

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSAL

STATE FEDERAL AID PROJECT NO. SS-FTF-5-999(036) (PCN-24246)

1.024 Miles

GRADING, CONCRETE, ASPHALT, AGGREGATE BASE, CULVERTS, SHARED USE PATH, SIGNING, PAVEMENT
MARKINGS, LIGHTING

CHATEAU ROAD, I-94 BUSINESS LOOP (PACIFIC AVE) TO BURNING HILLS AMPHITHEATRE (MEDORA)

BILLINGS COUNTY

DBE Race Conscious Goal - 1.50%

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 April 25, 2025.**

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

Proposal Form of:

(Firm Name)

(Address, City, State, Zipcode)

(For official use only)

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Project: SS-FTF-5-999(036) (PCN-24246)

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

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

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

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

NON-COLLUSION AND DEBARMENT CERTIFICATION

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

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

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

Project: SS-FTF-5-999(036) (PCN-24246)

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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.

Project: SS-FTF-5-999(036) (PCN-24246)

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.

Project: SS-FTF-5-999(036) (PCN-24246)

PROPOSAL GUARANTY

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

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

Annual Bid Bond*

Single Project Bid Bond

Certified or Cashier's Check

*Annual Bid Bond is required when submitting proposals electronically

BID ITEMS

Project: SS-FTF-5-999(036) (PCN-24246)

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

Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
001	103	0100	CONTRACT BOND	L SUM	1.				
002	107	0100	RAILWAY PROTECTION INSURANCE	L SUM	1.				
003	107	0140	RAILROAD COORDINATION	L SUM	1.				
004	107	0145	RAILROAD FLAGGING	DAY	1,600.				
005	201	0330	CLEARING & GRUBBING	L SUM	1.				
006	202	0130	REMOVAL OF CURB & GUTTER	LF	401.				
007	202	0136	REMOVAL OF PAVEMENT	TON	13,008.				
008	202	0170	REMOVAL OF CULVERTS-ALL TYPES & SIZES	LF	362.				
009	202	0174	REMOVAL OF PIPE ALL TYPES AND SIZES	LF	577.				
010	202	0230	REMOVAL OF INLETS	EA	1.				
011	202	0295	REMOVAL OF OBSTRUCTIONS	L SUM	1.				
012	202	0312	REMOVE EXISTING FENCE	LF	6,289.				
013	202	0350	REMOVAL OF TEMPORARY BYPASS	EA	5.				
014	203	0101	COMMON EXCAVATION-TYPE A	CY	36,786.				
015	203	0109	TOPSOIL	CY	11,786.				
016	203	0113	COMMON EXCAVATION-WASTE	CY	52,696.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$\$	000	\$\$\$\$\$	00
017	203	0120	SHALE EXCAVATION	CY	12,740.				
018	216	0100	WATER	M GAL	974.				
019	230	0165	SUBGRADE PREPARATION-TYPE A-12IN	STA	55.				
020	251	0300	SEEDING CLASS III	ACRE	31.600				
021	251	2000	TEMPORARY COVER CROP	ACRE	35.400				
022	253	0061	SOIL STABILIZATION	ACRE	61.100				
023	255	0103	ECB TYPE 3	SY	22,549.				
024	255	0201	TRM TYPE 1	SY	5,087.				
025	256	0100	RIPRAP GRADE I	CY	16.				
026	256	0300	RIPRAP GRADE III	CY	148.				
027	260	0200	SILT FENCE SUPPORTED	LF	7,010.				
028	260	0201	REMOVE SILT FENCE SUPPORTED	LF	7,010.				
029	261	0112	FIBER ROLLS 12IN	LF	23,618.				
030	261	0113	REMOVE FIBER ROLLS 12IN	LF	10,930.				
031	261	0120	FIBER ROLLS 20IN	LF	9,886.				
032	261	0121	REMOVE FIBER ROLLS 20IN	LF	8,942.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
033	265	0100	STABILIZED CONSTRUCTION ACCESS	EA	1.				
034	265	0101	REMOVE STABILIZED CONSTRUCTION ACCESS	EA	1.				
035	302	0050	TRAFFIC SERVICE AGGREGATE	TON	600.				
036	302	0120	AGGREGATE BASE COURSE CL 5	TON	20,020.				
037	302	0403	AGGREGATE SURFACE COURSE	TON	108.				
038	430	0500	COMMERCIAL GRADE HOT MIX ASPHALT	TON	1,613.				
039	550	0300	8IN NON-REINF CONCRETE PVMT CL AE-DOWELED	SY	23,286.				
040	702	0100	MOBILIZATION	L SUM	1.				
041	704	0100	FLAGGING	MHR	2,530.				
042	704	1000	TRAFFIC CONTROL SIGNS	UNIT	1,763.				
043	704	1052	TYPE III BARRICADE	EA	57.				
044	704	1060	DELINEATOR DRUMS	EA	277.				
045	704	1067	TUBULAR MARKERS	EA	22.				
046	704	1080	STACKABLE VERTICAL PANELS	EA	205.				
047	704	1500	OBLITERATION OF PAVEMENT MARKING	SF	2,947.				
048	704	4011	PORTABLE CHANGEABLE MESSAGE SIGN	EA	1.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
049	706	0400	FIELD OFFICE	EA	1.				
050	706	0500	AGGREGATE LABORATORY	EA	1.				
051	708	1540	INLET PROTECTION-SPECIAL	EA	2.				
052	708	1541	REMOVE INLET PROTECTION-SPECIAL	EA	2.				
053	709	0100	GEOSYNTHETIC MATERIAL TYPE G	SY	85.				
054	709	0151	GEOSYNTHETIC MATERIAL TYPE R1	SY	517.				
055	709	0155	GEOSYNTHETIC MATERIAL TYPE RR	SY	349.				
056	710	0100	TEMPORARY BYPASS	EA	5.				
057	714	4091	PIPE CONDUIT 12IN-APPROACH	LF	52.				
058	714	4092	PIPE CONDUIT 12IN-STORM DRAIN	LF	6.				
059	714	4099	PIPE CONDUIT 18IN-APPROACH	LF	53.				
060	714	4105	PIPE CONDUIT 24IN	LF	157.				
061	714	4106	PIPE CONDUIT 24IN-APPROACH	LF	86.				
062	714	4113	PIPE CONDUIT 30IN-APPROACH	LF	160.				
063	714	4115	PIPE CONDUIT 36IN	LF	175.				
064	714	5034	PIPE CORR STEEL .064IN 24IN POLYMERIC COATED	LF	9.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
065	714	5051	PIPE CORR STEEL .064IN 42IN POLYMERIC COATED	LF	23.				
066	714	5820	END SECT CORR STEEL .064IN 24IN	EA	1.				
067	714	9660	REMOVE & RELAY END SECTION-ALL TYPE & SIZES	EA	2.				
068	722	0100	MANHOLE 48IN	EA	1.				
069	722	0110	MANHOLE 60IN	EA	2.				
070	722	1100	MANHOLE RISER 48IN	LF	15.300				
071	722	1110	MANHOLE RISER 60IN	LF	15.500				
072	722	3510	INLET-TYPE 2	EA	1.				
073	722	3701	INLET SPECIAL-TYPE 2 48IN	EA	1.				
074	722	6160	ADJUST INLET	EA	1.				
075	724	0210	FITTINGS-DUCTILE IRON	LBS	62.				
076	724	0621	WATER SERVICE LINE 2IN	LF	187.				
077	724	0626	WATER SERVICE LINE 3IN	LF	187.				
078	724	0810	WATERMAIN 6IN PVC	LF	203.				
079	724	0944	CONNECTION TO EXISTING MAIN	EA	6.				
080	748	0140	CURB & GUTTER-TYPE I	LF	852.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$	000	\$\$\$\$	00
081	750	0101	SIDEWALK CONCRETE REINF	SY	4,980.				
082	750	0144	SIDEWALK CONCRETE 8IN	SY	630.				
083	750	0200	CONCRETE MEDIAN PAVING	SY	50.				
084	750	2115	DETECTABLE WARNING PANELS	SF	378.				
085	752	0320	FENCE BARBED WIRE 4 STRAND-STEEL POST	LF	85.				
086	752	0600	FENCE CHAIN LINK	LF	48.				
087	752	0708	FENCE WOVEN WIRE 8FT	LF	642.				
088	752	0905	TEMPORARY FENCE	LF	1,924.				
089	752	0911	TEMPORARY SAFETY FENCE	LF	1,600.				
090	752	0970	FENCE WOOD	LF	3,383.				
091	752	0993	FENCE TERMINAL	EA	4.				
092	752	2100	VEHICLE GATE	EA	1.				
093	752	2110	RESET VEHICLE GATE	EA	1.				
094	752	2120	REMOVE VEHICLE GATE	EA	2.				
095	752	3128	CORNER ASSEMBLY WOVEN WIRE 8FT	EA	3.				
096	752	3150	CORNER ASSEMBLY BARBED WIRE-WOOD POST	EA	6.				

BID ITEMS

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$\$	000	\$\$\$\$\$	00
097	752	4100	DOUBLE BRACE ASSEMBLY BARBED WIRE	EA	3.				
098	754	0110	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	286.				
099	754	0166	DELINEATORS-TYPE E	EA	1.				
100	754	0170	FLEXIBLE DELINEATORS	EA	76.				
101	754	0206	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	617.				
102	754	0805	OBJECT MARKERS - CULVERTS	EA	19.				
103	762	0111	EPOXY PVMT MK 12IN LINE	LF	504.				
104	762	0112	EPOXY PVMT MK MESSAGE	SF	232.				
105	762	0114	EPOXY PVMT MK 6IN LINE	LF	27,068.				
106	762	0115	EPOXY PVMT MK 8IN LINE	LF	2,493.				
107	762	0117	EPOXY PVMT MK 24IN LINE	LF	129.				
108	762	0134	EPOXY PVMT MK 12IN LINE-GROOVED	LF	144.				
109	762	0135	EPOXY PVMT MK 24IN LINE-GROOVED	LF	200.				
110	762	0136	EPOXY PVMT MK MESSAGE-GROOVED	SF	290.				
111	762	0200	RAISED PAVEMENT MARKERS	EA	6,038.				
112	762	0430	SHORT TERM 4IN LINE-TYPE NR	LF	28,236.				

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Item No.	Spec No.	Code No.	Description	Unit	Approx. Quantity	Unit Price		Amount	
						\$\$\$\$\$	000	\$\$\$\$\$	00
113	764	2000	REMOVE 2-CABLE GUARDRAIL & POSTS	LF	694.				
114	764	2081	REMOVE END TREATMENT & TRANSITION	EA	4.				
115	770	0001	LIGHTING SYSTEM	EA	1.				
116	770	4560	REMOVE LIGHT STANDARD	EA	5.				
117	900	0100	SETTLEMENT PLATE	EA	7.				
118	902	0200	DEBRIS REMOVAL	L SUM	1.				
119	910	0565	CONTROLLED DENSITY BACKFILL	CY	76.				
120	910	0570	MODIFY MANHOLE	EA	1.				
121	930	8671	CONCRETE SLEEPER SLAB	SY	48.				
122	970	0080	LANDSCAPE BOULDERS	TON	175.				
123	970	1011	LANDSCAPE PLANTINGS	L SUM	1.				
124	990	0400	PIPE CLEANOUT	EA	2.				
			TOTAL SUM BID						

Project: SS-FTF-5-999(036) (PCN-24246)

Type of Work: GRADING, CONCRETE, ASPHALT, AGGREGATE BASE, CULVERTS, SHARED USE PATH,
SIGNING, PAVEMENT MARKINGS, LIGHTING

County: BILLINGS

Length: 1.0240 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 06/12/2026 *. The Department provides a minimum of NA working days. The Department will begin charging working days beginning NA or the date work begins on the project site, whichever is earlier.

***REFER TO PLAN NOTES 105-P01, 724-P01, AND 970-P01 FOR ADDITIONAL TIME REQUIREMENTS.**

Project: SS-FTF-5-999(036) (PCN-24246)

Type of Work: GRADING, CONCRETE, ASPHALT, AGGREGATE BASE, CULVERTS, SHARED USE PATH,
SIGNING, PAVEMENT MARKINGS, LIGHTING

County: BILLINGS

Length: 1.0240 Miles

UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISE (DBE):

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

CONTRACT EXECUTION:

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

AFFIDAVIT:

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

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

of _____, a
CONTRACTOR NAME
MAILING ADDRESS

- Individual Partnership Joint Venture Corporation

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

_____, TITLE _____
BIDDER MUST SIGN ON THIS LINE

TYPE OR PRINT SIGNATURE ON THIS LINE

Subscribed and sworn to before me this day.

COUNTY

(Seal)

STATE DATE

NOTARY PUBLIC

My commission expires _____

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

Job 24246, SS-FTF-5-999(036)

Grading, Concrete, Asphalt, Aggregate Base, Culverts, Shared Use Path, Railroad Crossing, Signing, Pavement Marking

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Road Restriction Permits

Hot Line Notice

Price Schedule for Miscellaneous Items dated January 3, 2025 (PS-1)

SP DBE Program - Race Conscious dated October 1, 2024

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 3-7-24

SP Project Payment Reporting

NOTICE - Electrician

Labor Rates from U.S. Department of Labor dated January 3, 2025

On-The-Job Training Program 2025

SSP 1 Temporary Erosion & Sediment Best Management Practices

SSP 5 Limitations of Operations

SSP 8 Federal Prohibition on Certain Technological Hardware

SSP 10 E-Ticketing

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SP 424(24) Concrete Paving Control

SP 425(24) Manufactured Construction Tracking Pad

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

1/3/2025

**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	\$60.00 per MHR
100	9951	216.04	Water	Water	\$30.00 per M Gal
100	9952	430.04 G & I.3	HMA – Bituminous Materials	Patching – Machine Placed	\$250.00 per Ton
100	9952	430.04 G & I.3	HMA – Bituminous Materials	Patching – Hand Placed	\$260.00 Per Ton
100	9954	302.04 B	Aggregate Base and Surface Course	Aggregate Base CL 13	\$40.00 per Ton ¹
100	9955	203.01 C	Rock Excavation	Rock Excavation	\$30.00 per CY
100	9956	203.01 D	Shale Excavation	Shale Excavation	\$8.50 per CY
100	9957	203.01 E	Muck Excavation	Muck Excavation	\$10.50 per CY
100	9958	203.01 G & 203.05 G.3	Excavation and Embankment	Overhaul	\$0.08 per CY-Sta
100	9960	420.04 E	Bituminous Seal Coat	Blotter Sand	\$30.00 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

PROJECT SS-FTF-5-999(036) (PCN-24246)

RACE/GENDER CONSCIOUS GOAL The DBE goal for this project is: **1.50%**

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 (GFE).

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 GFE to do so.

QUOTES:

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 to subquotes@nd.gov

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

REQUIREMENT FOR ALL BIDDERS AT TIME OF BID:

- Must submit SFN 52013 List of Businesses that Submitted Quotes (Form B)
 - Complete form listing information for each subcontractor (DBE and non-DBE) you receive quotes from for this project.
 - The NAICS code to be selected for each firm should match the type of work of the entire project. If more than one type of work is within the project, select the NAICS code that reflects the largest portion of work to be performed overall.
 - Primes may require the information to complete the form to be provided by subcontractors along with their quote. If a subcontractor refuses to provide the information needed note that in the address field. Primes may be asked to provide proof of attempt(s) to collect the data.

ADDITIONAL REQUIREMENTS FOR ALL BIDDERS:

- Must submit Form A (DBE utilization identification) with bid package at the time of bid opening. This is completed as part of your bid in the electronic bidding system, there is not a separate form for it.
 - The DBE participation will be based on the information identified on Form A at the time your bid is submitted. 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.
 - 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.
- 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.
- Any DBEs used on federal aid projects must be supplied a copy of the Proposed Progress Chart within 7 days of project award.

REQUIREMENTS FOR APPARENT LOW BIDDER (ALB) WHEN THE PROJECT DBE GOAL IS MET AT THE TIME OF BID OPENING:

- Follow both REQUIREMENTS FOR ALL BIDDERS sections above, and in addition, include:
 - Must submit SFN 52160 Notification of Intent to Use (Form C) for any **DBE subcontractor, trucking, manufacturer, or other** categories used in all tiers of subcontracting to meet or exceed the project goal by 4:00 pm CST 2 business days after the bid opening. Applicable quote must be attached to each Form C. Submit Form C(s) for any DBEs added after award.
 - Must submit SFN 62503 Notification of Intent to Use – DBE Regular Dealer/Distributor (Form C) for any **DBE supplier and/or distributor** used in all tiers of subcontracting to meet or exceed the project goal by 4:00 pm CST 2 business days after the bid opening. Applicable quote must be attached to each Form C. Submit Form C(s) for any DBEs added after award.
 - 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 both REQUIREMENTS FOR ALL BIDDERS above, and in addition, include:
- A cover letter, submitted with SFN 60829 Contractor Good Faith Efforts Documentation explaining actions taken attempting to meet the project goal. See Page 3 & 4, questions # 1-9 to help explain your actions in the cover letter. Cover letter and form must be submitted by 4:00 pm CST 2 business days of the bid opening.
- SFN 60829 Contractor Good Faith Efforts Documentation 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 is to self-perform, a Bid Differential (BD) 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 BD that does not clearly address all items quoted by the DBE, the non-DBE, prime or combination of quotes, will not be considered. Applicable copies of quotes must be supplied for each bid differential.
- Must submit Form C (SFN 52160 and/or SFN 62503) for DBE's used in all tiers. Must submit Form C for non-DBE's used in a bid differential. All Form Cs must be received by 4:00 pm CST 2 business days after the bid opening. **Attach quotes for every Form C submitted.**
- 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 AND/OR WHEN ALB DOESN'T SUBMIT REQUIRED PAPERWORK:

- When the ALB does not meet goal, or doesn't submit paperwork on time, other bidders may be contacted to submit the applicable ALB documentation. 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?
 - a. Primes are not required to solicit DBEs that indicate they do not work within North Dakota, however, if a DBE quotes a Prime and their Directory listing indicates they do not work within North Dakota that quote must still be addressed.
- 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.
 - b. Initial solicitations must be made via email.
 - 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 is required.
 - c. Keep copies of emails as proof, if requested.
- 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?
 - a. Provide documentation within your GFE submission.
- 7) Did you receive and evaluate all DBE quotes?
 - a. The quotes **must be** converted to an acceptable format, whether the quotes are calculated by ton-mile, hour, acre, or square mile.
 - b. Any DBE quote not selected due to Bid Differential must be evaluated properly within the GFE form. **A copy of the DBE and non-DBEs quote must accompany SFN 60829 for each Bid Differential.**
 - c. Complete the
- 8) Did you advertise using one or both of the following options? Submit a copy with your GFE 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 GFE (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 GFE
5. If the ALB submits incorrect forms
6. If the Bid Differentials submitted by the ALB are not excessive
7. If the ALB did not address all DBE quotes received
8. If the ALB failed to Sign-In and/or Advertise

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 GFE 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

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 all DBEs and non-DBE subcontractors used on the project.
 - See Project Payments Special Provision for more information.
- 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 DBE firms identified on Form Cs a copy of the Proposed Progress Chart within 7 days of award.
- 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 GFE, the goal will not be waived; the contractor must make GFE 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:

1. 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

2. 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 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.

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 "GFE 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.

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 Civil Rights Division will provide a written final determination to the project engineer. The project engineer informs the contractor of the approval or rejection of the replacement of work.

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 "GFE Documentation."

The prime contractor is responsible for any additional costs incurred as a result of the prime contractor's failure 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.

Other 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

A Commercially Useful Function (CUF) - SFN 62120 - must be completed by NDDOT or consultant project personal as soon as the DBE begins the work.

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. Non-compliance of the DBE with program requirements noted on the CUF form may result in changes to and/or termination of certification.

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

- 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)
- 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)
- 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 participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has been paid to the DBE. 49 CFR § 26.55 (h)

The Department will count DBE participation toward the 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, and 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. At least 51% of materials provided by a DBE Regular Dealer/Supplier must come from their own inventory, except for Bulk Items and Specialty Products. Supplier credit would be awarded at 60% of the cost of the materials. 49 CFR 26.55 (e)(ii).

Distributor

Distributors are permitted to drop-ship from manufacturers if the firm has a distributorship agreement or assumes all responsibility for the materials after point of origin, allowing for 40% credit for the cost of materials.

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 DBE's 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 10 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 the Certification and Compliance System (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 trucking firm 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. **Any non-DBE match trucks must be added to the contract in B2Gnow under the DBE by Civil Rights. The usage of the 1:1 Ratio may be revoked at any time if the DBE is not following all required actions.**

**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 on one of these lists before entry of the subcontractor into LCPtracker. These lists may be found at: <https://www.dot.nd.gov/construction-and-planning/construction-and-contractor-resources/contractor-information>. Only Prime Approvers or the CRD may enter subcontractors into LCPtracker.
3. The prime contractor has the responsibility to see that all required payrolls are filed by subcontractors of all tiers. If payroll is rejected or project staff otherwise requests a correction of payroll by any subcontractor on the project, the prime contractor has a responsibility to see that corrected payroll is submitted.
4. For further information on certified payroll, go to the NDDOT Labor Compliance Program (Davis-Bacon)/LCPtracker page at: <https://www.dot.nd.gov/about-nddot/civil-rights/labor-compliance-program-davis-bacon>. On this page, contractors will find a Getting Started on LCPtracker Guide and a Prime Approver Guide. Recorded trainings are also available on this page for both contractors and prime approvers. Contractors can obtain an LCPtracker user name and password by calling the NDDOT Civil Rights Division at (701) 328- 2605 or (701) 328-2576.

03/07/2024

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

A. DESCRIPTION

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

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

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

B. PROMPT PAYMENT REQUIREMENTS

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

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

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

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

C. REPORTING REQUIREMENTS

1. General.

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

2. Utilization Plan.

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

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

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

a. Non-Account Holders.

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

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

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

b. Additional Payees.

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

3. Payments.

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

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

4. Payment Discrepancies.

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

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

5. Certification and Compliance System Assistance.

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

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

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NOTICE:

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

Apprentices in Line Construction: Apprentices in Line Construction must be classified and paid as Apprentice Linemen with a percentage of journeyman's pay that reflects the apprentice's progress level of training. Additionally, they must be enrolled in an approved Department of Labor registered lineman or electrician apprentice program.

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

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

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

Or contact:

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

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

U.S. DEPARTMENT OF LABOR

<small>STATE</small> NORTH DAKOTA	<small>COUNTY</small> STATEWIDE	ND20250006 Page 1 <small>DATE OF DECISION</small> 01-03-25
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CARPENTERS

CEMENT MASONS/FINISHERS

LINE CONSTRUCTION:

- Lineman
- Cable Splicer
- Line Equipment Operator
- Groundman

ELECTRICIANS:

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

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

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

- Electrician
(Cass County)

WELDERS:

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

Basic Hourly Rates	Fringe Benefits Payments
	H & W/Pensions
\$35.85	\$ 7.60
35.85	7.60
53.48	8.80 + 29.5%
53.48	8.80 + 29.5%
45.41	8.80 + 29.5%
30.26	8.80 + 19.5%
53.48	8.80 + 29.5%
53.48	8.80 + 29.5%
53.48	8.80 + 29.5%
53.48	8.80 + 29.5%
53.48	8.80 + 29.5%
53.48	8.80 + 29.5%
53.48	8.80 + 29.5%
35.35	16.32

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LABORERS:

Group 1

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

Group 2

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

Group 3

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

Group 4

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

POWER EQUIPMENT OPERATORS:

Group 1

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

Group 2

All Cranes 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
35.05	21.90
33.65	21.90

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 Hydro Hammer 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
\$33.40	\$21.90
33.25	21.90

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
\$32.40	\$21.90
31.60	21.90
32.88	17.99
33.00	17.99
33.31	17.99
33.31	17.99
34.83	17.99

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)].

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)(1).

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 \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing the contract in 2025.

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 \$13.30 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 2025.

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.

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

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

IV. FUNDING

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

V. ONLINE RESOURCES

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

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

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

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 not directly assigned by NDDOT.

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 40 hours of work on highway construction projects.

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

- B. The minimum wage scale to be used for classroom training will be that of the first federal-aid highway construction project on which the trainee will be employed. If the trainee is already employed on a federal-aid highway construction project, the trainee will be paid in accordance with the minimum wage scale applicable to that project. However, if the first project on which the trainee will be employed is a state funded only contract, the minimum wage scale to be used for the classroom training will be that of the appropriate DBRA wage in effect at the time of award of the state funded contract.

X. WAGE RATES

- A. When the contractor is submitting the trainee's hours toward training program, wages paid shall in no case be less than that of those stated in the approved curriculum. A trainee working on a non-federal aid project, must be paid the DBRA wage rate in effect at the time of award for the type of work the trainee is performing as a trainee. Current and prior labor rates can be found on the NDDOT website at: <https://www.dot.nd.gov/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 dependent on FHWA funding annually
- Once funding for the program has been expended for the year 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.

F. Completion Bonus Program:

Trainees that successfully complete their approved program may be eligible for a \$500 completion bonus. These funds are provided directly from NDDOT to the trainee once

completion is determined.

- Availability of program and eligible funds dependent on FHWA funding annually
- Once funding for the program has been expended for the year no further funds are available
- W-9 will be required prior to any payment
- Any voluntary positions and/or carryover positions are not eligible

G. Commercial Drivers License (CDL) Program Reimbursement:

Individuals that qualify may request reimbursement for tuition costs in an approved CDL Program upon completion up to \$6,000.

- Availability of program and eligible funds dependent on FHWA funding annually
- Once funding for the program has been expended for the year no further funds are available
- Pre-approval form and completion form required
- Periodic check-ins with instructors conducted to ensure compliance
- W-9 will be required prior to any reimbursement
- Only CDL Programs within ND on NDDOTs approved program list are available for reimbursement

XII. BASIS OF PAYMENT

- A. Contractors will be paid \$4.00 for each hour of training in accordance with the OJT Program Manual.
- B. Reimbursement will be made directly to the contractor. Complete SFN 51023 Voucher for On-the-Job Training Program Hourly Reimbursement for each trainee. LCPtracker must be utilized on NDDOT projects for reporting certified payrolls. The OJTSS consultant will be verifying hours submitted on NDDOT projects through this online reporting system. For non-NDDOT projects the firm must attach excerpts from the weekly certified payrolls showing the trainee's hours, rate of pay, and how applicable fringe benefits were paid. Vouchers without excerpts from payrolls will not be paid until the excerpts are provided. If the excerpts from the payrolls are not provided within one week, the voucher will not be paid, and the trainee's hours will not be credited toward completion.
- C. On contracts where certified payrolls are not required and not available for supporting documentation, contractors may enter trainee wages, hours in training, and the project control number(s) (PCN) in a spreadsheet to support their reimbursement vouchers. In this case, contractors should work with OJTSS to assure that all information required for payment is provided.
- D. Submit completed vouchers to CRD for approval and processing by the fifteenth (15th) calendar day of every following month the trainee is employed under the OJT Program. Regardless, all vouchers for trainee hours worked on state funded only projects from July 1 to June 30 must be received by CRD no later than July 15 in order to be

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

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

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

XIV. UNFILLED OR INCOMPLETE TRAINEE POSITIONS

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**SPECIAL PROVISION****TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES****GENERAL**

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

Definitions:

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

CONSTRUCTION REQUIREMENTS

A. General.

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

B. Permits.

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

C. Submittals.

1. Preconstruction

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

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

2. Changes to the Erosion Control Plan.

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

3. Inspection Reports

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

D. Construction.

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

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

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

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

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

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

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

Coordinate temporary 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.

E Maintenance.

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.

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.

F. Removal.

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

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.

Provide a supervisor that is an employee of the Prime Contractor and has the following qualifications:

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

C. Duties.

The supervisor's duties shall include the following:

1. Provide erosion and sediment control as required by the SWPPP, Plans, and Specifications.
2. Be on the site to supervise the installation, operation, inspection, maintenance, and removal of the 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.

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.

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.

METHOD OF MEASUREMENT

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

BASIS OF PAYMENT

A. General.

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 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.

B. Replacement of ESCMs.

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".

C. Removal of Sediment.

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

D. Contractor Controlled Areas.

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

LIMITATIONS OF OPERATIONS

DESCRIPTION

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

108.05 LIMITATION OF OPERATIONS

A. General.

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

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

B. Holidays.

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

C. 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

STANDARD SPECIAL PROVISION

FEDERAL PROHIBITION ON CERTAIN TECHNOLOGICAL HARDWARE

DESCRIPTION

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

CONTRACT REQUIREMENTS

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

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

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

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

STANDARD SPECIAL PROVISION

E-Ticketing

DESCRIPTION

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

CONTRACT REQUIREMENTS

A. General.

If the Contractor elects to use E-Tickets, 30 days before delivering material to the project confirm that the material suppliers E-Tickets are compatible with the Department's Electronic Ticketing portal (Haulhub).

If necessary, create a programming interface to integrate with the Department's E-Ticketing Portal. Utilize the interface to provide electronic data from the load read-out weighing system at the material source in a manner that is readable by the Department's E-ticketing Portal. Haulhub will be available to coordinate the interface with the Contractor and Subcontractors.

As E-Tickets are generated, submit them to the Department using the Department's Electronic Ticketing Portal.

B. Material Accepted by Weight.

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

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.

C. Concrete Batch Plants.

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

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

STANDARD SPECIAL PROVISION

BUY AMERICA/BUILD AMERICA BUY AMERICA

DESCRIPTION

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

BUY AMERICA FOR INFRASTRUCTURE PROJECTS

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.

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

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

B. Certifications.

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

C. Determination of Material Category.

1. General.

Only single category of 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. In cases where the classification of an item is in question or dispute, the Engineer's determination of the classification will be binding.

EXCEPTION:

Iron and steel components included in items classified as manufactured products must meet the requirements of Section D, "Steel and Iron Certification" of this SP.

2. Iron and Steel.

All iron and steel permanently incorporated into the work must meet the requirements of Section D, "Steel and Iron Certification" of this Special Provision. Buy America requirements do not apply to iron and steel items used by the Contractor to facilitate

construction that are left in place upon completion of the work and are not required to be permanently installed as part of the contract requirements.

3. Manufactured Products.

An FHWA general applicability waiver exists for Manufactured Products and this category is therefore currently not subject to BABA requirements; however, they are included in this Special Provision to maintain the category definition and consistency with Federal language.

Manufactured product is defined as articles, materials, or supplies that have been:

- Processed into specific form or shape; or
- Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

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);
- Fiber optic cables (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; or
- Drywall.

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

5. Exempt Materials [Section 70917(c) Materials].

The following materials are exempt from the requirements of this provision per Section 70917(c) of the Build America, Buy America Act:

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

D. Steel and Iron Certification.

1. General.

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

2. Bulk Manufactured Steel and Iron Materials.

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

Table 1

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

3. Other Steel and Iron Products.

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

4. 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

An FHWA general applicability waiver exists for Manufactured Products and this category is therefore currently not subject to BABA requirements; however, they are included in this Special Provision to maintain the category definition and consistency with Federal language.

A manufactured product is acceptable under this provision if:

- The 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.

Compute the cost of components of manufactured products as follows:

- For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product and any applicable duty; or
- For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs described in the prior bullet, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

F. Construction Materials.

1. General.

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

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

2. Non-Ferrous Metals.

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

3. Plastic and Polymer-Based Products.

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

4. Glass.

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

5. Fiber Optic Cable.

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

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

6. Optical Fiber.

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

7. Lumber.

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

8. Drywall.

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

9. Engineered Wood.

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION
PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

DESCRIPTION

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

107.14 Public Liability and Property Damage Insurance.

A. General Requirements.

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

Provide insurance policies executed by a corporation qualified and authorized to write the policies in the State of North Dakota. The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Secure and maintain insurance in full force and effect before starting the work and until completion of all work required and accepted by the Department or owner. The policies shall provide 30 calendar days notice to the Department or the owner of any intent to cancel or materially alter such insurance.

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

B. Insurance Requirements.

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

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

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

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

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

C. Subcontractor.

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION

COMMERCIAL GRADE HOT MIX ASPHALT

PROJECT 5-999(036) – PCN 24246

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
SOIL STABILIZATION

PROJECT: 5-999(036) – PCN 24246

DESCRIPTION

A. General.

This SP overrides Section 253 “Mulching”

B. Straw or Hydraulic Mulch.

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

C. Soil Stabilizer.

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

EQUIPMENT

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

Use a puncher that consists of a series of dull, flat disks:

- With notched or cutout edges;
- Approximately 20 inches in diameter;
- 0.25 inches thick;
- Spaced approximately 8 inches apart; and
- Fitted with scrapers.

MATERIALS

A. Seed.

Use the seed classification shown in the bid item that meets the requirements of Section 251.03 D, “Seed Class”.

B. Hydraulic Mulch.

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

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

C. Straw Mulch.

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

The Engineer will not accept mulch that:

- Is wet, musty, moldy, or rotted;
- Is chopped or ground; or
- Contains deleterious material.

D. Tackifier.

Use a tackifier consisting of one of the following:

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

E. Soil Stabilizer.

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

Product	Manufacturer								
<p style="text-align: center;">StarTak 600 Applied at a rate of 150 Lb/Acre</p>	<p style="text-align: center;">Chemstar Products Company Minneapolis, MN Phone: 1-800-328-5037 www.chemstar.com</p>								
<p style="text-align: center;">EarthGuard SFM Applied at a rate of 60 LB/Acre (approx. 6 Gallons/Acre)</p>	<p style="text-align: center;">Terra Novo Inc. Bakersfield, CA Phone: 1-661-747-5956 www.terranovo.com</p>								
<p style="text-align: center;">M-Binder Applied at a rate of 150 Lb/Acre</p>	<p style="text-align: center;">Ecology Controls Carpinteria, CA Phone: 1-805-684-0436 www.ssseeds.com</p>								
<p style="text-align: center;">FiberRX Applied at a rate of: Slope</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">None to 4:1</td> <td style="width: 50%;">50 Lb/Acre</td> </tr> <tr> <td>3:1</td> <td>60 Lb/Acre</td> </tr> <tr> <td>2:1</td> <td>70 Lb/Acre</td> </tr> <tr> <td>1:1 or steeper</td> <td>80 Lb/Acre</td> </tr> </table>	None to 4:1	50 Lb/Acre	3:1	60 Lb/Acre	2:1	70 Lb/Acre	1:1 or steeper	80 Lb/Acre	<p style="text-align: center;">Hydrostraw, LLC Manteno, IL Phone: 1-800-545-1755 hydrostraw.com</p>
None to 4:1	50 Lb/Acre								
3:1	60 Lb/Acre								
2:1	70 Lb/Acre								
1:1 or steeper	80 Lb/Acre								
<p style="text-align: center;">Enviropam Applied at a rate of 9 Lb/Acre</p>	<p style="text-align: center;">Innovative Turf Solutions, LLC Cincinnati, OH Phone: 1-513-317-8311 www.innovativeturfsolutions.com</p>								
<p style="text-align: center;">HydraTack, Tack Plus, Tack-P, or Tack-P Plus Applied at a rate of 30 Lb/Acre</p>	<p style="text-align: center;">Innovative Turf Solutions, LLC Cincinnati, OH Phone: 1-513-317-8311 www.innovativeturfsolutions.com</p>								
<p style="text-align: center;">FI-1045 Hydrobond or FI-1046 Hydrobond Applied at a rate of 15 Lb/Acre</p>	<p style="text-align: center;">JRM Chemical, Inc. Cleveland, OH Phone: 1-216-475-8488 www.soilmoist.com</p>								

Product	Manufacturer										
<p align="center">HF5000 Tack Applied at a rate of 60 Lb/Acre</p>	<p align="center">Rantec Corporation Ranchester, WY Phone: 1-307-655-9565 www.ranteccorp.com</p>										
<p align="center">R-Tack Applied at a rate of 150 Lb/Acre</p>											
<p align="center">SpecTac Applied at a rate of:</p> <table border="0"> <tr> <td></td> <td align="center">Slope</td> </tr> <tr> <td>None</td> <td align="center">30 to 80 Lb/Acre</td> </tr> <tr> <td>4:1</td> <td align="center">50 to 100 Lb/Acre</td> </tr> <tr> <td>3:1</td> <td align="center">80 to 120 Lb/Acre</td> </tr> <tr> <td>2:1</td> <td align="center">100 to 170 Lb/Acre</td> </tr> </table>			Slope	None	30 to 80 Lb/Acre	4:1	50 to 100 Lb/Acre	3:1	80 to 120 Lb/Acre	2:1	100 to 170 Lb/Acre
		Slope									
None		30 to 80 Lb/Acre									
4:1	50 to 100 Lb/Acre										
3:1	80 to 120 Lb/Acre										
2:1	100 to 170 Lb/Acre										
<p align="center">Super Tack Applied at a rate of 60 Lb/Acre</p>											

F. Tracer Material.

Provide tracer material that consists of a hydraulic mulch that contains a green dye.
Provide tracer material that is free of the following:

- Toxins; and
- Germination or growth inhibitors.

CONSTRUCTION REQUIREMENTS

A. General.

Uniformly cover areas of disturbed ground where construction activities have temporarily or permanently ceased.

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

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

B. Hydraulic Mulch.

1. General.

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

2. Anchoring.

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

C. Straw Mulch.

1. Application.

Place mulch at a rate of 2 tons per acre.

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

Avoid placing excessive cover that smothers seedlings.

2. Anchoring.

a. General.

Anchor mulch using one of the following methods to:

b. Punching.

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

Operate the puncher parallel to the contours of the ground.

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

c. Tackifier.

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

3. Maintenance.

Repair or re-mulch damaged areas.

D. Soil Stabilizer.

1. General.

Only use soil stabilizer in temporary stabilization applications.

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

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

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

2. Tracer Material.

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

METHOD OF MEASUREMENT

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

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

BASIS OF PAYMENT

Pay Item	Pay Unit
Soil Stabilization	Acre

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION
INTERIM COMPLETION

Project: SS-FTF-5-999(036) – PCN 24246

DESCRIPTION

This project has a 2-year construction schedule. Winter suspension will begin November 15, 2025, and end on April 15, 2026. The Contractor may request permission, in writing, to work past November 15 or begin before April 15. The Engineer will notify the Contractor if a request is granted.

Complete the work listed below in the year for which it is listed. Phases do not dictate order. The Contractor’s operation, utility encounters, material supply, and control of traffic may affect the overall order of operations. If the work outlined below is complete before winter suspension begins, the Contractor may request permission, in writing, to perform work in other areas of the project. Requests for partial completion of segments and/or phases designated for future years will be considered. Do not perform work outside what is listed in each year without the Engineer’s written permission.

Year 1 – 2025

- Complete all work listed per Note 105-P02 ORDER OF OPERATIONS in the Plans for locations contained within TABLE 1. Install temporary seed and temporary erosion control items as shown in Section 76 of the Plans prior to winter suspension.

TABLE 1		
Phase	Segment	Complete In Year 1 - 2025
1	P, A, B, C, D, E	Complete all work in the portions listed below: <ul style="list-style-type: none"> • Segment P = Full Segment • Segment A = Full Segment • Segment B = Temporary Bypasses • Segment C = Full Segment • Segment D = Temporary Bypass • Segment E = Full Segment
2	B, C, D, E	Complete all work in the portions listed below: <ul style="list-style-type: none"> • Segment B = Full Segment • Segment C = Full Segment • Segment D = Full Segment • Segment E = Sta 1036+72 to Sta 1041+80 (OCL_Chateau)
3	A, B, C, D, E, F	Complete all work in the portions listed below: <ul style="list-style-type: none"> • Segment A = Sta 1004+35 to Sta 1014+00 (OCL_Chateau) • Segment B = Full Segment • Segment C = Sta 1017+75 to Sta 1019+07 (OCL_Chateau) Sta 1022+00 to Sta 1022+75 (OCL_Chateau) Sta 1029+48 to Sta 1030+25 (OCL_Chateau) • Segment D = Full Segment • Segment E = Sta 1032+75 to Sta 1036+72 (OCL_Chateau) • Segment F = Full Segment

TABLE 1 - Continued		
Phase	Segment	Complete In Year 1 - 2025
4	E, F	Complete all work in the portions listed below: <ul style="list-style-type: none"> • Segment E = Sta 1036+14 to Sta 1041+80 (OCL_Chateau) • Segment F = Full Segment

Year 2 – 2026:

- Complete all work listed per Note 105-P02 ORDER OF OPERATIONS in the Plans for locations contained within TABLE 2.

TABLE 2		
Phase	Segment	Complete In Year 2 - 2026
5	C	Complete all work
6	C	Complete all work
7	F	Complete all work

- Install permanent seed, erosion control items, wood fence, and landscape plantings as shown in Section 77, 80, and 85 of the plans for areas listed in both TABLE 1 and TABLE 2.

INTERIM COMPLETION REQUIREMENTS

Meet the following conditions before beginning winter suspension:

- A. The roadway must be open to one lane of traffic in each direction with a minimum width of 28-ft which includes two 12-ft lanes and two 2-ft shoulders.
- B. The roadway pavement open to traffic has a minimum hot mix asphalt thickness of 4-inches or minimum portland cement concrete thickness of 8-inches.
- C. All inslopes within the clear zone to be 4:1 or flatter.
- D. Temporary bypasses are not utilized to maintain traffic.
- E. Install permanent flexible delineators per Section 110 except in the settlement area from Sta 1022+75 to Sta 1027+00 Lt.
- F. Install permanent signs per Section 110.
- G. Replace all removed or faded pavement marking as directed by the Engineer. Include all costs to remove and replace pavement marking in the contract unit price bid for "SHORT TERM 4IN LINE – TYPE NR.
- H. Maintain existing fence connectivity with existing, temporary, or permanent fencing.
- I. Access to adjacent properties is maintained.
- J. Stabilize all disturbed areas.
- K. Relocate all construction equipment and materials to the Contractor's staging area.
- L. Remove all free-standing portable traffic control devices. Post mount or anchor all traffic control devices required over winter by a method approved by the Engineer.

Schedule an interim completion walk-through with the Engineer two (2) days before the anticipated interim completion. The Engineer may require the completion of additional items of work relating to the suspension before issuing the winter suspension of work.

If the winter suspension requirements are not met, Liquidated Damages of \$4,000 per calendar day will be charged from November 15, 2025 to April 15, 2026 or until the winter suspension requirements are met.

MAINTENANCE REQUIREMENTS

Perform all maintenance within the entire corridor except for snow removal. Snow removal will be completed by others. Remove and replace any temporary traffic control devices that become damaged. Payment for damaged temporary devices will be paid at the contract unit price. If maintenance or restoration work becomes necessary, notification will be submitted by the Engineer. The Contractor is required to respond to notification as follows:

1. Begin the maintenance and restoration work within 24-hours of the Engineer's notification and stay onsite until the maintenance and restoration work is complete. If the maintenance and restoration work is not started within 24-hours of the Engineer's notification, the Department may do one or both of the following:
 - a. Complete the maintenance and restoration work by other means and deduct the cost of the maintenance and restoration work from monies due or to become due.
 - b. Apply a contract price reduction of \$250 per each additional hour or part of an hour, beyond the initial 24-hour notice.
2. If the maintenance or restoration work affects public safety, begin the maintenance and restoration work immediately. If the maintenance and restoration work is not started immediately, the Department will have the authority to have the maintenance and restoration work completed by others and deduct the cost of the maintenance and restoration work from monies due or to become due.

Beginning maintenance or restoration work is defined by having equipment and personnel at the location of the maintenance or restoration work. No mobilization charges will be paid to perform maintenance work.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

RAILROAD REQUIREMENTS BNSF

Project # SS-5-094(152)900 – PCN 23114

DESCRIPTION

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

This Special Provision incorporates the Construction and Maintenance Agreement (CMA) entered into, by, and between the North Dakota Department of Transportation (NDDOT) and BNSF. Any requirements of the Contractor, as listed in the CMA, must be adhered to as part of the contract documents. Therefore, bidders must 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.

Any reference to payment for flagging in the CMA, by the NDDOT to BNSF shall be reimbursed by the Contractor. 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.

ATTACHMENTS

CMA – Agreement between BNSF and NDDOT (**PENDING**)
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, the Contractor must coordinate with BNSF as outlined in Exhibit “C” and execute a copy of the agreement found in Exhibit “C-1” prior to commencing work activities with BNSF right-of-way as outlined in the CMA.

To execute the agreement found in Exhibit “C1”, the Contractor must first procure insurance as outlined and instructed in Exhibit “C1”. Certificates of insurance must be delivered to BNSF@certfocus.com or to the address provided in Exhibit “C1”. The Contractor must then fill out and sign the Exhibit C & C1 Agreement and deliver to BNSF’s Manager Public Projects (alexander.fiorini@bnsf.com). The agreement will not be fully executed until the Contractor’s insurance has been reviewed and approved, and BNSF’s Manager Public Projects has returned the signed agreement.

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.D 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 3.A 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 NDDOT.*" If the Department incurs costs from the railroad in the manner, the Department will recoup these costs from the Contractor.

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

B. Construction Submittals.

Section 1.G of Exhibit C in the CMA requires Contractor submittals for various construction activities. 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.

C. Railroad Flagging.

BNSF will bill the Department for railroad flagging costs. Any reference to payment for flagging in the CMA, by the NDDOT to BNSF, shall be reimbursed by the Contractor. The Contractor is responsible for coordinating all flagging activities with BNSF's Roadmaster. The Contractor must submit documentation of all discussions with BNSF's Roadmaster coordinating flagging activities to the Engineer.

Bidding Instructions

The Department has set the "Approx Quantity" of railroad flagging at 1,600. 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 1,600 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.

This project is adjacent to the BNSF Railway Company from RR MP 149.639. 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 060443A from the Federal Railroad Administration website: <http://safetydata.fra.dot.gov/Officeofsafety/>

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

A. Railroad Flagging.

1. General.

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

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

2. Flagging Days Incurred are Less than those Bid.

On each progressive estimate, the Engineer will calculate the amount of railroad flagging the Department has been billed for and enter that quantity for railroad flagging, up to the quantity bid.

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

3. Flagging Days Incurred are More than those Bid.

If the quantity of railroad flagging exceeds the amount bid, the Engineer will cease entering amounts for railroad flagging bid item, but will continue to process contract price reductions for the billed flagging at the rate included in the railroad flagging contract item.

B. Railroad Protective Liability Insurance.

Include the cost of railroad insurance in the contract unit price for “Railway Protection

Insurance". Upon receiving proof of approval of the policies by the railroad company, the Department will pay the Contractor the lump sum contract unit price.

C. Railroad Coordination.

Include all other costs associated with coordination with BNSF as well as compliance with the contents of this Special Provision and attachments in the contract unit price for "Railroad Coordination". The Department will pay for one-half of this item upon receipt of a copy of an executed Exhibit "C" and Exhibit "C-1" and the remaining half upon completion of the project.

Construction and Maintenance Agreement

The attached Construction and Maintenance Agreement (CMA) is a placeholder for the time being. Final agreement documents from BNSF are pending and the final agreement will be added to the project upon its execution via addendum.

North Dakota Department of Transportation
CONSTRUCTION AND MAINTENANCE AGREEMENT
Project No. SS-FTF-5-999(036), PCN 24246
Chateau Road - Medora

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

WITNESSETH:

WHEREAS, NDDOT is planning roadway improvements to Chateau Road near the City of Medora, hereafter referred to as the "Project", which encounters an at-grade quiet zone crossing designated by DOT #060443A located on BNSF Line Segment 39 at Milepost 149.636. Improvements include roadway realignment, widening, resurfacing, adding a separated paved shared-use path along Chateau Road, reconstructing approaches, culvert replacements and extensions, and installation of riprap. The Project is associated with and adjacent to the reconstruction of the intersection of Pacific Ave and Chateau Rd as a roundabout (NDDOT Project SS-5-094(152)900). The Project is as indicated on the plans located in Exhibit A, attached hereto and incorporated herein; and

WHEREAS, in connection with the roadway construction, NDDOT will require new temporary construction easements on the Railroad's right-of-way to construct drainage features and accommodate roadway construction; and

WHEREAS, NDDOT will require a permanent easement on the Railroad's right-of-way for roadway construction, maintenance and use; and

WHEREAS, the NDDOT is paying for the acquisition and installation of crossing signal equipment and the new crossing surface at Chateau Road with State and Federal funds pursuant to 23 U.S.C. § 130; and

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

WHEREAS, NDDOT will undertake the construction of said Project, using federal funds, the Railroad will accept 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 roadway plans as shown on Exhibit "A", attached hereto and made a part hereof. The Railroad shall grant to NDDOT by separate instrument,

and at a price and location to be agreed upon between the parties a permanent easement for construction and maintenance of the new roadway as shown on said Exhibit A. The form of the permanent easement is attached as Exhibit "H" 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 written 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, approval or an adoption by Railroad of plans and specifications.

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 OR ITS CONTRACTOR AT THE 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. Design and construction of Chateau Road Reconstruction Project, which includes replacing asphalt pavement surfacing with concrete surfacing on Chateau Road, constructing a separated paved shared-use path on the east side of Chateau Road, reconstructing the aggregate surfacing for BNSF maintenance access roads on the east and west sides of Chateau Road, reconstructing the storm drainage culvert on the west side of Chateau Road beneath the southern BNSF maintenance access road, extending the 42" storm drainage culvert beneath Chateau Road to accommodate the proposed path, and placing riprap on both ends of the 42" culvert as shown on the plans in Exhibit A.
3. Installation of pavement markings in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD").
4. Installation of advance warning signs in accordance with the MUTCD.
5. Installation of emergency pedestrian escape route in accordance with the MUTCD.
6. Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way.
7. Provide suitable drainage, both temporary and permanent.
8. Provide all barricades, lights, flaggers or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing, during the installation of the concrete crossing surfaces, and also during the installation of the Crossing Signal Equipment.

9. Jobsite cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the sole satisfaction of BNSF.
10. 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.
11. Coordinate all work with the Railroad's Roadmaster and Manager, Public Projects. Phone number and contact information are provided in the plans.
12. NDDOT will cause its Contractors to comply with Railroad safety and other requirements as specified in Exhibits C and C-1, all of which are incorporated herein. All NDDOT Contractors must execute Exhibit C-1 before commencing any work on BNSF property.
13. NDDOT must complete its portion of the work described in this Section III(A) on or before (36) months following the date of this agreement.

B. WORK TO BE PERFORMED BY RAILROAD

1. Furnish flagging as required in connection with the construction of the Project as specified in Exhibits C and C-1.
 - BNSF may direct NDDOT or its Contractor to hire the third-party flagging service, Railpros, at BNSF's sole discretion.
2. Installation of Crossing Signal Equipment for the roadway and shared-use path and Crossing Signal Control House as shown on Exhibit A.
3. Installation of one 65-foot concrete crossing surface for the one track complete with new rail, ties, ballast, fasteners, along with appropriate surfacing, to carry the improved roadway and shared-use path. Crossing surface to be constructed during a full roadway closure in an 8 hour window.

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 at least 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, the NDDOT or its Contractor to furnish flagging and such other 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 actual costs incurred for flagging and other protective services/devices furnished, including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes. Bills for flagging and other 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 flagging and other 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.

In addition to any rights and remedies that Railroad may have directly against the Contractor under Exhibits C and C-1, 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 its work to allow the Railroad to investigate and make necessary repairs at Contractor's sole cost and expense. No work will proceed until authorized in writing 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, the Railroad reserves the right to make such ballast raises to its existing and future tracks and further reserves the right to make changes or additions to its facilities within the limit of the crossing, all as it may deem necessary in its sole judgment. 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 crossing shall not be impaired.

In addition to the terms and conditions set forth elsewhere in this agreement, BNSF and the NDDOT agree to the following terms upon completion of construction of the Project:

- a. NDDOT will own and be fully responsible for repairs, maintenance, future construction or reconstruction of Chateau Road.
- b. NDDOT will replace the concrete roadway approaches in the event that they are removed by BNSF to perform railroad maintenance needed at the crossing. BNSF will temporarily replace the concrete roadway approaches with aggregate.
- c. NDDOT will maintain the elevation of the Chateau Road approaches to match the elevation on the Railroad track crossing surfaces and to be no more than three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail.
- d. NDDOT will do nothing and permit nothing to be done in the maintenance of Chateau Road, which will interfere with or endanger facilities of BNSF.
- e. It is expressly understood by NDDOT and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.

The parties mutually agree that neither construction activities for the Project, nor future maintenance of the crossing 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.

In addition to and consistent with its obligations under Article X above, NDDOT shall own, maintain, repair, and reconstruct, as necessary and at its own expense, the roadway and other improvements as described herein; excluding rail, ballast, ties and the Railroad crossing surface; 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.
- C. Reimburse the Railroad for all actual costs and expenses related to the maintenance or reconstruction of the roadway and other improvements incurred by the Railroad in connection with such maintenance, repair, or reconstruction.
- D. Agency with its own personnel may perform the following routine maintenance 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
 - Roadway and shared-use path cleaning, crack/joint sealing and concrete repairs

- Maintain drainage facilities such as cleanout pipes or inlets

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.

If the roadway ceases to be used for roadway purposes, then NDDOT shall notify the Railroad of such abandonment, and at NDDOT's expense, remove the roadway 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 the roadway are to be left in place. Removal from and cleaning up of the Railroad's property shall be done to the satisfaction of the Railroad.

XIII.

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:

BNSF RAILWAY COMPANY

NAME (TYPE OF PRINT)

OFFICER'S NAME (TYPE OR PRINT)

SIGNATURE

SIGNATURE

TITLE

DATE

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

WITNESS:

NORTH DAKOTA DEPARTMENT OF
TRANSPORTATION

NAME (TYPE OR PRINT)

DIRECTOR (TYPE OR PRINT)

SIGNATURE

SIGNATURE

DATE

APPROVED AS TO SUBSTANCE BY:

DESIGN ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

EXHIBIT A
PLANS

DRAFT

EXHIBIT B

(Intentionally Deleted.)

DRAFT



EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1) General

- A. The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the Chateau Road Reconstruction Project which encounters an at-grade quiet zone crossing designated by DOT #060443A located on BNSF Line Segment 39 at Milepost 149.636 near Medora, ND (the "Project"); Project SS-FTF-5-999(036), PCN 24246.
- B. The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- C. The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- D. The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction



License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

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

- E.** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws 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.
- F.** The Contractor must notify **NDDOT** at 701-328-4760 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-20550074**.
- G.** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must



be stamped by a registered professional engineer licensed to practice in the state the Project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the Project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

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

2) Contractor Safety Orientation

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

3) Railway Requirements

- A. The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting



from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.

- B.** The Contractor must notify the Railway's Division Engineer Jessa Shepard at (406-941-1007) and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- C.** The Contractor must abide by the following temporary clearances during construction:

 - 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- D.** Upon completion of construction, the following clearances shall be maintained:

 - 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- E.** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **NDDOT** and must not be undertaken until approved in writing by the Railway, and until the **NDDOT** has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- F.** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.



- G. The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by **NDDOT** for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- H. At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the Project, removed at the expense of the Contractor.
- I. Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- J. The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

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

- A. Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, which will be made available to Railway prior to commencement of any work on Railway



Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

- B.** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.
- i) The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.eRailsafe.com, in addition to any other applicable regulatory requirements.
 - ii) Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.
 - iii) Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.
 - iv) Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.



5) Railway Flagger Services

A. The Contractor must give Railway's **Roadmaster Levi Burch (telephone (406) 852-3623)** 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.

i) FOR THIS PROJECT BNSF IS UNABLE TO PROVIDE FLAGGING SERVICES THEREFORE, RAILROAD FLAGGING SERVICES WILL BE PROVIDED BY RAILPROS (NOT A BNSF EMPLOYEE). The Contractor must contact Railpros directly at Office # 877-315-0513 or e-mail: BNSFinfo@railpros.com to enter into a reimbursement agreement for flagging services and to request and schedule a railroad flagger. The Railpros flagger(s), the Contractor, and the BNSF Roadmaster must participate in a job safety briefing PRIOR TO the start of any work on/over/under Railway's right of way. The Railway reserves the right to utilize its employees to provide railroad flagging services when those resources become available. In this event, the Railpros flagger and the Contractor will be notified by the Railway.

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

- i) When, upon inspection by Railway's Representative, other conditions warrant.
- ii) When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
- iii) When work in any way interferes with the safe operation of trains at timetable speeds.



- iv) When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- v) Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

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

- i) Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- ii) Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- iii) The cost of flagger services provided by the Railway will be borne by **NDDOT**. 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.**
- iv) The average train traffic on this route is 8 freight trains per 24-hour period at a timetable speed 40 MPH and N/A passenger trains at a timetable speed of N/A MPH.

6) Contractor General Safety Requirements

- A.** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work



performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.

- B.** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- C.** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- D.** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the Project must be notified. A minimum of two employees must be present at all times.
- E.** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- F.** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the Project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the Project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the Project prior to the start of any work and must be posted at the job site.
- G.** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.



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

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

- J. Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

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

- L. All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated



to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

7) Excavation

- A. Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's 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.**
- B. The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- C. All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- D. Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

8) Hazardous Waste, Substances and Material Reporting:



- A) 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.

9) Personal Injury Reporting

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



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

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

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

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

Name (Last/First/MI): _____

Age: _____ Gender (if available): _____

Company: _____

eRailsafe Badge Number: _____ Expiration Date: _____

BNSF Contractor Badge Number: _____ Expiration Date: _____

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

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

Work activity in progress at time of accident: _____

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

Treatment:

First Aid Only

Required Medical Treatment

Other Medical Treatment: _____

Dr. Name: _____ Date: _____

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

Hospital Name: _____

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

Diagnosis: _____

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



EXHIBIT "C-1"

**Agreement Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR**

Railway File: _____

Agency Project: **SS-FTF-5-999(036) PCN 24246 – Chateau Road - Medora**

_____ (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, with **NDDOT** for the performance of certain work in connection with the following project: Construction of the Chateau Road Reconstruction Project which encounters an at-grade quiet zone crossing designated by DOT #060443A located on BNSF Line Segment 39 at Milepost 149.636 near Medora, ND (the "Project"). Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **NDDOT** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

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



1) RELEASE OF LIABILITY AND INDEMNITY

- A. Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**
- B. **THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**
- C. Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.



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

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

2) TERM

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

3) INSURANCE

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

A. Commercial General Liability "CGL" Insurance

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

- (1) Bodily Injury and Property Damage
- (2) Personal Injury and Advertising Injury
- (3) Fire legal liability
- (4) Products and completed operations



- ii) This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:
 - (1) 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.
 - (2) Waiver of subrogation in favor of and acceptable to Railway.
 - (3) Additional insured endorsement in favor of and acceptable to Railway.
 - (4) Separation of insureds.
 - (5) The policy shall be primary and non-contributing with respect to any insurance carried by Railway.
- iii) It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.
- iv) No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance

- i) This insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
 - (1) Bodily injury and property damage
 - (2) Any and all vehicles owned, used or hired
- ii) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:



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

C. Workers Compensation and Employers Liability Insurance

- i) This insurance will include coverage for, but not limited to:
 - (1) Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - (2) Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- ii) This policy will contain the following endorsements or language, which will be indicated on the certificate of insurance:
 - (1) Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability Insurance

- i) This insurance will name only the Railway as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 12 04 and include the following:
 - (1) Endorsed to include the Pollution Exclusion Amendment
 - (2) Endorsed to include the Limited Seepage and Pollution Endorsement.
 - (3) Endorsed to remove any exclusion for punitive damages.



- (4) No other endorsements restricting coverage may be added.
- (5) The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- (6) Definition of "Physical Damage to Property" shall be endorsed to read:
"means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

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

E. Other Requirements:

- i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- ii) Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control.
- iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- iv) Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include



a deductible, self-insured retention or other financial responsibility for claims.

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

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

- vi) Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.
- vii) Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- viii) If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.
- ix) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.
- x) Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk



management practices in the railroad industry and underwriting practices in the insurance industry.

- xi) If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.
- xii) Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.
- xiii) The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.
- xiv) In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.
- xv) These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.
- xvi) For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.



4) SALES AND OTHER TAXES

- A.** In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway (“Sales Taxes”), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.
- B.** Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway’s own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; *provided, however*, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway’s sole cost and expense, contest in Contractor’s own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.
- C.** Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor



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

5) EXHIBIT "C" CONTRACTOR REQUIREMENTS

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

6) TRAIN DELAY

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



- C. Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.
- D. The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.
- E. Contractor and its subcontractors must give Railway's representative Levi Burch at least 4 weeks' advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the Project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the Project.
- F. Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

SIGNATURE PAGE FOLLOWS



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

Signature:_____

Signature:_____

Printed Name:_____

Printed Name:_____

Title:_____

Title: Manager Public Projects

Date:_____

Date:_____

Accepted and effective this _____ day of 20__.

Contact Person:_____

Address:_____

City:_____

State:_____

Zip:_____

Fax:_____

Phone:_____

E-mail:_____



EXHIBIT D

(Intentionally Deleted.)



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.

Exhibit E

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;

- 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 F

(Intentionally Deleted.)

EXHIBIT G

(Intentionally Deleted.)

EXHIBIT H
FORM OF EASEMENTS

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

UTILITY COORDINATION

Project: SS-FTF-5-999(036) – PCN 24246

DESCRIPTION

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

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

ATTACHMENTS

Appendix A – Utility Coordination Table

Appendix B – Utility Exhibits

DEFINITIONS

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

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

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

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

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

UTILITY COMPANY CONTACTS

UTILITY COMPANY	CONTACT NAME	PHONE NUMBER	EMAIL
AT&T (AT&T)	Stephen Peters	701-390-8630	sp339f@att.com
Cogent Communications (COGCOM)	Mike Chebul, Area Engineer	402-316-8218	mchebul@cogentco.com
Reservation Telephone (RESTEL)	Dave Uhlich, Construction Manager	701-862-5332	daveu@rtc.email
	Derek Binstock, Combination Tech	701-862-5631	derekb@rtc.email
Roughrider Electric Cooperative (ROELCO)	Tyler Phelps, Line Superintendent	701-260-0587	tphelps@roughriderelectric.com
	Shawn Olson, Operations Manager	701-483-5111	solson@roughriderelectric.com
State Historical Society of North Dakota (SHSOND)	Keshna DeJesus, Site Supervisor – Chateau de Mores	701-623-4355	krdejesus@nd.gov
	Chris Dorfschmidt, Historic Site Manager	701-328-3593	cdorfschmidt@nd.gov
Southwest Water Authority (SOWAAU)	Andy Erickson, Water Distribution Manager	701-225-0241	aerickson@swwater.com
	Jenn Murray, Manager/CEO	701-225-0241	jmurray@swwater.com

CONTRACTOR RESPONSIBILITIES

A. Responsibilities.

The responsibilities for utility coordination include the following:

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

B. Utility Coordination Plan.

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

C. Record of Utility Outage Notifications.

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

D. Utility Coordination Schedule.

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

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

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

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

CONSTRUCTION REQUIREMENTS

A. General.

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

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

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

B. Utilities Identified in Plans.

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

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

The Contract documents show all known UE for the project.

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

C. Utilities Encountered During Work.

1. General.

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

2. Unidentified Utility Encounters.

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

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

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

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

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

D. Utility Coordination Meetings.

1. Preconstruction Utility Meeting.

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

2. Weekly Utility Coordination Meeting.

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

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

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

E. Fire Hydrants.

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

F. Damage and Interruptions.

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

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

G. Utility Criteria.

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

The following are specialized notes that could not fit in the comments column of Appendix A – Utility Coordination Table.

AT&T (AT&T)

I. AT&T, Applies to AT&T-1

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Protect existing line in place. Notify utility company a minimum of 5-days prior to working in the area of the encounters. Notify utility company anytime work is within 5-feet of existing utility line. Maintain a minimum cover of 4-feet over existing utility line.

Cogent Communications (COGCOM)

I. COGCOM, Applies to COGCOM-1

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Protect existing line in place. Notify utility company a minimum of 14-days prior to working in the area of the encounters.

Reservation Telephone (RESTEL)

I. RESTEL, Applies to RESTEL-1, RESTEL-4, RESTEL-5, RESTEL-8, RESTEL-24, RESTEL-25, RESTEL-26, RESTEL-27, RESTEL-28, RESTEL-29

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Contractor to protect existing lines, vaults and pedestals in place during construction activities.

II. RESTEL, Applies to RESTEL-2, RESTEL-9, RESTEL-10, RESTEL-12, RESTEL-14, RESTEL-15, RESTEL-16, RESTEL-19, RESTEL-20, RESTEL-21, RESTEL-23

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Utility Company agreed to share trench with Roughrider Electric Cooperative in some locations during the relocation of existing utilities along Chateau Road. Utility Company to coordinate with Roughrider Electric Cooperative during the relocation of underground fiber optic lines.

If Utility Company is not able to relocate and abandoned existing underground fiber optic lines in place before construction begins, Contractor to notify Utility Company a minimum of 14-days prior to working in the area of the encounters based on the following disposition:

- Contractor to protect in place existing underground fiber optic lines in cut sections during the relocation of proposed underground fiber optic lines.
- Existing lines in fill sections will be protected in place by Contractor during the relocation of proposed underground fiber optic lines.
- Once Utility Company has relocated and activated proposed underground fiber optic line, contractor to continue with construction activities. Contractor to remove and dispose of existing abandoned lines within cut sections. Removals are incidental to 202 0295 REMOVAL OF OBSTRUCTIONS. Contractor to abandon in place any existing lines within fill sections.

Utility Company relocation rates for proposed corresponding resolutions are anticipated to be 200-400 LF per day.

Once Utility Company has relocated proposed fiber optic lines, Contractor to remove and dispose of all abandoned underground fiber optic lines on the following disposition:

- Existing lines in cut sections will be removed and disposed by Contractor.
- Existing lines in fill section will be sheared by Contractor and abandoned in place.

III. RESTEL, Applies to RESTEL-3, RESTEL-6, RESTEL-7, RESTEL-11, RESTEL-13, RESTEL-17, RESTEL-18, RESTEL-22

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

If Utility Company is not able to relocate fiber optic vaults before construction begins, Contractor to notify Utility Company a minimum of 14-days prior to working in the area of the encounters and must protect existing fiber optic vaults and pedestals in place.

Once Utility Company has relocated proposed fiber optic vaults and has removed and disposed of existing fiber optic vaults and pedestals, Contractor to continue with construction activities. Contractor to protect proposed fiber optic vaults in place.

Utility Company relocation rates for proposed corresponding resolutions are anticipated to be three days for all fiber optic vaults.

Roughrider Electric Cooperative (ROELCO)

I. ROELCO, Applies to ROELCO-1, ROELCO-2, ROELCO-3, ROELCO-5, ROELCO-10, ROELCO-22, ROELCO-23, ROELCO-24, ROELCO-26, ROELCO-27, ROELCO-28, ROELCO-29, ROELCO-30

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Contractor to protect existing lines and boxes in place during construction activities.

II. ROELCO, Applies to ROELCO-6, ROELCO-7, ROELCO-8, ROELCO-9, ROELCO-11, ROELCO-12, ROELCO-14, ROELCO-15, ROELCO-19, ROELCO-20

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Utility Company agreed to share trench with Reservation Telephone Cooperative in some locations during the relocation of existing utilities along Chateau Road. Utility Company to coordinate with Reservation Telephone Cooperative during the relocation of underground electric lines.

If Utility Company is not able to relocate and abandoned existing underground electric lines in place before construction begins, Contractor to notify Utility Company a minimum of 14-days prior to working in the area of the encounters based on the following disposition:

- Contractor to protect in place existing underground electric lines in cut sections during the relocation of proposed underground electric lines.
- Existing lines in fill sections will be protected in place by Contractor during the relocation of proposed underground electric lines.
- Once Utility Company has relocated and activated proposed underground electric line, contractor to continue with construction activities. Contractor to remove and dispose of existing abandoned lines within cut sections. Removals are incidental to 202 0295 REMOVAL OF OBSTRUCTIONS. Contractor to abandon in place any existing lines within fill sections.

Utility Company relocation rates for proposed corresponding resolutions are anticipated to be 150-350 LF per day.

Once Utility Company has relocated proposed electric lines, Contractor to remove and dispose of all abandoned underground electric lines on the following disposition:

- Existing lines in cut sections will be removed by Contractor.
- Existing lines in fill sections will be sheared by Contractor and abandoned in place.

III. ROELCO, Applies to ROELCO-13, ROELCO-16, ROELCO-17, ROELCO-18, ROELCO-21, ROELCO-25

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Utility Company agreed to share trench with Reservation Telephone Cooperative in some locations during the relocation of existing utilities along Chateau Road. Utility Company to coordinate with Reservation Telephone Cooperative during the relocation of underground electric lines.

If Utility Company is not able to relocate existing electric boxes before construction begins, Contractor to notify Utility Company a minimum of 14-days prior to working in the area of the encounters and must protect existing electric boxes in place.

Once Utility Company has relocated proposed electric boxes and has removed and disposed of existing electric boxes, Contractor to continue with construction activities. Contractor to protect proposed electric boxes in place.

Utility Company relocation rates for proposed corresponding resolutions are anticipated to be three days for all electric boxes.

IV. ROELCO, Applies to ROELCO-4

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Contractor to notify Utility Company a minimum of 14-days prior to working in the area of the encounters.

Contractor to protect existing electric box in place when construction activities occur.

Utility Company will relocate the existing electric box during construction. Coordinate with Utility Company to facilitate the relocation work.

Utility Company relocation rates for proposed corresponding resolutions are anticipated to be three days for all electric boxes.

V. ROELCO, Applies to ROELCO-PR16.2, ROELCO-PR16.3, ROELCO-PR16.4

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Contractor to notify Utility Company a minimum of 14-days prior to working in the area of the encounters.

Contractor to protect transformer, underground electric line, and meter in place when construction activities occur.

Coordinate with Utility Company to connect proposed street lighting cable to meter.

State Historical Society (SHSOND)

I. SHSOND, Applies to SHSOND-1, SHSOND-2, SHSOND-4, SHSOND-6, SHSOND-8

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Contractor to protect existing lines in place. Contractor to notify SHSOND 14-days prior to working in the area of the encounters.

II. SHSOND, Applies to SHSOND-3, SHSOND-5, SHSOND-7

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Contractor to notify SHSOND 14-days and again 24-hours prior to working in the area of the encounters.

Existing water main can be shut down for a maximum of 10 calendar days to remove existing watermain and install proposed water main per Section 55 of the plans. A shutdown is not allowed from July 1, 2025 through July 6, 2025.

Contractor to verify SHSOND has shutdown the watermain prior to working in the area. Contractor to drain, remove, and dispose of the impacted watermain, fittings, and various appurtenances. Contractor to install new watermain, service lines, fittings, and connect to existing lines per Section 55 of the plans. Test and disinfect new lines per Standard Specification 724.04 C.3 in coordination with SHSOND. Notify SHSOND when new lines can be activated for service.

Southwest Water Authority (SOWAAU)

I. SOWAAU, Applies to SOWAAU-1, SOWAAU-6

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Contractor to protect existing line and meter in place. Contractor to notify utility company a minimum of 14-days prior to working in the area of the encounters.

II. SOWAAU, Applies to SOWAAU-2, SOWAAU-3, SOWAAU-5, SOWAAU-7

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Contractor to notify Utility Company a minimum of 14-days prior to working in the area of the encounters. Contractor to protect line once relocated.

If Utility Company is not able to relocate and abandoned existing lines in place before construction begins, Contractor to notify Utility Company a minimum of 14-days prior to working in the area of the encounters based on the following disposition:

- Contractor to maintain minimum of 4 feet of cover over existing underground watermain in cut sections and must be protected in place during the relocation of proposed underground watermain.
- Existing lines in fill sections will be protected in place by Contractor during the relocation of proposed underground watermain.
- Once Utility Company has relocated and activated proposed underground watermain, contractor to continue with construction activities. Contractor to remove and dispose of existing abandoned lines within cut sections. Removals are incidental to 202 0295 REMOVAL OF OBSTRUCTIONS. Contractor to cap existing abandon lines within fill sections.

Utility Company relocation rates for proposed corresponding resolutions are anticipated to be 150-350 LF per day.

Once Utility Company has relocated proposed water lines, Contractor to remove and dispose of existing abandoned watermain based on the following disposition:

- Existing lines in cut sections will be removed by Contractor.
- Existing liens in fill sections will be capped by Contractor and abandoned in place.

III. SOWAAU, Applies to SOWAAU-4

Construction activities include changes of grade, removal of existing pavement and base, installation of new pavement, base, shared-use path, and various other activities.

Contractor to notify Utility Company a minimum of 14-days prior to working in the area of the encounters. Contractor to protect new valve once relocated.

If Utility Company is not able to relocate and abandoned existing lines in place before construction begins, Contractor to notify Utility Company a minimum of 14-days prior to working in the area of the encounters based on the following disposition:

- Contractor to protect in place existing valve and riser during the relocation of proposed underground watermain.
- Once Utility Company has relocated and activated proposed underground watermain, contractor to continue with construction activities. Contractor to remove and dispose of existing valve riser to top of proposed subgrade at a minimum and cap the portion to be abandoned.

Contractor to remove and dispose of existing valve riser to top of proposed subgrade at a minimum and cap the portion to be abandoned.

Appendix A

Utility Coordination Table Appendix A of SP 336(24)

SS-FTF-5-999(036), PCN 24246

UE ID# UR ID# PR ID#	Utility Coordination Exhibits	Beginning Point			to	Ending Point			LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Comments	Utility Company	Type of Facility	UTILITY ENCOUNTER TYPE (UE)	
		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT										Protect in Place	Conflict
AT&T-1	5	1043+97	52.9	RT	to	1044+08	64.9	LT	Crossing	OCL_Chateau	119.6	FT	+3	Level 2	See Special Provision Note: I. AT&T	AT&T Corporation	Underground Fiber Optic Line	X	
COGCOM-1	5	1044+09	58.2	RT	to	1044+19	52.5	LT	Crossing	OCL_Chateau	111.2	FT	+4	Level 2	See Special Provision Note: I. COGOCM	Cogent Communications	Underground Fiber Optic Line	X	
RETEL-1	1	992+75	14	RT	to	992+87	1.5	LT	Crossing	OCL_Chateau	19.2	FT	+1	Level 2	See Special Provision Note: I. RETEL	Reservation Telephone	Underground Fiber Optic Line	X	
RETEL-2	1	992+87	1.5	LT	to	993+11	13.4	LT	LT	OCL_Chateau	30.0	FT	+1	Level 4	See Special Provision Note: II. RETEL	Reservation Telephone	Underground Fiber Optic Line		X
RETEL-PR2.1	1	992+87	1.5	LT	to	992+96	15.2	LT	LT	OCL_Chateau	17.0	FT	-	Proposed Level 2	Resolution for RETEL-2	Reservation Telephone	Underground Fiber Optic Line	X	
RETEL-3	1	992+94	10.9	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	+1	Level 4	See Special Provision Note: III. RETEL	Reservation Telephone	Fiber Optic Vault		X
RETEL-PR3.1	1	992+94	15.2	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 2	Resolution for RETEL-3	Reservation Telephone	Fiber Optic Vault	X	
RETEL-4	1	993+11	13.4	LT	to	997+95	25.8	LT	LT	OCL_Chateau	476.3	FT	-1 / +1	Level 2	See Special Provision Note: I. RETEL	Reservation Telephone	Underground Fiber Optic Line	X	
RETEL-PR4.1	1	992+96	15.2	LT	to	993+11	13.4	LT	LT	OCL_Chateau	16.0	FT	-	Proposed Level 2	Resolution for RETEL-4	Reservation Telephone	Underground Fiber Optic Line	X	
RETEL-5	1	997+17	14	RT	to	997+95	23.3	LT	Crossing	OCL_Chateau	86.1	FT	+1	Level 2	See Special Provision Note: I. RETEL	Reservation Telephone	Underground Fiber Optic Line	X	
RETEL-6	1	997+95	26.5	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	+1	Level 4	See Special Provision Note: III. RETEL	Reservation Telephone	Fiber Optic Pedestal		X
RETEL-PR6.1	1	997+95	26.5	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	+1	Proposed Level 2	Resolution for RETEL-6	Reservation Telephone	Fiber Optic Vault	X	
RETEL-7	1	997+96	22.7	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	+1	Level 4	See Special Provision Note: III. RETEL	Reservation Telephone	Fiber Optic Vault		X
RETEL-PR7.1	1	997+96	22.7	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 2	Resolution for RETEL-7	Reservation Telephone	Fiber Optic Vault	X	
RETEL-8	1	997+98	22.5	LT	to	998+91	14	RT	Crossing	OCL_Chateau	101.3	FT	+1	Level 2	See Special Provision Note: I. RETEL	Reservation Telephone	Underground Fiber Optic Line	X	
RETEL-9	1 / 2	997+98	23.7	LT	to	1006+47	28.8	LT	LT	OCL_Chateau	831.1	FT	-7 / +1	Level 4	See Special Provision Note: II. RETEL	Reservation Telephone	Underground Fiber Optic Line		X
RETEL-PR9.1	1	997+95	26.5	LT	to	999+07	50	LT	LT	OCL_Chateau	113.0	FT	-	Proposed Level 2	Resolution for RETEL-9	Reservation Telephone	Underground Fiber Optic Line	X	
RETEL-PR9.2	2	999+07	50	LT	to	1002+00	61.7	LT	LT	OCL_Chateau	261.0	FT	-7 / +7	Proposed Level 2	Resolution for RETEL-9	Reservation Telephone	Underground Fiber Optic Line	X	
RETEL-PR9.3	3	1002+00	61.7	LT	to	1003+00	54	LT	LT	OCL_Chateau	103.0	FT	-	Proposed Level 2	Resolution for RETEL-9	Reservation Telephone	Underground Fiber Optic Line	X	

Utility Coordination Table Appendix A of SP 336(24)

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UE ID# UR ID# PR ID#	Utility Coordination Exhibits	Beginning Point			to	Ending Point			LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Comments	Utility Company	Type of Facility	UTILITY ENCOUNTER TYPE (UE)	
		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT										Protect in Place	Conflict
RESTEL-PR9.4	2 / 3	1003+00	54	LT	to	1013+75	53.4	LT	LT	OCL_Chateau	1164.0	FT	-7	Proposed Level 2	Resolution for RESTEL-9	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-PR9.5	3	1013+75	53.4	LT	to	1014+45	60	LT	LT	OCL_Chateau	88.0	FT	-10 / +1	Proposed Level 2	Resolution for RESTEL-9	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-10	2	1006+47	28.8	LT	to	1008+36	4.8	LT	Crossing	OCL_Chateau	223.5	FT	-	Level 4	See Special Provision Note: II. RESTEL	Reservation Telephone	Underground Fiber Optic Line		X
RESTEL-11	2	1008+34	5.7	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	+4	Level 4	See Special Provision Note: III. RESTEL	Reservation Telephone	Fiber Optic Vault		X
RESTEL-12	2 / 3	1008+37	3.8	LT	to	1014+82	110.1	LT	Crossing	OCL_Chateau	697.2	FT	+3	Level 4	See Special Provision Note: II. RESTEL	Reservation Telephone	Underground Fiber Optic Line		X
RESTEL-PR12.1	3	1014+45	60	LT	to	1014+81	95	LT	LT	OCL_Chateau	61.0	FT	+2	Proposed Level 2	Resolution for RESTEL-12	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-PR12.2	3	1014+81	95	LT	to	1015+71	215.2	LT	LT	OCL_Chateau	204.0	FT	-16	Proposed Level 2	Resolution for RESTEL-12	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-13	2	1012+87	1.7	RT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Level 4	See Special Provision Note: III. RESTEL	Reservation Telephone	Fiber Optic Pedestal		X
RESTEL-PR13.1	3	1015+85	181.8	LT	to	1015+71	215.2	LT	LT	OCL_Chateau	43.0	FT	-	Proposed Level 2	Resolution for RESTEL-13	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-14	3	1014+82	110.1	LT	to	1015+73	219.6	LT	LT	OCL_Chateau	193.2	FT	-	Level 4	See Special Provision Note: II. RESTEL	Reservation Telephone	Underground Fiber Optic Line		X
RESTEL-15	3	1015+73	219.6	LT	to	1015+89	181.2	LT	LT	OCL_Chateau	49.7	FT	-10	Level 4	See Special Provision Note: II. RESTEL	Reservation Telephone	Underground Fiber Optic Line		X
RESTEL-16	3 / 4	1015+85	181.8	LT	to	1037+65	7.5	LT	LT	OCL_Chateau	1141.8	FT	-3 / +5	Level 4	See Special Provision Note: II. RESTEL	Reservation Telephone	Underground Fiber Optic Line		X
RESTEL-17	3	1015+87	185	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Level 4	See Special Provision Note: III. RESTEL	Reservation Telephone	Fiber Optic Pedestal		X
RESTEL-18	3	1015+87	180	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-4 / +1	Level 4	See Special Provision Note: III. RESTEL	Reservation Telephone	Fiber Optic Vault		X
RESTEL-PR18.1	3	1015+71	215.2	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 2	Resolution for RESTEL-18	Reservation Telephone	Fiber Optic Vault	X	
RESTEL-19	3	1016+66	55.7	RT	to	1015+89	181.2	LT	Crossing	OCL_Chateau	258.5	FT	-4	Level 4	See Special Provision Note: II. RESTEL	Reservation Telephone	Underground Fiber Optic Line		X
RESTEL-20	3	1016+66	55.7	RT	to	1023+77	268.4	LT	Crossing	OCL_Chateau	382.3	FT	-	Level 4	See Special Provision Note: II. RESTEL	Reservation Telephone	Underground Fiber Optic Line		X
RESTEL-PR20.1	3 / 4	1017+43	265.5	LT	to	1030+25	50	LT	LT	OCL_Chateau	851.0	FT	-10 / +1	Proposed Level 1	Resolution for RESTEL-20	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-PR20.2	4	1031+08	112.7	RT	to	1030+25	50	LT	Crossing	OCL_Chateau	185.0	FT	-	Proposed Level 2	Resolution for RESTEL-20	Reservation Telephone	Underground Fiber Optic Line	X	

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UE ID# UR ID# PR ID#	Utility Coordination Exhibits	Beginning Point			to	Ending Point			LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Comments	Utility Company	Type of Facility	UTILITY ENCOUNTER TYPE (UE)	
		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT										Protect in Place	Conflict
RESTEL-21	4	1031+02	44.3	LT	to	1031+08	112.6	RT	Crossing	OCL_Chateau	157.1	FT	-	Level 4	See Special Provision Note: II. RESTEL	Reservation Telephone	Underground Fiber Optic Line		X
RESTEL-PR21.1	4	1031+08	112.7	RT	to	1031+72	35.5	RT	RT	OCL_Chateau	119.0	FT	-	Proposed Level 2	Resolution for RESTEL-21	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-22	4	1031+05	44.3	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Level 4	See Special Provision Note: III. RESTEL	Reservation Telephone	Fiber Optic Vault		X
RESTEL-PR22.1	4	1031+09	112.7	RT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 1	Resolution for RESTEL-22	Reservation Telephone	Fiber Optic Vault	X	
RESTEL-23	4 / 5	1031+05	45.4	LT	to	1041+19	59.9	LT	LT	OCL_Chateau	977.8	FT	-	Level 4	See Special Provision Note: II. RESTEL	Reservation Telephone	Underground Fiber Optic Line		X
RESTEL-PR23.1	4 / 5	1031+72	35.5	RT	to	1040+48	50.7	RT	RT	OCL_Chateau	926.0	FT	-	Proposed Level 1	Resolution for RESTEL-23	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-24	5	1041+19	59.9	LT	to	1043+83	102.1	LT	LT	OCL_Chateau	269.6	FT	-	Level 2	See Special Provision Note: I. RESTEL	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-PR24.1	5	1040+48	50.7	RT	to	1041+13	50	LT	Crossing	OCL_Chateau	120.0	FT	-	Proposed Level 2	Resolution for RESTEL-24	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-PR24.2	5	1041+13	50	LT	to	1041+19	59.9	LT	LT	OCL_Chateau	12.0	FT	-	Proposed Level 2	Resolution for RESTEL-24	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-25	5	1043+83	102.1	LT	to	1047+40	44.2	LT	LT	OCL_Chateau	368.1	FT	-	Level 2	See Special Provision Note: I. RESTEL	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-PR25.1	5	1041+19	59.9	LT	to	1043+77	42.5	LT	LT	OCL_Chateau	260.0	FT	-	Proposed Level 1	Resolution for RESTEL-25	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-PR25.2	5	1043+77	41.6	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 1	Resolution for RESTEL-25	Reservation Telephone	Fiber Optic Pedestal	X	
RESTEL-PR25.3	5	1043+77	42.5	LT	to	1043+83	102.1	LT	LT	OCL_Chateau	60.0	FT	-	Proposed Level 1	Resolution for RESTEL-25	Reservation Telephone	Underground Fiber Optic Line	X	
RESTEL-26	5	1045+18	77.7	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Level 2	See Special Provision Note: I. RESTEL	Reservation Telephone	Fiber Optic Pedestal	X	
RESTEL-27	5	1045+19	81.1	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Level 2	See Special Provision Note: I. RESTEL	Reservation Telephone	Fiber Optic Vault	X	
RESTEL-28	5	1045+87	41.3	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Level 2	See Special Provision Note: I. RESTEL	Reservation Telephone	Fiber Optic Pedestal	X	
RESTEL-29	5	1045+89	38.2	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Level 2	See Special Provision Note: I. RESTEL	Reservation Telephone	Fiber Optic Pedestal	X	
ROELCO-1	1	991+82	32.5	LT	to	997+84	29.3	LT	LT	OCL_Chateau	629.3	FT	+1	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-2	1	997+77	14	RT	to	997+87	30.4	LT	Crossing	OCL_Chateau	45.7	FT	+1	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Underground Electric Line	X	

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UE ID# UR ID# PR ID#	Utility Coordination Exhibits	Beginning Point			to	Ending Point			LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Comments	Utility Company	Type of Facility	UTILITY ENCOUNTER TYPE (UE)	
		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT										Protect in Place	Conflict
ROELCO-3	1	997+79	14	RT	to	997+91	30	LT	Crossing	OCL_Chateau	46.0	FT	+1	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-4	1	997+84	29.7	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	+1	Level 4	See Special Provision Note: IV. ROELCO	Roughrider Electric Coop	Electric Box		X
ROELCO-PR4.1	1	997+84	29.7	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 2	Resolution for ROELCO-4	Roughrider Electric Coop	Electric Box	X	
ROELCO-5	1	997+88	29.5	LT	to	998+91	14	RT	Crossing	OCL_Chateau	113.5	FT	+1	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-6	1 / 2 / 3	997+90	31.6	LT	to	1011+58	28.1	RT	Crossing	OCL_Chateau	1345.3	FT	-7 / +10	Level 4	See Special Provision Note: II. ROELCO	Roughrider Electric Coop	Underground Electric Line		X
ROELCO-PR6.1	1	997+87	30.7	LT	to	999+15	50	LT	LT	OCL_Chateau	121.0	FT	-	Proposed Level 2	Resolution for ROELCO-6	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-PR6.2	1 / 2	999+15	50	LT	to	1002+00	59.7	LT	LT	OCL_Chateau	256.0	FT	-	Proposed Level 2	Resolution for ROELCO-6	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-PR6.3	2	1002+00	59.7	LT	to	1003+00	52	LT	LT	OCL_Chateau	103.0	FT	-	Proposed Level 2	Resolution for ROELCO-6	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-PR6.4	2 / 3	1003+00	52	LT	to	1013+75	51.4	LT	LT	OCL_Chateau	1160.0	FT	-	Proposed Level 2	Resolution for ROELCO-6	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-7	3	1011+58	28.1	RT	to	1014+83	108.2	LT	Crossing	OCL_Chateau	367.2	FT	-1 / +6	Level 4	See Special Provision Note: II. ROELCO	Roughrider Electric Coop	Underground Electric Line		X
ROELCO-PR7.1	3	1013+75	51.4	LT	to	1014+45	58.1	LT	LT	OCL_Chateau	89.0	FT	-	Proposed Level 2	Resolution for ROELCO-7	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-PR7.2	3	1014+45	58.1	LT	to	1014+83	95	LT	LT	OCL_Chateau	64.0	FT	-	Proposed Level 2	Resolution for ROELCO-7	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-8	3	1014+83	108.2	LT	to	1015+72	214	LT	LT	OCL_Chateau	187.3	FT	+4	Level 4	See Special Provision Note: II. ROELCO	Roughrider Electric Coop	Underground Electric Line		X
ROELCO-PR8.1	3	1014+83	95	LT	to	1015+57	258.4	LT	LT	OCL_Chateau	211.0	FT	-	Proposed Level 2	Resolution for ROELCO-8	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-9	3	1015+72	214	LT	to	1015+57	258.8	LT	LT	OCL_Chateau	54.9	FT	+2	Level 4	See Special Provision Note: II. ROELCO	Roughrider Electric Coop	Underground Electric Line		X
ROELCO-PR9.1	3	1015+56	257.9	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 2	Resolution for ROELCO-9	Roughrider Electric Coop	Electric Box	X	
ROELCO-PR9.2	3	1015+57	258.4	LT	to	1016+07	261.1	LT	LT	OCL_Chateau	114.0	FT	-	Proposed Level 2	Resolution for ROELCO-9	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-PR9.3	3 / 4	1016+07	261.1	LT	to	1038+63	297.5	LT	LT	OCL_Chateau	745.0	FT	-	Proposed Level 1	Resolution for ROELCO-9	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-PR9.4	4 / 5	1038+63	297.5	LT	to	1041+20	66.5	LT	LT	OCL_Chateau	350.0	FT	-	Proposed Level 2	Resolution for ROELCO-9	Roughrider Electric Coop	Underground Electric Line	X	

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UE ID# UR ID# PR ID#	Utility Coordination Exhibits	Beginning Point			to	Ending Point			LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Comments	Utility Company	Type of Facility	UTILITY ENCOUNTER TYPE (UE)	
		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT										Protect in Place	Conflict
ROELCO-PR9.5	5	1041+20	66.5	LT		1043+72	46.9	LT	LT	OCL_Chateau	254.0	FT	-	Proposed Level 1	Resolution for ROELCO-9	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-10	3	1015+57	258.8	LT		1015+29	380.3	LT	LT	OCL_Chateau	143.0	FT	+1	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-11	4	1029+44	83.5	LT		1031+05	51.3	LT	Crossing	OCL_Chateau	99.9	FT	-9	Level 4	See Special Provision Note: II. ROELCO	Roughrider Electric Coop	Underground Electric Line		X
ROELCO-PR11.1	4	1030+31	50	LT		1029+44	83.5	LT	LT	OCL_Chateau	63.0	FT	-	Proposed Level 1	Resolution for ROELCO-11	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-PR11.2	4	1030+31	50	LT		1031+10	108	RT	Crossing	OCL_Chateau	179.0	FT	-	Proposed Level 2	Resolution for ROELCO-11	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-12	4	1031+10	108	RT		1031+08	49.1	LT	Crossing	OCL_Chateau	157.1	FT	-6 / +1	Level 4	See Special Provision Note: II. ROELCO	Roughrider Electric Coop	Underground Electric Line		X
ROELCO-PR12.1	4	1031+10	108	RT		1031+72	33.4	RT	RT	OCL_Chateau	114.0	FT	-	Proposed Level 2	Resolution for ROELCO-12	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-13	4	1031+08	51.5	LT		-	-	-	Point	OCL_Chateau	1.0	EA	-6	Level 4	See Special Provision Note: III. ROELCO	Roughrider Electric Coop	Electric Box		X
ROELCO-PR13.1	4	1031+11	106.9	RT		-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 1	Resolution for ROELCO-13	Roughrider Electric Coop	Electric Box	X	
ROELCO-14	4	1031+13	48.8	LT		1038+48	8.9	LT	LT	OCL_Chateau	692.2	FT	-13 / +1	Level 4	See Special Provision Note: II. ROELCO	Roughrider Electric Coop	Underground Electric Line		X
ROELCO-PR14.1	4 / 5	1031+72	33.4	RT		1040+46	48.7	RT	RT	OCL_Chateau	924.0	FT	-	Proposed Level 2	Resolution for ROELCO-14	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-15	4	1037+13	78.4	RT		1037+71	6.2	LT	Crossing	OCL_Chateau	104.9	FT	-1 / +1	Level 4	See Special Provision Note: II. ROELCO	Roughrider Electric Coop	Underground Electric Line		X
ROELCO-PR15.1	4	1037+21	86.1	RT		1037+65	50	RT	RT	OCL_Chateau	60.0	FT	0	Proposed Level 2	Resolution for ROELCO-15	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-PR15.2	4	1037+65	50	RT		1037+77	41	RT	RT	OCL_Chateau	16.0	FT	-	Proposed Level 2	Resolution for ROELCO-15	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-16	4	1037+70	6.3	LT		-	-	-	Point	OCL_Chateau	1.0	EA	-1	Level 4	See Special Provision Note: III. ROELCO	Roughrider Electric Coop	Electric Box		X
ROELCO-PR16.1	4	1037+19	86	RT		-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 1	Resolution for ROELCO-16	Roughrider Electric Coop	Electric Box	X	
ROELCO-PR16.2	4	1037+17	88.8	RT		-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 1	See Special Provision Note: V. ROELCO Resolution for ROELCO-16	Roughrider Electric Coop	Transformer	X	
ROELCO-PR16.3	4	1036+24	38	RT		1037+19	88.9	RT	RT	OCL_Chateau	110.0	FT	-	Proposed Level 1	See Special Provision Note: V. ROELCO Resolution for ROELCO-16	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-PR16.4	4	1036+24	38	RT		-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 1	See Special Provision Note: V. ROELCO Resolution for ROELCO-16	Roughrider Electric Coop	Meter	X	

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		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT										Protect in Place	Conflict
ROELCO-17	4	1038+44	16	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	+1	Level 4	See Special Provision Note: III. ROELCO	Roughrider Electric Coop	Electric Box		X
ROELCO-18	4	1038+57	13.8	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	+1	Level 4	See Special Provision Note: III. ROELCO	Roughrider Electric Coop	Electric Box		X
ROELCO-19	4	1038+56	8.4	LT	to	1038+62	44.5	LT	Crossing	OCL_Chateau	53.7	FT	-1 / +1	Level 4	See Special Provision Note: II. ROELCO	Roughrider Electric Coop	Underground Electric Line		X
ROELCO-PR19.1	5	1040+46	48.7	RT	to	1041+10	50	LT	Crossing	OCL_Chateau	118.0	FT	-	Proposed Level 2	Resolution for ROELCO-19	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-PR19.2	5	1041+10	50	LT	to	1041+20	66.5	LT	LT	OCL_Chateau	19.0	FT	-	Proposed Level 2	Resolution for ROELCO-19	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-20	4 / 5	1038+56	8.4	LT	to	1043+75	106.7	LT	LT	OCL_Chateau	532.6	FT	-4	Level 4	See Special Provision Note: II. ROELCO	Roughrider Electric Coop	Underground Electric Line		X
ROELCO-PR20.1	5	1041+20	66.5	LT	to	1043+72	46.9	RT	LT	OCL_Chateau	256.0	FT	-	Proposed Level 1	Resolution for ROELCO-20	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-PR20.2	5	1043+72	46.9	LT	to	1043+76	106.4	LT	LT	OCL_Chateau	60.0	FT	-	Proposed Level 1	Resolution for ROELCO-20	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-21	4	1038+86	25.2	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-2	Level 4	See Special Provision Note: III. ROELCO	Roughrider Electric Coop	Electric Box		X
ROELCO-22	4	1038+68	61.3	RT	to	1038+62	44.5	RT	RT	OCL_Chateau	17.8	FT	-	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-23	4	1038+66	72.8	RT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Electric Box	X	
ROELCO-24	4	1038+67	67.5	RT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Electric Box	X	
ROELCO-25	5	1042+67	96.3	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	+9	Level 4	See Special Provision Note: III. ROELCO	Roughrider Electric Coop	Electric Box		X
ROELCO-PR25.1	5	1043+71	44.4	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 1	Resolution for ROELCO-25	Roughrider Electric Coop	Electric Box	X	
ROELCO-26	5	1043+74	103.9	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Electric Box	X	
ROELCO-27	5	1043+77	106	LT	to	1045+20	90.9	LT	LT	OCL_Chateau	144.1	FT	-	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-28	5	1045+20	88.1	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Electric Box	X	
ROELCO-29	5	1045+20	90.9	LT	to	1047+79	56.9	LT	LT	OCL_Chateau	262.0	FT	-	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Underground Electric Line	X	
ROELCO-30	5	1045+21	90.8	LT	to	1045+74	256.1	LT	LT	OCL_Chateau	173.5	FT	-	Level 2	See Special Provision Note: I. ROELCO	Roughrider Electric Coop	Underground Electric Line	X	

Utility Coordination Table Appendix A of SP 336(24)

SS-FTF-5-999(036), PCN 24246

UE ID# UR ID# PR ID#	Utility Coordination Exhibits	Beginning Point			to	Ending Point			LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Comments	Utility Company	Type of Facility	UTILITY ENCOUNTER TYPE (UE)	
		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT										Protect in Place	Conflict
SHSOND-1	4	15+74	0	LT	to	16+40	0	LT	LT	OCL_SHSOND_WaterMain	66.4	FT	+0.1	Level 2	See Special Provision Note: I. SHSOND See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 6IN PVC Watermain	X	
SHSOND-2	4	16+28	0	LT	to	16+29	23.4	LT	LT	OCL_SHSOND_WaterMain	23.4	FT	+0.1	Level 2	See Special Provision Note: I. SHSOND See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 6IN PVC Watermain	X	
SHSOND-3	4	13+71	0	LT	to	15+74	0	LT	LT	OCL_SHSOND_WaterMain	203.0	FT	-12	Level 3	See Special Provision Note: II. SHSOND See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 6IN PVC Watermain		X
SHSOND-PR3.1	4	15+09	0	LT	to	15+74	0	LT	LT	OCL_SHSOND_WaterMain	61.0	FT	-	Proposed Level 2	Resolution for SHSOND-3 See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 6IN PVC Watermain	X	
SHSOND-PR3.2	4	13+71	10	LT	to	15+09	0	LT	LT	OCL_SHSOND_WaterMain	142.0	FT	-	Proposed Level 2	Resolution for SHSOND-3 See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 6IN PVC Watermain	X	
SHSOND-4	4	15+53	26.6	LT	to	16+40	19.9	LT	LT	OCL_SHSOND_WaterMain	96.5	FT	+0.2	Level 2	See Special Provision Note: I. SHSOND See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 3IN Service Line	X	
SHSOND-5	4	13+66	18.5	LT	to	15+53	26.6	LT	LT	OCL_SHSOND_WaterMain	186.7	FT	-17	Level 3	See Special Provision Note: II. SHSOND See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 3IN Service Line		X
SHSOND-PR5.1	4	15+00	24.2	LT	to	15+53	26.6	LT	LT	OCL_SHSOND_WaterMain	53.0	FT	-	Proposed Level 2	Resolution for SHSOND-5 See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 3IN Service Line	X	
SHSOND-PR5.2	4	13+66	18.5	LT	to	15+00	24.2	LT	LT	OCL_SHSOND_WaterMain	134.0	FT	-	Proposed Level 2	Resolution for SHSOND-5 See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 3IN Service Line	X	
SHSOND-6	4	15+50	32.4	LT	to	16+12	28.7	LT	LT	OCL_SHSOND_WaterMain	62.6	FT	+0.5	Level 2	See Special Provision Note: I. SHSOND See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 2IN Service Line	X	
SHSOND-7	4	13+63	24.4	LT	to	15+50	32.4	LT	LT	OCL_SHSOND_WaterMain	187.2	FT	-20	Level 3	See Special Provision Note: II. SHSOND See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 2IN Service Line		X
SHSOND-PR7.1	4	14+97	30.12	LT	to	15+50	32.4	LT	LT	OCL_SHSOND_WaterMain	54.0	FT	-	Proposed Level 2	Resolution for SHSOND-7 See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 2IN Service Line	X	
SHSOND-PR7.2	4	13+63	24.4	LT	to	14+97	30.12	LT	LT	OCL_SHSOND_WaterMain	133.0	FT	-	Proposed Level 2	Resolution for SHSOND-7 See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 2IN Service Line	X	
SHSOND-8	4	15+97	34.4	LT	to	15+95	112.4	LT	LT	OCL_SHSOND_WaterMain	89.1	FT	+1	Level 2	See Special Provision Note: I. SHSOND See Section 55 Sheet 1	State Historical Society of North Dakota	Underground 2IN Service Line	X	
SOWAAU-1	4	1029+34	69.2	LT	to	1029+74	66.9	LT	LT	OCL_Chateau	30.0	FT	-	Level 2	See Special Provision Note: I. SOWAAU	Southwest Water Authority	Underground Watermain	X	
SOWAAU-PR1.1	4	1029+34	69.2	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 1	Resolution for SOWAAU-1	Southwest Water Authority	Watermain Valve	X	
SOWAAU-2	4	1029+74	67	LT	to	1030+58	40.7	LT	LT	OCL_Chateau	62.5	FT	-2	Level 4	See Special Provision Note: II. SOWAAU	Southwest Water Authority	Underground Watermain		X
SOWAAU-3	4	1030+31	47.8	RT	to	1030+58	40.7	LT	Crossing	OCL_Chateau	93.1	FT	-1.8 / +0.3	Level 4	See Special Provision Note: II. SOWAAU	Southwest Water Authority	Underground Watermain		X
SOWAAU-PR3.1	4	1029+75	65.4	LT	to	1029+89	50	LT	LT	OCL_Chateau	18.0	FT	-	Proposed Level 2	Resolution for SOWAAU-3	Southwest Water Authority	Underground Watermain	X	

Utility Coordination Table Appendix A of SP 336(24)

SS-FTF-5-999(036), PCN 24246

UE ID# UR ID# PR ID#	Utility Coordination Exhibits	Beginning Point			to	Ending Point			LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Comments	Utility Company	Type of Facility	UTILITY ENCOUNTER TYPE (UE)	
		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT										Protect in Place	Conflict
SOWAAU-PR3.2	4	1029+89	50	LT	to	1030+31	47.8	RT	Crossing	OCL_Chateau	105.0	FT	-	Proposed Level 2	Resolution for SOWAAU-3	Southwest Water Authority	Underground Watermain	X	
SOWAAU-4	4	1030+58	40	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-1	Level 4	See Special Provision Note: III. SOWAAU	Southwest Water Authority	Watermain Valve		X
SOWAAU-PR4.1	4	1030+31	47.8	RT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 1	Resolution for SOWAAU-4	Southwest Water Authority	Watermain Valve	X	
SOWAAU-5	4	1030+58	40.7	LT	to	1042+24	130.7	LT	LT	OCL_Chateau	1067.2	FT	+20	Level 4	See Special Provision Note: II. SOWAAU	Southwest Water Authority	Underground Watermain		X
SOWAAU-PR5.1	4 / 5	1029+75	65.4	LT	to	1040+56	252.2	LT	LT	OCL_Chateau	784.0	FT	-	Proposed Level 1	Resolution for SOWAAU-5	Southwest Water Authority	Underground Watermain	X	
SOWAAU-PR5.2	5	1040+56	252.2	LT	to	1042+24	130.7	LT	LT	OCL_Chateau	221.0	FT	-	Proposed Level 1	Resolution for SOWAAU-5	Southwest Water Authority	Underground Watermain	X	
SOWAAU-6	4	1037+82	92.7	RT	to	1037+82	92.7	-	Point	OCL_Chateau	1.0	FT	-	Level 2	See Special Provision Note: I. SOWAAU	Southwest Water Authority	Underground Watermain	X	
SOWAAU-7	4	1037+83	91.9	RT	to	1038+27	28.7	LT	Crossing	OCL_Chateau	129.4	FT	+1	Level 4	See Special Provision Note: II. SOWAAU	Southwest Water Authority	Underground Watermain		X
SOWAAU-PR7.1	4	1037+97	50	RT	to	1037+82	90.8	RT	RT	OCL_Chateau	44.0	FT	-	Proposed Level 2	Resolution for SOWAAU-7	Southwest Water Authority	Underground Watermain	X	
SOWAAU-PR7.2	4	1038+47	50	LT	to	1037+97	50	RT	Crossing	OCL_Chateau	112.0	FT	-	Proposed Level 2	Resolution for SOWAAU-7	Southwest Water Authority	Underground Watermain	X	
SOWAAU-PR7.3	4	1039+19	231.2	LT	to	1038+47	50	LT	LT	OCL_Chateau	197.0	FT	-	Proposed Level 2	Resolution for SOWAAU-7	Southwest Water Authority	Underground Watermain	X	
SOWAAU-PR7.4	4	1039+16	216.3	LT	to	-	-	-	Point	OCL_Chateau	1.0	EA	-	Proposed Level 1	Resolution for SOWAAU-7	Southwest Water Authority	Watermain Valve	X	

Utility Coordination Table Appendix A of SP 336(24)

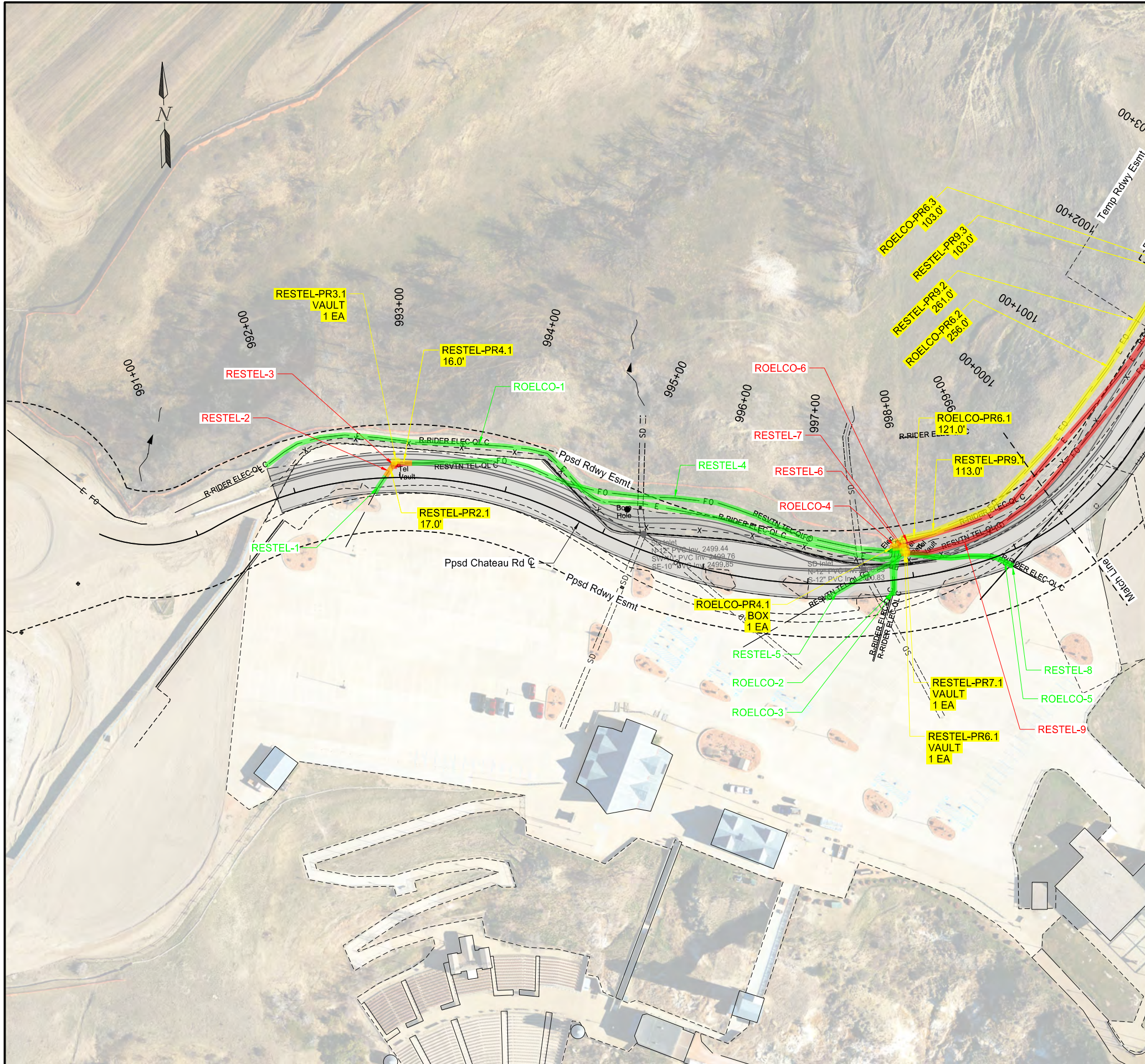
SS-FTF-5-999(036), PCN 24246

UE ID# UR ID# PR ID#	Utility Coordination Exhibits	Beginning Point			to	Ending Point			LT/RT or Crossing or Point Location	Roadway (Alignment/Chain)	Approx. Qty	Unit	Max Excavation Cut (-) / Fill (+) Feet	Encounter Level	Comments	Utility Company	Type of Facility	UTILITY ENCOUNTER TYPE (UE)	
		Sta.	Offset (FT)	RT/LT		Sta.	Offset (FT)	RT/LT										Protect in Place	Conflict

**SEE NORTH DAKOTA DEPARTMENT OF
TRANSPORTATION SPECIAL
PROVISION UTILITY COORDINATION
FOR CONTACT INFORMATION**

UTILITY ENCOUNTER LEVEL DESIGNATIONS	
UE LEVEL	DESCRIPTION
Level 1	Utility not affected by proposed improvements, no impacts.
Level 2	Construction activities will occur above and/or below the utility line. No relocation needed for the utility but may need precautions to protect the utility in place during construction activities.
Level 3	Utility permanently impacted by proposed improvements and requires vertical adjustment only. Horizontal location of utility will not change.
Level 4	Utility permanently impacted by proposed improvements and requires complete relocation. Vertical and horizontal location of utility will change.
Proposed Level 1	Utility that is to be relocated by the Utility Company, and after Utility is relocated to the new location, the final Encounter Level would be that of Level 1.
Proposed Level 2	Utility that is to be relocated by the Utility Company, and after Utility is relocated to the new location, the final Encounter Level would be that of Level 2.
Abandoned	Utility line that was an encounter and is now abandoned in place. See comments for construction disposition, removal, and/or remain in place.

Appendix B

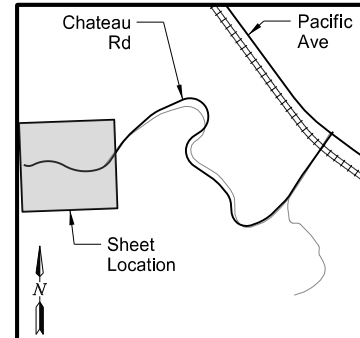


STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SS-FTF-5-999(036)	UTIL	1

UTILITY COMPANY AND ORGANIZATION NAME	ABBREVIATION
AT&T.....	AT&T
COGENT COMMUNICATIONS.....	COGCOM
RESERVATION TELEPHONE.....	RESTEL
ROUGH RIDER ELECTRIC COOP.....	ROELCO
SOUTHWEST WATER AUTHORITY.....	SOWAAU
STATE HISTORICAL SOCIETY OF NORTH DAKOTA.....	SHSOND

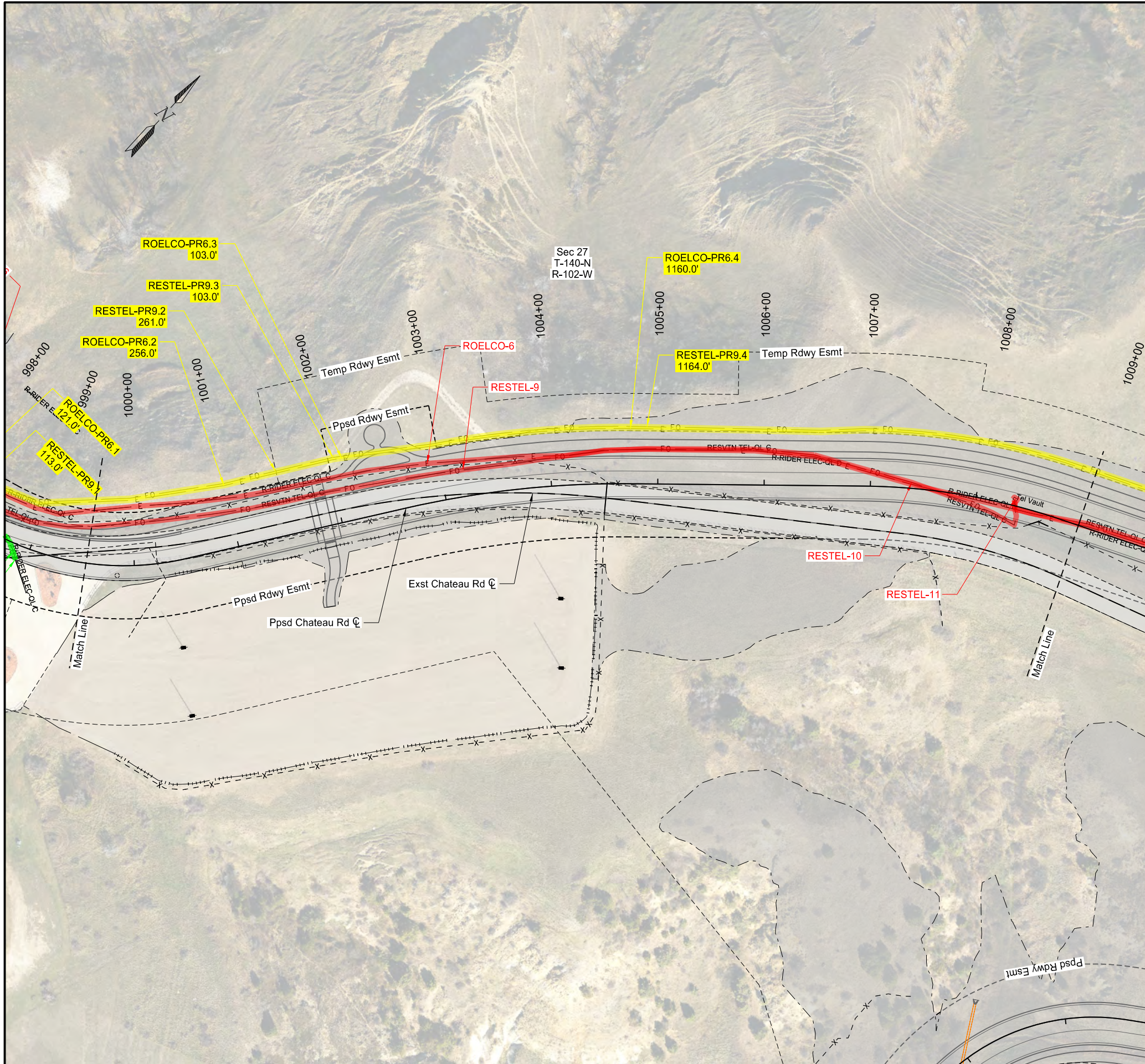
LEGEND

- Level 1 Utility Encounter:
Utility not exposed by proposed improvements, no impacts.
- Level 2 Utility Encounter:
Construction activities will occur above and/or below the utility line. No relocation needed for the utility but may need precautions to protect the utility in place during construction activities.
- Level 3 Utility Encounter:
Utility permanently impacted by proposed improvements and requires vertical adjustment only. Horizontal location of utility will not change.
- Level 4 Utility Encounter:
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- Proposed Level 1 :
Utility that is to be relocated by the Utility Company; and after the utility is relocated to the new location, the final Encounter Level would be that of Level 1.
- Proposed Level 2 :
Utility that is to be relocated by the Utility Company; and after the utility is relocated to the new location, the final Encounter Level would be that of Level 2.
- Abandoned In Place Facility:
Utility line that was an encounter is now abandoned in place or an existing line that had been abandoned. See comments for construction disposition, removal and/or remain in place.
- Existing Utility Easement
- Grading Tie Line
- Temp Grading Tie Line



Chateau Rd - Medora, ND
 Burning Hills Amphitheatre to Pacific Ave
 Utility Encounter Exhibits
 Sta 991+00 to Sta 999+50
 (OCL_Chateau)

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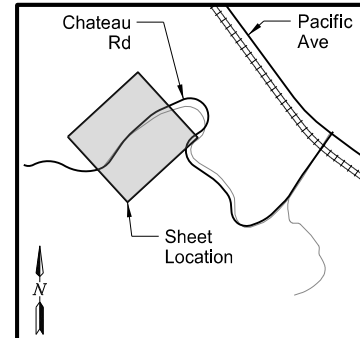


STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SS-FTF-5-999(036)	UTIL	2

UTILITY COMPANY AND ORGANIZATION NAME	ABBREVIATION
AT&T.....	AT&T
COGENT COMMUNICATIONS.....	COGCOM
RESERVATION TELEPHONE.....	RESTEL
ROUGH RIDER ELECTRIC COOP.....	ROELCO
SOUTHWEST WATER AUTHORITY.....	SOWAAU
STATE HISTORICAL SOCIETY OF NORTH DAKOTA.....	SHSOND

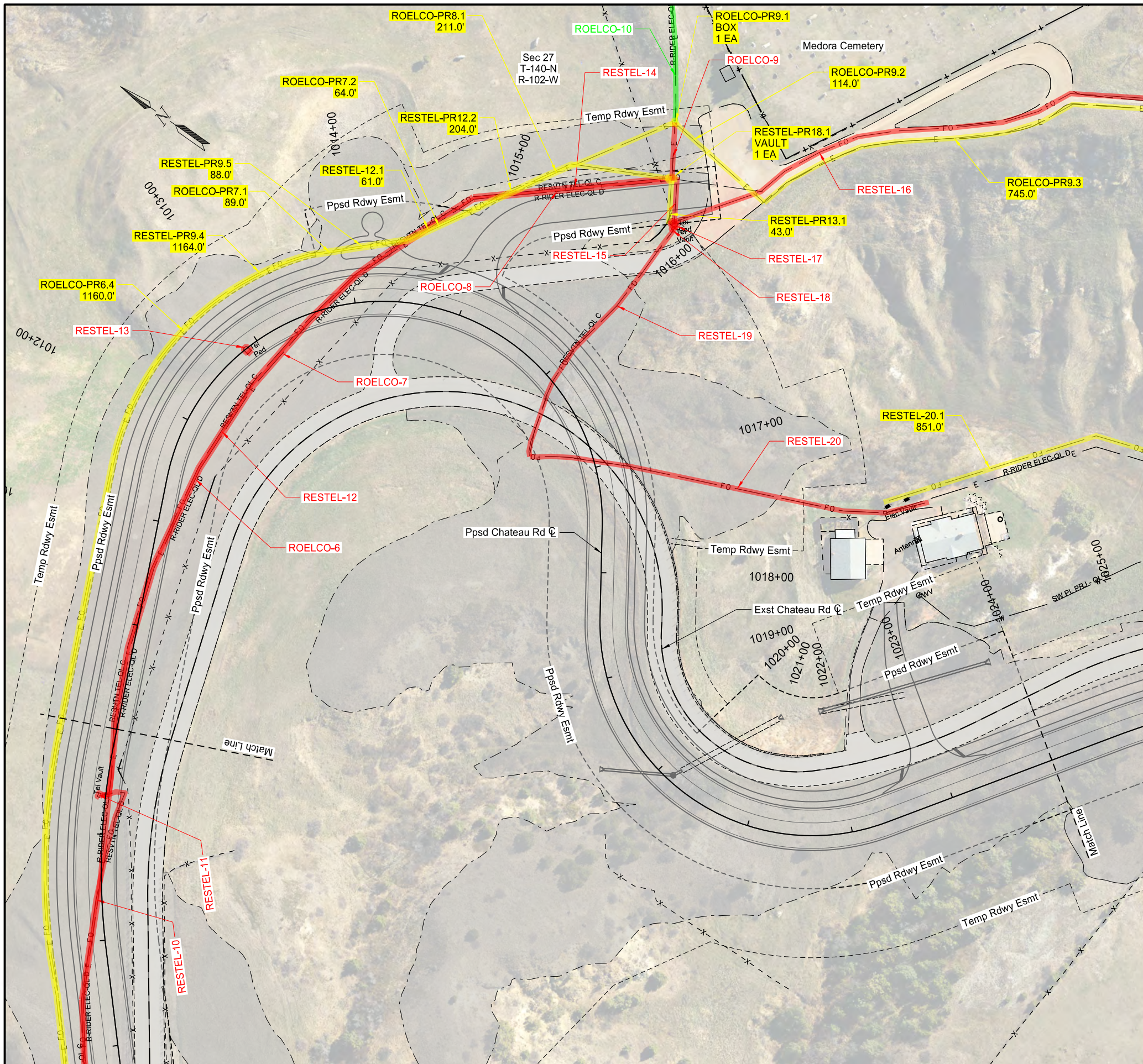
LEGEND

- Level 1 Utility Encounter:
Utility not exposed by proposed improvements, no impacts.
- Level 2 Utility Encounter:
Construction activities will occur above and/or below the utility line. No relocation needed for the utility but may need precautions to protect the utility in place during construction activities.
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Utility that is to be relocated by the Utility Company; and after the utility is relocated to the new location, the final Encounter Level would be that of Level 2.
- Abandoned In Place Facility:
Utility line that was an encounter is now abandoned in place or an existing line that had been abandoned. See comments for construction disposition, removal and/or remain in place.
- Existing Utility Easement
- - - - - Grading Tie Line
- - - - - Temp Grading Tie Line



Chateau Rd - Medora, ND
 Burning Hills Amphitheatre to Pacific Ave
 Utility Encounter Exhibits
 Sta 999+50 to Sta 1009+00
 (OCL_Chateau)

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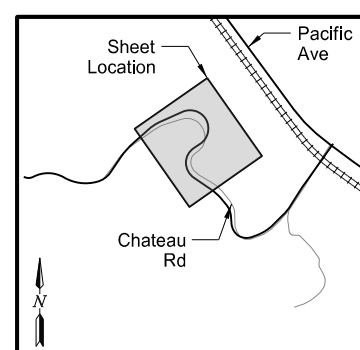


STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SS-FTF-5-999(036)	UTIL	3

UTILITY COMPANY AND ORGANIZATION NAME	ABBREVIATION
AT&T.....	AT&T
COGENT COMMUNICATIONS.....	COGCOM
RESERVATION TELEPHONE.....	RESTEL
ROUGH RIDER ELECTRIC COOP.....	ROELCO
SOUTHWEST WATER AUTHORITY.....	SOWAAU
STATE HISTORICAL SOCIETY OF NORTH DAKOTA.....	SHSOND

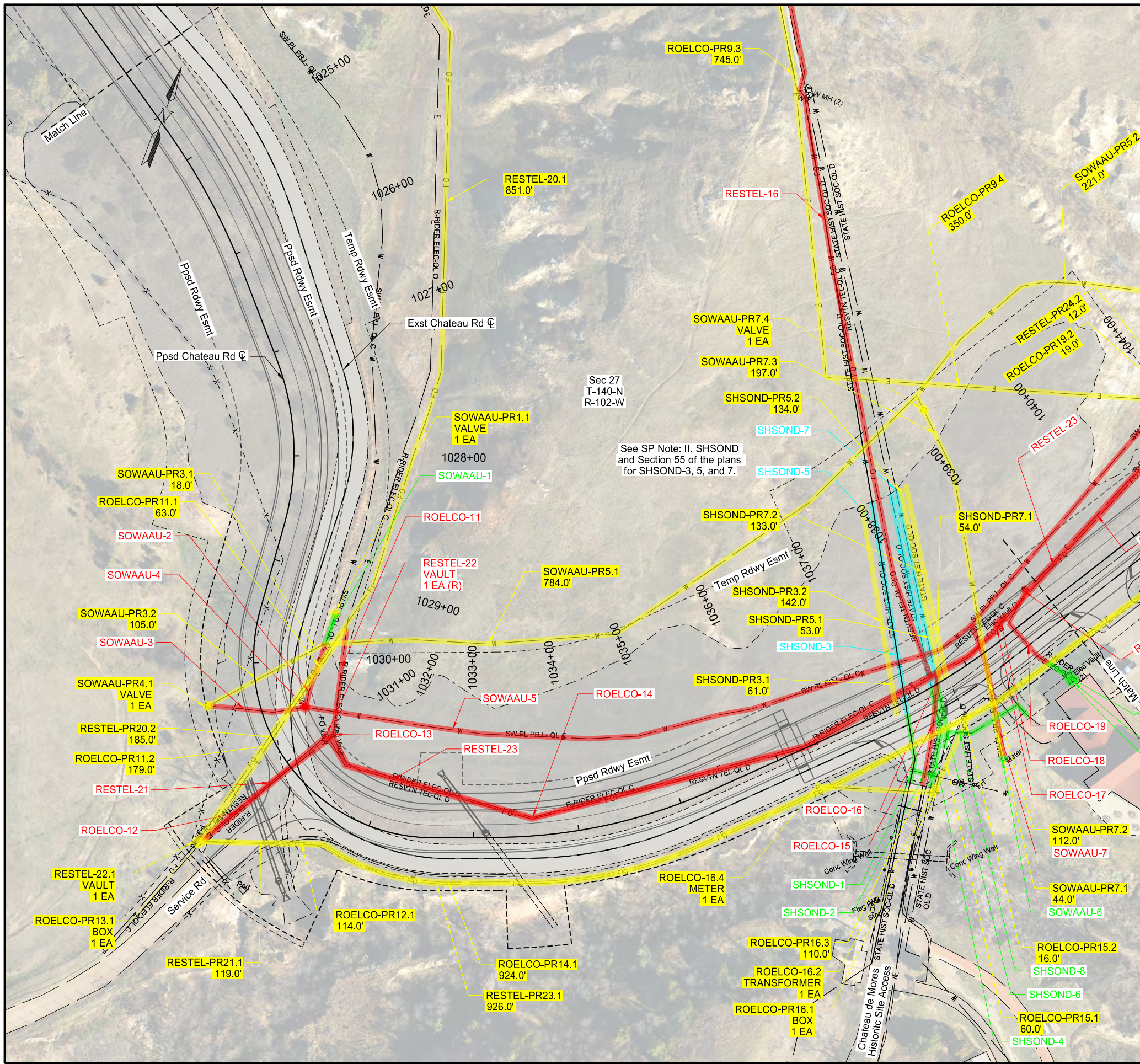
LEGEND

- Level 1 Utility Encounter:
Utility not exposed by proposed improvements, no impacts.
- Level 2 Utility Encounter:
Construction activities will occur above and/or below the utility line. No relocation needed for the utility but may need precautions to protect the utility in place during construction activities.
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- Proposed Level 1 :
Utility that is to be relocated by the Utility Company; and after the utility is relocated to the new location, the final Encounter Level would be that of Level 1.
- Proposed Level 2 :
Utility that is to be relocated by the Utility Company; and after the utility is relocated to the new location, the final Encounter Level would be that of Level 2.
- Abandoned In Place Facility:
Utility line that was an encounter is now abandoned in place or an existing line that had been abandoned. See comments for construction disposition, removal and/or remain in place.
- Existing Utility Easement
- Grading Tie Line
- Temp Grading Tie Line



Chateau Rd - Medora, ND
 Burning Hills Amphitheatre to Pacific Ave
 Utility Encounter Exhibits
 Sta 1009+00 to Sta 1024+00
 (OCL_Chateau)

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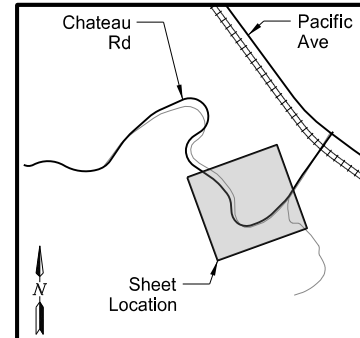


STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SS-FTF-5-999(036)	UTIL	4

UTILITY COMPANY AND ORGANIZATION NAME	ABBREVIATION
AT&T.....	AT&T
COGENT COMMUNICATIONS.....	COGCOM
RESERVATION TELEPHONE.....	RESTEL
ROUGH RIDER ELECTRIC COOP.....	ROELCO
SOUTHWEST WATER AUTHORITY.....	SOWAAU
STATE HISTORICAL SOCIETY OF NORTH DAKOTA.....	SHSOND

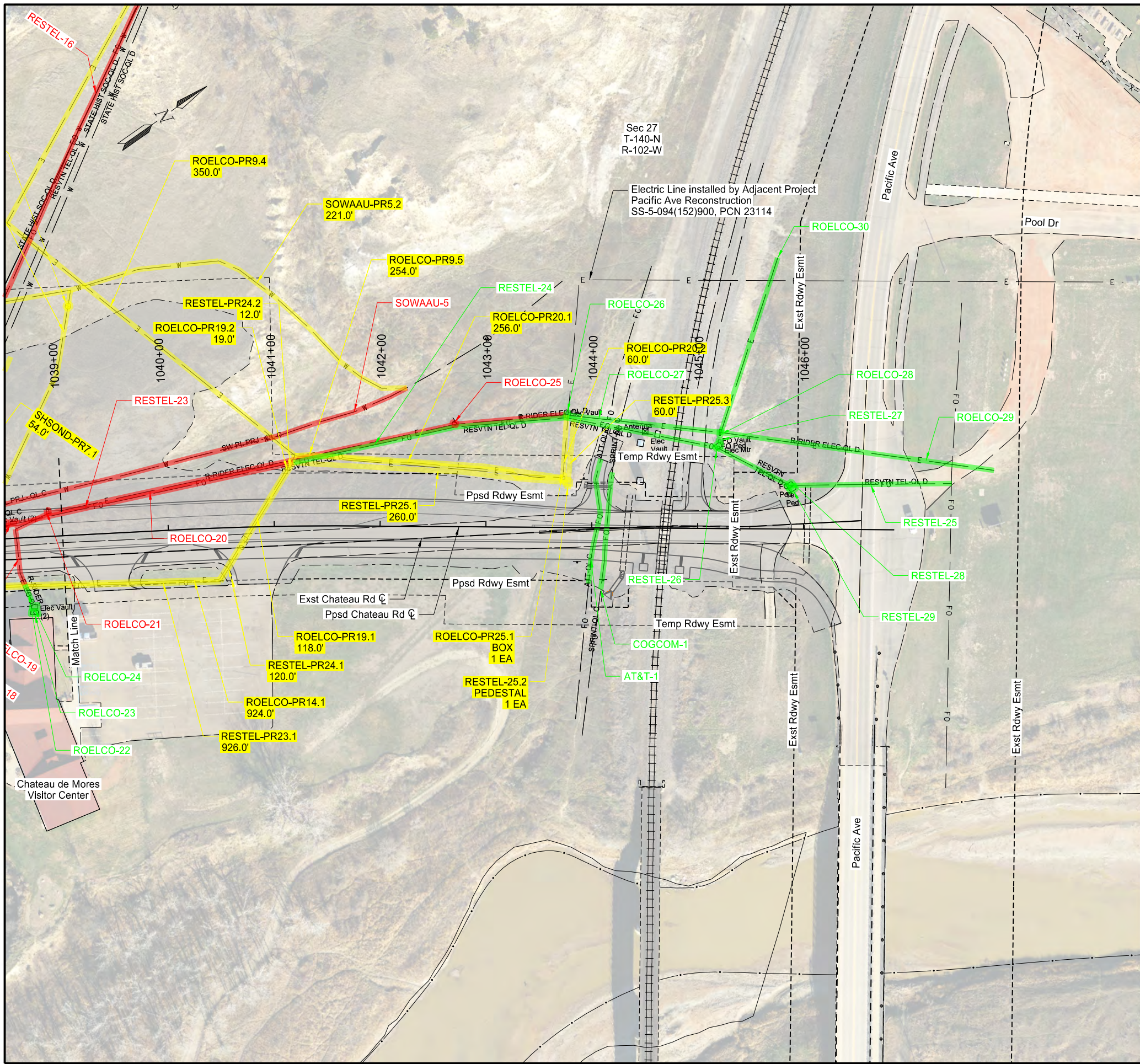
LEGEND

- Level 1 Utility Encounter:
Utility not exposed by proposed improvements, no impacts.
- Level 2 Utility Encounter:
Construction activities will occur above and/or below the utility line. No relocation needed for the utility but may need precautions to protect the utility in place during construction activities.
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- Proposed Level 2 :
Utility that is to be relocated by the Utility Company; and after the utility is relocated to the new location, the final Encounter Level would be that of Level 2.
- Abandoned In Place Facility:
Utility line that was an encounter is now abandoned in place or an existing line that had been abandoned. See comments for construction disposition, removal and/or remain in place.
- Existing Utility Easement
- Grading Tie Line
- Temp Grading Tie Line



Chateau Rd - Medora, ND
 Burning Hills Amphitheatre to Pacific Ave
 Utility Encounter Exhibits
 Sta 1024+00 to Sta 1039+00
 (OCL_Chateau)

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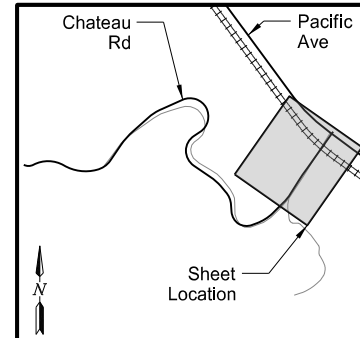


STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	SS-FTF-5-999(036)	UTIL	5

UTILITY COMPANY AND ORGANIZATION NAME	ABBREVIATION
AT&T.....	AT&T
COGENT COMMUNICATIONS.....	COGCOM
RESERVATION TELEPHONE.....	RESTEL
ROUGH RIDER ELECTRIC COOP.....	ROELCO
SOUTHWEST WATER AUTHORITY.....	SOWAAU
STATE HISTORICAL SOCIETY OF NORTH DAKOTA.....	SHSOND

LEGEND

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- Existing Utility Easement
- - - - Grading Tie Line
- - - - Temp Grading Tie Line



Chateau Rd - Medora, ND
 Burning Hills Amphitheatre to Pacific Ave
 Utility Encounter Exhibits
 Sta 1039+00 to Sta 1046+00
 (OCL_Chateau)

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NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

CONCRETE PAVING GRADE CONTROL

PROJECT 5-999(036) – PCN 24246

DESCRIPTION

Replace Section 550.04 C.2.a “String Line” with the following.

CONSTRUCTION REQUIREMENTS

Use one of the following methods for grade control when slip form paving.

A. String Line.

Use and maintain a taut string line for operating the automatic equipment controls.

B. Stringless Grade Control.

1. General.

Use electronic survey equipment for operating the automatic equipment controls.

The Supplemental Information will include the electronic data. The data may need to be converted into the required format for the survey equipment.

Submit a plan to the Engineer 14 days before beginning paving with the number of survey points to be used and the coordinates with elevation of any addition survey points.

2. Engineer Responsibilities.

The Engineer will set the primary control points.

3. Contractor Responsibilities.

Set additional Survey points necessary for the operation.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

MANUFACTURED CONSTRUCTION TRACKOUT PAD

PROJECT 5-999(036) – PCN 24246

DESCRIPTION

This work consists of installing, maintaining, and removing manufactured construction trackout pad device(s) for all stabilized construction entrances.

MATERIALS

Provide a multi-use manufactured trackout pad device designed to minimize sediment leaving the stabilized construction work area.

Provide a trackout pad device system with a minimum width of 12 feet and a minimum length of 35 feet, or 3 times the circumference of the largest tire crossing the pad, whichever is greatest.

CONSTRUCTION REQUIREMENTS

A. General.

Remove topsoil before placing of stabilized construction access. If the access restricts water flow, provide temporary drainage through the stabilized construction access.

B. Installation.

Install the device according to the manufacturer. Install devices on a surface that can support construction loads per manufacturer recommendations. Provide additional devices when needed for turning radii to prevent trucks from running off the pad during turns.

C. Maintenance.

Clean dirt and debris from device as required to maintain the function of the device. Monitor and maintain devices to minimize shifting, rutting of adjacent surfaces, and structural failure. Reset device if shifting occurs. Maintain a stable surface between the device and adjacent roadway. Replace missing or damaged device elements to maintain the function of the device.

D. Removal.

Remove the manufactured trackout pad system once the site is stabilized or when the trackout pad is no longer required. Properly dispose dirt and debris from the manufactured trackout pad and restore the stabilized construction entrance area.

After removal, restore the disturbed area to its original condition.

Perform topsoil work as specified in Section 203.04 B, "Topsoil".

Place the type of seed specified in the plans. If no seed is specified use Class II seed mixture. Place seed mixture as specified in Section 251.02, "Equipment"; 251.03, "Materials"; and 251.04, "Construction Requirements".

Place mulch as specified in Section 253.02, "Equipment"; 253.03, "Materials"; and 253.04, "Construction Requirements".

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Pay Item	Pay Unit
Stabilized Construction Access	Each
Remove Stabilized Construction Access	Each

Include the cost for pipe, topsoil, and seed in the price bid for "Stabilized Construction Access".

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

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
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Attachment A

PCN	Project Number		
The Contractor is not required to notify the Department at the time of submitting bids whether he will or will not participate in the fuel cost adjustment program. The Contractor shall return the affidavit on all Contracts with this Provision even if the Contractor elects not to participate.			
Check the box for each fuel type that has a fixed price. No adjustments in fuel price will be made for the boxes that are checked.			
<input type="checkbox"/> Diesel <input type="checkbox"/> Unleaded <input type="checkbox"/> Burner			
Does your company elect to participate in a fuel adjustment for this contract for the fuels that do not have a fixed price? No adjustments in fuel prices will be made if No is checked .			
<input type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, provide the total dollars for each of the applicable fuels:			
Diesel (D)		<div style="border: 1px solid black; height: 100px; width: 100%;"></div>	
Unleaded (U)			
Burner Fuel (B)			
Sum (D+U+B)			
		% of Original Contract Amount *	
<small>*The sum of the D, U, and B may not exceed 15% of the original contract amount.</small>			
Under the penalty of law for perjury of falsification, the undersigned,			
Name (print or type)		Title (print or type)	
Contractor (print or type)			
hereby certifies that the documentation is submitted in good faith, that the information provided is accurate and complete to the best of their knowledge and belief, and that the monetary amount identified accurately reflects the cost for fuel, and that they are duly authorized to certify the above documentation on behalf of the company.			
I hereby agree that the Department or its authorized representative shall have the right to examine and copy all Contractor records, documents, work sheets, bid sheets and other data pertinent to the justification of the fuel costs shown above.			
Signature			Date

Acknowledgement

State of	
County of	
Signed and sworn to (or affirmed) before me on this day _____ (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)	