CONTRACT NO. 04221

Backsfed.022521

STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION
BID PACKAGE

Sealed bids for construction of this project will be received by the Montana Department of Transportation, Construction Contracting Bureau, Room 101, 2701 Prospect, Helena, Montana until 9:00 a.m. on February 25, 2021. All bids will then be publicly opened, reviewed for correctness, and then publicly read.

Federal Aid Project(s):

HSIP STWD(647) SF 179 D1 Sfty Signs Guardrail

Bid proposals, Plans, Standard Specifications, Detail Drawings, and Standard Contract Forms are on file for examination and may be obtained from the Construction Contracting Bureau of the Montana Department of Transportation, 2701 Prospect Avenue, P.O. Box 201001, Helena, Montana 59620-1001.

Prime bidders use the Electronic Bid System or bid on-line through Bid Express to produce a bid containing Proposal Forms, Schedule of Items, and Disadvantaged Business Enterprises (DBE) Requirements (if applicable).

CONTRACT #04221
AWARDED ON: MARCH 9, 2021
TO: POTEET CONSTRUCTION, INC.

MONTANA DEPARTMENT OF TRANSPORTATION

Loran Frazier, Chairperson
Montana Transportation Commission

Malcolm “Mack” Long
Director of Transportation

Contract No.04221
EM:ST:9635000AWD-203

AWARD COPY

CURRENT QUESTIONS & ANSWERS

203 - SF 179 D1 SFTY SIGNS GUARDRAIL - February 25, 2021

Notifications

No Notices available for this project.

Addendums

No Addendums available for this project.

Clarifications

-1-

Submitted: 08-FEB-2021 12:15 PM

Loran Frazier has been appointed as the Chair of the Transportation Commission. Award documents will be updated to reflect this change.

Questions

No Questions available for this project.

MONTANA DEPARTMENT OF TRANSPORTATION
SCHEDULE OF ITEMS

CONTRACT ID: 04221

PROJECT: HSIP STWD(647) (9635647000)
SF179 D1 SFTY SIGNS GUARDRAIL

PROP LINE NO.	ITEM NUMBER	ITEM DESCRIPTION	UNIT OF MEASURE	QUANTITY
	SECTION 0001 - GUARDRAIL AND SIGNING			
0010	104 030 010	MISCELLANEOUS WORK	UNIT	10,000.00
0020	105 070 000	CONTRACTOR SURVEY AND LAYOUT	LS	1.00
0030	109 200 005	MOBILIZATION	LS	1.00
0040	203 020 375	EMBANKMENT IN PLACE	CUYD	3,365.00
0050	208 010 150	TEMPORARY EROSION CONTROL-LS	LS	1.00
0060	208 010 200	TEMPORARY EROSION CONTROL-FIXED	UNIT	500.00
0070	210 020 173	COM TRAILER-INSTALL, MAINTAIN, REM	EACH	1.00
0080	210 020 174	COM TRAILER-MOVE, RESET	EACH	1.00
0090	301 020 340	CRUSHED AGGREGATE COURSE	CUYD	885.00
0100	301 020 416	SHOULDER GRAVEL	CUYD	5.00
0110	606 010 150	GUARDRAIL-STL/BR APPR-TY 1	EACH	4.00
0120	606 010 330	MGS GUARDRAIL	LNFT	8,912.50
0130	606 010 335	MASH W-BEAM TERMINAL SECTION	EACH	2.00
0140	606 010 337	MGS GUARDRAIL/LONG POSTS	LNFT	1,462.50
0150	606 010 345	MGS ONE-WAY DEPARTURE TERMINAL SECTION	EACH	5.00
0160	606 010 346	MGS INTERSECTING RDWAY TERMINAL SECTION	LNFT	312.50
0170	606 010 347	MGS LONG SPAN GRDL/LONG POSTS	LNFT	125.00
0180	606 010 385	REMOVE GUARDRAIL	LNFT	100.00
0190	610 100 559	REVEGETATION	LS	1.00
0200	618 030 080	TRAFFIC CONTROL-LS	LS	1.00
0210	619 010 086	SIGNS-ALUM REFL SHEET IV	SQFT	7.60
0220	619 010 090	SIGNS-ALUM REFL SHEET XI	SQFT	31.50
0230	619 010 230	REMOVE SIGN	EACH	7.00
0240	619 010 310	POSTS-STEEL U SIGN	LB	40.00
0250	619 010 480	POLES-TREATED WOOD 4 IN	LNFT	70.00
0260	619 011 010	DELINEATOR DES A	EACH	95.00
0270	620 013 000	STRIPING-WHITE PAINT	GAL	27.00
0280	620 013 960	STRIPING-WHITE EPOXY	GAL	34.00
0290	620 014 000	STRIPING-YELLOW PAINT	GAL	27.00
0300	620 014 960	STRIPING-YELLOW EPOXY	GAL	34.00

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SPECIAL PROVISIONS

FEDERAL AID PROJECT NO(S). HSIP STWD(647)

(REVISED 2-11-21)

The following special provisions are hereby made part of the contract and supplement and/or supersede any sections of the Standard and Supplemental Specifications of Road and Bridge Construction, adopted by the Montana Department of Transportation and the Montana Transportation Commission and all supplements thereto in conflict therewith.

The following documents are hereby incorporated by reference into this contract:

- "Standard and Supplemental Specifications for Road and Bridge construction 2020 V2.0 Edition" found at the following link: https://www.mdt.mt.gov/other/webdata/external/const/specifications/2020/SPEC-BOOK/2020-SPEC-BOOK-V2.0.pdf
- The most recent version of the Detailed Drawings can be found at the following link: https://www.mdt.mt.gov/business/contracting/detailed_drawings.shtml
- The most recent version of the Materials Manual can be found at the following link: https://www.mdt.mt.gov/other/webdata/external/materials/materials_manual/MDT_MATERIALS_MANUAL_021121_LETTING.pdf

The latest version of the Standard and Supplemental Specifications, Quarterly updates, and revision summaries can be found at the following website: https://www.mdt.mt.gov/business/contracting/standard_specs.shtml

The Question and Answer Forum opens at 5:00 p.m. on the bid letting advertisement date and closes at 10:00 a.m. on the Monday before the bid letting. If Monday is a state holiday, the forum will close on Friday before the bid letting at 3:00 p.m. Questions raised by potential bidders on this project and answers and other information posted by the Department on the "Question and Answer Forum" can be found at the website https://www.mdt.mt.gov/business/contracting/qacurrent.shtml up to 5 p.m. on the day before the bid letting.

The U.S. Department of Transportation (DOT) operates a toll free number at 1-800-424-9071, 24 hours a day - 7 days a week. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use this number to report such activities. All information will be treated confidentially, and callers may remain anonymous.

The Department attempts to provide reasonable accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternate accessible formats of this document will be provided upon request. If reasonable accommodation is needed to participate in Department bid lettings, call the Civil Rights Bureau at 444-6331 or TTY 406-444-7696 [TTY 1-800-335-7592 (toll free)].

1. PROJECT DESCRIPTION [102]

Gravel, grading, guardrail and signage on the SF 179 D1 Safety Signs Guardrail project located at 3 locations:

Site 1 - State Primary Route 33/MT 37 located in Lincoln County beginning at RP 10.6 and ending at RP 11.2.

Site 2 - State Primary Route 36/MT 28 located in Sanders County beginning at RP 13.8 and ending at RP 14.9. This entire location is located with the Flathead Indian Reservation.

Site 3 - Interstate Route 90/US 12 located in Powell County beginning at RP 165.9 and ending at RP 166.5.

2. CONTRACT TIME [108] (REVISED 1-21-16)

The work begins on the effective date stated in the Notice to Proceed (NTP) and is to be completed in 55 Working Days. The NTP will be issued with an effective date of April 26, 2021.

3. CONTRACT DOCUMENTS [102] (ADDED 9-17-20)

The following documents are now available within the Contractors Reference Material on the Department's Contracting and Bidding webpage https://www.mdt.mt.gov/business/contracting/ :

- Table of Contractor's Submittals
- Traffic Control Rate Schedule
- Erosion Control Rates

4. DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENTS [102] (REVISED 1-18-18)

The DBE goal for this contract is 0.0%. Use the AASHTOWare Project Bids™ Electronic Bid System (EBS) to print the DBE submittal and timing requirements. If the contract does not have a project-specific goal, the field will display in the AASHTOWare Project Bids™ bid file as a blank field.

List the DBE commitments in the EBS file. An on-line DBE Directory is available at: https://app.mdt.mt.gov/dbe/dbe/search.

If the DBE goal cannot be met, show a good faith effort per the Good Faith Effort Criteria and supporting forms, available at: http://www.mdt.mt.gov/publications/forms.shtml. Submit the Good Faith Effort documentation within 48 hours of the bid opening.

5. DBE QUOTES [102] (REVISED 3-10-16)

The Department has a quick and easy way for you to request quotes from Montana DBE-certified companies. The information goes to the DBE companies that same day. The on-line form is located at web site: https://app.mdt.mt.gov/dbeqt/.

Call the Department DBE Supportive Services, 1-800-883-5811, for further assistance. Using this online request form will be considered for good faith efforts, but it does not constitute meeting all requirements of good faith efforts.

6. DBE USAGE [102] (REVISED 2-13-20 M)

Contract specific goals are not placed on contracts; however, the Department has an overall 6.5% DBE goal it must achieve. To assist contractors in determining their DBE commitment level, the Department has reviewed the estimates for this contract, and has established an 10.2 usage. Although not a contract requirement, the Department believes that the aspirational goal can realistically be achieved through race neutral measures based on current availability of DBEs and standard competitive procurement processes. While the utilization is not mandatory to be awarded the project, continuing utilization of DBE firms on contracts supports the success of Montana's DBE Program.

Any project listing a 0% DBE aspirational goal does not mean that a DBE may not be used on that project. A 0% DBE aspirational goal may have been established due to any of the following reasons:

- Limited identified subcontracting opportunities;
- Minimal contract days; and/or,
- Small contract dollar amount.

Contractors are encouraged to identify any opportunities to subcontract to DBEs.

The Department's DBE directory may be found at the following website: https://app.mdt.mt.gov/dbe/dbe/search.

7. LABOR REQUIREMENTS [102] (REVISED 9-5-19)

Pay the minimum wage rates contained elsewhere in the bid package. Comply with the required contract provisions contained in the form FHWA 1273 included with this contract. To obtain more information, contact the Department's Construction Engineering Services Bureau at 2701 Prospect, Helena, MT (406)475-2258, (800)335-7592 (TTY) or (406)444-7297 (Fax). The

local employment service office, designated by the Workforce Service Division, Department of Labor & Industry, for this project is :

County	Labor office
Lincoln - Site 1	Libby
Sanders - Site 2	Thompson Falls
Powell - Site 3	Anaconda

Executive Orders 13658 and 13706 do not apply to this contract.

8. CERTIFIED PAYROLL COMPLIANCE ELECTRONIC PAYROLL SUBMISSION [102] (REVISED 3-12-20)

The Contractor and all subcontractors must use AASHTOWare Project Civil Rights & Labor™ (CRL) to submit Certified Payrolls (CPRs). Ensure that all subcontractors have submitted their Vendor Access Form which can be found on the following page: https://www.mdt.mt.gov/business/contracting/prevailing-wage.shtml to the Department and have received their login IDs prior to work.

Request the contract number and project ID(s) from the Project Manager. Provide the information to all subcontractors subject to the FHWA 1273 requirements. This information is also available using the Search Awarded Contracts located at: https://app.mdt.mt.gov/project-search/project/search.

Provide assistance and ensure all subcontractors submit CPRs electronically into CRL within the required timeframe.

9. ZONE PAY (MULTIPLE LOCATIONS) [102] (ADDED 5-10-18)

For the purposes of this contract, all locations are considered Zone 3

10. BIDDING REQUIREMENTS – PROPOSAL GUARANTEE [102] (REVISED 12-17-20)

Subsection 102.07(C)(2), Proposal Guarantee, of the Standard Specifications is hereby rescinded and replaced with the following:

Proposal Guarantee. The bid bond is on the most current version of MDT-CTP-102-07-1; is signed and sealed in the proper places; a copy of the agent's Power of Attorney for the insurance company is attached; and contains the correct and complete project number; all signatures are original (stamped signatures are unacceptable). A qualified third-party surety agency must verify the proposal guarantee. Electronic bid bond verification must be submitted through AASHTOWare Project Bids and Bid ExpressTM . Contact Bid Express for more information on electronic bid bond verification.

If an error occurs with electronic bid bond verification through AASHTOWare Project Bids and Bid Express, submit the Electronic Bid Bond Form MDT-CTP-102-07-2 in Adobe PDF format via email to mdtcntplns@mt.gov prior to the bid opening. Hard copy or paper bid bonds submitted to the Department will not be accepted. Bids that include submission of a bid bond without electronic verification or Electronic Bid Bond Form CPB_102_07 will be deemed non-responsive.

11. DELIVERY AND PUBLIC OPENING OF PROPOSALS [102] (ADDED 9-17-20)

Subsection 102.10(A) Bid Submission by Sealed Envelope is hereby rescinded. Submissions by sealed envelope will be deemed non-responsive.

12. 103.07 EXECUTION AND APPROVAL OF CONTRACT [103] (ADDED 6-13-19)

Use DocuSign to sign the contract in accordance with Subsection 103.07.

No later than 5 calendar days after the date of bid-opening (the date of bid opening to count as the first full day), the apparent low bidder must submit to Construction Contracting

Bureau, during its regular work hours, a fully completed Contract Recipients Form documenting names and emails of authorized agents of the Contract and Surety to sign the contract. If the 5th day is a holiday, turn the documentation in earlier. The Contract Recipients Form is available at the following web page: https://www.mdt.mt.gov/publications/forms/contract-recipients.shtml.

The bid proposal may be considered non-responsive and rejected if the above form(s) are not submitted within the required time frame.

13. BIDDER'S PROPOSED AGGREGATE SOURCE(S) [103] (REVISED 1-24-19)

No later than 7 calendar days after the date of bid-opening (the date of bid opening to count as the first full day), the apparent low bidder must submit to Construction Contracting Bureau, during its regular work hours, a fully completed Form MDT-CON-106-02-3 for each aggregate source the bidder used to prepare its bid, or a subcontractor used to prepare its quote, if used by the bidder for its bid. (If the 7th day is a holiday, turn the documentation in earlier.)

The Bidder's Proposed Aggregate Source form is available at the following web page: http://www.mdt.mt.gov/publications/forms.shtml#hig.

The bid proposal may be considered non-responsive and rejected if the above form(s) are not submitted within the required time frame.

14. CONTRACTOR SURVEYING AND LAYOUT - DEPARTMENT STAKING [105] (REVISED 7-10-14)

Furnish Contractor Survey and Layout in accordance with Subsection 105.08.2 with the following exceptions:

- The Department will conduct all right-of-way and monumentation surveys.
- The Department will determine the slope stake catch point and provide copies of the slope staking notes to the Contractor. Replace any stakes that are obliterated by the Contractor or by construction activities.
- Unclassified Excavation, Embankment in Place and Unclassified Borrow items will be measured for payment.

15. SUBMISSION OF CERTIFIED CLAIMS [105] (ADDED 4-23-20)

This provision rescinds and replaces the first two paragraphs of Subsection 105.16.2.

If an agreeable resolution is not reached within 14 calendar days of the written notice, the Contractor may submit a Certified Claim by completing the Certified Claim form MDT-CON-105-16-2 to the Project Manager no more than 7 calendar days after receipt of the Project Manager's response. The form is available from the Project Manager or the Department's website. Include all Claim Cost Records to date with the Certified Claim. Submit electronic copies to the DCE and the CES Engineer of the Engineering Division. The Project Manager will continue to attempt to resolve the disagreement after the Certified Claim is submitted.

Detail the following, if applicable, in the Certified Claim:

A. Summary. (label page 1.1 through page 1.X) Include a detailed, factual statement of the claim for additional compensation and contract time, if any, with necessary dates and locations of work involved in the claim. Also include detailed facts supporting the Contractor's position.

B. Proof of Notice. (label page 2.1 through page 2.X) Submit notice of claim with all attachments that was furnished to the Department. Include the date when the written notice was given.

C. Supporting Documents. (label page 3.1 through page 3.X) Furnish copies of the contract specifications that support the Contractor's claim.

D. Theory of Entitlement. (label page 4.1 through page 4.X) Include a narrative of how or why the specific contract specifications support the claim.

E. Itemized Lists. (label page 5.1 through page 5.X) Provide an itemized list of claimed damages that resulted from the event with a narrative of the theories and records and documents used to arrive at the value of the damages.

F. Time Requests. (label page 6.1 through page 6.X) Provide additional contract time requests if the claim is for a combination of additional compensation and contract time. Submit a copy of the schedule that was in effect when the event occurred and a detailed narrative which explains how the event impacted contract time. In addition, if the Department-caused delay is claimed, provide the following:

1) Include the specific days and dates under claim;

2) Provide detailed facts about the specific acts or omissions of the Department that allegedly caused the delay, and the specific reasons why the resulting delay was unreasonable; and

3) Provide a schedule evaluation that accurately describes the impacts of the claimed delay.

G. Expense Records. (label page 7.1 through page 7.X) Submit copies of actual expense records. Include documents that contain the detailed records which support and total to the exact amount of additional compensation requested. Include the information and calculations necessary to support that amount. At a minimum, provide the following:

1) Direct materials.

2) Direct equipment. The rate claimed for each piece of equipment not to exceed the actual cost. For each piece of equipment, include a detailed description of the equipment and attachments, specific days and dates of use or standby, and specific hours of use or standby.

3) Direct labor; and

4) Other categories as specified by the Contractor or the Agency.

H. Supporting Records. (label page 8.1 through page 8.X) Provide additional supporting records and documents including copies of, or excerpts from the following:

1) Any documents that support the claim, such as manuals standard to the industry and used by the Contractor; and

2) Any daily reports or diaries related to the event, photographs or media that help explain the issue or event.

I. Certification. (label page 9.1 through 9.X) Provide a certified statement, signed by a representative authorized to execute change orders, by the Contractor, subcontractor, supplier, or entity originating the claim as to the validity of facts and costs

J. Lower Tier Claim. (label page 10.1 through 10.X) If the claim includes work done or costs incurred by any subcontractors, suppliers, or any entity other than the Contractor, the following are required:

1) Copies of the Contractor's, subcontractor's, supplier's and entity's (at all tiers above the level of which the claim originates) separate evaluation of entitlement.

2) Copies of the Contractor's, subcontractor's, supplier's and entity's (at all tiers above the level of which the claim originates) independent verification and evaluation of the amount of damages sought; and

3) An authorized representative to execute change orders on behalf of the Contractor, Subcontractor, Supplier and Entity (at all tiers above the level of which the claim originates).

If the Project Manager determines that additional information, records, or documentation is needed to allow proper evaluation of the claim submittal, the Project Manager will request the information, records, or documentation. Submit the requested information to the Project Manager within14 calendar days.

If the claim includes requests for delay compensation, follow all procedures in Subsection 108.07.6.

16. PARTNERING- LEVEL II FACILITATION [105] (ADDED 2-25-21)

An internal partnering meeting will be facilitated between the Project Manager and the Contractor prior to the Notice to Proceed date.

Implement partnering in accordance with the Montana Partnering Field Guide found at the following link: https://www.mdt.mt.gov/publications/manuals.shtml#con

Make a good-faith effort to settle any unresolved discrepancies by utilizing the Partnering Escalation/Issue Resolution Ladder identified in the Partnering Field Guide prior to submitting a notice of claim.

17. STEEL PRICE ADJUSTMENT [106] (REVISED 4-25-19)

A. General. The Department may apply a Steel Price Adjustment to payments for the applicable steel items of work listed in the contract as payment to the contractor or a credit to the Department. Payments will only be made for fluctuations in the cost of the steel used in the items of work listed in the contract. No adjustment will be made for changes in the cost of manufacturing, fabrication, shipping, or storage.

Payments may be positive, negative, or non-existent depending on the circumstances. Payments or deductions for the steel price adjustment will be calculated by the Project Manager. No steel price adjustments will be made for any products manufactured from steel purchased from the mill prior to the letting date.

Notify the Project Manager in writing by the Notice to Proceed date or at the pre-construction conference, whichever comes first, of intent to participate in steel price adjustment. The price adjustment will be based on a base price per pounds of steel. The base price is provided to the Department by the National Steel Bridge Alliance monthly and updated as necessary.

- The current base price per pound of steel is: $0.55.

The Department will use the Bureau of Labor and Statistics Producer Price Index (BLS PPI) “Steel Mill Products” Series ID WPU1017 not seasonally adjusted. The index used will be the final version of the index, revised 4 months after the original publication, including any corrections to the index or rebasing of the index.

B. Applicable Bid Items. The Department may apply a steel price adjustment to steel quantities in certain items. The cost of the steel within the item must be at least $5,000 to qualify for a steel price adjustment.

Nuts, bolts, rebar chairs, connecting bands, and other miscellaneous hardware items will not be included in the price adjustment. No other items will be considered for a price adjustment.

C. Steel Price Index. Furnish the following documentation for all steel bid items applicable to the steel price adjustment:

1) The weight of steel (pounds) to be incorporated into the various items of work covered by this special provision.

2) Steel Certification and Mill Test Reports.

3) The date that the steel item, subject to adjustment, was shipped from the producing mill.

Accompany the above documentation by an affidavit signed by the Contractor stating that the information provided is true and accurate. Submit all documentation, including the affidavit, to the Project Manager prior to incorporating the steel into the work. This provision in no way modifies or cancels the requirements of Subsection 106.09.

D. Steel Price Adjustment. Adjustments may be positive, negative, or non-existent depending on the difference between the Base Index (IB) and Current Index (IC). No price adjustment will be made unless the IC is 10% higher or lower than the IB.

For Increases:

Adjustment Factor (AF) = (IC/IB-1.1)
If AF is equal to or less than 0, no adjustment.
If AF is greater than 0.0, continue
Price Adjustment = AF x quantity x base price

For Decreases:

Adjustment Factor (AF) = (IC/IB-0.9)
If AF is equal to or greater than 0, no adjustment.
If AF is less than 0.0, continue
Price Adjustment = AF x quantity x base price

Where:
IB = BLS PPI for month contract was let
IC = BLS PPI for month material was purchased from the mill (invoice date)

18. INDIAN RESERVATION WORK [107] (REVISED 9-8-16)

Because all or part of this project is located within the external boundaries of an Indian Reservation, the following requirements apply:

1) Read, fully understand and agree to the provisions here included.

2) Inquire with the designated Tribal official and become familiar with the Tribal requirements, written or not, for work on the Reservation, and submit bid with full knowledge, understanding and acceptance of them. Understand and accept that (1) the Tribal laws, ordinances, regulations and requirements have been established by the Tribe as a sovereign entity on the Reservation, (2) the Department has no authority or ability to affect those requirements, and (3) neither the Tribal government nor any Tribal official or employee is acting in any way as an agent of the Department or the Transportation Commission. The Department and Commission have no control over the actions, inaction, requirements or comments of any Tribal government or employee, and are not bound by them.

3) If Tribal requirements will in any way increase the costs of performing the project, consider those and include any and all increased costs in bid prices.

4) Ensure that all proposed subcontractors are also fully aware of the Tribal requirements, and accepted them when they gave quotes.

5) Understand and agree that employees, and all subcontractors and their employees, are responsible to the Tribe to adhere to and abide by all Tribal laws, ordinances and regulations on work performed on the Reservation, specifically including all Indian hiring and contract fee requirements.

6) Dealings with the Tribe and its requirements, other than those related to the Clean Water Act, aquatic resources permitting, and/or cultural resources, are solely between the Contractor and the Tribe, and must be addressed in the appropriate forum between them alone.

7) By submitting a bid, agree to defend, protect, indemnify and save harmless the Department and State from any cost or delay caused or allegedly caused by or due to the failure of bidder or any subcontractor to fully comply with Tribal law, ordinance or regulation, or by claimed interference by the Tribe. Claims from such failure or claimed interference will not be considered extra work or compensable delay, but actual, documented and verified interference by Tribal government may be grounds for a contract time extension. Understand that any requests must fully comply with the Contract's claims procedure.

8) By submitting a bid, do so with full understanding and acceptance of all provisions of the Bid Package.

9) For bidder inquiries to the Tribe, or for more information about Tribal requirements other than those related to the Clean Water Act, aquatic resources permitting, and/or cultural resources, it is required to contact the Tribe directly. The point of contact designated by the Tribe for bidders to contact is Vernon Finley – Chairman, Confederated Salish & Kootenai Tribes, 42487 Complex Blvd, PO Box 278, Pablo MT 59855, (406) 675-2700.

10) If a Pre-Bid Conference for the project is provided for in the Contract, a designated, authorized agent of Bidder attends the Conference.

19. RESERVATION REQUIREMENTS [107] (REVISED 2-27-14 M)

The work on this project is being performed on the Flathead Indian Reservation. Included in this proposal package are a Memorandum of Understanding (MOU) and a Project Specific Agreement (PSA). These documents detail agreements between the State and the Confederated Salish and Kootenai Tribes that are made a part of this contract. The Contractor must adhere to all requirements contained in these documents. Questions regarding the MOU and PSA will be addressed at the pre-bid conference or if there is no pre-bid for the project, submit the question to the Department's Question and Answer Forum.

20. TELECOMMUNICATION OR VIDEO SURVEILLANCE EQUIPMENT, SERVICES, OR SYSTEMS [107] (ADDED 10-08-20)

2 CFR 200.216 has been added to the Code of Federal Regulations and became effective August 13, 2020. Ensure any telecommunications or video surveillance equipment, services, or systems used or installed on Federal-Aid Projects comply with 2 CFR 200.216.

21. WHITE CROSSES

White crosses that are owned by the American Legion exist within this project. The project manager will notify cross owners when crosses are required to be removed and reset. Additional requirements are described in the Standard Specifications 107.10.2.

22. STORM WATER PERMITTING REQUIREMENTS UNDER THE MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES) [107] (REV 3-16-17)

A. Description. The Montana Department of Environmental Quality (DEQ) regulates storm water discharges under the MPDES program. If the bid package contains blank erosion control plans, a construction storm water discharge permit authorization will be required. If not, a storm water discharge permit authorization may be required for this project depending on Contractor's operations. Sum the disturbance area (as defined by DEQ) identified in the contract with the area of disturbance caused by contractor operations to determine if the permit acreage threshold is exceeded. Contractor operations can include, but are not limited to, the following support activities: staging areas, access roads, material storage areas, temporary concrete or asphalt batch plants, borrow areas, areas used for fill placement, etc. If the summed disturbance area is one acre or more, use the DEQ authorization to discharge under the MPDES General Permit for Storm Water Discharges Associated with Construction Activity for this project. In order to facilitate permit transfer, separate NOI packages are required for areas within the right-of-way and areas outside of the right-of-way. A Notice of Intent (NOI) package includes a Notice of Intent, with a topographic map, a Storm Water Pollution Prevention Plan (SWPPP), the erosion control plans, sage grouse consultation letter, if applicable, and supporting documentation.

Blank Erosion Control Plans, and a topographic map, are provided with the plans if the plans include greater than 1 acre of disturbance. Complete the erosion control plans as required by the general permit. Complete the SWPPP using DEQ's most current SWPPP Form.

B. Materials. Follow the requirements described in the Department's *Erosion and Sediment Control Best Management Practices Manual (December 2016).* Rescind Section 208

detailed drawings. Submit to the Project Manager for review and acceptance BMPs proposed for use that are not included in the Manual.

C. Construction Requirements.

1) MPDES Permit Required.

a) Submit one NOI package and the associated fees to DEQ for ground disturbance areas shown in the plans or within the right-of-way. For ground disturbance areas shown in the plans and any other areas within the right-of-way where Contractor activities causing ground disturbance are planned, the Contractor is the sole permittee until construction is complete and the General Permit is transferred to the Department or another entity.

The Department is not responsible for delays caused by incomplete or inaccurate submittals by the Contractor.

Comply with the requirements of the General Permit for Storm Water Discharges Associated with Construction Activity and implement the SWPPP. Provide two copies of the NOI Package submitted to DEQ and confirmation for receipt of a complete NOI Package from DEQ to the Project Manager prior to conducting any ground disturbance activities.

Do not begin construction activities until the required copy of the NOI Package submitted to DEQ and confirmation for receipt of a complete NOI Package from DEQ is received by the Project Manager.

b) Submit a separate NOI package and the associated fees to DEQ for ground disturbance and support activity areas outside the right-of-way and not shown in the plans. Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside the right-of-way and not shown in the plans, are the Contractor's responsibility and must be submitted under a separate NOI package from the ground disturbance within the right-of-way. For all support activities outside the right-of-way which are not part of a larger commercial operation serving multiple unrelated construction activities, and will not continue operation beyond the completion of the contracted road construction activity, a notice of intent package must be submitted to DEQ to obtain an authorization under the storm water construction permit. Sand and gravel borrow area operations, gravel pits, and/or concrete batch plants that will continue operation beyond the completion of the contracted road project, are part of a larger commercial operation, or serving multiple unrelated construction activities must obtain permit coverage under the Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity (MSGP) regardless of acreage size of the activity if the activity does not already have MSGP authorization. The Contractor is the sole permittee until stabilization is complete and the General Permit is terminated or transferred to another entity. The Department is not responsible for delays caused by incomplete or inaccurate submittals to DEQ by the Contractor.

Provide a copy of the NOI Package submitted to DEQ and confirmation for receipt of a complete NOI Package from DEQ to the Project Manager prior to conducting any ground disturbance activities.

Be responsible for all temporary erosion, sediment, and pollution prevention controls for Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside the right-of-way and not shown in the plans.

c) Complete and document all inspections in accordance with the requirements of the General Permit for Storm Water Discharges Associated with Construction Activity. Use DEQ’s most current self-inspection form available online at: http://deq.mt.gov/Water/WPB/mpdes/stormwaterconstruction. Provide a copy of all inspection reports to the Project Manager.

Report potential noncompliance in accordance with applicable regulations, guidance, and permit conditions. Submit to the Project Manager within seven days of sending or receiving all correspondence to or from regulatory agencies regarding potential noncompliance or violations.

The temporary erosion and sediment control measures and devices to prevent pollution and control sediment transport and soil erosion will be inspected as part of the final inspection to ensure they are maintained and functioning properly. Do not transfer or terminate the General Storm Water Permit coverage until the BMPs are inspected and accepted and all records required under the permit, including inspection and monitoring reports, are furnished to the Project Manager. The Department may require that certain Best Management Practices (BMPs) be replaced by another type of BMP as a condition of permit transfer.

Upon approval of site conditions, measures, devices and all pertinent records, submit a signed copy of the Permit Transfer Notification Form provided by the Department. When submitting the General Storm Water Permit transfer package/application to the Department, include a check for the permit transfer fee. Make the check for the amount of the fee payable to the DEQ. The Department is not liable for the completeness or accuracy of Contractor records completed prior to the permit transfer. Upon receipt of the signed form, the Department will obtain signature of the new permit owner and submit to DEQ. Ensure permit conditions and responsibilities are met until confirmation of the transfer is received from DEQ. Defend and hold MDT harmless from any violations, claims, enforcement actions, penalties or fines issued for Contractor activities or recordkeeping that occurred prior to the transfer of the General Permit for Storm Water Discharges Associated with Construction Activity authorization.

If the Department concurs that final stabilization has been met during the final walk-through, the Contractor may submit a Notice of Termination form to DEQ. Pay the annual fee invoice due at the time of termination. Submit the annual fee invoice to the Project Manager for reimbursement.

2) MPDES Permit not Required.

The BMP-Administration item is included in contracts that may not meet either criteria for a MPDES permit but include ground disturbing activities. Complete BMP inspections and install BMPs, if necessary, in accordance with Section 208, if no storm water permit is required. Utilize form MDT-ENV-014, Water Pollution Control Inspection Report. A certified SWPPP Administrator is not required to conduct the inspections if no permit is required.

D. Method of Measurement. DEQ MPDES fees and monitoring costs associated with obtaining and maintaining the General Permit for Storm Water Discharges Associated with Construction Activity for ground disturbance areas both within and outside the right-of-way are not measured separately for payment.

If no permit is necessary, include the cost of all erosion control, devices, and inspections in the BMP-Administration bid item.

E. Basis of Payment. No additional payment will be made for the DEQ MPDES fees and monitoring costs associated with the General Permit for Storm Water Discharges Associated with Construction Activity. Include these costs in the Temporary Erosion Control-Lump Sum bid item.

For project including the BMP-Administration item, include the cost of all erosion control, devices, and inspections in the BMP-Administration bid item. Partial payment for the BMP-Administration will be monthly based on the lump sum contract price in accordance with Table 208-1 in Subsection 208.05.1.

Payment for BMPs required by an event or extra work, and approved by the Project Manager, will be measured and paid for in accordance with the Erosion Control Rate Schedule contained in the contract at a unit price of $1.00 per unit.

23. STORM WATER PERMITTING REQUIREMENTS UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) [107] (REVISED 3-16-17)

A. Description. The U.S. Environmental Protection Agency (EPA) regulates storm water discharges under the NPDES program. If the bid package contains blank erosion control plans, a construction storm water discharge permit authorization will be required. If not, a storm water discharge permit authorization may be required for this project depending on Contractor's

operations. Sum the disturbance area (as defined by EPA) identified in the contract with the area of disturbance caused by contractor operations to determine if the permit acreage threshold is exceeded. Contractor operations can include, but are not limited to, the following support activities: staging areas, access roads, material storage areas, temporary concrete or asphalt batch plants, borrow areas, areas used for fill placement, etc. If the summed disturbance area is one acre or more, use the EPA authorization to discharge under the NPDES General Permit for Discharges from Construction Activities for this project. In order to facilitate permit transfer, separate NOI packages are required for areas within the right-of-way and areas outside of the right-of-way. A Notice of Intent (NOI) package includes a Notice of Intent, with a topographic map, a Storm Water Pollution Prevention Plan (SWPPP), the erosion control plans, and supporting documentation.

Blank Erosion Control Plans, and a topographic map, are provided with the plans if the plans include greater than 1 acre of disturbance. The blank erosion control plans supplied by MDT do not include Contractor furnished material sources, staging areas, plant sites, or any other site that is not within the project limits. Permit these sites separately. Although permitted separately, the areas of disturbance are considered cumulative with the project disturbance area when determining the requirement for permit coverage. A Storm Water Pollution Prevention Plan (SWPPP) partially completed with “MDT sections” filled in will be provided if permit coverage is sought.

B. Materials. Follow the requirements described in the Department’s *Erosion and Sediment Control Best Management Practices Manual (December 2016).* Rescind Section 208 detailed drawings. Submit to the Project Manager for review and acceptance BMPs proposed for use that are not included in the Manual.

C. Construction Requirements.

1) NPDES Permit Required.

Submit one NOI package for ground disturbance areas shown in the plans or within the right-of-way. Complete the erosion control plans as required by the general permit. Complete the “Contractor sections” of the SWPPP. Ensure the “Contractor sections” do not conflict with the information MDT provided. Do not modify the SWPPP or MDT’s responses. Notify the Project Manager when returning the SWPPP to the Environmental Services Bureau. Return the completed signed SWPPP to the Department at the following address:

Environmental Services Bureau
Attention: Environmental Services Bureau Chief
Montana Department of Transportation
2701 Prospect Ave
PO Box 201001
Helena, MT 59620-1001

Within 7 business days of receiving the completed signed SWPPP, the Department will review the SWPPP. If the Contractor’s portions of the SWPPP are not complete, the SWPPP will be returned to the Contractor for completion. If the Contractor’s portion of the SWPPP is complete, MDT’s Environmental Services Bureau Chief will sign and certify the SWPPP and send the executed SWPPP to the Project Manager. The SWPPP is not executed until it is signed and certified by both parties. The Department’s review of the Contractors’ portion of the SWPPP is limited to the completeness of responses. The Contractor is responsible for the accuracy.

Notify tribes as specified in Section 9.5 of the general permit. Obtain any necessary tribal reviews and approvals as specified. If EPA or applicable tribes require revised or additional information, submit updated copies of this information to the Project Manager and Environmental Services Bureau within 5 business days of the correspondence.

After execution of the SWPPP, submit a certified NOI to EPA at least 14 calendar days prior to commencing earth-disturbing activities and any applicable tribal authorities as specified in the general permit. Submit electronic NOI to EPA through EPA’s Electronic NPDES

eReporting Tool (NeT) Home Page at: https://www.epa.gov/npdes/stormwater-discharges-construction-activities-2017-cgp#accessing.

The Department is not responsible for delays caused by incomplete or inaccurate submittals by the Contractor.

Email copies of the certified NOI, EPA's confirmation letters, and applicable tribal approval letters to the Project Manager and to the Environmental Services Bureau at mdtenoi@mt.gov prior to conducting any ground disturbance activities. Include copies of these documents in the executed SWPPP.

Comply with the requirements of the General Permit for Discharges from Construction Activities and implement the SWPPP. Do not begin ground disturbing activities until the above referenced documents are received by the Project Manager and the Environmental Services Bureau and confirmation from EPA is provided to the Project Manager stating coverage under EPA's CGP is now active for both the contractor and MDT.

Submit a separate NOI package to EPA for ground disturbance and support activity areas outside the right-of-way and not shown in the plans. Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside the right-of-way and not shown in the plans, are the Contractor's responsibility and must be submitted under a separate NOI package from the ground disturbance within the right-of-way. The Contractor is the sole permittee until stabilization is complete and the general permit authorization is terminated or transferred to another entity. The Department is not responsible for delays caused by incomplete or inaccurate submittals to EPA by the Contractor.

Provide a copy of the NOI Package submitted to EPA and confirmation for receipt of a complete NOI Package from EPA to the Project Manager prior to conducting any ground disturbance activities.

Be responsible for all temporary erosion, sediment, and pollution prevention controls for Contractor furnished material sources, staging areas, plant sites, or any other Contractor caused ground disturbance outside the right-of-way and not shown in the plans.

Complete and document all inspections in accordance with the requirements of the General Permit for Discharges from Construction Activities. Use the Department's most current inspection form or other form that conforms to the requirements of the permit. Provide a copy of all inspection reports to the Project Manager.

Report potential noncompliance in accordance with applicable regulations, guidance, and permit conditions. Submit to the Project Manager within seven days of sending or receiving all correspondence to or from regulatory agencies regarding potential noncompliance or violations.

The temporary erosion and sediment control measures and devices to prevent pollution and control sediment transport and soil erosion will be inspected as part of the final inspection to ensure they are maintained and functioning properly. Do not transfer or terminate the general permit coverage until the BMPs are inspected and accepted and all records required under the permit, including inspection and monitoring reports, are furnished to the Project Manager. The Department may require that certain BMPs be replaced by another type of BMP as a condition of permit transfer. Ensure permit conditions and responsibilities are met until permit coverage is assumed by the Department. The Department will notify the Contractor in writing when permit coverage has been assumed. Defend and hold MDT harmless from any violations, claims, enforcement actions, penalties or fines issued for Contractor activities or recordkeeping that occurred prior to the transfer of the General Permit for Discharges from Construction Activities authorization.

2) NPDES Permit not Required.

The BMP-Administration item is included in contracts that may not meet criteria for a NPDES permit but include ground disturbing activities. Complete BMP inspections and install BMPs, if necessary, in accordance with Section 208, if no storm water permit is required. Utilize

form MDT-ENV-014, Water Pollution Control Inspection Report. A certified SWPPP Administrator is not required to conduct the inspections if no permit is required.

D. Method of Measurement. Fees and monitoring costs associated with obtaining and maintaining the NPDES general permit coverage for ground disturbance areas within and outside the right-of-way are not measured separately for payment.

If no permit is necessary, include the cost of all erosion control, devices, and inspections in the BMP-Administration bid item.

E. Basis of Payment. No additional payment will be made for monitoring costs associated with the General Permit for Storm Water Discharges Associated with Construction Activity. Include these costs in the Temporary Erosion Control-Lump Sum bid item.

For project including the BMP-Administration item, include the cost of all erosion control, devices, and inspections in the BMP-Administration bid item. Partial payment for the BMP-Administration will be monthly based on the lump sum contract price in accordance with Table 208-1 in Subsection 208.05.1.

Payment for BMPs required by an event or extra work, and approved by the Project Manager, will be measured and paid for in accordance with the Erosion Control Rate Schedule contained in the contract at a unit price of $1.00 per unit.

24. CLEAN WATER ACT SECTION 404 PERMIT AND SECTION 401 CERTIFICATION

A. Description. This provision describes the project work that has been authorized under Sections 404 and 401 of the Clean Water Act (CWA) and the associated conditions that must be adhered to for compliance with CWA requirements.

B. Section 404 CWA Nationwide Permit 14 Description. The permanent features of this project are authorized under US Army Corps of Engineers Nationwide Permit 14 – Linear Transportation Projects, (Army Corps File Number NWO-2020-01301-MTM).

1) The permit for this project authorizes the following permanent features within waters of the US.

a) Roadway fill and guardrail installation at a wetland adjacent to Cottonwood Creek. (STA 365+38 to 376+07) Section 14, Township 21N, and Range 24W. Latitude 47.5494, Longitude -114.6511.

2) This authorization is valid until March 18, 2022.

3) Obtain the Nationwide Permit 14 Fact Sheet that fully describes the Nationwide Permit 14 and lists the General Conditions that must be adhered to for this authorization to remain valid. Adhere to the General Conditions.

C. Section 404 CWA Nationwide Permit 33 Description. Obtain authorization for the temporary features of this project (e.g. work bridges, work pads, cofferdams, diversions, etc.) under US Army Corps of Engineers Nationwide Permit 33 – Temporary Construction, Access, and Dewatering.

a) Acquire an additional Section 404 Permit and 401 Certification authorization for temporary discharges that are:

b) Located within 100 feet of the water source in natural spring areas;

c) Includes features that extend out from the existing bank line greater than 25% of the bankfull channel width;

d) Within the boundaries of any Tribal Reservation or Tribal trust lands;

e) Within the following waterways and their impoundments: Kootenai River, Missouri River, Yellowstone River, Bitterroot River, Clark Fork River (tributary to the Columbia River), Flathead River, Flathead Lake, and Milk River; or,

f) Within Special River Management Zone of the Upper Yellowstone River.

Prepare and submit a joint application in accordance with Section 208.03.3. MDT is not responsible for delays caused by incomplete or inaccurate submittals by the Contractor.

2) For all other temporary discharges, submit a written description to the Project Manager detailing the temporary facilities planned for the project, along with the associated

restoration plan. Allow 5 working days for the Project Manager to review the plan and confirm CWA 404 pre-construction notification is not required. For temporary discharges authorized under Nationwide Permit 33 without pre-construction notification, the authorization is valid until March 18, 2022.

3) Obtain the Nationwide Permit 33 Fact Sheet that fully describes the Nationwide Permit 33 and lists the General Conditions that must be adhered to for this authorization to remain valid. Adhere to the General Conditions.

D. CWA Section 404 Regional Conditions. Obtain the 2017 Nationwide Permits Regional Conditions, Omaha District, State of Montana, Effective March 19, 2017, that also apply to this project and must be adhered to for these authorizations to remain valid. Adhere to the Regional Conditions, including but not limited to the following:

1) Temporary fills in wetlands must be placed on a horizontal marker layer, such as fabric or certified weed-free straw, to delineate the pre-project ground elevation and facilitate complete fill removal and site restoration.

2) All erosion control blanket or fabric used in or adjacent to waters of the U.S. must be comprised of degradable material to ensure decomposition. Do not use material that includes stabilized netting or stabilized open mesh, as these products take a long time to degrade and they can trap small animals, birds, amphibians and fish. This prohibition also applies to mesh materials used for wattles, rolled materials, and bank wraps. Erosion control blanket or fabrics that break down within 24 months are acceptable. Non-degradable blankets or fabric may be allowed on a case-specific basis if it will be buried beneath riprap or structures and it is not likely to be exposed. Non-degradable blanket or fabric that becomes exposed within waters of the US must be removed.

E. CWA Section 401 Water Quality Certification is granted for Nationwide Permits 14 and 33 by the Montana Department of Environmental Quality (DEQ), provided that certain general and special conditions are met.

1) Obtain the water quality certification requirements issued by DEQ on March 6, 2017. Adhere to those general and special conditions.

2) Adhere to the notification requirement of the DEQ 401 Certification Special Conditions. Notify the DEQ Water Protection Bureau – Discharge Permitting Program within 48 hours of commencement of the regulated activity. Send notification to DEQWPBPublicComments@mt.gov . Provide confirmation of this notification to the Project Manager. Notification shall include at minimum the following information:

a) Statement that the notification is being submitted for an MDT Project

b) MDT Project Name

c) Statement that the work is being conducted under a CWA Nationwide Permit 14

d) The legal description(s) of the permitted activities included in Section B above

e) The decimal latitude(s) and longitude(s) to the millionth degree (six significant figures to the right of the decimal point) for the permitted activities, which are provided in Section B above

F. Copies of the 2017 Nationwide Permit Fact Sheets for Nationwide Permits 14 and 33, the 2017 Nationwide Permit Regional Conditions for the State of Montana, and DEQ's 401 Water Quality Certification requirements for the 2017 Nationwide Permits are available upon request from Environmental Services or on the web at http://www.mdt.mt.gov/business/contracting/environmental/cwa.shtml .

Coordinate with the project manager if you have questions regarding this authorization. Proposed changes to the permanent structures should be directed to the project manager for coordination with the District Project Development Engineer in the Environmental Services Bureau. Temporary facility permitting and/or general permit questions should be directed to the project manager for coordination with the District Environmental Engineering Specialist.

25. BALD EAGLE PROTECTION

A. Description. Active bald eagle nests occur within 1/2-mile of Sites 1 and 3. Bald eagles are protected by the Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act (MBTA). Both acts prohibit killing, selling or otherwise harming eagles, their nests, or eggs.

B. Requirements.

1) Site #1 - Located in Lincoln County, east of Libby on Highway 37, from RP 10.5± to RP 11.2±. The work zone is within the ¼-mile buffer of one to two bald eagle nests. Work at this site must occur between June 1 and January 31, outside the most sensitive nesting period.

2) Site #3 - Located in Powell County, at the Gold Creek Interchange, on Interstate 90, from RP 165.9± to RP 166.5±. The work zone is within the ½-mile buffer of three to four bald eagle nests. Work at this site must occur between June 1 and January 31, outside the most sensitive nesting period.

3) Haul trucks and low-intensity construction activities confined to the existing roadway pavement are excepted from these restrictions by approval of the Project Manager.

4) Locate all staging, stock piling, gravel crushing, hot plant, borrow sources and other intense localized activity outside the above stated limits, OR

5) Notify the MDT District Biologist at (406)-444-0461 at least 2 weeks in advance of establishing any staging, stock piling, gravel crushing, hot plant, borrow sources or other intense localized activity location within the above stated limits. The location of such activities proposed west of the highway will require additional consultation with the US Fish, Wildlife, Service and/or MT Fish, Wildlife and Parks and must be evaluated for potential disturbances to bald eagles. These locations may be restricted or denied based on the potential to adversely impact nesting bald eagles.

C. Basis of Payment. Consider all costs associated with this provision's incidental to the construction. Include the cost in the cost of other items.

Contact the EPM for coordination with the District Biologist with questions or further guidance regarding the conditions of this special provision.

26. MIGRATORY BIRD TREATY ACT COMPLIANCE -VEGETATION REMOVAL [107] (ADDED 9-26-13)

Description. Suitable nesting habitat (trees and shrubs) exists for migratory birds within the construction limits.

Construction Requirements. Perform any required cutting of trees or shrubs between August 16th and April 15th. Remove only those trees and shrubs in direct conflict with the permanent construction limits. Where possible, do not remove, but trim trees and shrubs as necessary for equipment access and construction activities.

Method of Measurement and Basis of Payment. Work described in this provision is not measured for payment. Consider all costs associated with this provision incidental to performance of the work. Include the cost in the cost of other items.

27. WORK IN BEAR HABITAT [107] (ADDED 11-14-13)

This project is located within bear habitat, adhere to the following requirements:

- Promptly clean up any project related spills or debris.
- Camping is allowed in designated camping areas only.
- Store all food, food related items, petroleum products, antifreeze, garbage, and personal hygiene items inside a closed, hard-sided vehicle or commercially manufactured bear resistant container.
- Remove garbage from the project site daily and dispose of it in accordance with all applicable regulations.
- Notify the Project Manager of any animal carcasses found in the area.

- Notify the Project Manager of any bears observed in the vicinity of the project.

Consider all costs associated with this provision incidental to performance of the work. Include the cost in the cost of other items.

28. AIS WATERCRAFT AND EQUIPMENT INSPECTION [107] (ADDED 4-25-19)

Description. State laws, regulations, and rules are in effect in Montana to prevent the spread of AIS. The following website includes information to aid in the prevention of AIS: http://cleandraindry.mt.gov/.

Requirements. Contact Montana Fish, Wildlife & Parks (FWP) at least 2 weeks prior to operating equipment in or working within an aquatic resource. FWP may require additional inspection or action for aquatic invasive species (AIS) prior to equipment use in any aquatic resource in the State of Montana.

FWP Contact Information		
Fisheries Front Desk:	(406) 444-2449	
Watercraft Inspection Program Coordinator:	(406) 444-5383 – Office	(406) 546-3847 - Cell
Watercraft Inspection Specialist:	(406) 444-5540 – Office	(406) 465-6705 - Cell

1) Ensure all watercraft vessels and equipment that enters Montana from out of state, crosses the continental divide, or enters the Flathead basin is inspected by FWP prior to launch in an aquatic resource in the State of Montana.

2) Clean, drain, dry all watercraft and equipment according to FWP guidelines after exiting any aquatic resource and prior to launch into or use in another aquatic resource.

Method of Measurement and Basis of Payment. Work described in this provision is not measured for payment. Consider all costs associated with this provision incidental to performance of the work. Include the cost in the cost of other items.

29. NOTICE TO BIDDERS [108] (ADDED 11-21-08)

This project is funded in whole or in part by funds received from the Federal Highway Administration (FHWA), and its construction is wholly contingent on the state's continued receipt of those federal funds. If the federal funds are reduced or not received, the Department may choose to terminate the contract for convenience under the provisions of Subsection 108.10. Any bidder on this project, by submitting its bid, understands and accepts the possibility of the contract being terminated in the event federal funds are reduced or not available and by submitting a bid, each bidder waives any claims for costs or damages other than as specifically allowed by Subsection 108.10.2. In particular, bidders understand and accept that no payment will be allowed for any claimed anticipated profit for work not performed.

30. PORTABLE SELF-CONTAINED COMMUNICATION TRAILER [210] (ADDED 8-13-20)

A. Description. Install, maintain, move, and remove portable communication trailer(s) capable of delivering Verizon wireless cellular signal as well as wireless internet connection with speeds greater or equal to 4gLTE in remote areas were cellular coverage is weak or nonexistent.

B. General

1) Provide a secure wireless G access point with a one-half mile range.

2) Provide a cellular network extender to allow for voice calls via the Verizon network.

3) Install devices a minimum of 24 hours prior to starting work. Locations are to be approved by the Project Manager.

4) Each device will be moved at the request of the Project Manager. Move and reset must be completed within 24 hours.

5) Include unlimited voice and data.

6) Provide technology support during working hours.

7) Install the device outside of the clear zone when practical.

Only remove the devices from the project with the approval of the Project Manager

C. Measurement and Payment.

1) Communications trailer install, maintain, and remove is measured by the each for each trailer that is installed, maintained, and removed.

2) Communications trailer move and reset is measured by the each, for each trailer that is moved and reset to the satisfaction of the Project Manager.

31. ASBESTOS (SITE #1)

A. General. The project is located within the boundaries of the Libby Asbestos National Priorities List (NPL) Superfund site. Testing by the U.S. Environmental Protection Agency (EPA) has confirmed the presence of Libby amphibole asbestos (LA) within vermiculite. Vermiculite has been observed in right-of-way soil within the project boundaries. Assume that LA is present. Coordinate with Lincoln County Environmental Health: Contact Amanda Harcourt at least two weeks before the beginning excavation activities. Amanda Harcourt, Lincoln County Environmental Health in Libby, MT Phone: (406) 283-2445.

B. Construction Requirements. Contractor is to complete the following:

1) Wet down all areas to be disturbed as necessary for dust control. Continue to wet material during construction.

2) Material may be reused on site. If material is not reused on site it will need to be disposed at Lincoln County Landfill.

3) Wash equipment, tools, and gear prior to leaving the project boundary.

C. Contractor Responsibilities. Require all employees or contractors that might be engaged to perform excavation activities, saw cutting, milling, transport and disposal, and associated tasks to obtain all necessary training with Amanda Harcourt to identify vermiculite and utilize best management practices to decrease potential exposure to possible LA contamination. Conduct work in compliance with applicable state and federal asbestos worker regulations.

D. Transport and Disposal.

1) Coordinate transport and disposal of LA - contaminated millings and soil with the Lincoln County Environmental Health (Amanda Harcourt, Phone: 406-283-2445)

2) Provide a temporary stockpile location for the materials in the project right-of-way approved by the EPM.

3) Load and transport material to the disposal site.

4) Wet down all material for dust control before transport to the disposal site.

E. Submittals.

1) Submit a Site-Specific Safety and Health Plan (Plan), prepared by an industrial hygienist or certified safety professional to the PM 15 working days prior to the start of work. The Plan must include, but is not limited to, a description of how LA is to be handled, worker and environmental protection, decontamination procedures, any personal protective equipment (PPE) to be used, restriction of site access, and proof of training as described in Section C above.

32. LONG SPAN/LONG POST GUARDRAIL (SITE NO. 2)

A. Description. Long span 25 ft. over existing bridge between station 350+55.54 to 351+17.54 lt. & rt., omit 3 posts across bridge. Follow MDT Detail Drawings 606-09, and 606-11B.

B. Remove and salvage existing guardrail, posts, & hardware on bridge.

C. Measurement and Basis of Payment. Measure Remove Guardrail by the linear foot of guardrail removed. Measurement will be by the linear foot and payment will be under MGS LONGSPAN GUARDRAIL//LONG POSTS.

33. REMOVE GUARDRAIL (SITE NO. 1)

A. Description. Remove, salvage and stockpile guardrail beams, blocks, posts, end treatment, and associated hardware to the Savage Lake Maintenance facility, located at reference post 32.8 Hwy 56. (Contact Jesse Gascon, Section Supervisor, (406) 239-4089, jgascon@mt.gov). Perform the work without damaging the salvaged material.

B. Construction Requirements. Furnish and place hardware in containers that protect the hardware from weather.

C. Notify the Project Manager of beams and posts and associated hardware impractical to salvage before work begins. The Project Manager will determine if the materials are salvageable or not.

D. Dispose of posts and block outs and other non-salvageable items in accordance with applicable laws and regulations.

E. Measurement and Basis of Payment. Measure Remove Guardrail by the linear foot of guardrail removed. Payment at the contract unit price for Remove Guard Rail is full compensation for resources necessary to complete the work described herein.

34. MASH GUARDRAIL [606] (ADDED 1-18-18)

Use one of the MASH tested W-Beam terminal sections listed on the Department's QPL.

35. TRAFFIC CONTROL DEVICES – PLASTIC DRUMS [618] (REVISED 1-23-20)

Beginning on April 1, 2021, all plastic drums furnished and installed on Interstate projects must include 6-inch retro-reflective white and retro-reflective fluorescent orange sheeting.

Beginning on April 1, 2022, all plastic drums furnished and installed on all projects must include 6-inch retro-reflective white and retro-reflective fluorescent orange sheeting. All other requirements of Detailed Drawing 618-00 still apply.

36. SMART WORKZONE WALKBACK FLAGGER REPLACEMENT OPTION (END OF QUEUE DETECTION AND WARNING) [618] (ADDED 8-13-20)

A. Description. Furnish a smart work zone system capable of detecting and protecting the end of queue in lieu of a walk back flagger.

B. General.

1) End of Queue Detection and Warning. Furnish, install, maintain, adjust, and remove smart work zone technology to replace the walk back flagger. Install this system at flagging or signal control operations where a minimum of 10 vehicles are stopped at the location for more than 50% of the time or when sight distance to the signal or flagger is impaired.

a) Install radar sensors at the following signs: W3-3, R2-1, and W3-5.

b) Install a variable message board capable of displaying messages based on the input from the sensors 1500 feet from the estimated max queue location.

c) Adjust the radar sensors and message boards accordingly to protect the end of the queue.

d) Provide an online dashboard capable of showing the systems function and health in real time; including but not limited to:

(1) traffic speed at the individual sensors.

(2) battery life.

(3) system connectivity; and

(4) message displayed on the variable message board.

Average Speed at R2-1	VMS Phase 1	VMS Phase 2
> 35 MPH or when system is not in use.	Flashing Caution (4 corners)	
34 MPH to 30 MPH	Signal (or Flagger) Ahead	
29 MPH to 20 MPH	Slow Traffic Ahead	Prepare to Stop
< 20 MPH	Stopped Traffic Ahead	Prepare to Stop
Traffic Stopped at any Sensor	Stopped Traffic Ahead	Prepare to Stop
Fail Safe Mode	Signal (or Flagger) Ahead	Flashing Caution (4 corners)

Provide a failsafe system if communications go down or a fault is detected in the system for more than 2 minutes. Provide a system that will revert to a failsafe mode in which the message board will read “Signal or Flagger Ahead”

Sensor and message board locations must be included in the traffic control plan and approved by the Project Manager

Insert Network extender language if installing in areas of no cell coverage.

Provide speed data from sensors at the request of the Department.

2) Portable variable message signs. Furnish portable variable message signs that can execute the requirements set forth above. Furnish VMS that meet MUTCD requirements

3) Non-intrusive sensors. Furnish sensors that are portable, non-intrusive, capable of recording speed, detect traffic over multiple lanes, detect stopped traffic, and maintain performance in all weather conditions.

If a safe and visible installation location cannot be found, construct a pad that provides a safe, level location to install the message board adjacent to traffic.

C. Method of Measurement. Smart Work Zone Systems is measured by each system per day. One system is defined as one message board and 3 sensors.

D. Basis of Payment. Smart Work Zone Systems will be paid by each system at a rate of 500 units per day.

This item will be paid under group 37 of traffic control rate schedule.

37. REVEGETATION

A. Description. This work consists of providing the necessary equipment and materials to accomplish revegetation of all ground disturbed by construction activities, and/or as directed by the project manager.

B. Construction Requirements. Salvage sufficient quantities of topsoil to replace 4 inches over shoulder gravel and disturbed areas. Immediately following construction activities, uniformly place the topsoil, condition soil, and drill seed with the reclamation seed mix and equivalent rates.

Areas too steep, narrow, or inaccessible with drill equipment can be broadcast seeded at double the seed rate. Following broadcast seeding, scarify the areas to incorporate the seed into the upper ¼ to ½ inch of soil.

RECLAMATION SEED MIX			DRILLED SEEDING RATE		
SCIENTIFIC NAME	COMMON NAME	VARIETY	% of Mix	Pounds PLS/ Acre	PLS/ sq.ft.
Elymus trachycaulus	Slender wheatgrass	Pryor, First Strike or Revenue	8	2.0	6

Elymus lanceolatus spp. riparium	Streambank wheatgrass	Sodar	18	4.0	14
Pascopyrum smithii	Western wheatgrass	Rosana or Recovery	11	4.0	9
Pseudoroegneria spicata	Bluebunch wheatgrass	Goldar or Anatone	16	4.0	13
Poa secunda (P. ampla)	Big bluegrass	Sherman	25	1.0	20
Achnatherum hymenoides	Indian Ricegrass	Rimrock	14	2.0	11
Achillea millefolium	Western Yarrow	Eagle or Great Northern	8	0.1	7
		GRAND TOTAL	100	17.1	80

- Use individual substitute species only if the recommended species is not available and substitution is approved by MDT's Reclamation Specialist.

C. Basis of Payment. Topsoil salvage, replacement, soil conditioning and seeding are paid for as REVEGETATION at the lump sum contract unit price.

END OF SECTION I

MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

Federal protected classes	State protected classes
Race, color, national origin, sex, sexual orientation, gender identity, age, disability, & Limited English Proficiency	Race, color, national origin, parental/marital status, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, religion/ creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, national origin, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran status

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, 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:

a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
    i. Statement that PARTY does not discriminate on the grounds of any protected classes.
    ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
    iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.

iv. Information on how to request information in alternative accessible formats.

c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml

b. By signing this agreement, the PARTY assures that:

The contractor, sub recipient 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.

c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY 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 PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, 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 MDT or relevant US DOT 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 PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non- discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or

b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statues and authorities; including but not limited to:

Federal

- 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 Airways Improvement Act of 1982, (49 U.S.C. § 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 prohibits 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 CFR 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 prevents 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.*).

- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

- Mont. Code Ann. § 49-3-205 Governmental services;

- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;

- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

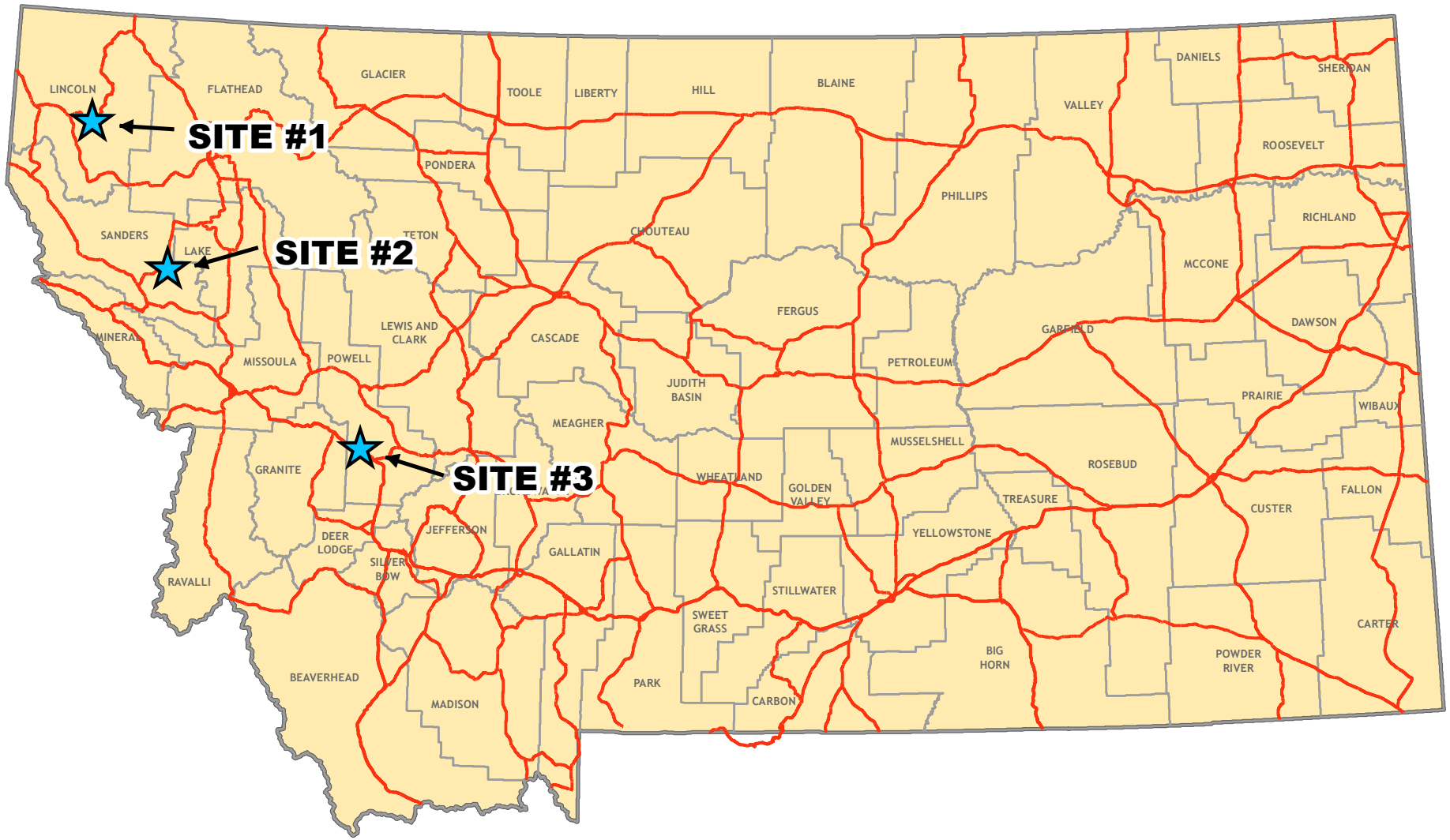
(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

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HSIP-G STWD (646)
ROADWAY & ROADSIDE SAFETY IMPROVEMENT
CONTROL NUMBER 9635000
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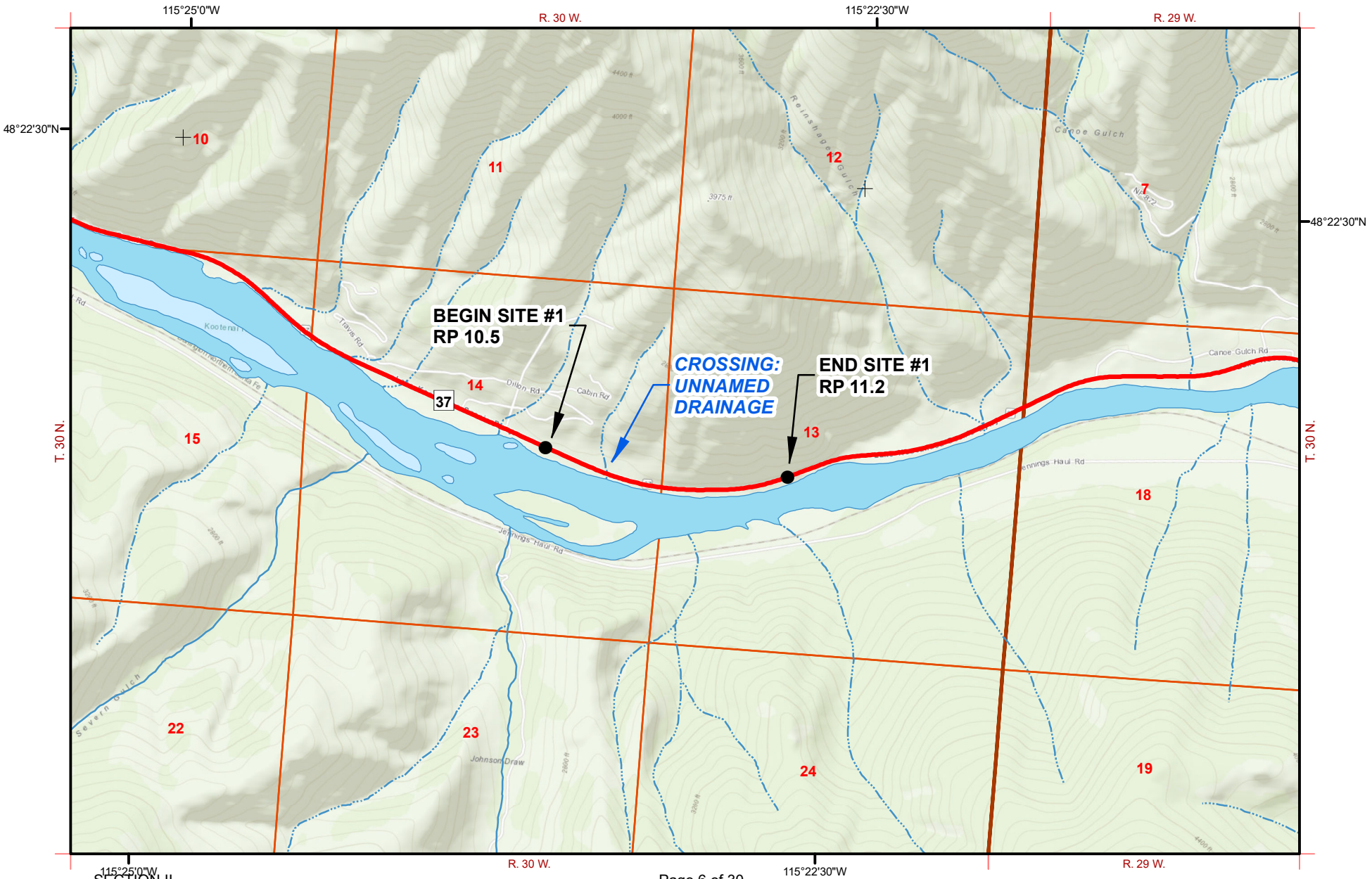
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SF 179 D1 SFTY SIGNS GUARDRAIL
HSIP-G STWD (646)
ROADWAY & ROADSIDE SAFETY IMPROVEMENT
CONTROL NUMBER 9635000
PROJECT LOCATION QUAD MAP 1 OF 3 - LINCOLN COUNTY

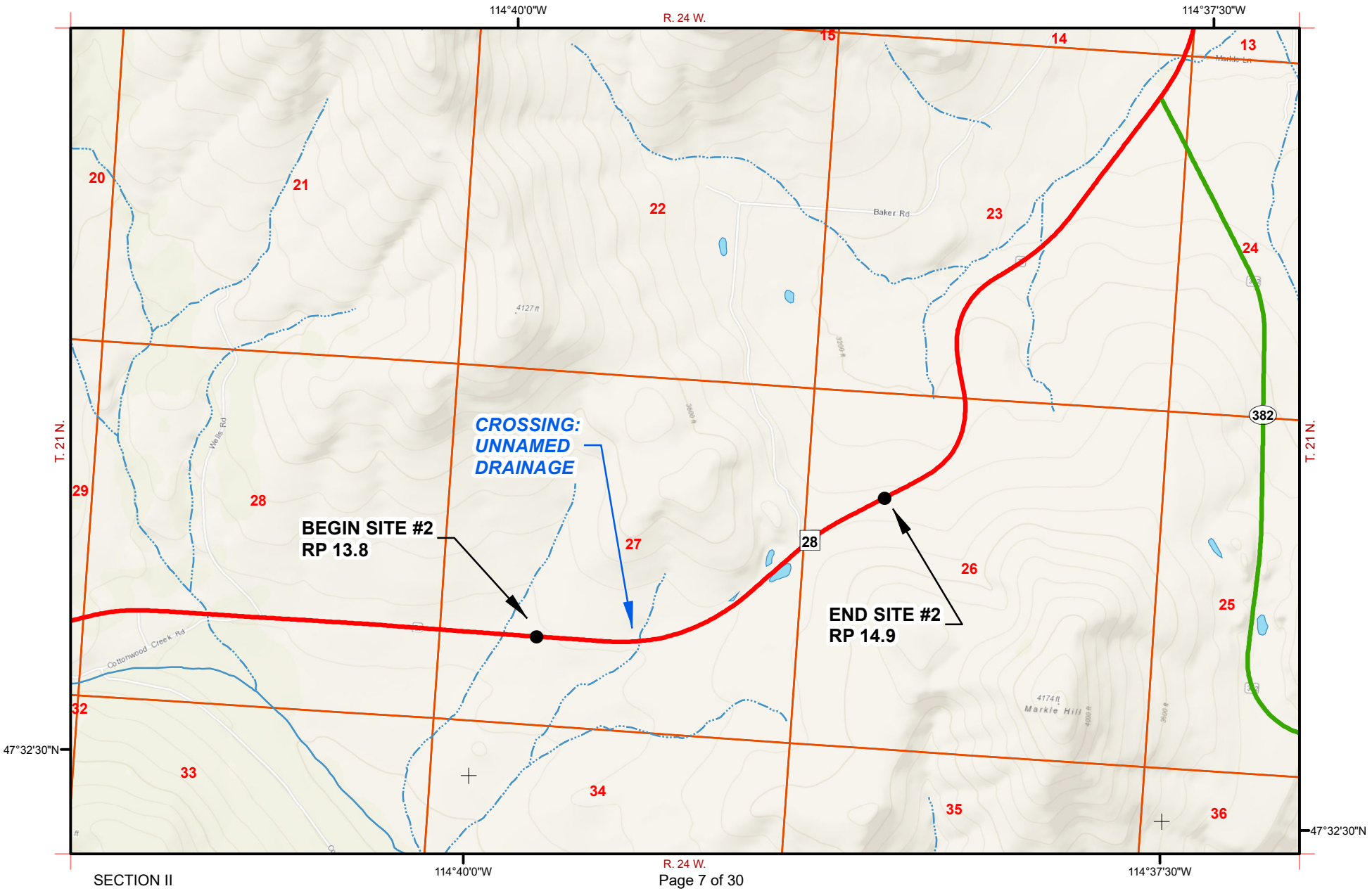


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HSIP-G STWD (646)
ROADWAY & ROADSIDE SAFETY IMPROVEMENT
CONTROL NUMBER 9635000
PROJECT LOCATION QUAD MAP 2 OF 3 - SANDERS COUNTY

MONTANA DEPARTMENT OF TRANSPORTATION

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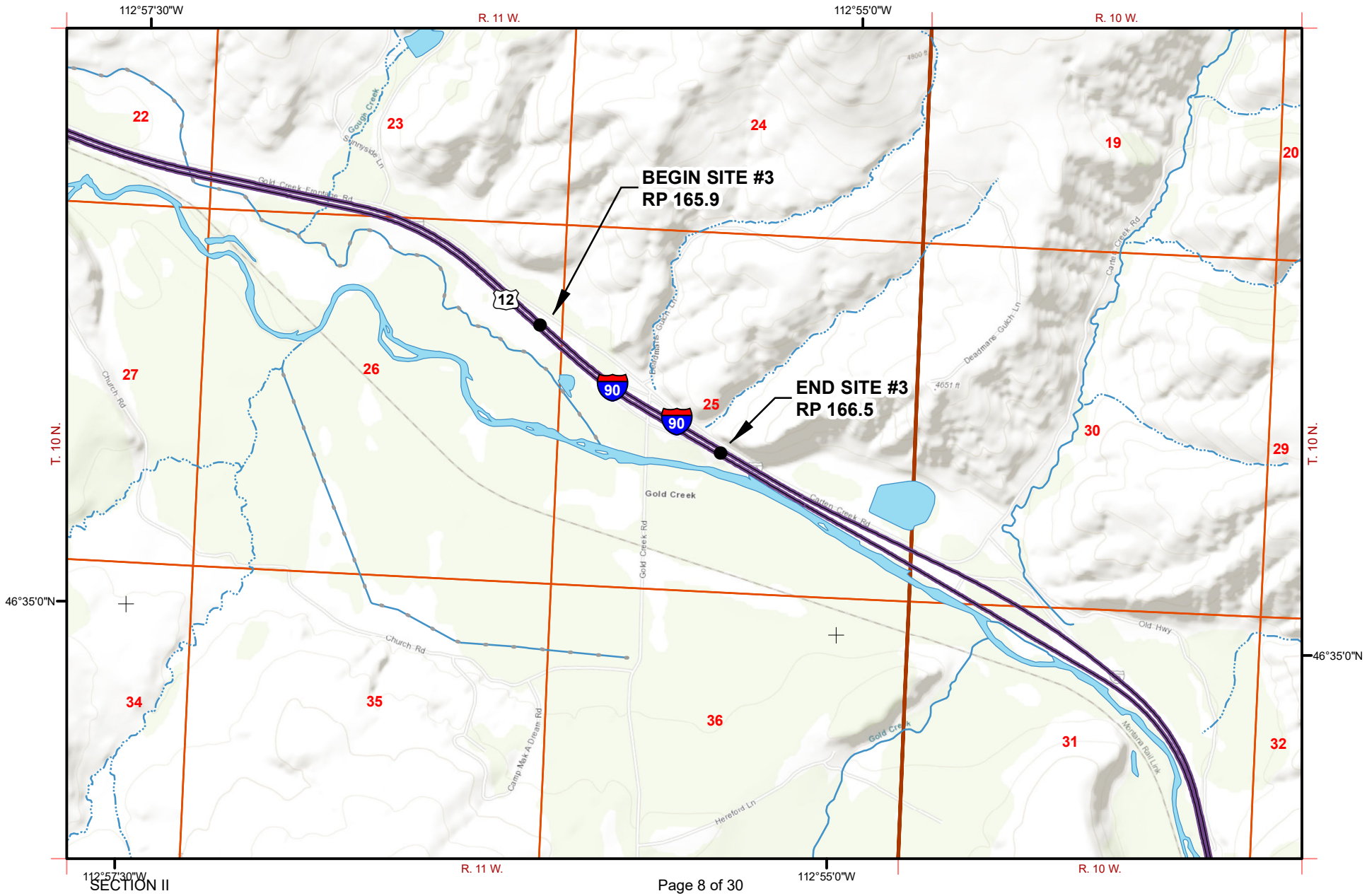


SF 179 D1 SFTY SIGNS GUARDRAIL
HSIP-G STWD (646)
ROADWAY & ROADSIDE SAFETY IMPROVEMENT
CONTROL NUMBER 9635000
PROJECT LOCATION QUAD MAP 3 OF 3 - POWELL COUNTY

MONTANA MDT DEPARTMENT OF TRANSPORTATION

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MONTANA DEPARTMENT
JUN - 1 2020
OF TRANSPORTATION
LEGAL SERVICES

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE MONTANA DEPARTMENT OF TRANSPORTATION

AND

THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION

This Agreement is entered into by and between the Montana Department of Transportation ("MDT") and the Confederated Salish and Kootenai Tribes of the Flathead Reservation ("Tribes") (collectively referred to herein as the ("Parties")).

I. Parties

MDT is an executive state agency with responsibility for federal-aid and state highways located within the State of Montana.

The Tribes are a federally-recognized Indian tribal government residing on the Flathead Indian Reservation ("Reservation").

II. Statement of Intent

The intent of this Agreement is to continue the cooperative relationship existing between MDT and the Tribes, carrying forward and building upon the principles and commitments set forth in the 2000 Memorandum of Agreement between the Tribes, MDT, and the Federal Highway Administration. This Agreement is intended to govern all MDT construction, maintenance, facilities, and architectural and engineering projects on the Reservation.

The Parties intend to negotiate and execute Project Specific Agreements ("PSA") to govern specific requirements of individual projects, provided, however, that anything contained in a PSA that is inconsistent with or in conflict with this MOU will be interpreted so as to be consistent with this MOU. The Tribes agree to promptly review the proposed PSAs and sign all approved PSAs within thirty days from receipt.

III. Government to Government Relationship

The Tribes recognize the State of Montana as a sovereign power. Out of deference and respect for the State of Montana, the Tribes will honor and give effect to those laws of the

state that are consistent with federal law and that are respectful of the rights of the Tribes and Tribal members.

The Tribes recognize that MDT is the custodian of the federal-aid and state highways with a duty to plan, develop, operate, maintain and protect these highways and appurtenant structures for present as well as future use. The Tribes further recognize that adequate and integrated systems of highways, roads, and streets are essential to the general welfare of the state and are necessary for the preservation of the public peace, health, and safety and as a contribution to the national defense.

MDT, as a state executive agency, recognizes the Tribes as a sovereign power. Out of deference and respect for the Tribes, MDT will honor and give effect to those laws of the Tribes that are consistent with federal law and that are respectful of the rights of the State, its citizens, and other persons who are under the protection of its laws.

MDT recognizes that the Reservation is a perpetual homeland that the Tribes reserved for themselves pursuant to the terms of the Hellgate Treaty, with the objective of securing for themselves and future generations the health, well-being, and cultural survival of the Salish, Pend d'Oreille, and Kootenai people. MDT also recognizes that the Tribes reserved the right in common with the citizens of the United States to travel upon all public highways pursuant to the terms of the Hellgate Treaty. MDT further recognizes and will honor the unique culture of the Tribes.

MDT and the Tribes will work in a government-to-government relationship and hereby pledge to work diligently and cooperatively, to the extent their governmental resources allow, to facilitate the planning, development, operations, maintenance and protection of federal-aid and state highway projects on the Reservation. Additionally, MDT and the Tribes recognize the trust responsibility to the tribes of the U.S. Department of Transportation and the Federal Highway Administration, and these agencies' legal requirement to protect the well-being of the Tribes.

MDT and the Tribes recognize that a wide range of options are available in transportation design that will provide safe roadways, efficient traffic flow, and that will have minimal environmental impacts, and that differing designs may have disparate impacts on the communities, environment, and cultural resources of the Flathead Reservation, as well as the long-term sovereignty of the Tribes. MDT and the Tribes therefore commit to continuing to seek innovative approaches to transportation that will best meet and protect all of these concerns.

MDT will consult and coordinate with the Tribal Council on all MDT projects being planned, developed, and/or constructed on the Reservation.

The Tribes will diligently review and respond to MDT proposals for MDT projects being planned, developed, and/or constructed on the Reservation.

MDT and the Tribes will each make diligent inquiry toward identifying potential conflicts

between the laws of the State of Montana and of the Tribes that are relevant to this Agreement, and in the event that such conflicts are identified, MDT and the Tribes pledge to work together toward resolving them. Tribal Ordinances in effect at the time of the execution of a PSA for a particular project and shown at that project's pre-bid conference will apply to that project until its completion.

IV. Specific Issues

A. Scoping I Project Nomination

MDT will notify the Tribes of all projects contemplated for implementation on the Reservation and invite the Tribes' comment and/or participation in determining whether or not to nominate a contemplated project for placement on MDT's five-year schedule of projects. MDT will periodically, but not less than once every six months, provide to the Tribes an updated five- year schedule and status report for MDT's projects on the Reservation.

B. Survey / Data Gathering / Environmental / Design

1. In order to clearly define the location and scope of a project, the Parties agree to cooperate in providing MDT with access to Tribal parcels for purposes of preliminary inspection and survey in conformance with the requirements of 25 CFR § 169.101. The Tribes hereby waive the requirement that MDT submit a damage deposit and MDT agrees to indemnify the Tribes, as is allowed under 25 CFR§ 169.103. MDT hereby agrees to pay damages promptly when they are sustained as a result of MDT's inspection and survey actions.

2. In an effort to keep one another fully informed, each party, upon request of the other party, will provide the public record information in their respective possession that is pertinent to a proposed project to the requesting party, to the extent administrative resources allow.

3. MDT and the Tribes will establish a Technical Design Committee ("TDC"). The TDC will consist of one permanent representative each from MDT, the Tribes, and the U.S. Department of Transportation/Federal Highway Administration (FHWA)(invited). The TDC may invite additional duly authorized representatives of other government agencies to join the TDC temporarily for oversight of an individual MDT project when that MDT project will have direct physical impacts on the jurisdictional property of a temporary representative' s agency.

The TDC's purpose is to oversee all preconstruction activities for all MDT Reservation projects, including maintenance and safety projects, so as to develop alternatives for environmental review, select a preferred alternative for design, and to facilitate the production by MDT of technical plans for construction of the selected preferred alternative. The TDC will meet on an as-needed basis and will render decisions by consensus. In the event that the TDC cannot reach consensus on a design issue, then within ten days of

impasse: (a) the MDT representative will report the issue to the MDT Director; (b) the Tribal representative will report the issue to the Tribal Council; and (c) each other governmental representative will report the issue to her/his respective agency's decision-maker with authority over the issue. The MDT Director, the Tribal Council, and the decision-maker for any other represented governmental agency, or their respective delegees, will then arrange to meet as soon as reasonably possible to review the issue and seek resolution. MDT and Tribes may mutually identify a third party to arrange and chair meetings, and to provide meeting documentation.

4. MDT and the Tribes will work cooperatively toward analyzing the environmental impacts related to a project as required by the National Environmental Policy Act ("NEPA") and by the Montana Environmental Policy Act ("MEPA"). In achieving such cooperative analysis, the Tribes will provide a representative to participate on NEPA\MEPA interdisciplinary teams who will represent the Tribes in all NEPA/MEPA related meetings and processes.

5. Within the NEPA/MEPA process, the Parties will exercise due diligence to develop one mutually acceptable preferred alternative for a project.

6. Within the NEPA/MEPA process, the Parties will jointly consult with the lead Federal Agency, plus U.S. Fish and Wildlife Service regarding issues related to the Endangered Species Act, and with the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency regarding issues related to the Clean Water Act.

C. Permitting

1. Construction Water Use

a. For any project that MDT is constructing on the Reservation, MDT and the Tribes will consult to identify and select the source and location for temporary withdrawal of water for construction purposes.

b. When selecting potential sources and locations for temporary withdrawal of water for construction purposes, the Parties will identify multiple sites and consider:

i. whether water is available;

ii. whether there is access to the withdrawal site;

iii. the impact that the project's proposed withdrawal and use will have on other water users;

iv. the impact that the project's proposed withdrawal and use will have on the environment; and

v. the practicality and cost effectiveness of using that withdrawal source and location for fulfilling the project's construction purposes.

c. When selecting a source and location for temporary withdrawal of water for construction purposes, the Parties will favor sources and locations which:

i. avoid and minimize impacts to other water users and to the environment;

ii. are most practical and cost effective for fulfilling MDT's construction purposes; and

iii. to the extent known by Parties, are not objected to by local water users.

d. The Parties will establish the multiple sources and locations for temporary withdrawal of water for construction purposes for any MDT project on the Reservation, and any related terms, conditions or limitations on such withdrawal, in the PSA for that project.

2. Cultural/Historic Resource Protection

a. MDT will enter into one or more contracts for purposes of identifying, documenting, protecting, and preserving historic and cultural resources that may be impacted by an MDT Reservation project. Such agreement(s) will be in the form of one or more contracts for services by and between MDT and its selected consultant. MDT' s Missoula District Administrator, or her/his designee, will provide notice and an opportunity to bid on any such contracts to the Tribal Preservation Department.

b. MDT will act in accordance with the Tribes' Cultural Resource Protection Ordinance ("CRPO"), Ordinance No. 95, which, among other obligations, requires a written application to the Tribes' Cultural Preservation Office for any undertaking that may affect cultural resources on lands within the exterior boundaries of the Flathead Reservation.

3. Water Quality: The Tribes will complete review and certification actions required pursuant to § 401 of the Clean Water Act for Reservation portions of MDT construction projects.

4. Aquatic Land Protection: MDT will apply for a permit pursuant to:

a. the Tribal Aquatic Lands Protection Ordinance 87-A for any MDT project that may cause physical alteration of aquatic lands, wetlands, or Reservation waters; and

b. the Tribal Shoreline Protection Ordinance 64A for any MDT project that will require construction or maintenance, on the bed and banks of a Reservation navigable water body below high water mark, of a wharf, dock, pier, breakwater, jetty, groin, bulkhead, marina or other structure.

5. Wetlands: MDT will inventory, delineate and perform functional assessments of wetlands in advance of proposed projects in accordance with current U.S. Army Corps of Engineers' ("COE") manual and functional assessment methods approved by the COE and the Tribes. MDT will disclose the results of the inventory in advance of proposed projects. MDT will work in cooperation with the Tribes to, in order of priority, avoid, minimize, rectify, reduce and compensate for impacts to wetland resources that are directly or indirectly attributable to MOT's Reservation projects. There will be no net loss of wetlands functions and values within the Reservation attributable to MDT's projects. Wetland mitigation projects to compensate for unavoidable impacts to wetlands attributable to MDT's projects will take place on the Reservation, and will be jointly designed by MDT and the Tribes. MDT will strive to mitigate for unavoidable impacts to wetlands in advance of the impact. MDT will notify the Tribes in advance of all meetings of the Interagency Wetlands Review Team where MDT will present information regarding wetlands impacts or wetlands mitigation on the Reservation. Wetland mitigation locations, types, methods and standards will be selected and applied pursuant to the Wetlands

Conservation Plan for the Flathead Indian Reservation, Montana, December 1999; Chapter 7 Wetland Mitigation Guidelines for the Flathead Indian Reservation. The specific wetland mitigation requirements for a project will be established by the Parties in that project's PSA.

D. Right of Way Acquisition / Negotiation Process for Indian/Tribal Trust Lands

1. Conveyance of interests in real property and grants of rights of way between MDT and the Tribes will be done in accordance with:

a. 23 CFR Part 710 (Right of Way and Real Estate)
b. 25 CFR Part 169 (Rights of Way over Indian Land);
c. 49 CFR part 24 (Uniform Relocation Assistance and Real Property Acquisition Regulations for Federally Assisted Programs); and
d. MDT Right of Way Operations Manual.

2. It is the agreed policy of the Parties that the acquisition of any interest or use right in Tribal property by MDT for highway purposes will not result in a significant loss in acreage or a net loss in value by the Tribes. To effectuate this policy, the Parties further agree that the preferred method for compensating the Tribes for acquisition of Tribal property by MDT for highway purposes will be by exchange.

3. Property exchanged will be equal in value and, as closely as reasonably possible, equal in area.

4. Property for exchange will be valued at fair market value. Fair market value will be determined by mutual agreement of the Parties. In the event that the Parties cannot agree on fair market value, then the Parties will agree to have fair market value determined by an appraisal conducted by a licensed professional appraiser that is hired jointly and paid for equally by the Parties.

5. Any individual exchange transaction will be completed within a ten-year period of time, unless such period is extended by mutual written agreement of the Parties.

6. MDT will provide to the Tribes an annually updated list of all properties owned by MDT that are located on the Reservation that are in excess of MDT's present and foreseeable future highway needs and that are available for exchange.

7. The Tribes will provide MDT with a periodically updated statement regarding the Tribes' determination of acceptability and priority of properties on MDT' s excess property list. In the event that there are properties not listed on MDT's excess property list that the Tribes want to acquire and that maybe available for acquisition by MDT, the Tribes will advise MDT of their perception of availability and their relative desire for acquisition.

8. Property will be conveyed by individual exchange agreements or other conveyance

mutually acceptable to the Parties.

E. Construction and Maintenance Projects

1. MDT and the Tribes will enter into a PSA for each MDT construction and maintenance project to be performed on the Reservation. The PSA will be negotiated and executed after completion of final design/scope of work but before completion of final contract for bid. The PSA will address issues and duties specific to that project. Projects performed on the Reservation directly by MDT personnel will be exempt from the requirements of Sections IV (F), (G), (H) and of this MOU.

2. Unless the Parties agree in a PSA that a Pre-Bid Conference is not required, MDT will host a Pre-Bid Conference on the Reservation for each Reservation project. MDT will make attendance at the Pre-Bid Conference a mandatory prerequisite for submission of a bid by a prospective contractor. The Tribes will send representatives to the Pre-Bid Conference, including the Indian Preference Coordinator. At the Pre-Bid Conference:

a. the Tribes' Indian Preference Coordinator will inform MDT and all prospective contractors in attendance of the Tribes' laws, rules and regulations directly related to the administration and performance of an MDT prime contract and any related subcontracts and employment; and

b. MDT and the Tribes will jointly lead a discussion of the unique nature of the project and the specific methods and/or measures for constructing the project that differ from MDT' s usual construction methods and/or measures.

3. MDT may fund Tribal staff positions, with construction engineering funds, when necessary to provide for adequate Tribal participation in construction oversight activities. In the event that the Parties want to provide for such funding, then the Parties will agree to the amount and scope of use of such funding on a project-by-project basis and memorialize that agreement in the PSA for each particular project. Tribal oversight does not relieve MDT of its inspection responsibilities.

4. MDT will host a Pre-Construction Conference on the Reservation for each of its Reservation projects. MDT will make attendance at the Pre-Construction Conference mandatory for the prime contractor and for each major subcontractor. MDT and the Tribes will send representatives to the Pre-Construction Conference, including all of those staff members who are to be identified to the contractor on MDT' s project organizational chart. At the Pre-Construction Conference:

a. MDT will lead a discussion regarding the project and sequence of operations;

b. MDT will have its prime contractor lead a discussion of its intended construction methods, schedule, and other prominent project-related topics; and

c. the Tribes will lead a discussion regarding avoidance and minimization of project-related economic, cultural and environmental impacts.

5. The Tribes will be party to weekly or agreed upon frequency of construction meetings with MDT and its contractors. These construction meetings will identify and discuss future

and ongoing construction related projects and issues.

6. Construction Borrow Materials:

a. MDT and the Tribes will cooperate in identifying highway construction borrow and surface materials sources on the Reservation, particularly those sources that may have potential for long term use by both Parties.

b. MDT will encourage the use of highway construction borrow materials from Tribal and/or Indian allottee sources for a construction project on the Reservation when such materials are:

i. available in a quantity sufficient for the project;

ii. available in a quality that conforms with state and federal specifications for use as highway construction material;

iii. competitively priced relative to other local sources (When determining whether materials are "competitively priced," the Parties will consider all relevant factors, including: availability, quality, quantity, royalty, haul, stripping, production, access, and reclamation.); and

iv. located in borrow sites that are readily accessible by road and are relatively close in proximity to the construction project

c. The specific actions which MDT will undertake to encourage use of Tribal and/or Indian allottee highway construction borrow materials will be established in the project's PSA.

d. Reclamation of impacts attributable to MDT's project at a borrow or mine site will be performed as required by applicable Tribal, federal, and/or state laws and regulations. Upon request by the Tribes, MDT will review a site identified by the Tribes as a potential construction borrow materials source to determine if it is in the public interest to require MDT's construction contractor to use borrow materials from that site as provided pursuant to 23 C.F.R. § 635.407. If MDT, in consultation with FHWA, finds that it is in the public interest to use such a site, then MDT will:

i. require its contractor to use materials from that site; and

ii. jointly, with the Tribes, develop the mining and reclamation plan for the site.

7. To ensure that all projects are finalized in a way that is satisfactory to both parties upon the completion of a construction or maintenance project (including but not limited to site reclamation), a final walk-through will be performed. Within 30 days of the completion of the work, MDT and the Tribe will perform a joint review of the site, documenting any deficiencies on form MDT-CON-105_17_1F.

F. Indian Preference Employment

1. Policy: MDT and the Tribes, by this Section IV(G), jointly seek to facilitate full employment of Indian people on the Reservation by promoting Indian economic self-

sufficiency through the granting of preference to qualified Indian employees whenever consistent with Federal law.

2. TERO Fee:

a. The Tribes will assess an Indian Preference Contracting fee ("TERO fee") against MDT for all MDT highway construction contracts performed on the Reservation in an amount equal to 3% of the contract' s total value. The contract' s total value amount will be calculated to include the 3% Indian preference increment in its sum. For projects that are located only partly on the Reservation, the TERO fee assessment will be pro-rated to be equivalent to the ratio of miles of project within the Reservation to total miles of project. The TERO fee will be assessed and administered by the Tribes in a manner that is consistent with:

i. applicable Tribal law, rules and practices as applied to all other entities; and

ii. applicable Federal regulations and policy.

b. MDT will collect the TERO fee for the Tribes by withholding the fee from each progress and final payment made to its contractor in an incremental amount equal to 3% of each such progress and final payment. MDT will then submit each incremental payment to the Tribes within ten (10) days of payment to the contractor.

3. Indian Preference Employment: MDT and the Tribes will provide for Indian preference employment on MDT projects on the Reservation pursuant to the terms of this MOU.

4. Indian Preference Coordinator: The Tribes will establish and maintain the position of Indian Preference Coordinator whose duties include but are not limited to the following:

a. establish and administer an Indian Preference Hiring Hall;

b. negotiate, administer and enforce employment compliance plans with MDT contractors cooperatively with MDT;

c. monitor employer compliance;

d. recruit, identify and select trainee candidates; and

e. liaison between the Tribal Council, MDT, and MDT contractors on all issues related to Indian preference employment.

5. Hiring Hall: The Indian Preference Coordinator will establish and administer an Indian Preference Hiring Hall as a resource providing referral services for qualified Indian applicants, without regard or restriction to affiliation or membership in a particular tribe, seeking work and contractors/subcontractors seeking qualified Indian employees.

a. Applicants will be recruited, identified and selected by the Indian Preference Coordinator in a manner consistent with this MOU and with Indian preference law, rules, and standard practices. Such law, rules, and practices, for purposes of this MOU, will allow employers to maintain a "core crew" of employees who are exempt from Indian preference employment requirements. For purposes of this MOU "core crew" is defined to include a person who is either in a supervisory position or who has an ownership interest in the firm or another key position such that the employer would risk likely financial damage or loss if the position is not filled with a

demonstrably qualified employee.

b. When qualified Indian applicants are not available, the project contractor and subcontractors may utilize other recruitment sources.

c. Upon receipt of a request for an applicant, the Indian Preference Coordinator will have two working days to locate a qualified Indian applicant and one additional working day to have the selected applicant report to the job site. If the Indian Preference Coordinator determines that no qualified Indian applicants are available prior to the expiration of the two working day search period, then she/he will immediately notify the contractor of such unavailability so that the contractor can utilize other recruitment sources.

d. Employers may not use job qualification criteria or personnel requirements which bar Indians from employment, unless such criteria or requirements are justified by business necessity. Such criteria must be justified in writing to the Indian Preference Coordinator prior to implementation. The Indian Preference Coordinator and the employer will jointly determine whether an employee is qualified for a job craft or skill. The burden of proof will be on the employer in all disputes of minimum qualification standards and on termination of Indian preference employees when the employer determines that the employee is not qualified.

e. Indian preference employees will be given the same schedule opportunities and number of work hours as similarly situated non-Indian employees.

f. In all lay-offs and reductions in force, no Indian preference employee will be terminated when a non-Indian employee in the same job classification is still employed.

6. Compliance Plan: MDT will direct each of its contractors for construction and maintenance projects to be performed on the Reservation to negotiate an Indian Preference Employment Compliance Plan ("Compliance Plan") with the Indian Preference Coordinator. MDT will not authorize any contractor to commence work on a project until the Compliance Plan has been approved by the Indian Preference Coordinator. The Compliance Plan will:

a. be on a form provided by the Indian Preference Coordinator;

b. be submitted by the contractor to the Indian Preference Coordinator for approval not less than ten days before work begins;

c. provide for prime contractor responsibility for compliance in the prime contract and at every tier in associated subcontracts;

d. provide the Indian Preference Coordinator with authority to access the job site for purposes of performing on-site inspections as necessary to determine compliance;

e. identify the reporting protocol that the contractor will follow to document compliance; and

f. stipulate to possible sanctions for non-compliance including:

i. changes in contractor procedures and policies as necessary to become compliant;

ii. suspension of contractor operations until an identified violation is cured; and

iii. other actions as are reasonable and necessary for the purpose of enforcing

the Compliance Plan.

7. Reports: Every contractor and subcontractor having a contract with a value in excess of $25,000 will submit to the Indian Preference Coordinator:

a. project payroll reports (i.e. wages and hours) within one week of payroll disbursement, but whether such reports include any individual's social security number is entirely at the discretion of the contractor;

b. disciplinary action reports regarding Indian preference employees within two working days of taking disciplinary action;

c. promotion reports within two working days of giving any promotion;

d. layoff/RIF notice 24 hours prior to making any layoffs or reductions in force; and

e. trainee reports for Indian trainees on the Project

f. The Indian Preference Coordinator will submit to MDT a report of findings if there are any anomalies, discrepancies, or issues of non-compliance in any of these reports.

8. Non-compliance:

a. When the Indian Preference Coordinator has reason to believe that an employer is out of compliance with the Compliance Plan, then the Indian Preference Coordinator will issue notice of noncompliance to the alleged violator, with a copy to MDT. Such notice will be served on the alleged violator either personally or by registered mail. The notice will state the nature of the alleged violation, identify the type of sanction that the Indian Preference Coordinator may seek for each alleged violation, notify the alleged violator of her/his right to answer, and the potential consequences for failing to answer. The notice will, when possible, suggest measures for cure of the alleged acts of non-compliance including suggested methods and time. The notice will specify the actions to be taken by the Indian Preference Coordinator if the alleged violation is not cured.

b. A contractor who is served a notice of non-compliance will be provided 15 days to answer. The answer may be in either written form or personal contact. The answer will either admit or deny the alleged violations, raise all affirmative defenses, and state whether the contractor will undertake curative measures. If an answer states that a contractor will undertake curative measures specified in the notice, then the contractor will be granted a reasonable amount of time to implement such measures. If curative measures are implemented within a reasonable time and to the satisfaction of the Indian Preference Coordinator, then no further action will be taken.

G. Indian Training

MDT and the Tribes will provide for training opportunities for Indian trainees on MDT projects on the Flathead Reservation. Such opportunities will consist of placement of trainees by MDT with a contractor when such opportunities can be implemented within an MDT contract without creating undue difficulty or unreasonable risk for the contractor. The number and type of such trainee opportunities for a project will be determined pursuant to

negotiations between MDT and the Tribes' Indian Preference Coordinator and specified in that project' s PSA. MDT and the Tribes will identify said training opportunities no less than six (6) months prior to signing of the PSA by both parties.

H. Indian Contracting

MDT will select prime contractors and subcontractors based on applicable federal and state law and not pursuant to Tribal Indian preference rules. MDT and the Indian Preference Coordinator will work together to promote Disadvantaged Business Enterprises ("DBE") contractors for work on or near the Reservation. MDT will utilize DBE contractors on federal-aid construction contracts on or near the Reservation. DBE goals will be established on federal-aid projects on or near the Reservation to reflect the construction capabilities of DBE firms.

I. Access Management

1. MDT will form an exceptions committee to review all requests regarding access to federal-aid and state highways on the Reservation. The exceptions committee will function according to committee bylaws attached hereto as Appendix #1, and at a minimum will:

a. meet as necessary;

b. include three permanent representatives, one each from MDT, the Tribes, and the county in which the access in question is located and may also include duly authorized representatives of other government agencies who are invited by the permanent representatives to join the exceptions committee temporarily for oversight of an individual MDT project when that MDT project will have direct impacts on the jurisdictional property of a temporary representative' s agency; and

c. render recommendations to MDT based on the consensus of the representatives regarding grant of new access or change in existing access.

2. MDT will follow the recommendations of the exceptions committee regarding grant/denial of new access or change in existing access whenever possible and consistent with its authorities and duties for managing and controlling highway access pursuant to state law.

J. Tribal Law & Order / Accident Reports

For purposes of gathering comprehensive safety data, the Tribal Law and Order Department will provide copies of Tribal officers' investigative reports regarding traffic accidents which are under the jurisdiction of the Tribes to the Montana Highway Patrol. These reports may be submitted in forms and at times agreed upon by Tribal Law and Order and the Montana Highway Patrol.

V. Duration / Termination / Renewal

A. This MOU will become effective upon the signature of both of the Parties and will continue in effect for a term of five years unless earlier terminated by the Parties.

B. Either party upon sixty days written notice to the other may terminate this MOU.

C. Approximately six months prior to the expiration of this MOU, the Parties will meet to review this MOU and identify issues of concern. The Parties will then seek to resolve these concerns by good faith negotiation so that mutually acceptable terms and conditions are available to the Parties in the event the Parties want to renew the MOU for an additional five-year term.

VI. Amendments / Severability

A. Any amendment or variance affecting this MOU will only be made in writing with the concurrence of both parties.

B. The Parties agree that if any portion of this MOU is declared invalid or is otherwise determined to be without force or effect, the remainder of this MOU will remain in full force and effect.

VII. Party Contacts

Michael T. Tooley, Director, MDT, or his designee or successor, will be the liaison for MDT. All notices and communications between the Parties with respect to this MOU will be directed to him at the following address:

Michael T. Tooley, Director
Montana Department of Transportation
2701Prospect Avenue
P.O. Box 201001
Helena, Montana 59620-1001

B. Shelly R. Fyant, Chairman, Tribal Council, or his designee or successor, will be the liaison for the Tribes. All notices and communications between the Parties with respect to this MOU will be directed to him at the following address:

Shelly R. Fyant, Chairman
Confederated Salish and Kootenai Tribes
42487 Complex Boulevard P.O. Box 278
Pablo, Montana 59855

VIII. Negative Declaration

Nothing in this MOU or in any conduct undertaken pursuant to it will be deemed as enlarging or diminishing the jurisdiction of either of the respective Parties, or as a waiver of sovereign immunity, or as an admission or liability of any kind.

IX. Signatures

In Witness Whereof, this Memorandum of Understanding is hereby approved and executed on the latest date shown below.

For MDT:

Michael T. Tooley, Director Date 6/1/2020

For the Tribes:

Shelly R. Fyant, Chairwoman Date 18 May 2020

Approved for Legal Content:

Tim Fox, Montana Attorney General Date

Project Specific Agreement between the Confederated Salish and Kootenai Tribes and the Montana Department of Transportation

Project Name: SF 179 D1 SFTY SIGNS GUARDRAIL
HSIP STWD(647)
UPN 9635000

Project Type: Roadway & Roadside Safety Improvements

Project Route: MT 28, Reference Post (RP) 13.8 to RP 14.9 (map attached)

Letting Date: December 17, 2020

This Project Specific Agreement ("PSA") is entered into as specified in the Memorandum of Understanding ("MOU") dated June 1, 2020 between the Confederated Salish and Kootenai Tribes ("Tribes") and the Montana Department of Transportation ("MDT").

The purpose of this PSA is to describe the specific cooperative efforts the parties will perform and have agreed to in conjunction with this Project. Nothing contained in this PSA shall be inconsistent or in conflict with the MOU. If anything is inconsistent, the MOU shall control. In the event the above-specified Project is not awarded, this PSA is null and void and a new PSA will be drafted.

Specific Issues:

A. A pre-bid conference will not be held on this project.

B. A pre-construction conference for this project will be held prior to the start of the project. Attendance at the Preconstruction Conference is mandatory for the prime contractor and for each major subcontractor. The Tribes will be invited to attend the pre-construction meeting.

C. The prime contractor and it subcontractors may obtain construction borrow materials for the Project from any lawful source.

D. An Indian Preference Contracting fee ("IPC fee") of three percent (3.0%) will be assessed against the total contract cost for work performed on the Flathead Reservation. MDT will collect the IPC fee for the Tribes by withholding the fee from each progress and final payment made to its contractor in an incremental amount equal to 3% of each such progress and final payment. MDT will then

submit each incremental payment to the Tribes within ten (10) days after having made payment to the contractor.

E. Indian Hiring Requirements

1. Before beginning work, MDT will require its prime contractor and all subcontractors to each negotiate an Indian Preference Employment Compliance Plan with the Tribal Indian Preference Coordinator in accordance with the MOU, and will direct its prime contractor and subcontractors to abide by the Indian Preference laws, rules and procedures required by the MOU.

2. MDT and the Tribes understand and agree that the prime contractor and/or its subcontractors will not employ any trainees on the Project.

F. Water to be used by the contractor for the Project may be obtained by the prime contractor from any lawful source desired by it. There will be no Tribal charges to the contractor for Project water unless the prime contractor negotiates and obtains water from a Tribally-owned source.

G. The prime contractor and all of its subcontractors will procure all permits required by Tribal regulations before commencing work on the project.

H. The Tribes are aware of the Project's scheduling and support it.

I. The contractor will assist and cooperate with the Tribes and MDT in fulfilling and enforcing the Montana State Weed Law (MCA 7-22). The objectives are to prevent, control and restrict the spread of noxious weeds during construction of this project.

1. Seed rights-of-way or portions thereof devoid of competing vegetation as soon as practical, pursuant to the seeding provisions of Project design specifications. All seed used for this purpose must be certified noxious weed seed free, and records of sources, lots, or batches and evidence of certifications must be provided to the Weed Board on demand.
2. All fill, borrow or gravel sources must be noxious weed free.
3. Obtain organic materials used for surface mulch, erosion control, water barriers, or frost and weather protection of green concrete from noxious weed seed free sources.
4. Clean equipment and trucks before moving from noxious weed infested areas to areas free of noxious weeds.

Shelly R. Fyant, Chairwoman
Confederated Salish & Kootenai Tribes

Date: 17 Aug 2020

Michael T. Tooley, Director
Montana Department of Transportation

Date: 10/9/2020

Approved for Legal Content

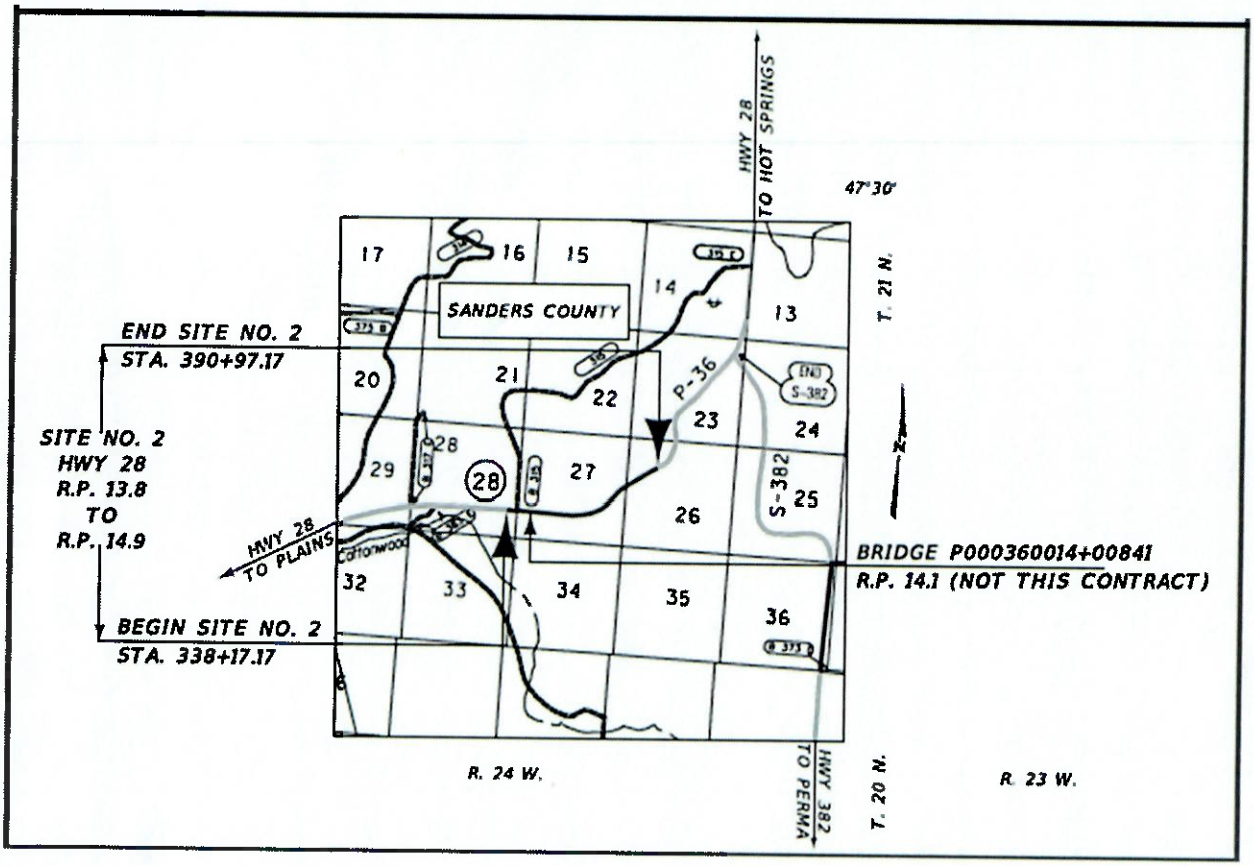
Legal Services,
Confederated Salish & Kootenai Tribes

Date: 9-8-20

Approved for Legal Content

Legal Services,
Montana Department of Transportation

Date: 10/6/20


HWY 28
TO HOT SPRINGS
47°30'
SANDERS COUNTY
T. 21 N.
END SITE NO. 2
STA. 390+97.17
SITE NO. 2
HWY 28
R.P. 13.8
TO
R.P. 14.9
P-36
S-382
BRIDGE P000360014+00841
R.P. 14.1 (NOT THIS CONTRACT)
HWY 28
TO PLAINS
Cottonwood
BEGIN SITE NO. 2
STA. 338+17.17
R. 24 W.
HWY 382
TO PERMA
T. 20 N.
R. 23 W.

MDT NONDISCRIMINATION
AND
DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with Federal law, MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, national origin,
sex, sexual orientation,
gender identity,
age, disability, & Limited English Proficiency

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States relative to Non- Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, 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:

a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
    i. Statement that PARTY does not discriminate on the grounds of any protected classes.
    ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
    iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.

iv. Information on how to request information in alternative accessible formats.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml

b. By signing this agreement, the PARTY assures that:

The contractor, sub recipient 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.

c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY 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 PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, 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 MDT or relevant US DOT 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 PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non- discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or

b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statues and authorities; including but not limited to:

Federal

- 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 Airways Improvement Act of 1982, (49 U.S.C. § 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 prohibits 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 CFR 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 prevents 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.*).

- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

STANDARD PROVISIONS INDEX

FEDERAL AID PROJECTS CONTAINS

Federal Wage Rates (Rev. 1-1-2021)..... 9 Pages

Requirements & Acknowledgement for Working on Railroad R/W ..... 1 Page

Required Contract Provisions Federal-Aid Const. Contracts (FORM FHWA-1273) [Rev.5-1-2012]..... 12 Pages

Supplemental Revisions for Required Contract Provisions Federal-Aid Const. Contracts (FORM FHWA-1273) [Added 2-4-2016] ..... 1 Page

EEO Affirmative Action Req. on Federal-Aid Construction ..... 1 Page

General Decision Number: MT20210079 01/01/2021

Superseded General Decision Number: MT20200079

State: Montana

Construction Type: Highway

Counties: Montana Statewide.

HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021

* SUMT2014-001 02/19/2014

	Rates	Fringes
CARPENTER		
Carpenter/Piledriverman.....$	29.00	11.82
Millwright.....$	32.00	11.82

Zone 1: 0 to 25 miles – Free
Zone 2: 25 to 50 miles - Base Pay +$2.50
Zone 3: Over 50 miles - Base Pay +$3.00

The Carpenter zone hourly rate applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Courthouse of the following cities to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Missoula, Kalispell.

The agency shall calculate the mileage and include it in the special provisions of the bid documents and awarded contract.

CEMENT MASON/CONCRETE FINISHER...$ 24.87 10.80

Zone 1: 0 to 25 miles – Free
Zone 2: 25 to 50 miles - Base Pay +$2.50
Zone 3: Over 50 miles - Base Pay +$3.00

The Cement Mason/Concrete Finisher zone hourly rate applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Courthouse of the following cities to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Missoula, Kalispell.

The agency shall calculate the mileage and include it in the special provisions of the bid documents and awarded contract

DIVER

Diver Tender.....$ 37.16 14.52
Diving.....$ 76.32 14.52
Stand-By.....$ 38.16 14.52
The tender shall receive 2 hours at the straight time pay rate per shift for dressing and/or undressing a Diver when work is done under hyperbaric conditions.

Depth Pay (Surface Diving):

0-20 ft.: Free zone
>20-100 ft.: $2.00 per ft.
>100-150 ft.: $3.00 per ft.
>150-220 ft.: $4 00 per ft.
>220 ft.: $5.00 per ft.
Diving in Enclosures (Diver Only):

0-25 ft.: Free zone
>25-300 ft.: $1.00 per ft.

DIVER ZONE PAY:

The hourly wage rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Court House of the following cities only to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Missoula.

ZONE 1: 0 to 25 miles - Free
ZONE 2: 25 to 50 miles - Base Pay +$2.50
ZONE 3: Over 50 miles - Base Pay +$3.00

The agency shall calculate the mileage and include it in the special provisions of the bid documents and awarded contract

ELECTRICIAN (LINE CONSTRUCTION)

Equipment Operator.....$ 33.27 14.16
Groundman.....$ 25.98 13.25
Lineman.....$ 43.43 15.38

TRAVEL PAY:

$50.00 per day - 0-25 Miles from the County Courthouse of the following cities: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, and Missoula.

$60.00 per day - Over 25 Miles

The agency shall calculate the mileage and include it in the special provisions of the bid documents and awarded contract

ELECTRICIAN

All Areas.....$ 32.74 13.42

TRAVEL PAY:

Zone 1: 0 to 10 miles - Free
Zone 2: 10 to 60 miles - Federal mileage both ways/day
Zone 3: Over 60 miles - $75.00 per day

The Electrician zone hourly rate applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Courthouse of the following cities to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Missoula.

The agency shall calculate the mileage and include it in the special provisions of the bid documents and awarded contract.

IRONWORKER.....$ 27.25 20.98

TRAVEL PAY:

0 to 45 miles - Free
45-85 miles - $55.00 per day
Over 85 miles - $85.00 per day

The Ironworker zone hourly rate applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Courthouse of the following cities to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Missoula.

Zone 1: 0 to 25 miles - Free
Zone 2: 25 to 50 miles - Base + $2.50

Zone 3: Over 50 miles - Base + $3.00

The agency shall calculate the mileage and include it in the special provisions of the bid documents and awarded contract.

LABORER

Group 1.....$ 20.90 9.60
Group 2.....$ 23.97 9.60
Group 3.....$ 24.19 9.60
Group 4.....$ 25.18 9.60

GROUP 1: Flag Person

GROUP 2: All General Labor work; Burning Bar; Bucket Man; Carpenter Tender; Caisson Worker; Cement Mason Tender; Cement Handler (dry); Chuck Tender; Choker Setter; Concrete Worker; Curb Machine-Lay Down; Crusher and Batch Plant Worker; Fence Erector; Form Setter; Form Stripper; Heater Tender; Landscaper; Pipe Wrapper; Pot Tender; Powderman Tender; Rail and Truck Loaders and Unloaders; Riprapper; Sealants for Concrete and other materials; Sign Erection, Guard Rail and Jersey Rail; Stake Jumper; Spike Driver; Signalman; Tail Hose man; Tool Checker and Houseman; Traffic Control Worker.

GROUP 3: Concrete Vibrator; Dump man (Grade man); Equipment Handler; Geotextile and Liners; High-Pressure Nozzleman; Jackhammer (Pavement Breaker); Laser Equipment; Non-riding Rollers; Pipelayer; Posthole Digger (power); Power Driven Wheelbarrow; Rigger; Sandblaster; Sod-Cutter-power; Tampers

GROUP 4: Asphalt Raker; Cutting Torch; Grade Setter; High-Scaler; Power Saws (Faller & Concrete); Powderman ($1.00 per hour above Group 4 rate); Rock & Core Drill; Track or Truck Mounted Wagon Drill; Welder including Air Arc

LABORERS ZONE PAY:

The hourly wage rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Court House of the following cities only to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Missoula.

ZONE 1: 0 to 25 miles - Free
ZONE 2: 25 to 50 miles - Base Pay +$2.50
ZONE 3: Over 50 miles - Base Pay +$3.00

The agency shall calculate the mileage and include it in the special provisions of the bid documents and awarded contract.

PAINTER (Pavement Marking/Milling and related work. Includes operating marking and all other equipment and all work involved in application of pavement markings including epoxies, paints, tape, buttons, thermo-plastics, and any other products applied for traffic marking purposes and for directing and regulating traffic and cutting rumble strips) .....$ 28.00 10.30

PAINTER ZONE PAY:

The hourly wage rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Court House of the following cities only to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Missoula.

ZONE 1: 0 to 25 miles - Free
ZONE 2: 25 to 50 miles - Base Pay +$2.50
ZONE 3: Over 50 miles - Base Pay +$3.00

The agency shall calculate the mileage and include it in the special provisions of the bid documents and awarded contract.

POWER EQUIPMENT OPERATOR:

Group 1.....	$ 26.52	10.40
Group 2.....	$ 28.55	10.40
Group 3.....	$ 29.41	10.40
Group 4.....	$ 30.10	10.40
Group 5.....	$ 31.44	10.40
Group 6.....	$ 32.13	10.40
Group 7.....	$ 34.23	10.40

GROUP 1: Air Compressor; Auto Fine Graders; Belt Finishing Machine; Boring Machine (small); Cement Silo; Crane, A-Frame Truck Crane; Crusher Conveyor; DW-10, 15, and 20 Tractor Roller; Farm Tractor; Forklift; Form Grader; Front End Loader Under 1 CU Yard; Heavy Duty Drills; Herman Nelson Heater; Mulching Machine; Oiler, All Except Cranes & Shovels; Pumpman.

GROUP 2: Air Doctor; Backhoe/Excavator/Shovel to and including 3 CU Yard; Bit Grinder; Bituminous Paving Travel Plant; Boring Machine Large; Broom, Self-Propelled; Concrete Travel Batcher; Concrete Float & Spreader; Concrete Bucket Dispatcher; Concrete Finish Machine; Concrete Conveyor; Distributor; Dozer; Rubber-Tired, Push & Side Boom; Elevating Grader/Gradall; Field Equipment Serviceman; Front End Loader 1 CU Yard to including 5 CU Yard; Grade Setter; Heavy Duty Drills, All Types; Hoist/Tugger, All; Hydralift & Similar; Industrial Locomotive; Motor Patrol, Except Finish; Mountain Skidder; Oiler - Cranes & Shovels; Pavement Breaker, EMSCO; Power Saw, Self-Propelled; Pugmill; Pumpcrete/Grout Machine; Punch Truck; Roller, Other Than Asphalt; Roller, Sheepsfoot, Self-Propelled; Roller, 25 Tons and Over; Ross Carrier; Rotomill Under 6 Ft; Trenching Machine; Washing/Screening Plant.

GROUP 3: Asphalt Paving Machine; Asphalt Screed; Backhoe/Excavator/Shovel Over 3 CU Yard; Cableway Highline; Concrete Batch Plant; Concrete Curing Machine; Concrete Pump; Cranes; Creter; Cranes, Electric Overhead; Cranes 24 Tons and Under; Curb Machine/Slip Form Paver; Finish Dozer; Front End Loader Over 5 CU Yard; Mechanic/Welder; Pioneer Dozer; Roller Asphalt (Breakdown & Finish); Rotomill Over 6 FT; Scraper, Single, Twin or Pulling Belly Dump; Yo-Yo Cat.

GROUP 4: Asphalt/Hot Plant Operator, Cranes, 25 Tons to 44 Tons; Crusher Operator; Finish Motor Patrol; Finish Scraper.

GROUP 5: Cranes, 45 Tons to Including 74 Tons.

GROUP 6: Cranes, 75 Tons to Including 149 Tons; Crane, Whirley (All).

GROUP 7: Cranes, 150 Tons to Including 250 Tons (Add $ 1.00 For Every 100 Tons Over 250 Tons; Crane, Tower (All).

POWER EQUIPMENT OPERATOR ZONE PAY:

The hourly wage rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Court House of the following cities only to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Missoula.

ZONE 1: 0 to 25 miles - Free
ZONE 2: 25 to 50 miles - Base Pay +$2.50
ZONE 3: Over 50 miles - Base Pay +$3.00

The agency shall calculate the mileage and include it in the special provisions of the bid documents and awarded contract.

TRUCK DRIVER

Group 1.....$ 22.39 10.16
Group 2.....$ 28.06 10.16

GROUP 1: Pilot Car

GROUP 2: Combination Truck and Concrete Mixer and Transit Mixer; Dry Batch Trucks; Distributor Driver; Dump man; Dump Trucks and Similar Equipment; Dumpster; Flat Trucks; Lumber Carriers; Lowboys; Pickup; Powder Truck Driver; Power Boom; Serviceman; Service Truck/Fuel Truck/ Tire person; Truck Mechanic; Trucks with Power Equipment; Warehouseman, Parts man, Cardex and Warehouse Expeditor; Water Trucks.

TRUCK DRIVER ZONE PAY:

The hourly wage rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Court House of the following cities only to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Missoula.

ZONE 1: 0 to 25 miles – Free
ZONE 2: 25 to 50 miles - Base Pay +$2.50
ZONE 3: Over 50 miles - Base Pay +$3.00

The agency shall calculate the mileage and include it in the special provisions of the bid documents and awarded contract.

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

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

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 (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers:

A four-letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers:

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in

producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers:

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those

classifications: however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can

be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations.

Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board).

Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

Effective 01-21-21

"CONTRACTOR REQUIREMENTS AND ACKNOWLEDGMENT FOR WORKING ON RAILROAD RIGHT-OF-WAY"

This document must be dated and signed by the Contractor and submitted to the State before occupying or working on Railroad right-of-way.

1) No change, which has a direct effect on the Railroad, will be made to construction plans without submitting revised plans and receiving approval from the Railroad. Work covered by the plans, that requires flagging, will be covered by the Railroad/Highway Agreement. For work that is a result of the contractor's discretion, flagging protection will be required when equipment crosses or is working within 25 feet (7.62 meters) of center of any live track. When deemed necessary by local Railroad officers, a flagman may be required at all times while working on Railroad right-of-way in high density rail traffic area.

2) Crossing of any Railroad tracks must be done at approved locations and must be full depth timber, rubber, etc. Any equipment with steel wheels, lugs or tracks must not cross steel rails without the use of rubber tires or other approved protection. This shall apply specifically to, but not be limited to, access for Contractor furnished gravel, borrow or waste sites. The Contractor will be required to obtain a permit from the Railroad, and comply with any provisions thereof, before using any private Railroad crossings. All track crossing locations must be covered by a Private Roadway and Crossing Agreement. This does not apply to any public crossing.

3) Costs of flagging or planking protection of the tracks, which are a direct result of the planned construction, will be paid for by the State. Costs of flagging, planking for protection of the tracks, installation of new crossings or other work caused by the Contractor's discretion, will be paid by the Contractor.

4) When work to be performed by the Contractor is not covered in the Railroad/Highway agreement, the Contractor must furnish a plan to the Railroad for approval showing details as to how any work that may affect the Railroad will be accomplished.

5) Storing of construction materials or any other material, including dirt, sand, etc., within the Railroad right-of-way, will not be allowed unless covered by an easement, construction permit, or Contractor's permit/lease.

6) Construction within 25 feet (7.62 meters) of the center of any track not covered by the Railroad/Highway agreement will require plan approval and authorization by the Railroad Superintendent Maintenance and Engineering. This includes, but is not limited to, any excavation, slope work and driving of sheet piling.

7) No vehicles, equipment or machines shall be parked or stored unattended within 25 feet (7.62 meters) of any track, on railroad right-of-way, without specific written approval of the Railroad.

8) When any work is to be performed on Railroad property by the Contractor that is not shown in the construction plans, the Contractor must submit a detailed plan of the work to the Railroad for their approval.

CONTRACTOR'S ACKNOWLEDGMENT:

_____
Company

By: _____
Name

_____
Title

_____
Date

WORK SITE LOCATION:

_____
Town

_____
State

_____
Project #

Rev. 01/01/04

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated 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. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

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 (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).

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.

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). 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 bid proposal or request for proposal 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).

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

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

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

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 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 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, 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 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, 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 230, 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 (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 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 35 and 29 CFR 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.

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, 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 who 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.

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, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure 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. 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, 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, 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 there under. 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, 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 and 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. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor 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 contracting agency deems appropriate.

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 $10,000 or more.

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, 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). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

a. All laborers and mechanics employed or working upon the site of the work, 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 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.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. 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 shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). 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 classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall 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.(1) The contracting officer shall 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 shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore 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 utilized 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) 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 shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. 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.

(3) 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 shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall 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.

c. 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 shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. 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, 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.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, 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.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, 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 section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) 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 section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall 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. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed 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 Regulations, 29 CFR part 3;

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, 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 may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed 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 Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall 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 the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall 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, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. 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. 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 journeymen 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.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 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.

9. Disputes concerning labor standards. 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 he or she) 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 section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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 watchmen 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.

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. 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 watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 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.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or 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, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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” 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:

(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.

2. 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. 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.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

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 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.

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 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).

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 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 1, 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

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

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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.

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.

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.

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.

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 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee 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 grantee or subgrantee 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.

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.

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. 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 Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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. 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) 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;

(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; 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.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **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)

a. By signing and submitting this proposal, the prospective lower tier 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.

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 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 grantee or subgrantee 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 grantee or subgrantee 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.

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.

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 Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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.

* * * * *

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall 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 20).

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.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

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.

Supplemental Revisions for FHWA Form-1273 (Dated May 1, 2012)
Required Contract Provisions
Federal-Aid Construction Contracts

The following are supplementary or amendatory to the May 1, 2012, FHWA Form-1273 insofar as they apply to this contract:

Add the following provisions in accordance with the FHWA memo dated December 11, 2015:

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.

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 above paragraph to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

SPECIAL PROVISIONS
Rev. 3-15-02
EEO AFFIRMATIVE ACTION REQUIREMENTS ON
FEDERAL & FEDERAL-AID CONSTRUCTION CONTRACTS

Federal-aid contractors are hereby notified they are subject to the OFCCP goals and timetables for minority and female participation expressed below. Compliance with the goals and OFCCP affirmative action efforts for contracts and subcontracts consisting of $10,000 or more will be determined by OFCCP officials.

APPENDIX A

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

1. The Offeror's or Bidder's attention is called to the Equal Opportunity Clause and "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 workforce in each trade on all construction work in the covered area, are as follows:

GOALS FOR FEMALE PARTICIPATION EACH TRADE	6.9%
TIMETABLES	GOALS FOR MINORITY PARTICIPATION IN EACH TRADE
153 Great Falls, MT	
SMSA (Standard Metropolitan Statistical Area) Counties	
3040 Great Falls, MT	3.2%
Cascade County	
Non-SMSA Counties	4.1%
Blaine, Broadwater, Chouteau, Fergus, Glacier, Hill, Jefferson, Judith Basin, Lewis & Clark, Liberty, Meagher, Petroleum, Phillips, Pondera, Teton, Toole, Valley, Wheatland	
154 Missoula, MT	
Non-SMSA Counties	2.7%
Beaverhead, Deer Lodge, Flathead, Granite, Lincoln, Madison, Mineral, Lake Missoula, Powell, Ravalli, Sanders, Silver Bow	
155 Billings, MT	
SMSA Counties	
0880 Billings, MT	3.3%
Yellowstone County	
Non-SMSA Counties	3.3%
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Gallatin, Garfield, Golden Valley, McCone, Musselshell, Park, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, Wibaux, Yellowstone Nat'l Park	
Non-SMSA Counties	
Daniels, Sheridan, Richland, Roosevelt	4.4%

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 of 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 its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 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. 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 provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.