3\(b\)\(2\)](#) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

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

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

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

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

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP

authorization, instead of components of a compensatory mitigation plan (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).

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

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

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

24. Safety of Impoundment Structures.

To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been

independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality.

(a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see [33 CFR 330.4\(c\)](#)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

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

26. Coastal Zone Management.

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



27. Regional and Case-By-Case Conditions.

The activity must comply with any regional conditions that may have been added by the Division Engineer (see [33 CFR 330.4\(e\)](#)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits.

The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

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

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications.

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

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this



nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. Compliance Certification.

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

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

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

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

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

31. Activities Affecting Structures or Works Built by the United States.

If an NWP activity also requires review by, or permission from, the Corps pursuant to [33 U.S.C. 408](#) because it will alter or temporarily or permanently occupy or use a U.S.



Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification.

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

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

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see [33](#)

[33 CFR 330.4\(f\)](#)) and/or section 106 of the National Historic Preservation Act (see [33 CFR 330.4\(g\)](#)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in [33 CFR 330.5\(d\)\(2\)](#).

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

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

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of



wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

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

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

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

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat



(or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

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

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

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

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

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

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

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

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any



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Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

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

Further Information

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

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

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

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

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



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**2021 Nationwide Permits
Regional Conditions for North Dakota
and
Omaha District - Required Best Management Practices**

The following Nationwide Permit (NWP) regional conditions will be used in the State of North Dakota. The issuance of the NWPs was announced in the January 13, 2021, issue of the Federal Register (86 FR 2744) and December 27, 2021, issue of the Federal Register (86 FR 73522). Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

A. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO ALL NWPs OR LIMITED REVOCATION OF NWPs

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

1. Wetlands Classified as Peatlands:

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

- a. PCN required for NWP 3, 5, 20, 32, 38 and 45.
- b. All NWPs not listed above are revoked for use in peatlands.

2. Waters Adjacent to Natural Springs:

PCN required for any regulated activity located within 100 feet of the water source in natural spring areas. For purposes of this condition, a spring source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

Springs do not include drain tile outlets.

3. Bank Stabilization Activities:

PCN required for any regulated activity that involves bank stabilization impacting an area greater than 1/10 of an acre below the Ordinary High Water Mark or includes features that extend out from the existing bank line greater than 25% of the bankfull channel width.

4. Specific Waterways:

PCN required for any regulated activity occurring in or under the Missouri River, including Lake Sakakawea and Lake Oahe. In addition, a PCN is required for any activity occurring in an off channel area (e.g. marinas and bays) of any of these waterways.



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B. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO SPECIFIC NWP

1. NWP 23 – Approved Categorical Exclusions:

In addition to PCN requirements identified in Regulatory Guidance Letter (RGL) 05-07 or the applicable Corps RGL, PCN is required prior to initiating any regulated activity under NWP 23 that would permanently impact an area greater than 1/2 an acre of waters of the United States. In addition to information required for PCN, the applicant must identify the approved categorical exclusion that applies in RGL 05-07 or the applicable Corps RGL and provide documentation that the project fits the categorical exclusion.

C. BEST MANAGEMENT PRACTICES

Required Best Management Practices:

In addition to the Regional Conditions above, additional required best management practices apply to NWPs within the Omaha District follow. These are also available at:

<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nation-Wide-Permit-Information/>

The following Nationwide Permit regional condition best management practices are required for Montana, Nebraska, North Dakota, South Dakota, and Wyoming in the Omaha District. The issuance of the NWPs was announced in the January 13, 2021, issue of the Federal Register (86 FR 2744) and December 27, 2021, issue of the Federal Register (86 FR 73522). Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

A. REQUIRED BEST MANAGEMENT PRACTICES APPLICABLE TO MONTANA, NEBRASKA, NORTH DAKOTA, SOUTH DAKOTA, AND WYOMING

1. Suitable Material:

Permittees are reminded of General Condition No. 6 which prohibits use of unsuitable material. A list of materials prohibited or restricted as fill material in waters of the United States can be found at:

<http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/12320/prohibited-restricted-materials.aspx>

PARAGRAPHS PERTAINING TO ALL STATES EXCEPT NORTH DAKOTA HAVE BEEN REMOVED FROM THIS VERSION FOR CLARITY.

B. NORTH DAKOTA REQUIRED BEST MANAGEMENT PRACTICES

2. Minimum Culvert Width:

For all NWPs in jurisdictional streams, the culvert opening width of a stream crossing shall not be less than the mean bank to bank width as measured from the Ordinary High Water Mark in the affected stream reach. In stable stream channels, the Ordinary High Water Mark is often found at the point where over-bank flow begins during a flood event. In incised stream channels that do not frequently access a floodplain or upper terrace, the Ordinary High Water Mark is generally located within the entrenched channel. The Ordinary High Water Mark may be identified by observing indicators such as a distinct change in slope, a change in vegetation characteristics, or a change in sediment characteristics, see 33 CFR 328.3(e).



**2021 Nationwide Permits
Regional Conditions for North Dakota
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Omaha District - Required Best Management Practices**

3. Culvert Countersink Depth:

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

Culvert Type	Drainage Area	Minimum Distance Culvert Invert Shall Be Lowered Below Stream Flow Line
All culvert types	< 100 acres	Not required
Pipe diameter <8.0 ft	100 to 640 acres	1/2 ft
Pipe diameter <8.0 ft	>640 acres	1.0 ft
Pipe diameter > 8.0 ft	All drainage sizes	20% of pipe diameter
Box culvert	All drainage sizes	1.0 ft

- a. The stream flow line shall be defined as the longitudinal average of the low flow stream channel.
- b. The slope of the culvert should be parallel to the slope of the stream flow line.
- c. The culvert invert depression depth shall be measured at the culvert inlet for culverts installed at a slope less than the slope of the stream flow line.
- d. Riprap inlet and outlet protection shall be placed to match the height of the culvert invert.

4. Spawning Areas:

Spawning areas and seasons can be accessed on the North Dakota Game & Fish Department’s website at: <http://gf.nd.gov/gnf/conservation/docs/spawning-restriction-exclusions.pdf>

5. Intake Structures:

- a. Intake screens with a maximum mesh opening of 1/4-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed 1/2-foot per second.
- b. Pumping plant sound levels will not exceed 75 dB at 50 feet.
- c. Intakes located in Lake Sakakawea, above river mile 1519, and on the Yellowstone River, are subject to the following conditions:
 - i. The intakes shall be floating.
 - ii. At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
 - iii. If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.
 - iv. If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to 1/4-foot per second.
- d. Intakes located in Lake Sakakawea, below river mile 1519, and the Missouri River below



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**2021 Nationwide Permits
Regional Conditions for North Dakota
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Omaha District - Required Best Management Practices**

Garrison Dam are subject to the following conditions:

- i. The intakes shall be submerged.
 - ii. At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
 - iii. The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
 - iv. If the 20-foot depth is not attainable, then the intake velocity shall be limited to ¼-foot per second with intake placed at the maximum practicable attainable depth.
- e. Intakes and associated utility lines that are proposed to cross sandbars in areas designated as piping plover critical habitat are prohibited.
- f. Any temporary open trench associated with utility lines are to be closed within 30 days of excavation. This time limit may be extended by notifying the North Dakota Regulatory Office and receiving a written response that the extension is acceptable

6. Boat Docks:

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

- a. No boat dock shall be located on a sandbar or barren sand feature. The farthest point riverward of a dock shall not exceed a total length of 30 feet from the Ordinary High Water Mark. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.
- b. Any boat dock shall be anchored to the top of the high bank.
- c. Any boat dock located within an excavated bay or marina that is off the main river channel may be anchored to the bay or marina bottom with spuds.
- d. Section 10 Waters located in the State of North Dakota are:
 - i. Bois de Sioux River
 - ii. James River Missouri River
 - iii. Red River of the North
 - iv. Upper Des Lacs Lake
 - v. Yellowstone River



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**2022 Nationwide Permits
Regional Conditions
State of North Dakota
Section 401 Water Quality Certification**

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

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

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

WQC by NWP follows:

- **NWP 1 – Aids to Navigation**
-Certification not required (Section 10 Only)
- **NWP 2 – Structures in Artificial Canals**
-Certification not required (Section 10 Only)
- **NWP 3 – Maintenance**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities**
-EPA waived certification for all activities.
-NDDEQ certified for all activities.
- **NWP 5 – Scientific Measurement Devices**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 6 – Survey Activities**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 7 – Outfall Structures and Associated Intake Structures**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified with a condition requiring a copy of the preconstruction notification (PCN) be provided for any projects affecting classified rivers, streams or lakes.
Classified waters are listed in Appendixes I and II of the State Water Quality Standards.
- **NWP 8 – Oil and Gas Structures on the Outer Continental Shelf**
-Not applicable in North Dakota

- **NWP 9 – Structures in Fleeting and Anchorage Areas**
-Certification not required (Section 10 Only)
- **NWP 10 – Mooring Buoys**
-Certification not required (Section 10 Only)
- **NWP 11 – Temporary Recreational Structures**
-Certification not required (Section 10 Only)
- **NWP 13 – Bank Stabilization**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified with a condition requiring that a copy of the PCN be provided for any projects affecting classified waters.
- **NWP 14 – Linear Transportation Projects**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 15 – U.S. Coast Guard Approved Bridges**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities, except those affecting classified waters. Individual certification is required for projects affecting classified waters.
- **NWP 16 – Return Water From Upland Contained Disposal Areas**
-EPA denied certification and individual certification is required for all activities.
-NDDEQ certified with a condition requiring that a copy of the PCN be provided for any projects affecting classified waters.
- **NWP 17 – Hydropower Projects**
-EPA denied certification and individual certification is required for all activities.
-NDDEQ certified for all activities, except those affecting classified waters. Individual certification is required for projects affecting classified waters.
- **NWP 18 – Minor Discharges**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 19 – Minor Dredging**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities, provided spoils are disposed of at an upland site and are not allowed to drain back to waters of the state.
- **NWP 20 – Response Operations for Oil or Hazardous Substances**
-EPA certified with conditions (see EPA certification following this listing).
-NDDEQ certified for all activities.
- **NWP 22 – Removal of Vessels**
-EPA waived certification for all activities.
-NDDEQ certified for all activities.

- **NWP 23 – Approved Categorical Exclusions**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities, except those impacting classified waters and bank loss exceeds 300 linear feet. Individual certification is required for the excepted projects.
- **NWP 24 – Indian Tribe or State Administered Section 404 Programs**
 - Not applicable in North Dakota.
- **NWP 25 – Structural Discharges**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified with conditions: 1) PCN must be provided for projects affecting classified waters; 2) Projects must not result in a net loss of wetland or wetland type; and 3) no in-stream berms, dams, or similar structures in classified waters, unless constructed in such a way that the stream assimilative capacity and aquatic life passage are maintained or the structures are part of a restoration project.
- **NWP 28 – Modifications of Existing Marinas**
 - Certification not required (Section 10 Only)
- **NWP 30 – Moist Soil Management for Wildlife**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 31 – Maintenance of Existing Flood Control Facilities**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 32– Completed Enforcement Actions**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified with a condition requiring that a copy of the PCN be provided for any projects affecting classified waters.
- **NWP 33 – Temporary Construction, Access, and Dewatering**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 34 – Cranberry Production Activities**
 - EPA denied certification and individual certification is required for all activities.
 - NDDEQ N/A
- **NWP 35 – Maintenance Dredging of Existing Basins**
 - Certification not required (Section 10 Only)

- **NWP 36 – Boat Ramps**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 37 – Emergency Watershed Protection and Rehabilitation**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 38 – Cleanup of Hazardous and Toxic Waste**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 41 – Reshaping Existing Drainage Ditches**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 45 – Repair of Uplands Damaged by Discrete Events**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 46 – Discharges in Ditches**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ certified for all activities.
- **NWP 49 – Coal Remining Areas**
 - EPA denied certification and individual certification is required for all activities.
 - NDDEQ certified for all activities.
- **NWP 53 – Removal of Low-Head Dams**
 - EPA denied certification and individual certification is required for all activities.
 - NDDEQ certified for all activities.
- **NWP 54 – Living Shorelines**
 - EPA waived certification for all activities.
 - NDDEQ N/A
- **NWP 59 – Water Reclamation and Reuse Facilities**
 - EPA certified with conditions (see EPA certification following this listing).
 - NDDEQ N/A

EPA certification follows.

**U.S. Environmental Protection Agency Region 8 Clean Water Act Section 401
Water Quality Certification for the U.S. Corps of Engineers CWA Section 404
2021 Nationwide Permits Reissuance**

This Certification applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers CWA 404 Nationwide Permit (NWP) into waters of the United States that occur within Indian country¹ lands within the state of North Dakota: NWP 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 34, 36, 37, 38, 41, 45, 46, 49, 53, 54, and 59/E.²

Section 401(a)(1) of the Clean Water Act requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has authority to give such certification, the U.S. Environmental Protection Agency (EPA) is the certifying authority. In this case, the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians currently are not authorized to provide CWA Section 401 certifications for discharges occurring on reservations, or any other Indian country lands, within the State of North Dakota, therefore, the EPA is making the certification decisions for discharges that may result from potential projects authorized under the proposed Corps CWA 404 NWPs listed above. Although the above Tribes currently are not authorized to provide CWA Section 401 certifications, EPA will condition certifications using Tribal water quality requirements where applicable and appropriate.

General Information

The general information provided in this section is intended to provide context for EPA's certification decision and does not itself constitute a certification condition(s). The information in this section is being provided to help project proponents comply with the terms and conditions of the CWA Section 401 certification on the NWPs on applicable Indian country lands.

- Prior to work commencing, project proponents should notify the appropriate Tribal Environmental Office.
- The project proponents for projects authorized under the NWPs should obtain all other permits, licenses, and certifications that may be required by federal, state, or tribal authority.

¹ Indian country is defined in 18 U.S.C. Section 1151. Indian country in North Dakota generally includes (1) lands within the exterior boundaries of the following Indian reservations located within North Dakota: the Fort Berthold Indian Reservation, the Spirit Lake Reservation, the Lake Traverse Reservation, the Standing Rock Sioux Reservation, and the Turtle Mountain Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151.

² This Certification does not apply to the following NWPs: 1, 2, 8, 9, 10, 11, 24, 28, and 35. The Corps has not requested certification for these NWPs. If any activity authorized by these listed NWPs may result in a discharge into a water of the United States, the project proponent should contact the Corps or EPA to determine if a CWA Section 401 certification is required. Furthermore, NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, A/55, B/56, C/57, and D/58 were reissued in January 2021. 86 FR 2744. EPA denied certification for all these NWPs, except NWP 48. Project proponents must apply for an individual CWA Section 401 certification from EPA for all NWPs reissued in January 2021, except NWP 48, for which EPA expressly waived certification authority.

- If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the project proponent should request an individual CWA Section 401 certification from EPA. An individual certification request is subject to the requirements outlined in 40 CFR 121.
- Copies of this certification should be kept on the job site and readily available for reference.
- Pursuant to CWA section 308(a), EPA representatives may inspect the authorized activity and any mitigation areas to determine compliance with the terms and conditions of the NWP.
- If you have questions regarding this certification, or need assistance contacting the appropriate tribe, please contact EPA Region 8 at: R8CWA401@epa.gov and Aaron Blair at (303) 312-6883 or via email at blair.aaron@epa.gov or Toney Ott at (303) 312-6906 or via email at ott.toney@epa.gov. Additional information on tribes in EPA Region 8 also can be found at: <https://www.epa.gov/tribal/region-8-tribal-program>.

NWPs Granted with Conditions (121.7(d)(2))

On behalf of the tribes listed above, CWA Section 401 certification is granted with the following conditions for NWPs 3, 5, 6, 7, 13, 14, 15, 18, 19, 20, 23, 25, 27, 30, 31, 32, 33, 36, 37, 38, 41, 45, 46, and 59/E. EPA Region 8 has determined that any discharge authorized under these proposed NWPs will comply with water quality requirements, as defined in 40 C.F.R. 121.1(n), subject to the following conditions pursuant to Section 401(d). Note that all correlating justification statements and citations as required by 40 CFR 121.7(d)(2) are included in Appendix A.

General Condition 1: Point source discharges shall not occur in jurisdictional waters of these special aquatic resources: (1) fens, bogs, or other peatlands; (2) within 100 feet of the point of discharge of a known natural spring source; (3) riffle-pool complexes of streams; or (4) water sources above hanging gardens. Projects or activities expected to have potential discharges into these areas are not covered by this certification and require a project-specific CWA Section 401 certification from EPA Region 8.

A peatland is defined by the U.S. Forest Service as any type of peat covered terrain with an accumulation of at least 20 to 40 centimeters of peat within the upper 80 centimeters of the soil profile. More resources on peatlands and hanging gardens can be found here:

<https://www.fws.gov/mountain-prairie/es/fen/FWSRegion6FenPolicy1999.pdf>

https://www.fs.fed.us/wildflowers/beauty/California_Fens/what.shtml

<https://cnhp.colostate.edu/cnhpblog/2009/08/11/hanging-gardens/>

<https://springstewardshipinstitute.org/hanging-garden>

General Condition 2: Except as specified in the project plan, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter or be stored within 100 feet of waters of the U.S. If materials are stored within 100 feet of waters of the U.S., the project plan shall identify the measures and controls that will be used to ensure the materials will not enter waters of the U.S. No activities shall result in an unconfined discharge of liquid cement into waters of the U.S.

Any materials not specified in the project plan that do enter waters of the U.S. shall be reported to EPA (R8CWA401@epa.gov) with a remediation plan within 15 days.

For emergency spills, including any spills of petroleum products, contact EPA's National Response Center at 1-800-424-8802, the appropriate Tribal Environmental Office, and local spill response hotlines within 24 hours.

General Condition 3: Activities that may result in a point source discharge shall occur during seasonal low flow or no flow periods. Activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

General Condition 4: When operating equipment or otherwise undertaking construction activities (including grouting riprap) in aquatic resources:

- Work shall be completed in the dry, unless justification for working in the wet can be documented by the project proponent prior to construction.³
- Concrete grouting shall be allowed to dry thoroughly before exposure to waters of the U.S.
- All equipment shall be cleaned prior to arriving on the project site. All equipment shall be inspected daily and prior to entering any streams or wetlands for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks.
- All contaminated areas shall be cleaned immediately, and contaminated soil removed from the site or contained in enclosed containers. Containers shall not be stored within 100 feet of waters of the U.S. If site conditions do not allow for storage at least 100 feet away from waters of the U.S., or if the topography is such that storage can occur within 100 feet without risk to waters of the U.S., the project proponent shall document this along with the measures and controls that will be used to ensure contaminants will not enter waters of the U.S. All equipment detected with leaks shall be repaired promptly or moved offsite within 24 hours.
- Containment booms and/or absorbent material shall be available onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the U.S.

General Condition 5: For projects that require coverage under EPA's Construction General Permit, the project proponent shall submit the Stormwater Pollution Prevention Plan (SWPPP) to EPA Region 8 (R8CWA401@epa.gov).

For projects that do not require the development of a SWPPP, the project proponent shall document how the project will utilize construction techniques, including soil erosion and sediment controls, to prevent or minimize water quality degradation because of the project. Projects shall not permanently impact the overall health of the aquatic resource; beneficial uses shall not be lost or impaired.

General Condition 6: Vegetation in jurisdictional wetlands and waterbodies shall be protected except where its removal is necessary for completion of the work. Locations disturbed by construction activities shall be revegetated with appropriate native vegetation in a manner that optimizes plant establishment for the specific site (e.g., stockpiling of existing topsoil that is weed-seed free). Revegetation may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching. All revegetation materials, including plants and plant seed shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Exceptions to native revegetation include agricultural lands that are being returned to crop or pasture vegetation, with Corps permission.

Where removal of vegetation occurs, the project proponent shall develop a restoration plan prior to initiating construction on the project. The restoration plan shall include measures, including but not limited to:

- The project proponent shall describe and photo document where the disturbance or removal of riparian/wetland vegetation will occur during the completion of the work.

³ See "Working in the dry: Cofferdams, in-river construction, and the United States Army Corps of Engineers" <https://usace.contentdm.oclc.org/digital/collection/p16021coll4/id/156/>

- The project proponent shall revegetate disturbed jurisdictional areas within three months of completion of construction, based on pre-disturbance or reference site conditions, including percent cover and native species diversity.
- The project proponent shall revegetate any disturbed wetland soil with native plant species. Non-native and invasive species shall not be used for restoration activities.

General Condition 7: The placement of material (discharge) for the construction of new dams is not certified, except for stream restoration projects. Activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

General Condition 8 – Applicable only to the following NWPs: 3, 7, 13, 14, 15, 19, 23, 27, 37, and 59/E. Project proponents shall provide notice to EPA Region 8 at least 30 days prior to commencing work in water of the U.S. to provide EPA Region 8 with the opportunity to review and inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. In cases where the Corps requires a PCN for the applicable NWP, in accordance with Corps' National General Condition 32(b), Pre-Construction Notification (86 FR 2873), the applicant shall also provide the PCN to Region 8.

Additionally, the applicant shall include a summary of communications with the affected Tribe's water quality staff regarding the project, including any concerns or issues, in its submission to EPA.

NWP-Specific Conditions:

NWP 3, Specific Condition 1: No more than 25 cubic yards of new or additional riprap shall be placed to protect the structure or fill. If a project proponent seeking NWP authorization plans to use more than 25 cubic yards of new or additional riprap to protect the structure or fill, the project proponent shall request a project-specific CWA Section 401 certification from EPA Region 8.

NWP 3, Specific Condition 2: Bridge replacements shall span the bankfull width and/or the ordinary highwater mark of the affected waters of the U.S. Projects or activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

NWP 3, Specific Condition 3: Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions for the repair of low water crossings, or loss of stream cross section dimensions. Original land contour dimensions shall be documented prior to construction to confirm contours are returned to these dimensions post-maintenance activities.

NWP 3, Specific Condition 4: Silt and sediment removal shall not exceed:

- 1) 50 linear feet for low water crossings; and
- 2) 100 linear feet for bridge crossings.

Projects or activities that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

NWP 7, Specific Condition 1: Construction of the outfall structure shall be placed at the streambed elevation and, at a minimum, the pipe should be sized to prevent high pressure discharge of stormwater. Pipe sizing selection methods and justification that high pressure discharge will be minimized shall be documented by the

project proponent.

NWP 7, Specific Condition 2: Outfall structures shall not be constructed in jurisdictional wetlands. If a project proponent plans to construct an outfall structure in a jurisdictional wetland, the project proponent shall request a project-specific CWA Section 401 certification from EPA Region 8.

NWP 7, Specific Condition 3: For activities that do not require a SWPPP, the project proponent shall submit to EPA, an erosion and sediment control plan prior to construction that includes outfall stabilization controls. (Projects or activities requiring a SWPPP must submit the SWPPP to EPA per General Condition 5.)

The plan shall describe type, location, and maintenance schedules for all controls to be put in place prior to, during, and after construction to stabilize all areas of the bed and bank around and adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively. The plan shall provide for maintenance of measures, and adaptive management processes if any measures are determined to be ineffective. During monitoring and maintenance, if water quality requirements are exceeded or if measures are identified as ineffective, then descriptions of additional measures taken to ensure compliance shall be sent to EPA within 48 hours of the exceedance or measure failure.

Rip rap aprons and/or energy dissipation structures shall be constructed to provide protection from the erosive potential of high-velocity flows, as documented in the erosion and sediment control plan, with adaptive management in place for potential structure failures.

NWP 7, Specific Condition 4: The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.
- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 (R8CWA401@epa.gov). The report shall be labeled with the project name and Corps District number.

NWP 13, Specific Condition 1: The project proponent shall submit a project plan with design techniques and stabilization methods to EPA Region 8 prior to construction. Activities shall use native vegetation or other bioengineered design techniques (e.g., willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g., rock) and predominately native vegetation or bioengineered design techniques. Artificial soil stabilizing material (e.g., mulch, matting, netting, etc.) shall be used to reduce soil erosion. These materials, to include all plants and plant seed, shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Sediment control measures shall be maintained in good working order at all times.

Any project proposing bank stabilization solely using hard armoring methods, or where the scope of the entire project is greater than 500 linear feet, is not authorized under this certification and the project proponent shall seek a project-specific CWA Section 401 certification from EPA Region 8.

NWP 13, Specific Condition 2: The slopes of disturbed banks shall be configured to mimic a stable reference reach and not reduce the bottom width of the stream. Pre-construction cross sections shall be included in the project plan submitted to EPA Region 8.

NWP 13, Specific Condition 3: The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.
- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 (R8CWA401@epa.gov). The report shall be labeled with the project name and Corps District number (if available).

NWP 14, Specific Condition 1: NWP 14 is conditionally certified, except that a project-specific CWA section 401 certification is required for projects authorized under one or more NWP by the Corps that result(s) in:

1. Greater than 1/10 acre of impacts to waters of the U.S.; or
2. Greater than 300 linear feet of impacts to waters of the U.S.

NWP 14, Specific Condition 2: The project proponent shall submit a project design plan to EPA Region prior to construction. Affected streambanks shall be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations. Stream bank slopes should not be steeper than 3:1. Justification for banks steeper than 3:1 shall be included in the project design plan. The project design plan also shall document how all temporary fills and structures will be removed, and the area restored to pre-project conditions.

NWP 14, Specific Condition 3: Permanent culverts shall be installed using an established culvert analysis and design tool (ex. HY-8, HEC-RAS, USGS CAP, etc.). Culverts shall span the bankfull width and/or ordinary high-water mark of the affected waterbody. The culvert bottom shall be installed below the existing streambed elevation to allow aquatic organism passage and the natural substrate to reestablish.

NWP 14, Specific Condition 4: The project proponent shall submit a monitoring plan to EPA Region 8 prior to initiating construction on the project.

- The project proponent shall monitor the project site through the next growing season or until the site is restored to pre-disturbance or reference site conditions. The monitoring plan shall contain the restoration plan (as outlined in General Condition 6) and any additional adaptive management methods if the site is not achieving pre-disturbance or reference site conditions.
- Impacts to aquatic resource buffers shall be avoided. If avoidance is not possible, methods for buffer restoration and monitoring shall be in the monitoring plan.
- The project proponent shall use referenced photographs to document the status of all relevant locations at the project site prior to construction, during project construction, after project completion, and upon completion of all restoration activities, consistent with the monitoring plan.

- The project proponent shall submit electronic photos (prior to, during and post-construction, and post-restoration) in an annual monitoring report to EPA Region 8 (R8CWA401@epa.gov). The report shall be labeled with the project name and Corps District number (if available).

NWP 15, Specific Condition 1: Fill or dredged material shall not result in an increase in land contour height beyond the original dimensions of the waterbody. Original land contour dimensions shall be documented prior to construction to confirm contours are restored to pre-disturbance conditions. Affected streambanks shall be sloped such that the stream bottom width is not reduced, and bottom elevations are restored to original elevations. Stream bank slopes should not be steeper than 3:1. Justification for banks steeper than 3:1 shall be included in the project design plan. The project design plan also shall document how all temporary fills and structures will be removed, and the area restored to pre-project conditions.

NWP 15, Specific Condition 2: Crossings shall be placed perpendicular to the water course, unless the project proponent can document that this would result in increased impacts to aquatic resources or compromise the safety of the structure.

NWP 15, Specific Condition 3: Bridge decks shall be designed such that they do not drain directly into the waterbody.

NWP 15, Specific Condition 4: Bridges shall span the bankfull width, adjacent wetlands, and/or ordinary high-water mark of the affected waterbody. Projects that cannot meet this condition require a project-specific CWA Section 401 certification from EPA Region 8.

NWP 19, Specific Condition 1: Dredged or fill materials shall be placed in non-jurisdictional areas and controlled such that it cannot return to waters of the U.S. Dredged or fill material shall not be placed on islet, islands, sandbars, landmass or other area of sediment accumulation within the banks of a stream, shore of lake, edge of wetland or other type of waterbody, unless the project proponent can document that the vegetation and geomorphology signify a long-term stable configuration (e.g., areas of sediment accumulation are not formed from temporary situations such as drought conditions or upstream reservoir release conditions).

NWP 27, Specific Condition 1: NWP 27 is conditionally certified, subject to the general conditions listed above, except for the following activities, where an individual project-specific CWA Section 401 certification is required: (1) the project involves dam removal; and/or (2) the project or activities involve greater than 1-acre of impacts to waters of the U.S.; and/or (3) the project impacts greater than 500 linear feet of waters of the U.S.

NWP 37, Specific Condition 1: Original and planned stream contours shall be documented by the project proponent. Construction activities shall not result in the channelization of streams or sloughs. Channelization is defined, for this purpose, as the placement of excess material in a manner that modifies the bank alignment, and subsequently the channel alignment, from its present condition.

NWP 37, Specific Condition 2: Construction activities shall not remove silt beyond what was deposited by the emergency event. Based on the original site conditions and planned project design, the project proponent shall justify the amount of silt identified for removal, such that the construction activities do not result in the removal of silt beyond what was deposited by the emergency event (e.g., excavating a wetland area to the point it's a stormwater retention pond, or deepening/widening a stream channel to accommodate higher flow capacity).

NWP 37, Specific Condition 3: Construction of temporary structures or drains for the purpose of reducing or preventing flood damage shall be removed within 60 days following the emergency event, unless justification for retaining the structures for a longer period is documented by the project proponent.

NWPs Denied (121.7(e)(2))

On behalf of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 cannot certify that the range of discharges from potential projects authorized under the following proposed NWPs will comply with water quality requirements, as defined in 40 CFR 121.1(n). Therefore, CWA Section 401 water quality certification is denied for NWPs 16, 17, 34, 49, and 53 and applicants must request an individual water quality certification, consistent with 40 CFR 121.5.

Certification denial is due to insufficient information. 40 CFR 121.7(e)(2)(iii). In EPA's unique role certifying on behalf of a tribe, EPA lacks important information about tribal water resources. In the case of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 lacks sufficient information on sensitive resources that may exist on these tribal lands, potential impaired waters on these tribal lands, and potential cultural importance of the water resources on these tribal lands. Additional information on these specific subjects would be needed for EPA Region 8 to assure that the range of discharges from potential projects authorized under NWPs 16, 17, 34, 49, and 53 will comply with water quality requirements, as defined in 40 CFR 121.1(n).

This information would also be necessary for EPA Region 8 to identify specific water quality requirements and evaluate whether the range of discharges from potential projects will comply with such requirements, in accordance with CWA section 401(a)(1) and 40 CFR 121.7(b). Lacking this information, EPA Region 8 is therefore denying certification.

NWPs Waived (121.9(a)(1))

On behalf of the Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nation), and Turtle Mountain Band of Chippewa Indians, EPA Region 8 is expressly waiving its authority to act on the CWA § 401 certification request for the following proposed NWPs: 4, 22, and 54.

December 8, 2020

Patricia L. McQueary
Regulatory Program Manager, North Dakota
US Army Corps of Engineers
1513 South 12th Street
Bismarck, ND 58504-6640

Dear Ms. McQueary:

The department has completed reviewing the proposed 2020 Nationwide Permits (NWP) for compliance with Standards of Quality for Water of the State (WQ-standards) and for Certification under Section 401 of the Clean Water Act.

The department has Clean Water Act Section 401 authority for North Dakota. Under that authority the department certifies, certifies with conditions, or denies select 2020 NWP. Certification, certification with condition, and denials are issued to ensure that the water quality requirements as defined in the Standards of Quality of Water Quality of the State, North Dakota Administrative Code Chapter 33.1-16-02.1 (WQ-Standards) are supported as intended by the Clean Water Act (CWA) Sections 301, 301, 303, 306, and 307, the 40 Code of Federal Registry Part 121 and the ND Century Code 28-61-04.

If a project is unable to meet the enclosed conditions, or if certification is denied for an applicable NWP, the applicant may request an individual certification from the department. An individual certification request must follow the requirements outlined in §121.5 of EPA's CWA § 401 Certification Rule, effective September 11, 2020.

The department may inspect any authorized activity to determine compliance with the terms and conditions (Section 121.11).

Under Section 401 of the Clean Water Act this department grants certification to the following Nationwide Permits as the discharge(s) will comply with water quality requirements:

- 1) **Nationwide Permits Not Applicable:** No. 8, 24, 34, 54, A, B, and E.
- 2) **Nationwide Permits Clean Water Certified:** No. 1, 2, 3, 4, 5, 6, 9, 10, 11, 14, 18, 20, 21, 22, 25, 28, 30, 31, 33, 36, 37, 38, 41, 43, 44, 45, 46, 48, 49, 50, 51, 53, and C.

Under Section 401 of the Clean Water Act the department grants certification with conditions (Section 121.7(d)(2)) to the following Nationwide Permits, as with the conditions discharge(s) will comply with water quality requirements:

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

Section 121.7(d)(2)

(i) A preconstruction notification (PCN) requirements for Federal and Federal Permittees provides the department the means to ascertain if the Water Quality Standards are being supported and to confirm if the action was implemented as permitted. Both of these are required under 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.11(b) [The certifying authority, prior to the initial operation of a certified project, shall be afforded the opportunity to inspect the facility or activity of the purpose of determining whether the discharge from the certified project will violate the certification].

(ii) Without a PCN the department and USACE regulator will be blind to any violations, preventing the requirements of 40 CFR 121.11(c) [The Federal agency shall be responsible for enforcing certification condition that are incorporated into a license or permit]. Without a PCN Sections 301,302,303,306 and 307 of the Clean water act (CWA) cannot be supported.

- 4) **Nationwide Permits 15, and 17:** Nationwide Permits 15 and 17 are granted Section 401 Clean Water Certification except those in, on or over Class I, IA, II Rivers and Streams.

Section 121.7(d)(2)

(i) Bridges and hydropower dams sequester sediments and other pollutants from runoff, as well as reduce or increase flow velocities in waters of the state. Maintaining natural stream morphology reduces the destabilization of the stream/river.

Drainage directly from hydropower surfaces and bridge decks may cause erosion, and introduce additional pollutants, such as oil, gas, sediment, and toxics. Directing bridge deck drainage into constructed runoff water quality control systems will help prevent erosion and keep pollutants from directly entering the waterway.

The placement of a structure within the ordinary highwater alters the hydrologic characteristics of the waterbody leading to increased erosional forces, scour around the structures, increased sediment loads to the waterbody, abandonment of the primary channel, and undermining of the structure itself.

(ii) All streams are waters of the state under North Dakota Century Code 28-61-04 and protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the

beneficial uses, municipal, domestic, aquatic life, recreation, agriculture, and industry. In order to ensure that state law is supported bridges and hydropower projects need project and specific conditions and allow inspections during and after construction (Section 121.11).

Authority for NWP 15 and 17 are 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge] and 40 CFR 121.11(b) [The certifying authority, prior to the initial operation of a certified project, shall be afforded the opportunity to inspect the facility or activity of the purpose of determining whether the discharge from the certified project will violate the certification]. Conditioning of NWP 17 and 19 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 5) **Nationwide Permit 19:** Nationwide Permit 19 is granted Section 401 Clean Water Certification with the condition spoils are disposed at an upland site where they will not drain back to waters of the state.

Section 121.7(d)(2)

(i) Discharge of dredge material has the capacity to bury the biological community, impact stream function, and release trace elements in concentration exceeding the numeric criteria in the WQ-standards.

(ii) All streams, rivers, lakes, ponds and wetlands are waters of the state under North Dakota Century Code 28-61-04 are protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the beneficial uses, municipal, domestic, aquatic life, recreation, agriculture, and industry. Conditioning of NWP 19 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 6) **Nationwide Permits 23, and 29:** Nationwide Permits 23 and 29 are granted Section 401 Clean Water Certification with the condition that the project will not result in a stream bank loss exceeding 300 Linear feet in Class I, IA, II and III streams. Projects that cannot meet the condition under nationwide Permits 23 and 29 will require an individual certification.

Section 121.7(d)(2)

(i) Projects exceeding 300 linear feet of stream bank have the capacity to remove the biological, hydraulic and geomorphic stream function, disconnect and fragment the watershed and potentially result in the total loss of a stream.

(iii) All streams are waters of the state under North Dakota Century Code 28-61-04 and protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the beneficial uses of municipal, domestic, aquatic life, recreation, agriculture, and industry. Conditioning of NWP 19 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 7) **Nationwide Permit 27:** Nationwide Permit 27 is granted Section 401 Clean Water Certification with the following conditions: (1) Projects in Class I, IA, II, III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-Standards must provide a preconstruction notification, (2) projects will not result in a net loss of wetland or wetland type, and (3) no in-stream berms, dams, or similar structures on Class I, IA, and II, III river or stream listed in the Appendix I of the standards unless constructed in such a way that the stream assimilative capacity and aquatic life passage are maintained or the structures are part of a stream, river, wetland, or lake restoration project.

Section 121.7(d)(2)

(i) NWP 27 is sometimes used for damming, ephemeral and intermittent drainages. A PCN is required to ensure appropriate conditions are applied during and after construction to protect aquatic life passage, existing beneficial uses and prevent construction in ecological settings likely to become contaminant sinks (WQ-Standards). Projects need to demonstrate that at maturity there will be no net loss of wetland and wetland types. Wetland/wetland type and associated vegetation ensure no loss of assimilative capacity of contaminants, nutrients, and sediment to protect aquatic life (WQ-Standards).

(iv) Under 40 CFR § 121.2 [Clean Water Certification is required for any license or permit that authorizes an activity that may result in a discharge], 40 CFR 121.11(b) [The certifying authority, prior to the initial operation of a certified project, shall be afforded the opportunity to inspect the facility or activity of the purpose of determining whether the discharge from the certified project will violate the certification], and 40 CFR 121.11(c) [The Federal agency shall be responsible for enforcing certification condition that are incorporated into a license or permit]. Without a PCN, 40 CFR § 121.2, 40 CFR 121.11(b), or 40 CFR 121.11(c) cannot be satisfied. Conditioning of NWP 27 insure support of Sections 301,302,303,306 and 307 of the CWA.

- 8) **Nationwide Permits 39, 40, and 42:** Nationwide Permits 39, 40 and 42 are granted Section 401 Clean Water Certification with the condition that the resulting will not cause a loss or relocation of 150 feet or more of any river or stream. Projects that cannot meet the condition under nationwide Permits 39, 40 and 42 will require an individual certification.

Section 121.7(d)(2)

(i) North Dakota has many intermittent and perennial streams with bed widths of less than four (4) feet. Projects with large footprints (i. g., Commercial, Industrial, Agricultural, and Recreational) that remove ≥ 150 linear feet of stream bank have the capacity to remove the capability, singularly or cumulatively, of the biological, assimilative, hydraulic and geomorphic stream function, disconnect and fragment the watershed and potentially result in the total loss of a stream.

(v) All streams are waters of the state under North Dakota Century Code 28-61-04 and protected by North Dakota Administrative Code Chapter 33.1-16-02.1 for the beneficial uses, municipal, domestic, aquatic life, recreation, agriculture, and industry.

Conditioning of NWP 39, 40, and 42 insure support of Sections 301,302,303,306 and 307 of the CWA.

9) **Nationwide Permit D (Utility Line Activities for Water and Other Substances):**

Utility line activities under Nationwide Permit D for water and other substances are granted Section 401 Clean Water Certification with the condition they do not carry oil and gas production water, produce water, or brine water. Pipelines that carry oil or gas production water, produced water, or brine water, collectively called saltwater pipelines, in, over or under Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-standards will require an individual certification with conditions based on the specific waterbody, location on the water, type of construction, and safety controls applied prior, during, and after construction.

Section 121.7(d)(2)

(i) Documentation of the “may discharge” by saltwater pipelines in violation of North Dakota’s Administrative Code Chapter 33.1-16-02.1, the Clean Water Act 301, 302 (40 CFR part 121) are the 284 reported pipeline releases/failures reported in North Dakota between January 1, 2016 and October 1, 2020.

Saltwater pipelines in, over or under Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the WQ-standards need to be conditioned based on the waterbody, location on the water, type of construction, and safety controls applied prior during and after construction.

Pipelines carrying oil or gas production water, produced water, or brine water can be constructed to minimize discharge and failure potential through appropriate permit conditions. Under the proposed 2020 NWP D information is required to develop project specific conditions. General information needed to certify or certify with conditions is, but not limited to is: 1) construction type, 2) design, 3) crossing type, 4) monitoring, 5) safety systems installed, and 6) what toxin or pollutant is being transported by the pipeline.

Specific information required: (1) The geologic and geomorphic conditions at the constructions site to determine the likelihood of point source releases from construction activities such as the common frac-out of directional drilling fluids and the toxicity of the fluids, and (2) the location of the project in order to inspect during and after construction to ensure compliance with conditions (§121.11). Finally, there is a physical requirement to know that that all saltwater pipelines are installed at depths below any potential scour to protect them from the hydraulic energies of water.

(ii) Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-61-04 have federally and state defined beneficial uses. These include the Clean Water Act (CWA) 101(a)(2) beneficial uses of “*wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983*”. Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-

61-04 also have state defined beneficial uses. These include municipal, domestic, agriculture, and industrial uses. Pollutant releases into state waters may occur during and after construction of production, produced and brine water (saltwater) pipelines. Releases will violate sections 301, 302, 303, and 306 of the Clean Water Act, and WQ-Standards.

The department has the legal obligation to ensure the protection of the beneficial uses: municipal and industrial, fish and aquatic biota, recreation, agriculture, and industrial by insuring the ND Century Code 28-61-04 is supported by the WQ-Standards as determined by the Clean Water Act 301, 302, 303, and 306 and information to do so (§121.11).

Under Section 401 of the Clean Water Act the department denies (CFR 40 Section 121.7(e)(2)) certification of the following Nationwide Permits as the discharge(s) will not comply with water quality requirements:

- 10) **Nationwide Permit 12:** Oil and gas natural related projects in Class I, IA, II and class III rivers and streams, and classified lakes listed in Appendixes I and II of the standards are denied Section 401 Water Quality Certification.

Denied Section 121.7(e)(2)

(i) Documented “May discharge” by oil and natural gas pipelines in violation of North Dakota’s Administrative Code Chapter 33.1-16-02.1, the Clean Water Act 301, 302 and 40 CFR Part 121 is documented by the 183 crude oil pipeline releases/failures reported in North Dakota between January 1, 2016 and October 1, 2020.

Pipeline permitted under NWP 12 can be built/constructed to minimize discharge and failure potential through appropriate conditioning. Under the proposed 2020 NWP there is not enough information to do so. General information needed to certify or certify with conditions is, but not limited to is: 1) construction type, 2) design, 3) crossing type, 4) monitoring, 5) safety systems installed, and 6) what toxin or pollutant is being transported by the pipeline.

Specific information required: (1) The geologic and geomorphic conditions at the constructions site to determine the likelihood of point source releases from construction activities such as the common frac-out of directional drilling fluids and the toxicity of the fluids, and (2) the location of the project in order to inspect during and after construction to ensure compliance with conditions (§121.11). Finally, there is a requirement to know that all oil and natural gas pipelines are installed at depths below any potential scour to protect them from the hydraulic energies of water.

(ii) Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-61-04 have federally and state defined beneficial uses. These include the Clean Water Act (CWA) 101(a)(2) beneficial uses of “*wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983*”.

Class I, IA, II and III streams under 40 CFR 131.10 and state law ND Century Code 28-61-04 also have state defined beneficial uses. These include municipal, domestic, agriculture, and industrial uses. Pollutant releases into state waters may occur during and after construction of crude oil, natural gas and oil related pipelines. Releases will violate sections 301, 302, 303, 306 and 307 of the Clean Water Act, and WQ-Standards.

The department has the legal obligation to ensure the protection of the beneficial uses: municipal and industrial, fish and aquatic biota, recreation, agriculture, and industrial by ensuring the ND Century Code 28-61-04 is supported by the WQ-Standards as determined by the Clean Water Act 301, 302, 303, 306, and 307 and information to do so (§121.11).

The WQ-Standards may be found at <https://www.legis.nd.gov/information/acdata/pdf/33.1-16-02.1.pdf>. Within the WQ-Standards are the Authority 33.1-16-02.1-01, Beneficial uses 33.1-16-02.1-04, Narrative standards 33.1-16-02.1-08, Numeric standards 33.1-16-02.1-09, Stream and stream class (Appendix I), Lake and lake classifications (Appendix II), Antidegradation policy (Appendix IV).

Sincerely,



Karl H. Rockeman, P.E.
Director, Division of Water Quality

PNW:saj

From: [Tom Blackmore](#)
To: [Kessler, Steven E.](#)
Subject: RE: [EXTERNAL]RE: Floodplain Permit PCN 23419
Date: Wednesday, October 18, 2023 8:22:55 AM
Attachments: [image002.png](#)

***** **CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. *****

Good morning Steve,
You are authorized to proceed with your permitted project as there are no planned changes being made at this time.



From: Kessler, Steven E. <skessler@nd.gov>
Sent: Wednesday, October 18, 2023 7:04 AM
To: Tom Blackmore <tblackmore@jamestownnd.gov>
Subject: [EXTERNAL]RE: Floodplain Permit PCN 23419

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. If in doubt, contact the IT department.

Good morning Tom,
Have you had a chance to look into this?

Thanks,

Steve

From: Kessler, Steven E.
Sent: Tuesday, September 26, 2023 9:09 AM

To: Tom Blackmore <tblackmore@jamestownnd.gov>

Subject: Floodplain Permit PCN 23419

Good morning Tom,

This project is now in a 12/8/23 bid opening. There have been no changes to the project since permitting. Can we receive authorization to move forward under the existing floodplain permit after the expiration date?

Thanks,

Steve Kessler

**North Dakota Department of Transportation
Environmental & Transportation Services
608 E Boulevard Avenue
Bismarck ND 58505-0700
Phone (701) 328-3736**



THIS PERMIT IS NOT VALID
UNLESS STAMPED "PAID"
BY THE CITY OF
JAMESTOWN FINANCE
DEPARTMENT

INSPECTION DEPARTMENT - City Hall
102 3rd Ave SE
Jamestown, ND 58401

Phone # 701-252-5900
Fax # 701-252-5903

FLOODPLAIN DEVELOPMENT PERMIT

PERMIT #: 202300139		DATE ISSUED: 8/02/2023	
JOB ADDRESS: JAMES RIVER BRIDGE	LOT #:	CONTRACTOR: NDDOT	ADDRESS: 608 E BOULEVARD AVE
PARCEL ID:	BLK #:	ADDRESS: 608 E BOULEVARD AVE	CITY, STATE ZIP: BISMARCK ND 58501
SUBDIVISION:	ZONING:	PHONE:	CITY, STATE ZIP: BISMARCK ND 58501
OWNER: NDDOT	CONTRACTOR: NDDOT	APPLICANT: STEVE KESSLER NDDOT	
ADDRESS: 608 E BOULEVARD AVE	ADDRESS: 608 E BOULEVARD AVE		
CITY, STATE ZIP: BISMARCK ND 58501	CITY, STATE ZIP: BISMARCK ND 58501		
PHONE:	PHONE:		
PROP. USE: INTERSTATE HIGHWAY SYSTEM	SQ FT: 0.00		
VALUATION: \$ 0.01	OCCP TYPE:		
	CNST TYPE:		

SCOPE OF WORK: WORK INCLUDES BRIDGE APPROACH SLAB REPLACEMENT, BRIDGE DECK SPALL REPAIRS, ABUTMENT AND ENDBEAM SPALL REPAIRS, EROSION REPAIR, EXPANSION JOINT MODIFICATION, REMOVAL OF CHAIN LINK FENCE BELOW THE BRIDGE, RESETTING ANCHOR BOLTS, AND REMOVE AND RESETTING GUARDRAIL. WORK WILL BE WITHIN THE JAMES RIVE FLOODPLAIN AND FLOODWAY

CONDITIONS IF ANY:

DESCRIPTION	AMOUNT
TOTAL	

NOTICE

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 6 MONTHS, OR IF CONSTRUCTION OR WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF 6 MONTHS AT ANY TIME AFTER WORK IS STARTED.

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS DOCUMENT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISION OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.

APPROVED BY

August 2, 2023

DATE

FLOODPLAIN DEVELOPMENT PERMIT APPLICATION NON-BUILDING SITUATION

GENERAL INFORMATION

PERMIT APPLICATION # _____ DATE: 7/11/2023

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, T139N, R63W

Work includes bridge approach slab replacement, bridge deck spall repairs, abutment and endbeam spall repairs, erosion repair, expansion joint modification, removal of chain link fence below the bridge, resetting anchor bolts, and remove and resetting guardrail. Work will be within the floodplain/floodway of the James 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: *Yes*

Map information: FIRM Date: *May 24, 2011*
FIRM Zone: *Zone AE*
BFE at Development Site: *1386*
Development will be elevated to:

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

<input type="checkbox"/> Fill placement	(fill brought in from outside the floodplain)
<input type="checkbox"/> Excavation	(where subgrade fill is removed from the floodplain)
<input type="checkbox"/> Landscaping	(cut and fill, fill borrow and placement)

- Construction or maintenance of a dike/levee/floodwall
- Removal of fill, embankment, or dikes
- Watercourse alterations (river, stream, lake - channel modifications, rip-rap)
- Road, street or bridge construction (new, repair or replacement, realignment)
- Drainage improvements (including culvert work)
- Mining (removal of gravel, rock, fill or other natural materials)
- Installation of utilities (water, sewer, pipeline, gas, electric, communications)
- Well drilling (water, oil, natural gas etc.)
- Subdivision (new or expansion)
- Other (*bridge maintenance repairs*)

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): *Thomas R. Blackman*

Date: *8/2/2023*

NOTES TO USERS

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. The community map repository should be consulted for possible updated or additional flood hazard information.

The projection used in the preparation of this map was Universal Transverse Mercator (UTM) zone 14. The horizontal datum was NAD 83, GRS 1980 spheroid. Differences in datum, spheroid, projection or UTM zones used in the production of FIRMs for adjacent jurisdictions may result in slight positional differences in map features across jurisdiction boundaries. These differences do not affect the accuracy of this FIRM.

Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same vertical datum. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1988, visit the National Geodetic Survey website at <http://www.ngs.noaa.gov> or contact the National Geodetic Survey at the following address:

NGS Information Services
NOAA, NINGS12
National Geodetic Survey
SSMC-3, #9202
1315 East-West Highway
Silver Spring, Maryland 20910-3282
(301) 713-3242

Qualifying bench marks for this jurisdiction lie outside of the corporate limits and are located on non-printed panels. See the Qualifying NGS Bench Marks table in the FIS Report for a listing of bench marks. To obtain current elevation, description, and/or location information for qualifying bench marks located in the vicinity of this jurisdiction, please contact the Information Services Branch of the National Geodetic Survey at (301) 713-3242, or visit its website at <http://www.ngs.noaa.gov>.

Base map information shown on this FIRM was derived from 2005 aerial photography obtained from the United States Department of Agriculture - Farm Service Agency. The aerial photography has a pixel resolution of 1 meter.

The profile baselines depicted on this map represent the hydraulic modeling baselines that match the flood profiles in the FIS report. As a result of improved topographic data, the profile baseline, in some cases, may deviate significantly from the channel centerline or appear outside the SFHA.

Based on updated topographic information, this map reflects more detailed and up-to-date stream channel configurations and floodplain delineations than those shown on the previous FIRM for this jurisdiction. As a result, the Flood Profiles and Floodway Data tables for multiple streams in the Flood Insurance Study Report (which contains authoritative hydraulic data) may reflect stream channel distances that differ from what is shown on the map. Also, the road to floodplain relationships for unrevised streams may differ from what is shown on previous maps.

Corporate limits shown on this map are based on the best data available at the time of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate community officials to verify current corporate limit locations.

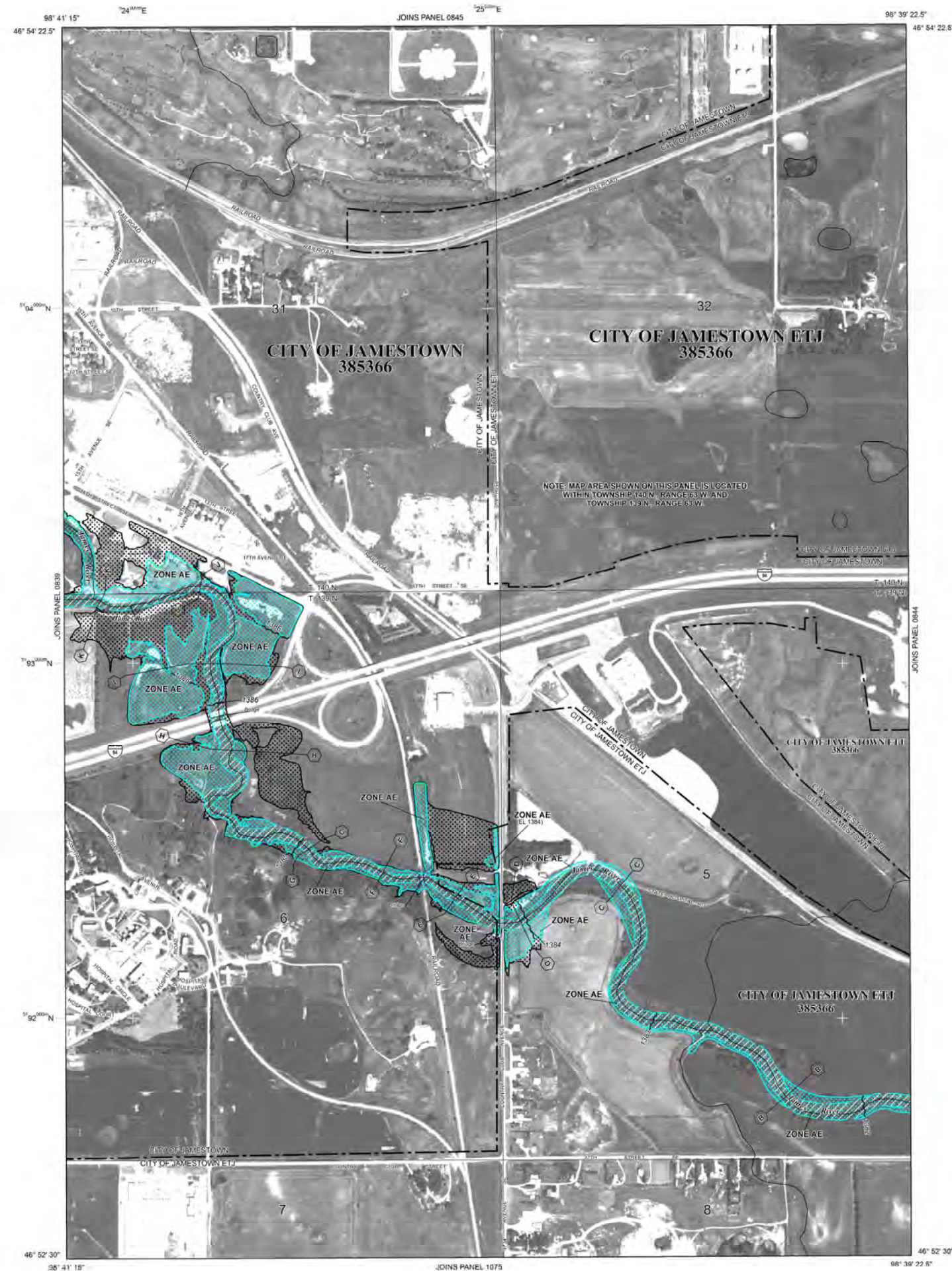
Please refer to the separately printed Map Index for an overview map of the county showing the layout of map panels, community map repository addresses, and a Listing of Communities table containing National Flood Insurance Program dates for each community as well as a listing of the panels on which each community is located.

For information on available products associated with this FIRM visit the Map Service Center (MSC) website at <http://msc.fema.gov>. Available products may include previously issued Letters of Map Change, a Flood Insurance Study Report, and/or digital versions of this map. Many of these products can be ordered or obtained directly from the MSC website.

If you have questions about this map, how to order products, or the National Flood Insurance Program in general, please call the FEMA Map Information eXchange (FMIX) at 1-877-FEMA-MAP (1-877-336-2627) or visit the FEMA website at <http://www.fema.gov/business/infr>.

Vertical Datum Conversion Factor:
Feet NAVD 88 above Feet NGVD 29:
James River: +1.24 feet
Pigstem Creek: +1.25 feet
Spirithood Lake: +1.23 feet

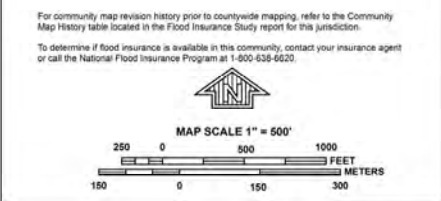
This Digital Flood Insurance Rate Map was produced as part of the Flood Hazard Map Modernization Program through a Cooperating Technical Partner agreement between the North Dakota State Water Commission and the Federal Emergency Management Agency.



LEGEND

- SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD**
The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V, and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.
- ZONE A** No Base Flood Elevations determined.
- ZONE AE** Base Flood Elevations determined.
- ZONE AH** Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.
- ZONE AO** Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
- ZONE AR** Special Flood Hazard Areas formerly protected from the 1% annual chance flood by a flood control system that was subsequently deteriorated. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.
- ZONE A99** Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.
- ZONE V** Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.
- ZONE VE** Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.
- FLOODWAY AREAS IN ZONE AE**
The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachments so that the 1% annual chance flood can be carried without substantial increases in flood heights.
- OTHER FLOOD AREAS**
ZONE X Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.
- OTHER AREAS**
ZONE X Areas determined to be outside the 0.2% annual chance floodplain.
ZONE D Areas in which flood hazards are undetermined, but possible.
- COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS**
- OTHERWISE PROTECTED AREAS (OPAs)**
CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.
1% Annual Chance Floodplain Boundary
0.2% Annual Chance Floodplain Boundary
Floodway boundary
Zone D boundary
CBRS and OPA boundary
Boundary dividing Special Flood Hazard Area Zones and boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths, or flood velocities.
Base Flood Elevation line and value; elevation in feet*
Base Flood Elevation value where uniform within zone; elevation in feet*

- *Referenced to the North American Vertical Datum of 1988
- Cross section line**
- Transect line**
- Geographic coordinates referenced to the North American Datum of 1983 (NAD 83) Western Hemisphere
1000-meter Universal Transverse Mercator grid values, zone 14
- Bench mark (see explanation in Notes to Users section of this FIRM panel)
- River Mile
- MAP REPOSITORIES**
Refer to Map Repositories list on Map Index
- EFFECTIVE DATE OF COUNTYWIDE FLOOD INSURANCE RATE MAP**
May 24, 2011
- EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL**



NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0843E

FIRM
FLOOD INSURANCE RATE MAP
STUTSMAN COUNTY,
NORTH DAKOTA
AND INCORPORATED AREAS

PANEL 843 OF 1350
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
JAMESTOWN, CITY OF	385366	0843	E

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

MAP NUMBER
38093C0843E
EFFECTIVE DATE
MAY 24, 2011
Federal Emergency Management Agency

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION

FUEL COST ADJUSTMENT CLAUSE

Revision Date: 9/8/2006

Introduction

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

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

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

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

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

Fuel Indexes

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

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

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

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

Fuel Ratio

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

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

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

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

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

Cost Change

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

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

Contract Adjustments

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

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

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

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

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

Payments

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

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

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

Attachments

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

FUEL COST ADJUSTMENT AFFIDAVIT

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

SP Fuel Cost Adjustment Clause
 6 of 6

Attachment A

PCN	Project Number		
<p>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.</p>			
<p>Check the box for each fuel type that has a fixed price. No adjustments in fuel price will be made for the boxes that are checked.</p> <p style="text-align: center;"> <input type="checkbox"/> Diesel <input type="checkbox"/> Unleaded <input type="checkbox"/> Burner </p>			
<p>Does your company elect to participate in a fuel adjustment for this contract for the fuels that do not have a fixed price? No adjustments in fuel prices will be made if No is checked .</p> <p style="text-align: right;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p>			
<p>If yes, provide the total dollars for each of the applicable fuels:</p>			
Diesel (D)		<p>% of Original Contract Amount *</p>	
Unleaded (U)			
Burner Fuel (B)			
Sum (D+U+B)			
<p>*The sum of the D, U, and B may not exceed 15% of the original contract amount.</p>			
<p>Under the penalty of law for perjury of falsification, the undersigned,</p>			
Name (print or type)		Title (print or type)	
Contractor (print or type)			
<p>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.</p>			
<p>I hereby agree that the Department or its authorized representative shall have the right to examine and copy all Contractor records, documents, work sheets, bid sheets and other data pertinent to the justification of the fuel costs shown above.</p>			
Signature			Date

Acknowledgement

State of	
County of	
Signed and sworn to (or affirmed) before me on this day _____	
(month, day, year)	
Name of Notary Public or other Authorized Officer (Type or Print)	Affix Notary Stamp
Signature of Notary Public or other Authorized Officer	
Commission Expiration Date (if not listed on stamp)	