CONTRACT NO. 05921

Backsfed.090921

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 September 9, 2021. All bids will then be publicly opened, reviewed for correctness, and then publicly read.

Federal Aid Project(s):

STPP 3-4(46)102 US-89 Erosion Repair-Two Medicine

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 #05921
AWARDED ON: SEPTEMBER 21, 2021
TO: GLACIER EXCAVATING INC

MONTANA DEPARTMENT OF TRANSPORTATION

Loran Frazier, Chairperson
Montana Transportation Commission

Malcolm “Mack” Long
Director of Transportation

Contract No.05921
JJ:HB:9838000ADV-105

AWARD COPY

CURRENT QUESTIONS & ANSWERS

105 - US-89 EROSION REPAIR - TWO MEDICINE - September 9, 2021

Notifications
No Notices available for this project.

Addendums
No Addendums available for this project.

Clarifications
No Clarifications available for this project.

Questions
No Questions available for this project.

MONTANA DEPARTMENT OF TRANSPORTATION
SCHEDULE OF ITEMS

CONTRACT ID: 05921

PROJECT: STPP 3-4(46)102 (9838046000)
US-89 EROSION RPR-TWO MEDICINE

PROP LINE NO.	ITEM NUMBER	ITEM DESCRIPTION	UNIT OF MEASURE	QUANTITY
	SECTION 0001 - RIVERBANK EROSION REPAIR - 100% ON BLACKFOOT RESERVATION			
0010	104 030 010	MISCELLANEOUS WORK	UNIT	10,000.00
0015	104 030 065	MISCELLANEOUS ITEMS-LNFT	LNFT	387.00
0020	105 070 000	CONTRACTOR SURVEY AND LAYOUT	LS	1.00
0030	107 100 010	CULTURAL RESOURCE PERSON	DAY	5.00
0040	109 200 005	MOBILIZATION	LS	1.00
0050	208 010 000	BMP ADMINISTRATION-LS	LS	1.00
0060	208 010 200	TEMPORARY EROSION CONTROL-FIXED	UNIT	500.00
0070	208 010 486	STREAMBED MATERIAL	CUYD	309.00
0080	208 010 500	BIOENGINEERED BANK	LS	1.00
0090	210 020 173	COM TRAILER-INSTALL, MAINTAIN, REM	EACH	1.00
0100	607 100 229	FARM FENCE-TYPE F4W	LNFT	351.00
0110	607 100 380	FARM FENCE-PANEL/DOUBLE FW	EACH	6.00
0120	610 100 559	REVEGETATION	LS	1.00
0130	610 100 560	RIPRAP REVEGETATION	SQYD	946.00
0140	610 650 028	TREE AND SHRUB PLANTING	LS	1.00
0150	613 100 050	RIPRAP-CLASS 3 RANDOM	CUYD	1,601.30
0160	618 030 005	TRAFFIC CONTROL DEVICES CB	UNIT	5,000.00
0170	622 011 043	PERM EROSION CONTROL-HIGH SURV	SQYD	1,187.00

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SPECIAL PROVISIONS

FEDERAL AID PROJECT NO(S). STPP 3-4(46)102

(REVISED 09-09-21)

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 V2.3 Edition" found at the following link: https://www.mdt.mt.gov/other/webdata/external/const/specifications/2020/SPEC-BOOK/2020-SPEC-BOOK-V2.3.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_090921_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]

Riverbank erosion repair to include construction of a bioengineered bank using riprap and geotextile on US-89 Erosion RPR-Two Medicine. This project is located in Glacier County 12 miles southeast of Browning on State Primary Route 3/HWY 89 between RP 102.2 and RP 102.3. This project is located on the Blackfeet Reservation.

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

This contract is a completion date contract. The work begins on the effective date stated in the Notice to Proceed (NTP) and all work is to be completed no later than March 11, 2022. Unusually severe weather is not considered as a delay cause. The NTP will be issued with an effective date of November 16, 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 0.00%. 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 aspirational goal of 4.5% DBE 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 Cut Bank.

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 [102] (REVISED 5-10-18)

Wage rates and zone pay requirements can be found elsewhere in the proposal. The mileage for determining the zone is 112 miles.

Indicate the Zone requirements for all classifications. Provide this information to the Project Manager at the Preconstruction Conference on Form MDT-CON-102_02.

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. 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.

16. STEEL PRICE ADJUSTMENT [106] (REVISED 6-10-21)

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: $0.65.

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-1.10), rounded to the nearest 0.01
If AF is equal to or less than 0, no adjustment.
If AF is greater than 0, continue
Price Adjustment = AF x weight x base price

For Decreases:

Adjustment Factor (AF) = (IC/IB-0.90), rounded to the nearest 0.01
If AF is equal to or greater than 0, no adjustment.
If AF is less than 0, continue
Price Adjustment = AF x weight 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)
Weight = weight of steel in pounds

17. 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:

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

B. 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.

C. 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.

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

E. 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.

F. 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.

G. 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.

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

1) 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:

Timothy Davis, Chairman
All Chiefs Square
PO Box 850
Browning MT 59417
(406) 338-7521 Phone
(406) 338-7530 Fax
www.blackfeetnation.com

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

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

The work on this project is being performed on the Blackfeet 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 Blackfeet Nation 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.

19. TRADITIONAL TRIBAL CULTURAL AUTHORITY COORDINATION

A. Construction Requirements.

1) Contact John Murray, Blackfeet Tribal Historic Preservation Officer (THPO), at (406) 338-7522 Ext. 2269, at least ten working days prior to starting construction or disturbing any ground at contractor optioned staging areas, borrow areas, or proposed material stockpile sites.

2) Do not conduct grubbing, clearing trees and shrubs and/or activities that involve new ground disturbances unless a Traditional Tribal Cultural Authority (TTCA) designated by THPO is present to monitor construction activities.

3) The TTCA will act as the Tribal Historic Preservation Officer's eyes and ears on the ground to ensure that no cultural resources are inadvertently damaged or destroyed by the contractor during project construction.

a) DO NOT DISTURB Rock Cairns, Plate Offerings, Rock Alignment Sites, or Human Burial Sites (Cultural Resources).

4) Obtain all necessary permits and approvals from the Blackfeet Tribal Environmental Office and the Blackfeet Tribal Historic Preservation Office prior to ground disturbances at any contractor optioned staging areas, borrow areas, or stockpile sites within the boundaries of the Blackfeet Reservation.

5) Submit copies of the invoices from THPO within 10 calendar days of the invoice dates.

B. Method of Measurement and Basis of Payment. A fixed price bid item, CULTURAL RESOURCE PERSON, at the rate of $300 per day is included in the bid schedule for this contract. Payment will be based on the actual number of days the TTCA person(s) presence is required as documented by invoice. Include all other costs of work associated with this provision in the price of other items.

20. 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 23 Description. The permanent features of this project are authorized under a US Army Corps of Engineers Nationwide Permit 23 – Approved Categorical Exclusions, (Army Corps File Number NWO-2020-0163-MTH).

1) The permit for this project authorizes the following project work to be performed within waters of the US.

Approximately 570 cubic yards of Class III rock and 309 cubic yards of salvaged streambed material will be used to stabilize 430 linear feet of bank and will extend approximately eleven (11) feet into the river to make a smooth transition to the existing bank. Approximately 416 linear feet of bank will be stabilized by placing rock along the bank and creating a 3-foot bench to allow for the placement of containerized shrubs. Approximately 14 linear feet of bank will be stabilized by placing a rock toe and constructing four (4) layers of fabric encapsulated soil lifts. The slope will be constructed to a 1.5:1 slope, the rock will be placed at the toe of the slope and a soil lift will be constructed on top of the rock revetment. Glacier County, Montana. Section 5, Township 31 North, Range 9 West. Latitude 48.4743795, Longitude -112.8079217.

2) This authorization is valid until March 18, 2022

3) Obtain the Nationwide Permit 23 Fact Sheet that fully describes the Nationwide Permit 23 and lists the General Conditions that must be adhered to for this authorization to remain valid. Adhere to the General Conditions.

4) In addition to the General Conditions, adhere to the following Special Condition provided by the US Army Corps in the Authorization:

The Blackfeet Nation CWA Section 401 Water Quality Certification issued on January 11, 2021, for Army Corps File Number NWO-2020-0163-MTH, includes specific conditions, all of which must be complied with for that certification to remain valid. This does not eliminate the need to obtain other permits that may be required by that agency.

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.

1) For Nationwide Permit 33, pre-construction notification is required within the boundaries of the Blackfeet Nation. Acquire an additional Section 404 Permit and 401 Certification authorization for temporary discharges. The following is necessary to facilitate the 404 Permit and 401 Certification authorizations:

a) Pre-filing Meeting Request

(1) Submit a pre-filing meeting request to the Blackfeet Environmental Office per 40 Code of Federal Regulations (CFR) 121.4.

(2) The pre-filing meeting request must be submitted a minimum of 30 days prior to the initial submittal of a Joint Application to the 401 Certifying Authority (the Blackfeet Nation) and the US Army Corps of Engineers.

b) CWA 404/401 Joint Application Submittal

(1) 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) Obtain the Nationwide Permit 33 Fact Sheet that fully describes 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 has been granted for Army Corps Permit Number NWO-2020-0163-MTH by the Blackfeet Nation, provided that certain general and special conditions are met.

1) Obtain the water quality certification requirements issued by the Blackfeet Environmental Office (BEO) on January 11, 2021. Adhere to those general and special conditions, including but not limited to the following.

a) Obtain all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities. Primary relevant tribal permit will be ALPO (Ordinance 117). Others may apply. Know the tribal and local ordinances and complete all necessary permissions before commencing work.

b) Copies of the CWA 401 Water Quality Certification should be kept on the job site and readily available for reference.

c) Blackfeet and US Environmental Protection Agency (EPA) representatives may inspect the authorized activity to determine compliance with the terms and conditions of the permit.

d) All existing water uses will be fully maintained during and after the completion of the project.

e) Where practicable, perform all in-channel and wetland work during periods of low flow or drawn-down or when dry.

f) Equipment staging areas must be located out of all delineated wetlands.

g) Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during and immediately after construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or in a wetland, must be permanently stabilized as soon as possible.

h) Materials such as piling, culverts, sandbags, fabric, mats, timbers used for temporary facilities in wetlands or below the high water mark of Waters of the US must be free from oil, gas, excess dirt, loose paint and other pollutants.

i) Equipment staging areas in wetlands or in stream or river channels must be placed on mats, or other measures must be taken to minimize soil disturbance and compaction.

j) Clearing of riparian or wetland vegetation for the sole purpose of constructing work bridges, detours, staging areas or other temporary facilities must be limited to the absolute minimum necessary. When temporary impacts to native riparian or wetland vegetation are unavoidable, it must be mowed or cut above ground with the topsoil and root mass left intact.

k) Remove all temporary fills and structures in the entirety when they are no longer needed. Restore affected areas to the appropriate original and planned contours where possible. Re-vegetate disturbed areas with appropriate native species when native species are impacted.

l) Construction methods and best management practices (BMPs) must minimize aquatic resource impacts to the maximum extent possible. Any BMPs described in the Joint Application must be followed. BMPs should include installation and maintenance of sediment control measures; separation, storage and reuse of any topsoil; and recovery of all disturbed areas where possible. All best management practices must in place prior to the onset of construction or as soon as practicable during the construction process.

m) Best available technology and/or best management practices must be utilized to protect existing water uses and maintain turbidity and sedimentation at the lowest practical level.

n) Manage disturbed streambank topsoil in a manner that optimizes plant establishment for the site.

o) When operating equipment or otherwise undertaking construction in wetlands and water bodies the following conditions apply:

(1) Work should be done in dry conditions if possible.

(2) All equipment is to be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid or other petroleum leaks. All such leaks will be properly repaired and equipment cleaned prior to being allowed on the project site. Leaks that occur after the equipment is moved to the project site will be fixed the same day or the next day or removed from the project area. The equipment is not allowed to continue operation once a leak is discovered.

(3) All equipment is to be inspected and cleaned before and after use to minimize the spread or introduction of invasive or undesirable species.

(4) Construction equipment shall not operate below the existing water surface except as follows:

(a) Impacts from construction should be minimized through the use of best management practices submitted in the permit application.

(b) Essential work below the waterline shall be done in a manner to minimize impacts to aquatic system and water quality.

(5) Containment booms and/or absorbent material must be available onsite. Any spills of petroleum products must be reported to the Army Corps, Blackfeet Nation BEO Office and the US EPA within 24 hours.

p) Upland, riparian and in-stream vegetation should be protected except where its removal is necessary for completion of work. Revegetation should be completed as soon as possible. Applicant/contractor should revegetate disturbed soil in a manner that optimizes plant establishment for the site. Revegetation must include topsoil replacement, planting, seeding, fertilization, liming and weed-free mulching as necessary. Applicant must use native plant material and soils where appropriate and feasible. This certification does not allow for the introduction of non-native flora and fauna. All disturbed surface areas must be restored to pre-construction contours and elevation.

q) Spoils piles should not be placed or stored within the delineated wetlands or streams unless protected by a temporary structure designed to divert and handle high flows that can be anticipated during permit activity. Spoils piles should be placed on landscaping fabric or some other material to separate spoils material and allow retrieval of spoils material with minimal impact.

r) Impacts to wetlands shall not exceed 0.108 acres.

s) Any unexpected and additional impacts to waters of the US should be reported to the Army Corps, Blackfeet Environmental Office Water Quality Coordinator and the US EPA.

t) All instream and stream channel reconstruction work must be completed before the stream is diverted into the new channel. Any temporary crossings, bridge supports, cofferdams, or other structures that are necessary during permit activity should be designed to handle high flows that can be anticipated during permit activity. All temporary structures should be completely removed from the water body at the conclusion of the permitted activity and the area restored to a natural function and appearance.

u) The certification does not authorize any unconfined discharge of liquid cement into the waters of the United States. Grouting riprap must occur under dry conditions with no exposure of wet concrete to the water body.

v) BMPs shall include application of certified weed-free straw or hay across all disturbed wetland areas that are temporarily impacted; installation and maintenance of sediment control measures during construction and if necessary after construction is completed; use of heavy mud mats if necessary; separation, storage and reuse of all streambank topsoil and wetland topsoil, as appropriate; and recovery of all disturbed wetland and streambank areas where possible. All conditions set by the Blackfeet Tribe and US Army Corps must be followed.

w) Adhere to the notification requirement of the 401 Water Quality Certification. Notify the BEO at least seven (7) days prior to the commencement of the regulated activity. Send notification to both Barry Adams, BEO Water Quality Coordinator, beo.waterquality@gmail.com, (406) 338-7421, and David Spotted Eagle Jr., BEO Aquatic Lands Protection Coordinator, beo.ord117@gmail.com, (406) 338-7421. If the BEO office cannot be reached then contact Jennifer Wintersteen, EPA, (406) 457-5006. Provide confirmation of this notification to the Engineering Project Manager. Notification shall include at minimum the following information:

(1) Project location (Lat., Long.; exact point on map);

(2) NWP that will be used and the specific activity that will be authorized under the NWP;

(3) Amount of permanent and temporary fills;

(4) A short summary of the proposed activity, and all other federal, state, tribal or local permits or licenses required for the project;

(5) complete contact information of both the applicant and contractor (name, name of the company or property if applicable, telephone, mobile, and email);

(6) Summary of BMPs that will be used; and

(7) A summary of communications with BEO water quality staff, including any concerns or issues.

x) Point source discharges may not occur: (1) in fens, bogs or other peatlands; (2) within 100 feet of the point of discharge of a known natural spring source; or (3) hanging gardens.

y) Except as specified in the application, no debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes shall be allowed to enter into or be stored where it may enter into waters of the U.S.

z) Silt fences, straw wattles, and other techniques shall be employed as appropriate to protect waters of the U.S. from sedimentation and other pollutants.

aa) Water used in dust suppression shall not contain contaminants that could violate water quality standards.

bb) Erosion control matting that is either biodegradable blankets or loose-weave mesh must be used to the maximum extent practicable.

cc) All equipment used in waters of the U.S. must be inspected for fluid leaks and invasive species prior to use on a project. All fluid leaks shall be repaired and cleaned prior to use or when discovered, or if the fluid leak can't be repaired, the equipment shall not be used on site. Equipment used in waters with the possibility of aquatic nuisance species infestation must be thoroughly cleaned and effectively decontaminated before they are used on the project.

dd) Vegetation should be protected except where its removal is necessary for completion of the work. Locations disturbed by construction activities should be revegetated with appropriate native vegetation in a manner that optimizes plant establishment for the specific site. Revegetation may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching, as necessary. Where practical, stockpile weed-seed-free topsoil and replace it on disturbed areas. All revegetation materials, including plants and plant seed shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities.

ee) Activities may not result in any unconfined discharge of liquid cement into waters of the U.S. Grouting riprap must occur under dry conditions with no exposure of wet concrete to the waterbody.

ff) Activities that may result in a point source discharge shall occur during seasonal low flow or no flow periods to the extent practicable.

gg) The placement of material (discharge) for the construction of new dams in not certified except for stream restoration projects.

F. Copies of the 2017 Nationwide Permit Fact Sheets for Nationwide Permits 23 and 33, the 2017 Nationwide Permit Regional Conditions for the State of Montana, and the 401 Water Quality Certification from the BEO 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 engineering 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.

21. AQUATIC LANDS PROTECTION ORDINANCE 117-A PERMIT

A. The Blackfeet Nation Blackfeet Environmental Office has authorized this project under Aquatic Lands Protection Ordinance 117-A Permit number 064-20. This provision applies to the permanent features described in this contract. If the project requires temporary features not contained in the construction plans, acquire an additional Aquatic Lands Protection Ordinance 117-A Permit from the Blackfeet Environmental Office for temporary facilities.

1) The permit for this project authorizes the following activity: Badger Creek S Fencing (Fencing, Cattle Guard, Gate Installation) on the Blackfeet Indian Reservation in Sections 10 and 34, Township 31 North, Range 08 and 09 West.

2) The following Terms and Conditions apply.

a) The work will not, during either its construction or during the life of the project:

(1) Materially diminish water quality;

(2) Materially diminish habitat for fish and wildlife;

(3) Interfere with navigation or other lawful recreation;

(4) Create a public nuisance;

(5) Create a visual impact discordant with natural scenic values, determined by the Tribal Council, where such values form the predominant landscape elements; or

(6) Alter the characteristics of the area.

b) Comply with the Blackfeet Tribes Water Quality Plan, federal EPA standards and all other tribal and federal laws governing water use and streambed activities on the Blackfeet Reservation.

3) Other specific conditions apply as follows.

a) This permit will expire on January 15, 2022.

b) Utilize BMP's while working adjacent to aquatic lands.

c) All equipment to be inspected for oil, gas, diesel, anti-free, hydraulic fluid, and other petroleum leaks. All such leaks will be properly repaired and equipment cleaned prior to be allowed in/adjacent to aquatic lands.

d) Report any additional impacts to aquatic lands that were not listed or anticipated in application to Blackfeet Environmental Office within 24 hours.

B. 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.

22. STREAM PROTECTION ACT 124 [107] [208]

A. Description. The proposed project has been authorized by Preconstruction Stream Protection Act (SPA) 124 No.: MDT-R4-46-2020, by the Montana Department of Fish, Wildlife, and Parks (FWP); provided the General and Special Conditions listed below are followed. This Preconstruction SPA 124 authorizes the permanent features at the following locations:

Station	Waterbody
All	Two Medicine River

B. General Conditions

1) Meet the specifications listed in Subsection 208.03.3.

2) Install and maintain Best Management Practices and temporary erosion control measures where appropriate to protect the waterbodies and adjacent areas listed in the table above. Conduct all work in a manner that minimizes turbidity and other disturbance to these areas.

3) All surface applied erosion control materials used in or adjacent to the waterbodies listed in the table above must comply with Specification 713.12 and be comprised of natural fiber and biodegradable material to ensure decomposition.

4) Limit the clearing of vegetation to only what is necessary for the construction of the project within riparian areas. Restore temporary access routes and any temporarily disturbed areas to original conditions, including original contours and vegetation reclamation.

5) Obtain a temporary facility SPA 124. This Preconstruction SPA 124 does not cover the construction of temporary facilities such as work bridges, work pads, cofferdams, temporary detours, diversions, etc. This authorization does not include removal and disposal of the existing structure, access to and from authorized locations, sequencing and construction methodology to construct authorized features, or any other unauthorized impacts affecting permitted drainages. These items, and any other items not covered here but potentially affecting a stream/river or its channel(s), need to be permitted separately by the Contractor.

C. Special Conditions

- None

Copies of the Preconstruction SPA 124 Authorization are available upon request from Environmental Services.

Contact the Project Manager for coordination with the District Biologist on questions regarding this authorization.

23. PREQUALIFIED STREAM RESTORATION CONTRACTORS

A. Description. This project requires a Prequalified Stream Restoration Contractor to complete the bioengineered bank, revegetation, riprap revegetation, and containerized shrub planting portions of the work as shown in the plans and described elsewhere in the bid documents.

B. Requirements.

1) A list of pre-qualified stream restoration contractors is located at the following website: http://www.mdt.mt.gov/business/contracting/prequalified.shtml

2) Contractors not currently pre-qualified by the Department to perform stream restoration work can obtain pre-qualification information from the Construction Engineering Services Bureau, (406) 444-6289, 2701 Prospect Ave., Helena, Montana. A complete Statement of Qualifications (SOQ) must be received a minimum of 14 calendar days prior to the bid opening as specified in the Invitation for Bids.

3) The Contractor and Stream Restoration Contractor will attend a Pre-Work meeting on site to discuss the proposed work with the MDT District Biologist and Project Manager. Notify the Project Manager a minimum of five days prior to the desired meeting time. Construction equipment, task sequencing, and construction methods will be discussed and finalized before work can commence.

4) Adjustments may be necessary to minimize disturbance to existing vegetation or other river features and to field-fit the design. Ensure all adjustments are approved by Project Manager prior to execution of the work. The Project Manager will coordinate the proposed changes with the MDT District Biologist prior to approval.

C. Measurement and Payment. Include all costs associated with using a prequalified Stream Restoration Contractor in the associated bid items.

24. STREAMBED MATERIAL

A. Description. This work includes the removal of existing native streambed material impacted by the placement of the riprap.

B. Construction Requirements.

1) Salvageable native streambed material is available in the area of the riprap installation.

2) Native streambed material is to be salvaged from the sections of the existing streambed that fall within the construction limits of the riprap placement. No streambed material is to be salvaged from any section of the existing stream not impacted by the project construction limits.

3) Place streambed material over the riprap key once riprap has been placed.

4) Stockpile streambed material in a location separate from all other construction materials.

5) Approximately 309 cubic yards of streambed material is required to fill back over the riprap key.

C. Basis of Payment. Include the cost of handling, equipment, tools and labor necessary to salvage streambed material and place the material in the unit price for Streambed Material.

25. ENVIRONMENTAL REQUIREMENTS [208] (ADDED 9-9-21M)

The following subsections apply to this Contract. The Contractor is required to review the following subsections as they have been identified as project specific to this contract:

Migratory Bird Treaty Act Compliance – Vegetation Removal	Subsection 208.03.4A(1)
AIS Watercraft and Equipment Inspection	Subsection 208.03.2D

26. STORM WATER PERMITTING REQUIREMENTS UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) [208] (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.

27. CONSERVATION MEASURES FOR WORK IN GRIZZLY BEAR HABITAT

A. Description. This project is located within grizzly bear habitat.

B. Requirements.

1) No work will be conducted between 9:00 PM and 7:00 AM.

2) Promptly clean up any project related spills, litter, garbage, debris, etc.

3) Camping is allowed in designated camping areas only and in accordance with posted regulations.

4) 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.

5) Remove garbage from the project site daily and dispose of it in accordance with all applicable regulations.

6) Notify the Project Manager of any animal carcasses found in the area.

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

C. Conduct all project-related activities outside of construction limits in a manner which will not adversely affect federally listed species and/or designated critical habitat. Such measures include but are not limited to those listed in A. above.

D. 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.

28. BIOENGINEERED BANK

A. Description. The purpose of this work is the incorporation of seeded soil lifts and willow cuttings into the new riprap installation from station 20+00 to 20+35

B. Materials

1) Coir logs. Furnish 100% biodegradable coir logs of the following dimensions and technical specifications.

Length	Minimum 10- foot lengths
Diameter/ Unit Weight	20-inch and 12-inch
Density	Min 6 lbs. per cubic foot
Wrapping Material	Encased in spun, multiple ply coir twine or yarn
Core Material	100% coir fibers, uniformly distributed

2) Coir Erosion Control Netting made of 100% bristle fiber with a minimum weight of 700 grams per square meters.

3) Long Term Erosion Control Blanket the department's QPL. Use only 100% biodegradable blanket that does not contain polypropylene plastic.

4) 18-inch wooden stakes.

5) Topsoil: Salvaged topsoil, or salvaged streambank material with less than 30% coarse fragments (>0.2 inch) by weight.

6) Provide live, dormant, freshly cut willow stakes.

a) Make collection in the dormant season prior to April 14th.

b) Collect cuttings within the immediate vicinity of the project site to the extent practical. Cuttings can be taken from willows within 20 miles of the project site. Coordinate with private landowners when applicable.

c) Collect willows in 4 to 5-foot lengths, ½ to 2 inches in diameter in sufficient quantities to provide three per linear foot of bioengineered bank.

d) Cut the bottom of the willow stakes at a 45-degree angle to aid installation.

e) Provide short term storage of willow cuttings during the collection period in a manner that preserves their health and vigor.

C. Construction Requirements.

1) Construct soil lifts as shown in the plan details.

2) Coir fiber logs: Place coir fiber logs along the channel bank as shown on the plans.

3) Soil Lifts: Wrap all encapsulated soil lifts with a Long-Term Rolled Erosion Control inner layer and coir netting as the outer layer. Wrap coir logs inside soil lift. Longitudinal joints in the rolled erosion control and coir netting are not permitted. The top lift is to be constructed of a continuous length of fabric.

4) Willow Cuttings: Store the willow cuttings so that they remain viable from the time of collection until final placement. The Stream Restoration Contractor, and/or Project Manager must inspect and approve all cuttings before installation. Drive cuttings into lower two soil lifts as live stakes behind coir logs, as shown in the plan details.

a) Use rebar or other suitable material to create pilot hole as needed to insert the willow stake to the bottom of the lifts without damage.

b) Install willow cuttings every 10 to 12 inches in each lift and offset so that there are three willow stakes per linear foot of bank.

5) Hand broadcast seed the uppermost soil surface prior to placement of the erosion control blanket with the seed blend specified in the riprap revegetation special provision. Rake the seed

6) into the soil to a ¼ to ½-inch depth after seeding.

7) Secure the erosion control blanket following the manufacturer's recommendations. It is important that all edges of the blanket/netting be secured. Do not place coir netting on upper soil surfaces.

D. Basis of Payment. Include the cost of furnishing all materials, equipment, tools and labor necessary and incidental to completing the work described under this item in the lump sum bid item for BIOENGINEERED BANK.

29. RIPRAP [701] (ADDED 9-9-21)

A. Source Approval. The Department will approve sources for riprap. Furnish riprap from sources that meet the material requirements in Table 1 Riprap Requirements.

1) Test results indicating compliance with Table 1 are mandatory for Department approval of riprap sources.

2) Do not place riprap without source approval.

3) Submit a 100-pound sample of material representative of the riprap source. Crush the sample so that the entire sample passes a 2" sieve. Alternatively, 2" core samples may be submitted.

B. General. Furnish hard, durable, angular stone that is resistant to weathering and water action and free of organic or other unsuitable material. Angular stone is characterized by sharp, clean edges at the intersections of relatively flat surfaces. Furnish stone that is environmentally safe.

Do not use rounded stone or boulders from a streambed source as riprap. Do not use shale, stone with shale seams, or other fissile or fissured stone that may break into smaller pieces in the process of handling and placing.

The stone must meet the requirements of Table 1.

TABLE 1
Riprap Requirements

Riprap (Class I, II, and III)	
Specific gravity (AASHTO T 85)	2.40 min.
Absorption (AASHTO T 85)	4.0% max
Wear (ASTM C535)	50% max
Gradation (Optical Granulometry)	Table 701-22
Soundness of aggregate using sodium sulfate (AASHTO T 104)	12% loss max
The longest dimension (length) of each stone is no longer than 3 times the shortest dimension (width) of the stone	

Each material source proposed for use as riprap is subject to approval prior to placement. If the riprap source is approved, it may be limited to certain areas, layers, or locations within the source. Approval of the source does not preclude the Department from retesting the material once it is delivered to the project.

Ensure the riprap's placement is uniformly distributed. Acceptance for gradation will be determined by visual analysis and use of optical granulometry software and will be verified in the riprap's final placement location. Prior to final placement the Contractor may request a maximum of 3 courtesy tests of the riprap gradation.

Once in place, and prior to covering or revegetating the riprap, notify the Project Manager for in-place gradation testing.

There are no changes to Subsection 701.06.1 Handlaid Riprap.

Rescind Table 701-21 of the Standard Specifications and replace with Table 2.

TABLE 2

TABLE OF GRADATIONS - RANDOM RIPRAP

Class	Mean Particle Size (inches)	% of Mean Particle Size Passing
I	13	100
	11	70-90
	8	40-60
	3	0-10
II	24	100
	21	70-90
	16	40-60
	7	0-10
III	36	100
	30	70-90
	24	40-60
	9	0-10

30. RIPRAP FILTER BAGS

A. Description. This work is the construction, filling, and placement of the riprap filter bags in the river channel as shown in the Contract or as directed by the Project Manager.

B. Materials.

1) Geotextile. Provide Permanent Erosion Control Geotextile, High Survivability, Class B meeting the requirements of Section 716.

2) Aggregate Fill. Provide aggregate fill material meeting the requirements for Filter Material Number 2 in accordance with Section 701, Table 701-20. Alternate aggregate fill materials may be used with the written approval of the Project Manager.

C. Construction

1) Construct riprap filter bags from a single piece of geotextile measuring 14-ft x 7-ft. Fold the geotextile in half to create a 7-ft x 7-ft square. Sew seems on two sides.

2) Fill riprap filter bags to an even thickness of approximately 12-inches with aggregate fill. Sew the open side closed to produce a 5-ft x 6-ft filter bag.

3) Sewn seams must meet the requirements of Section 622.

4) Handle the riprap filter bags before and after filling in a manner that prevents tears, punctures, or other damage. Bags that have been damaged prior to installation will be repaired or replaced at no cost to the Department.

5) Lower riprap filter bags into water in a controlled fashion that prevents damage or distortion to the riprap filter bags and ensures accurate placement.

6) Overlap individual filter bags a minimum of 6-inches as shown in the plans, with the upstream bag over the downstream bag, to maintain continuous contact between geotextile and native subgrade.

7) Verify accurate placement of riprap filter bags visually or by methods approved by the Project Manager.

D. Measurement. Riprap filter bags are measured by the linear foot complete in place along the outer edge of the installation farthest from centerline.

E. Payment. Include the cost of construction and placement of riprap filter bags in the unit price bid for MISCELLANEOUS ITEMS-LNFT. Payment is full compensation for all labor, tools, materials, equipment, and other incidentals necessary to complete the work in accordance with the Contract and as directed by the Project Manager.

31. RIPRAP REVEGETATION

A. Description. This work is the incorporation of filter material between riprap voids, and revegetating material on riprap surfaces as shown on the streambank stabilization plan detail.

B. Materials.

1) Filter Material No. 2, or native material approved by the Project Manager.

2) Salvaged topsoil, or salvaged streambank material with less than 30% coarse fragments (>0.2 inch) by weight.

3) Long Term Erosion Control Blanket the department's QPL. Use only 100% biodegradable blanket that does not contain polypropylene plastic.

4) Provide the following seed mix:

RECLAMATION SEED MIXTURE			BROADCAST SEEDING RATE		
SCIENTIFIC NAME	COMMON NAME	VARIETY	% of Mix	Pounds PLS/ Acre	PLS/ sq. ft.
Elymus trachycaulus	Slender wheatgrass	Pryor, First Strike or Revenue	11	4.0	13
Pascopyrum smithii	Western wheatgrass	Rosana or Recovery	18	10.0	21
Pseudoroegneria spicata	Bluebunch wheatgrass	Goldar or Anatone	19	7.0	22
Elymus lanceolatus spp. riparium	Streambank wheatgrass	Sodar	21	7.0	24
Nassella viridula	Green needlegrass	Lodorm	22	6.0	26
Elymus canadensis	Canada wildrye	Mandan or Helena Valley	9	4.0	11
		GRAND TOTAL	100	38.0	117

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

C. Construction Requirements.

1) Fill the spaces and voids between the rocks with Filter Material No. 2, or native material. Place a sufficient amount of filter (or approved native) material over the riprap, so that after settling, the level of filter material comes to the very top of the rock.

2) Place salvaged topsoil and/or salvaged bank material to a 12-inch depth over the filter material. Place material in a manner that creates a smooth, uniform surface for seeding and/or shrub placement.

3) Hand broadcast seed the soil immediately after placement, regardless of time of year, with the seed mixture and rates listed below. Scarify the soil immediately prior to and following seeding to incorporate seed to a depth of ¼ to ½ inch into the soil.

4) Install the long-term erosion control blanket immediately following broadcast seeding and scarification as shown in the plan details. Install and secure in a manner specified by the manufacturer with wooden stakes.

D. Method of Measurement and Basis of Payment. The No. 2 filter material, topsoil and streambank material placement, erosion blanket, and seeding are measured and paid for as RIPRAP REVEGETATION at the Contract Unit price per square yard.

32. REVEGETATION

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

Construction Requirements.

1) Salvage sufficient quantities of topsoil to replace 4 inches over all disturbed areas in accordance with subsection 203.03.6.

2) Immediately following construction activities, uniformly place the topsoil, condition soil and drill seed with the reclamation seed mix and equivalent rates regardless of time of year. Areas too steep, narrow, or inaccessible with drill equipment can be broadcast seeded at double the seeding rate. Following broadcast seeding, scarify the areas to incorporate the seed into the upper ¼ to ½ inch of soil.

RECLAMATION SEED MIXTURE			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	11	2.0	6
Pascopyrum smithii	Western wheatgrass	Rosana or Recovery	18	5.0	11
Pseudoroegneria spicata	Bluebunch wheatgrass	Goldar or Anatone	19	3.5	11
Elymus lanceolatus spp. riparium	Streambank wheatgrass	Sodar	21	3.5	12
Nassella viridula	Green needlegrass	Lodorm	22	3.0	13
Elymus canadensis	Canada wildrye	Mandan or Helena Valley	9	2.0	5
		GRAND TOTAL	100	19.0	58

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

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

33. CONTAINERIZED SHRUBS

A. Description. This work consists of furnishing, delivering, and planting shrubs of the type and quantity specified.

B. Materials.

1) Furnish containerized plants of the type and size specified below. Plant materials sourced from the DNRC State Nursery are preferred. If shrubs of the required size and species are unavailable from the DNRC State Nursery, provide plants nursery grown in Montana.

SCIENTIFIC NAME	COMMON NAME	SIZE & AGE	QUANTITY
Alnus incana	Thin Leaf Alder	All shrubs are minimum 100 cu in pot size and grown for not less than 4 months to no more than 18 months	50
Cornus sericea	Red-Osier Dogwood		50
		TOTAL	100

2) If containerized plants are not available for planting during the dormant season, bare root stock of the same species can be substituted. Quantities will be doubled and planting density increased.

3) Commercial grade slow release fertilizer tablets in a 20-10-5 formulation with minor nutrients.

C. Construction Requirements.

1) The project manager must inspect and approve the use of all containerized plants prior to planting.

2) Install one shrub approximately every 3 to 4 feet along the constructed bench. Place shrubs so that species are mixed and evenly distributed along the length of reconstructed bank.

3) Excavate a hole of sufficient diameter and depth that the shrub, after settlement will stand at the same rooting depth as the container it was delivered in. Adjust placement as needed to accommodate the riprap.

4) Place slow-release fertilizer tablet(s) according to the manufacturer's instructions. Use quantity and size tablets recommended by the fertilizer manufacturer for the size and type of plant.

5) Backfill hole with soil after placement of plant.

6) Water each plant on the same day as planting. Re-water each plant 72 hours after the planting date.

D. Basis of Payment. Include the cost of furnishing all materials, equipment, tools, and labor necessary and incidental to completing the work described under this item in the lump sum bid item for TREE AND SHRUB PLANTING.

34. 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.

35. BILLING CYCLE [109] (ADDED 8-12-21)

Rescind the last paragraph of subsection 109.06.1 Billing Cycle which begins “Pay all subcontractors.” and replace with the following:

Pay all subcontractors within 7 calendar days after receipt of a periodic or final payment from the Department. Payment must be for the full amount due the subcontractor (including retainage) for work performed or materials provided that were included in the periodic or final payment according to the provisions of Section 28-2-2103(2)(a) MCA. A subcontract may not provide for a time longer than the law’s mandated 7 calendar days.

36. 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.

37. 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.

END 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 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.

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PROJECT SPECIFIC AGREEMENT
BETWEEN THE
BLACKFEET NATION AND THE
MONTANA DEPARTMENT OF TRANSPORTATION

PROJECT: **STPP 3-4(45)102**

NAME: **US 89 EROSION RPR – TWO MEDICINE**

NUMBER: **9838000**

LETTING DATE: Spring 2020

ESTIMATED CREW: 2 laborers, 1 operator

This Project Specific Agreement (PSA) is entered into as so specified in the Memorandum of Understanding (MOU) of April 21, 2017, between the Blackfeet Nation (Nation) and the Montana Department of Transportation (MDT).

The intent of this PSA is to cover the specifics of the US 89 Erosion Repair construction contract, provided, further, that nothing contained in this PSA shall be inconsistent or in conflict with the MOU.

SPECIFIC ISSUES:

I. PRELIMINARY ENGINEERING

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

b. The purpose of this PSA is to address contracted construction activities for the above project. This project will repair and stabilize the bank on the Two Medicine River adjacent to US 89 (P-3) between mileposts 102.2 and 102.5.

c. The contractor will secure right-of-way entry approval for any work to be accomplished outside of the public right-of-way.

d. A pre-construction conference will be held at a date and time mutually acceptable to the contractor, the Nation and MDT prior to commencement of any work. The pre-construction conference will be held at the Tribe's TERO Office.

II. Improvements or Services

a. The Improvements or Services (IOS) percentage amount applied to the construction contract for the work performed on the Reservation shall be 1.5%.

b. MDT shall calculate the IOS dollar amount based on 1.5% of that part of the contract amount that is performed on the Reservation and deposit it into the Nation's MDT account for use on future projects which are mutually beneficial to both parties and are consistent with FHWA guidelines.

III. Tribal Employment Rights Office (TERO)

a. All contracted employees will be required to have a Blackfeet Business license in accordance with Tribal Law. The license shall be obtained at the Blackfeet Tribe Revenue Department.

b. Before beginning work, the Prime and all subcontractors will file a compliance work plan with TERO.

c. Pursuant to the MOU and Tribal Resolution, a Tribal TERO fee of 3% of that part of the contract amount that is performed on the Reservation will be calculated by the contractor and MDT. MDT will pay this amount to the Nation following contractor invoice submittals.

d. The Prime Contractor will secure all of the needed Blackfeet work permits.

IV. Gravel, Borrow and Fill Materials.

MDT requires the use of gravel, borrow and fill materials for construction projects on the Blackfeet Nation in accordance with the terms of the MOU.

06 15, 2020

Timothy Davis, Chairman
Blackfeet Tribal Business Council
Authorized pursuant to resolution #_____

DocuSigned by:
Mike Tooley
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August 14, 20 20

Michael T. Tooley, Director
Montana Department of Transportation

DocuSigned by:
Carol Grell Morris
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Reviewed for Legal Content
MDT Legal Counsel

Tribal Legal Counsel

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE BLACKFEET NATION AND
THE STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

PREAMBLE

This Memorandum of Understanding (MOU) reflects a new era of cooperation and understanding between the State of Montana (State), through the Montana Department of Transportation (MDT), and the Blackfeet Nation (Nation), in support of Governor Bullock's commitment to strengthening government to government relations between the State and the Nation and in support of the commitment to cooperation and collaboration stated in the principles established by section 2-15-142, Montana Code Annotated.

GENERAL TERMS:

I. This MOU is a general agreement and is intended to cover all MDT construction, facilities and architectural and engineering (A&E), and MDT-contracted maintenance contracts (all "projects") located on the Blackfeet Nation Reservation (Reservation).

II. Project Specific Agreements (PSAs) will be negotiated and entered into by the parties to cover the specifics of individual construction contracts, provided that nothing contained in a PSA shall be inconsistent with or in conflict with this MOU. There will be no PSA required on maintenance projects done by MDT personnel through MDT's Maintenance Division. Other than Ordinance 90-A permits, Tribal requirements will not apply to maintenance projects done by MDT personnel through MDT's Maintenance Division.

III. The Nation and MDT recognize the importance of bridge and highway construction and maintenance for the safety of the citizens residing in the State of Montana, the citizens of the Reservation, the traveling public, and for the economic health, employment and commercial benefit of the Nation, State and region.

IV. MDT recognizes and honors the unique language, culture, and environment of the Blackfeet people, as the Nation recognizes the divergent cultures of the citizens of the State of Montana. MDT shall recognize and respect the laws of the Nation to the extent such recognition does not conflict with federal (*i.e. SK Constr. Inc. v. MDT*, CV-10-10-GF-SHE) or state Law. If conflicts exist between the respective laws, the Nation and MDT shall use their best efforts to identify with specificity the conflicts and work together in resolving the conflicts. If any part of this MOU conflicts with tribal law, regulation, etc., it is agreed that this MOU supercedes the conflicting portion of the tribal law, regulation, etc., for purposes of the MDT projects built under the provisions of this MOU. The Montana state laws and regulations and tribal resolutions and ordinances in effect at the time of the execution of the PSA, and not in conflict with this MOU, shall govern the project until the project's completion. The Nation and MDT agree that this MOU and

the project's PSA will become a part of the project's contract when it is advertised and awarded. The Nation and MDT pledge their mutual cooperation for all projects on the Reservation.

V. MDT shall coordinate with the Nation on all MDT contracts on the Reservation. MDT will also inform the Nation of projects to be developed and constructed near the Reservation. MDT, in conjunction with the Nation, shall schedule semi-annual meetings to find areas in which MDT can cooperate with the Nation on all projects to be developed and constructed on the Reservation.

SPECIFIC TERMS:

I. Highway Construction and Maintenance

a. MDT shall invite the Nation to attend and participate in all planning activities conducted for projects on the Reservation. MDT and the Nation shall discuss, identify and agree upon Reservation impacts that may result from the construction and mitigation of those impacts in the design phase of the construction project.

b. Unless mutually waived beforehand in writing, a pre-bid conference and pre-construction meeting will be held on the Reservation at the Tribe's TERO Office for all on-Reservation construction projects. If the Tribe's TERO Office is unavailable for use, then MDT shall hold the pre-bid conference at another location on the Reservation. At the pre-construction meeting, it is mandatory that all contractors and subcontractors attend prior to engagement in the project.

c. At the pre-bid conference, MDT and the Nation shall inform all bidders of the Nation's tribal ordinances, resolutions and regulations in effect which will apply to the contractor and subcontractors under the terms of the PSA.

d. MDT and the Nation's Tribal Employment Rights Office (TERO) shall advise all bidders that the Montana state laws and regulations and tribal resolutions and ordinances in effect at the time of the execution of the PSA shall govern the project until completion.

e. MDT shall invite the TERO officer to attend and participate in the pre-construction conferences for off-reservation construction projects to be performed near the Reservation. The TERO officer will inform MDT and all contractors of the work force available by providing a list of qualified applicants (work force) to MDT and all contractors. MDT shall encourage hiring by the contractors from the work force provided by the TERO officer.

f. MDT pledges to work with the Nation's Environmental Office as well as the Nation's Tribal Historic Preservation Office on all environmental issues and specifications and on issues of cultural significance. MDT will make every effort to ensure that environmental mitigation will take place within the exterior

boundaries of the Reservation for on-Reservation projects. There will be no "net loss" of wetlands within the exterior boundaries of the Reservation unless otherwise agreed by both parties in the PSA. Mitigation of wetlands will provide for not less than an acre-for-acre replacement and will consist of either construction of new wetlands or purchase of conservation easements on existing wetlands. Mitigation must meet all federal requirements.

g. The Nation agrees to not assess any taxes, fees, or permits against MDT or its employees. Except for the Nation's TERO fees, contractor work permits, business licenses, Ordinance 90-A permits, and trespass permits, if necessary, no other tribal fees, taxes or permits will be assessed against MDT's prime contractor, subcontractors, the prime contractor's and subcontractor's employees, or anyone else working on MDT's project. The Nation agrees to forego any other applicable tax, fee, or permit unless expressly negotiated and agreed upon in the PSA. If a project is partially on-Reservation and partially off-Reservation, the Nation may assess TERO fees proportionate to the work being performed on the Reservation. The proportionate assessment must be negotiated and agreed upon in the PSA.

h. MDT shall require the use of gravel, borrow and fill materials for construction projects covered by this MOU from tribal and/or allottee sources if the cost is less than or equal to non-Indian sources and meets state and federal specifications. The specific requirements for use of tribal gravel will be set forth in the project's PSA. The Nation and MDT will cooperate in identifying gravel sites on the Reservation, particularly those that may have potential for long term use of both parties. Any of those materials that are offered and agreed upon must meet state and federal specifications, and the price must be competitive to other sources in the area. The Nation and MDT agree that a "competitive price" may include consideration of all factors such as quality, quantity, royalty, haul, stripping, production, access and reclamation costs, as well as the characteristics of the material that can be produced. The Tribe will give a final price at the pre-bid conference including charges for treated water and untreated water (any access and per unit pricing), trespass, and access fees. No further cost may be added to the material after the pre-bid conference. Additionally, there must be proof of a sufficient quantity of materials to satisfy the estimated needs of the project. No specific materials source will be made mandatory for a project.

i. Subject to the requirements of the Blackfeet Employment Rights Office, MDT can use term contracts that are specifically limited to engineering and architecture, which does not include surveying, for term assignments up to $50,000 per year, per individual or entity. Once MDT is aware of a preconstruction activity using a standard term contract, it will notify the Nation's TERO Officer in writing of its contract to complete the activity. This notification will contain a description of the activity, and an estimate of contract cost for the portion that will take place within the boundaries of the Reservation.

1. No PSA will be required for these term assignments.
2. The remaining obligations under this MOU will still be applicable to these term assignments.

II. TERO

a. The parties agree that the Nation's TERO ordinance must address all construction projects over which the Nation has regulatory jurisdiction. MDT's projects will only be charged the same TERO fees as are in effect on and enforced against all other construction projects on the Reservation.

b. Indian employment preference on all projects located on the Reservation will be in accordance with the current TERO Ordinance except as specified herein. All referrals for local hires shall be pursuant to the TERO Ordinance and Regulations, and through the TERO office. When qualified workers, are not available, contractors may utilize other recruitment sources. Upon receipt of a request for a worker, TERO shall have two working days to locate a worker through the skills bank or other labor resources. An additional working day shall be allotted for the referred worker to report to the job site or supervisor. If the TERO officer determines there are no qualified workers to refer prior to the expiration of two working days, the TERO officer shall immediately notify the contractor so the contractor can utilize other recruitment sources.

c. Pursuant to the TERO Ordinance, the contractor's or subcontractor's core crew is not subject to local Indian preference in employment. "Core crew" is defined as a regular permanent employee that is either in a supervisory position or another key position such that the employer would risk likely financial damage or loss if the position was filled by a person who had not previously worked for that firm. A "regular permanent employee" is one who was on the contractor's payroll for the prior construction season, or is presently an owner of the firm, in contrast with a person who is hired on a project by project basis.

d. For on-Reservation projects, the Nation shall assess a TERO fee of three percent (3.0%) of the contractor's cost pursuant to the Nation's TERO Ordinance, subject to the requirements of paragraph II.a, above. MDT shall collect this fee for the Tribe on each progress payment and final payment to the contractors. MDT shall immediately submit each withheld payment to the Nation for disbursement pursuant to the tribal law.

e. Prime contractors and subcontractors shall attend the pre-bid conference with the TERO officer and shall execute a TERO Agreement evidencing his/her attendance at such conference.

f. MDT is specifically excluded from each and every Indian contractor and subcontractor preference requirement that may be contained in any Ordinance

notwithstanding that MDT must follow Federal Law regarding Disadvantaged Business Enterprises (DBE).

g. MDT and the TERO officer shall work together to promote DBE Contractors for work on or near the Reservation since under DBE regulations Indian-owned businesses are eligible for DBE certification.

h. Trainees on federal-aid highway projects on the Reservation will be selected from the work force list provided by the TERO officer. The number and type of Trainee positions will be negotiated and included in the PSA.

i. MDT will continue to actively work with TERO to increase employment opportunities for Nation's members as well as other Native Americans residing on or near the Reservation.

j. The parties recognize that MDT and the Federal Highway Administration interpret Title VII of the Civil Rights Act as not permitting a tribal-specified preference in hiring of Indian workers in federal highway construction contracting. MDT recognizes that this interpretation has no bearing on the well-settled policy of preferential employment of Indians on reservations and that federal law expressly supports this interpretation. MDT will emphasize Montana's commitment to Indian employment as a means of strengthening tribal communities for these projects.

III. IMPROVEMENTS OR SERVICES

MDT will fund additional improvements or services beyond the mitigation requirements noted in paragraph If, above, which, over a number of projects shall be 1.5% of the total amount of the contract construction cost of the projects let to bid on the Reservation from the effective date forward through the duration of the MOU. For preliminary engineering work, the fee will be assessed on work physically performed within the exterior boundaries of the Reservation. The improvements or services shall be mutually beneficial to the Tribe and MDT. The improvements or services and the estimated percentage amount shall be specified in the PSA.

Examples of such improvements or services include, but are not limited to, reimbursement for a project liaison officer (as stated in II.C, above), construction of wetlands, purchase of wetlands easements, construction of a visitor Information/Rest Area facility to be operated by the Tribe, construction of scenic turnouts or bicycle and pedestrian paths and acquisition of such lands which may be mutually beneficial to the parties. All improvements or services shall be consistent with FHWA regulations.

MDT will withhold the 1.5% IOS amount from each progress payment and final payment to the contractors, placing the amount into an MDT account which can be used to fund a later IOS that is agreed-upon as stated above. Interest accrued on this account will remain in the account for use on IOS projects as specified above.

No other tribal taxes, fees or permits will be assessed against MDT, the contractors or the contractors' employees except as specified in section I (g.)

IV. Blackfeet Environmental Office (BEO) Permits

MDT shall apply for Ordinance 90-A permits and pay the associated fees for any project that requires a 90-A permit.

IV. A & E CONTRACTS

a. In A&E contracts for projects to be constructed on the Reservation, a PSA will be negotiated and executed before a request for proposal (RFP) is advertised. The PSA will include:

1. The percentage of the project's eventual cost that will be subject to the TERO fee;
2. Knowledge of possible opportunities for Native American employment or participation;
3. Project-specific points of contact for the Nation and MDT,
4. How payment of the TERO fee will be made; and
5. Any other restrictions or requirements which the bidders should know for bidding of the work.

b. There will be a post-award meeting between Nation and MDT personnel and the successful contractor with the time and location of the meeting to be established shortly afterward.

V. RECLAMATION

MDT and the Nation agree that all disturbed sites shall be reclaimed consistent with applicable tribal, federal and state laws and regulations. The responsibility for such reclamation will be specified in the PSA.

VI. DURATION

This MOU is effective upon the signing by all parties. The MOU shall remain effective for five (5) years unless terminated by either party. Either party upon ninety (90) days written notice may terminate this MOU. The parties agree that if any portion of this MOU is declared invalid or is otherwise determined to be unenforceable, the remainder of this MOU will remain in full force and effect.

VII. AMENDMENTS, RENEGOTIATION and RENEWAL

a. Any change, addition or modification affecting this MOU shall only be made in writing with the concurrence of both the Tribe and the State/MDT.

b. Approximately six (6) months prior to the expiration of the initial term of this MOU, the parties shall meet to negotiate in good faith a renewal of the MOU for an additional term and, thereafter, shall meet to negotiate successive renewals of the MOU. The parties shall seek to agree on any outstanding issues that have presented concerns pursuant to the terms and conditions of this MOU.

c. If this Agreement expires because the term has run, the parties agree that all of its terms shall remain in full force and effect until a new agreement is reached.

VIII. LIAISON

Michael Tooley, Director of Transportation, or his designee, or his successor, will be the liaison for MDT.

Harry Barnes, Chairman of the Blackfeet Tribal Business Council, or his designee, or his successor, will be the liaison for the Nation.

All notices and communications between the parties with respect to this MOU shall be directed to the Chairman of the Blackfeet Tribal Business Council and the MDT Director with copies to the tribal and state liaison. If either party's leadership or employees necessitate a change in the designation of liaison, the effected party shall provide timely written notice to the other of the new liaison.

IX. NEGATIVE DECLARATION

Nothing in this MOU or in any conduct undertaken pursuant to this MOU shall be deemed as enlarging or diminishing the jurisdiction of either of the parties, or an admission of liability of any kind.

X. OFFICIAL NOTICES

Official Notice as required in this MOU shall be mailed postage prepaid to the following address with copies to the Liaisons for the parties at the following addresses:

Chairman
Blackfeet Tribal Business Council
PO Box 850
Browning, MT 59417-0850

Michael T. Tooley, Director
Montana Department of Transportation
PO Box 201001
Helena, MT 59620-1001

XI. SIGNATURES

Harry Barnes, Chairman
Blackfeet Tribal Business Council

Date: 4/6/17, 2017

Governor Steve Bullock
State of Montana

Date: 4/21/17, 2017

Michael T. Tooley, Director
Montana Department of Transportation

Date: April 18, 2017

//

Approved for Legal Content:

Attorney for Blackfeet Nation

MDT Legal Services

Approved as to legal sufficiency pursuant to Mont. Code Ann. § 18-11-105:

Tim Fox
Attorney General, State of Montana

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.