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 Section, Room 101, 2701 Prospect, Helena, Montana until 9:00 a.m. on June 5, 2025. All bids will then be publicly opened, reviewed for correctness, and then publicly read.

Federal Aid Project(s):

NH-HSIP 7-1(180)60 US 93 - N Victor & S Ravalli

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 #03625
AWARDED ON: JUNE 17, 2025
TO: RIVERSIDE CONTRACTING, INC

MONTANA DEPARTMENT OF TRANSPORTATION

Loran Frazier, Chairperson
Montana Transportation Commission

Christopher Dorrington
Director of Transportation

Contract No.03625
HB:BB:10374000AWD

AWARD COPY

CURRENT QUESTIONS & ANSWERS

102 - US 93 - N VICTOR & S RAVALLI - June 05, 2025

Notifications
No Notices available for this project.

Amendments
No Amendments available for this project.

Clarifications
No Clarifications available for this project.

Questions
-1-
Submitted: Thursday 22-MAY-2025 02:31 PM
Company: Riverside Contracting, Inc.
Contact: Cale Fisher
The late advertising of this project and requirement to complete both the micro surfacing and chip sealing in the same construction season creates a very small 1-2 week window to schedule the micro surfacing operations and we have not found anyone that could confidently meet this schedule. We request that MDT revise the contract to suspend contract time for winter shutdown and allow for the completion of the microsurfacing, rumble strips, chip sealing, paint/epoxy markings and installation of delineators along the S Ravalli project area in 2026. We also request an additional 20 days of contract time to perform work in 2026 and it be chargeable beginning July 6, 2026.
Answer
Submitted: Friday 23-MAY-2025 12:59 PM
Contract time will be suspended after completion of all contract work with the exception of micro surfacing, rumble strips, seal coat, interim paint, epoxy paint, delineators, **and signing installation** on the S Ravalli project. Contract time for this work will resume on July 6, 2026 or an earlier date as set by the contractor. 15 working days are hereby added to the contract.
UPDATE:Tuesday 27-MAY-2025 11:24 AM
Special provision #2, Contract Time-Flex Time Proceed Date, is hereby replaced with the following updated special: ~~UPDATED CONTRACT TIME~~
UPDATED:
Monday 02-JUN-2025 11:30 AM
Special provision #2, Contract Time – Flex Time Proceed Date, is hereby replaced with the following revised special: **REVISED FLEX CONTRACT TIME** **(See end of Q&A).**
-2-
Submitted: Thursday 29-MAY-2025 11:17 AM
Company: Alpine Sign Inc.
Contact: John
Please provide Sign Design Calculations for this project.
Answer
Submitted: Thursday 29-MAY-2025 01:00 PM
The sign design files for the requested project are posted here: **SIGN DESIGN CALCS** The requested files are only design files. The Department cannot guarantee the

CURRENT QUESTIONS & ANSWERS

accuracy of the electronic data, particularly as it may be called up by your computer, nor does any data in these files supersede the data in the contract documents. In addition, the Department will not make any revisions to the electronic files prior to award. Changes needed via change ordered work, or changes that are made during construction to fit field conditions, will be provided at that time. See the requirements of Subsection 619.03.2.

-3-

Submitted: Thursday 29-MAY-2025 12:37 PM
Company: Alpine Sign Inc
Contact: John

Special Provision #30 requiring PVDF Paint System for sign backs is a process that takes much more time than a typical unpainted sign.
From project award of June 17, lead time for signs is approximately 14 weeks (70 working days). This does not account for any questions there may be concerning Sign Design Calculations or verification from MDT that the Sign Design Calculations provided in the Q&A are unchanged. This also does not account for sample materials to be provided to the Project Manager for approval prior to fabrication.
I see that 15 days have been added to the contract but would ask MDT to consider adding additional contract time or to add a provision allowing more time for sign fabrication and installation.

Answer
Submitted: Monday 02-JUN-2025 11:27 AM
See answer to question #1

-4-

Submitted: Friday 30-MAY-2025 02:46 PM
Company: Intermountain Slurry Seal
Contact: GARY RUSSELL PRICE

Does the department have current rut depth data pertaining to the project in Lake County from reference point 20.1 to 26.7? If so, could that data be shared with contractors?

Answer
Submitted: Monday 02-JUN-2025 01:32 PM
The file provided represents data collected and utilized as part of the Department's statewide Pavement Management Program. This data does not supersede contract documents. **RUT VALUES**

1. CONTRACT TIME – FLEX TIME PROCEED DATE [108] (REVISED 1-21-16)

A. General. This provision modifies Subsection 108.02 of the Specifications.

B. Notice to Proceed. The notice to proceed will be issued with an effective date of July 28, 2025. The Contractor may change the notice to proceed date to an earlier date if written notification is received at least ten calendar days in advance of the date selected and the selected date is approved by the Project Manager. Include an updated schedule with the notification.

C. Contract Time. Contract time assessment will begin on the notice to proceed date issued by the Department or as changed by the Contractor, whichever is earlier. Work is to be completed in 45 working days. Contract time will be suspended after completion of all contract work with the exception of micro surfacing, rumble strips, seal coat, interim paint, epoxy paint, signing installation and delineators on the S Ravalli project. Contract time for this work will resume on July 6, 2026 or an earlier date as set by the contractor.

MONTANA DEPARTMENT OF TRANSPORTATION
SCHEDULE OF ITEMS

CONTRACT ID: 03625

PROJECT: NH-HSIP 7-1(180)60 10374180000 US 93 - N VICTOR & S RAVALLI

SECTION: 0001 - RUT FILL, SEAL & COVER, SAFETY IMPROVEMENT

PROP LINE NO.	ITEM NUMBER	ITEM DESCRIPTION	UNIT OF MEASURE	QUANTITY
0010	104030010	MISCELLANEOUS WORK	UNIT	10,000.00
0020	108000010	STRUCTURE ANALYSIS	LS	1.00
0030	109200005	MOBILIZATION	LS	1.00
0040	208010000	BMP ADMINISTRATION-LS	LS	1.00
0050	208010005	PAR BMP ADMINISTRATION-LS	LS	1.00
0060	208010200	TEMPORARY EROSION CONTROL-FIXED	UNIT	500.00
0070	401020068	MICROSURFACING AGGREGATE-TYPE 3	TON	1,546.00
0080	401020162	COMMERCIAL MIX-1/2 IN-PG 58V-34	TON	94.00
0090	402020315	EMULSIFIED ASPHALT-TACK COAT	GAL	4,504.00
0100	402020320	EMULSIFIED ASPHALT-FOG SEAL	GAL	11,374.00
0110	402020337	MICROSURFACING EMULSION	TON	182.30
0120	402020375	EMULSIFIED ASPHALT CHFRS-2P	TON	270.60
0130	402020380	RUT FILLING	LNFT	137,403.00
0140	403010255	CRACK SEALING	LB	8,499.00
0150	409000030	COVER-TYPE 3	SQYD	151,630.00
0160	411010000	COLD MILLING	SQYD	734.00
0170	411011135	RUMBLE STRIPS	MILE	13.00
0180	411011145	SINUSOIDAL RUMBLE STRIPS	MILE	6.50
0190	552010160	BRIDGE DECK CRACK SEAL	SQYD	138.00
0200	563000050	HIGH FRICTION SURFACE TREATMENT	SQYD	13,161.00
0210	618030005	TRAFFIC CONTROL DEVICES CB	UNIT	225,000.00
0220	618100001	MOTORCYCLE ADVISORY SIGN	EACH	2.00
0230	618100005	PORTABLE VARIABLE MESSAGE SIGN	EACH	2.00
0240	619010062	SIGNS-ALUM SHEET INCR XI	SQFT	218.50
0250	619010090	SIGNS-ALUM REFL SHEET XI	SQFT	533.60
0260	619010230	REMOVE SIGN	EACH	81.00
0270	619010240	REMOVE SIGN-GUIDE	EACH	9.00
0280	619010310	POSTS-STEEL U SIGN	LB	589.00
0290	619010480	POLES-TREATED WOOD 4 IN	LNFT	464.00
0300	619010490	POLES-TREATED WOOD 5 IN	LNFT	608.00

SECTION: 0001 - RUT FILL, SEAL & COVER, SAFETY IMPROVEMENT

PROP LINE NO.	ITEM NUMBER	ITEM DESCRIPTION	UNIT OF MEASURE	QUANTITY
0310	619010500	POLES-TREATED WOOD 6 IN	LNFT	18.00
0320	619010800	PANEL DELINEATOR DESIGN A	EACH	40.00
0330	619011090	DELINEATOR TYPE 1	EACH	317.00
0340	619011138	DELINEATION-LINEAR-WHITE-W-BEAM	EACH	425.00
0350	619011155	TOP MOUNTED BARRIER WHITE	EACH	10.00
0360	619011158	TOP MOUNTED W-BEAM WHITE	EACH	107.00
0370	619011200	DELINEATION-LINEAR-BARRIER-WHITE	EACH	48.00
0380	620011105	WORDS AND SYMBOLS-WHITE PAINT	GAL	12.00
0390	620011110	WORDS AND SYMBOLS-YELLOW PAINT	GAL	11.00
0400	620011260	WORDS AND SYMBOLS-WHITE EPOXY	GAL	16.00
0410	620011265	WORDS AND SYMBOLS-YELLOW EPOXY	GAL	15.00
0420	620012955	TEMPORARY STRIPING	LNFT	86,378.00
0430	620013000	STRIPING-WHITE PAINT	GAL	386.00
0440	620013960	STRIPING-WHITE EPOXY	GAL	514.00
0450	620014000	STRIPING-YELLOW PAINT	GAL	437.00
0460	620014960	STRIPING-YELLOW EPOXY	GAL	582.00

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SPECIAL PROVISIONS

FEDERAL AID PROJECT NO(S). NH-HSIP 7-1(180)60

(REVISED 4-03-25)

The following special provisions are hereby made part of the contract and supplement and/or supersede any sections of the Standard 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:

- "Question and Answer Forum":

Question and Answer Forum

- "Standard Specifications for Road and Bridge construction":

Standard Specifications January 2025

- The most recent version of the Detailed Drawings:

Detailed Drawings

- The most recent version of the Materials Manual:

Materials Manual January 9, 2025

The latest version of the Standard Specifications, Biannual updates, and revision summaries can be found at the following website: Standard Specifications

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. Answers provided by the Department to the questions, clarifications, and notifications can be posted up to 5:00 p.m. on the day before the 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]

The US 93-N Victor & S Ravalli project will perform the following work in Lake County on US-93 (N-5), south of Ravalli, from reference post 20.1 to 26.7:

- Crack seal full width of roadway.
- Microsurfacing Rut fill of the 2 travel lanes.
- Seal and cover and fog seal across the travel, median and turn lanes, and 3' into the shoulder.
- Other work will include signing and delineation upgrades, pavement markings, and rumble strips. The South of Ravalli segment is entirely located within the Flathead Reservation.

The US 93-N Victor & S Ravalli project will also perform the following work in Ravalli County on US-93 (N-7), north of Victor, from reference post 69.4 to 69.9:

- Safety elements, consisting of a high friction surface treatment, asphalt mill/fill at the bridge ends of the wildlife underpass bridge at RP 69.7, curve signing, panel delineation, w-beam guardrail delineation, pavement markings, and rumble strips

~~2. CONTRACT TIME – FLEX TIME PROCEED DATE [108] (REVISED 1-21-16)~~

~~A. General. This provision modifies Subsection 108.02 of the Specifications~~.

~~B. Notice to Proceed. The notice to proceed will be issued with an effective date of July 28, 2025. The Contractor may change the notice to proceed date to an earlier date if written notification is received at least ten calendar days in advance of the date selected and the selected date is approved by the Project Manager. Include an updated schedule with the notification.~~

~~C. Contract Time. Contract time assessment will begin on the notice to proceed date issued by the Department or as changed by the Contractor, whichever is earlier. Work is to be completed in 30 working days.~~

3. DEPARTMENT CONSTRUCTION TRAINING [108] (REVISED 4-24-25 M)

Do not work during the Department's statewide construction training which will be held March 2, 2026 through March 6, 2026. No time will be charged for Contracts with active construction during this period.

4. CONTRACT DOCUMENTS [102] (REVISED 6-5-25)

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/ :

1) Table of Contractor's Submittals. (Revised 6-5-25)
2) Traffic Control Rate Schedule (Revised 3-9-23)
3) Erosion Control Rates (Revised 1-09-25)

5. COORDINATION WITH MDT TRAFFIC DATA COLLECTION AND ANALYSIS SECTION – AUTOMATED TRAFFIC RECORDER SITE

A. Description. An existing Automated Traffic Recorder (ATR) site (Site ID: A-008) is located at RP 26.3 on US-93, 1 mile south of the Town of Ravalli.

1) Existing conduit will be abandoned by MDT, and existing pull boxes and cabinet will be removed by MDT. Abandon the existing "in-road" sensors. New radar sensors will be installed by state forces and charged to the project.

2) Two weeks prior to any road work in the area of the existing ATR site, contact Tedd Little at 406-465-1402, or by email at tlittle@mt.gov for site sensor replacement/repair or maintenance.

B. Method of Measurement and Basis of Payment. All of the work entailed by this provision is considered incidental and absorbed in the various bid items of the contract. No separate payment will be made.

6. DBE-SBE BIDDING REQUIREMENTS [102] (ADDED 6-05-25)

A. Rescind Standard Specification 103.10 Subcontractor Report.

B. Rescind Standard Specification 102.07B and replace it with the following:

Ensure bids submitted using the EBS format contain a Proposal guarantee, an EBS generated Proposal, Schedule of Items, and DBE requirements when applicable.

Written changes to the Schedule of Items, or a bidder's non-submission of every page from the AASHTOWare Project BidsTM EBS file, (including all Schedule of Items pages, Bidders List page, and all DBE pages), automatically renders the bid non-responsive, and the bid will not be read or considered.

Acknowledge addenda using the amended EBS project file to generate the Proposal, Schedule of Items and DBE requirements. It is the bidder's responsibility to ensure that they acquire and apply addenda files when applicable.

C. Standard Specification 102.07C Determination of Bid Responsiveness, is modified to include the following:

1) Bidders List. The bidders list file must be attached and include the required information for the prime contractor and subcontractors that provided a quote for this project.

D. Standard Specification 102.08 Rejection of Bid Proposals, is modified to include the following:

1) Failure to provide a complete Bidders List.

7. DBE USAGE [102] (REVISED 11-16-23)

Contract specific goals are not placed on contracts; however, the Department has an overall 6.3% 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 10.7% 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/ess-dbe/.

8. LABOR REQUIREMENTS [102] (REVISED 9-19-24)

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).

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

9. NEW SUBCONTRACTORS [102] (ADDED 4-04-24)

The contract amount will be increased by a maximum of $10,000 via change order if the Prime Contractor uses a DBE or SBE certified firm that has not worked on a federal-aid MDT contract in the past three years. The incentive amount will be applied in accordance with the following table.

Subcontract Amount	Added Contract Amount
≤ $15,000	$1,000
$15,001-$50,000	$2,500
$50,001-$100,000	$5,000
≥ $100,000	$7,500

Note: The table is representative for one subcontract.

Payment will be made once the subcontract has been fully executed and will be paid under the bid item NEW DBE-SBE INCENTIVE.

10. SMALL BUSINESS ENTERPRISES REQUIREMENTS [102] (ADDED 5-16-24)

Rescind "DBE requirements" and replace with "DBE and SBE requirements" within the following subsections:

1) 102.02 Contents of Bid Package.
2) 102.07 Bidding Requirements.
3) 102.08J Rejection of Bid Proposal.

11. BIDDER'S PROPOSED AGGREGATE SOURCE(S) [103] (REVISED 4-28-22)

No later than 7 calendar days after the date of bid-opening (the date of bid opening to count as the first full day), submit to ECCB form MDT-CON-106-02-3 in accordance with Subsection 103.11.

12. PARTNERING [105] (ADDED 1-11-24)

In accordance with Subsection 105.05.1, this contract requires Level (II) facilitation.

13. BUILD AMERICA, BUY AMERICA (BABA) [106] (REVISED 1-11-24)

Furnish construction materials manufactured in the United States. Construction materials include articles, materials, or supplies that are or consist primarily of:

- Non-ferrous metals.
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables).
- Glass (including optic glass).
- Fiber optic cable (including drop cable).
- Optical fiber.
- Lumber.
- Drywall, and
- Engineered wood.

Construction materials exclude cement and cementitious materials, aggregates including stone, sand, or gravel, or aggregate binding agents (e.g., asphalt binder) or additives (e.g., polymer modifiers and admixtures).

Manufacturing processes for the construction material must occur in the United States. Manufacturing processes for each of the bulleted construction materials above are defined in 2 CFR 184.6 and are summarized below.

a) Non-ferrous metals: Initial smelting or melting through final shaping, coating, and assembly.

b) Plastics: Initial combination of plastic, polymer based, or composite materials until item is in its final form.

c) Glass: Initial batching and melting, annealing, cooling, and cutting.

d) Fiber Optic Cable: Initial ribboning, buffering, and fiber stranding and jacketing.

e) Optical Fiber: Initial preform fabrication through completion of draw.

f) Lumber: Initial debarking, treatment, and planing.

g) Drywall: Initial blending of gypsum, cutting, and drying of sandwiched panels.

h) Engineered Wood: Initial combination of constituents until item is in its final form.

BABA preference applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to a project. It does not apply to tools, equipment, and supplies brought to the construction site and removed at or before the completion of the project (e.g., temporary aluminum scaffolding). Buy America preference does not apply to equipment and furnishings that are used at or within the finished infrastructure project but are not permanently affixed to the structure (e.g., movable chairs, desks, or computer equipment used at or within the project but are not integral or permanently affixed to a structure).

2 CFR 184 applies to all construction materials on projects receiving federal financial assistance funds. Submit Form MDT-MAT-407 "Manufacturer's Certificate of Compliance" for every material identified as a construction material in the Department's Materials Manual Section MT 601 furnished to the project. For all other materials, documentation will be required upon request. Do not incorporate construction materials into the project until all required documentation is submitted to the Department. Ensure that suppliers and manufacturers understand the BABA and contract requirements to supply the required documentation.

The Department will not accept items installed until all supporting documentation has been reviewed and is found to be in accordance with the contract requirements. Insufficient or unavailable documentation or documentation showing products containing construction materials of foreign origin are grounds for removal and replacement at the contractor's expense.

The Department has designated contract materials as "construction materials" by their respective 9-digit material codes in section MT 601 of the Montana Materials Manual. However, the Department recognizes there will be situations where a product or material may not fit the designation indicated in section MT 601. In these cases, submit documentation demonstrating or justifying the supplier or manufacturer's position that their specific item has been misclassified to the Project Manager at least 10 business days in advance of installation. The Department, in conjunction with FHWA, will review the submitted documentation and decide as to how that specific product or material will be classified. These determinations will be final and will require the appropriate necessary documentation as defined above.

The US DOT has found that it is in the public interest to issue a waiver of BABA's domestic preferences in certain situations. For Construction Materials, the domestic preference may be waived if the total value of non-compliant material is under $1,000,000 or 5% of the total applicable project costs, whichever is less. Submit actual individual material costs, minus manufacturing costs outside the defined manufacturing processes outlined above, along with justification in the form of invoices, bills of lading, or other appropriate documents to the Department if requesting the waiver.

The above waiver does not apply to iron and steel and the existing de minimis standard for iron and steel under 23 CFR 635.410(b)(4) continues to apply.

Projects with a total contract value of $500,000 or less are exempt from all domestic preference regulations including steel and iron.

14. INDIAN RESERVATION WORK [107] (REVISED 8-11-22)

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

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

2) Inquire with the designated Tribal official and become familiar with the Tribal requirements, written or not, for work on the Reservation, and submit bid with full knowledge, understanding and acceptance of them. Understand and accept that:

a) the Tribal laws, ordinances, regulations, and requirements have been established by the Tribe as a sovereign entity on the Reservation.

b) The Department has no authority or ability to affect those requirements, and

c) Neither the Tribal government nor any Tribal official or employee is acting in any way as an agent of the Department or the Transportation Commission. The Department and Commission have no control over the actions, inaction, requirements or comments of any Tribal government or employee, and are not bound by them.

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

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

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

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

7) By submitting a bid, agree to defend, protect, indemnify, and save harmless the Department and State from any cost or delay caused or allegedly caused by or due to the failure

of bidder or any subcontractor to fully comply with Tribal law, ordinance or regulation, or by claimed interference by the Tribe. Claims from such failure or claimed interference will not be considered extra work or compensable delay, but actual, documented and verified interference by Tribal government may be grounds for a contract time extension. Understand that any requests must fully comply with the Contract's claims procedure.

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

9) For bidder inquiries to the Tribe, or for more information about Tribal requirements other than those related to the Clean Water Act, aquatic resources permitting, and/or cultural resources, it is required to contact the Tribe directly. The point of contact designated by the Tribe for bidders to contact is the liaison listed in the attached Memorandum of Understanding, the main tribal phone number is: (406) 675-2700

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

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

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

16. CONSTRUCTION EQUIPMENT ON STRUCTURES [107] (REVISED 9-21-23)

A. Description: Requirements associated with the operation of equipment on structures.

B. Definition. The following definition applies to this special provision:

1) Equipment. Any vehicle or machine weighing more than 5000 pounds.

C. Construction Requirements. Do not use bridges as work platforms, work bridges, or to support or move equipment without the Project Manager's written approval.

1) For bridges having no posted load restrictions and no removal of deck concrete (not milled), provide a full engineering submittal for approval for all equipment utilizing outriggers on the structure and for any equipment not already approved under one of the following conditions:

a) Legal Loads. A vehicle that is a legal load as defined by Section 61-10 MCA.

b) Pre-Approved Equipment. The equipment is currently listed on MDT's Approved Construction Equipment List (ACEL) and will be operated according to any conditions stated in the ACEL.

2) For bridges with a posted load restriction or if bridge deck concrete is partially milled or removed, submit a full engineering submittal for approval for any of the following cases:

a) Equipment weight exceeds 25 tons.

b) Vehicle weight and configuration does not satisfy the posted load restriction.

c) More than one piece of equipment will be simultaneously located on a span.

d) Concrete removal results in significant debonding of the top mat of deck reinforcing steel. The Project Manager, in conjunction with the Bridge Bureau, will determine if significant debonding is present.

e) Repairs to bridge beams or truss members are specified in the contract and repairs are not complete.

f) Equipment outriggers will be used.

3) Full engineering submittal requirements. Submit an engineering analysis and report performed by a Professional Engineer registered in Montana.

a) Engineering analysis. Clearly describe loading conditions and assumptions and provide calculations. Investigate an envelope within which the equipment may function without damaging the structure or endangering workers or the public. MDT proposes the following topics, at a minimum. Provide additional information when necessary.

(1) Load Cases.

(a) Minimum suggested live load vehicles are Type 3 and Type 3S2 trucks in live load combinations from AASHTO "Manual for Condition Evaluation of Bridges."

(b) Consider all loads on the bridge including axle loads, outriggers, equipment dynamic forces, and wind forces on the load, the boom, and the equipment. Consider deflection and secondary force effects. Include traffic live load if the structure will carry traffic during equipment operations.

(c) Investigate different loading combinations for all configurations. Include the distribution of dead load and changing center-of-gravity of the equipment with and without load at different boom extensions, rotations, and elevations.

(2) Structural Effects. Identify critical members. Determine any conditions under which the equipment cannot safely operate.

(a) Written Report. Provide a report containing a narrative summarizing the results of the analysis. Describe special measures necessary to protect the structure through all phases of the equipment's positioning and use. Include drawings as necessary and indicate any minimum equipment clearances to relevant portions of the structure and to traffic flow. Estimate the work's duration.

D. Method of Measurement. Work associated with this provision is not measured for payment.

E. Basis of Payment. Include all costs associated with the requirements of this provision in the lump sum bid for Structure Analysis. Exception: If a full engineering analysis is required as a result of top mat debonding alone (none of the other criteria listed under C.2 are met) then it will be considered extra work and considered for time extension under 108.07.5.

17. RAILROAD COORDINATION AND FLAGGING [107] (REVISED 4-25-24)

Schedule work and coordinate flagging requirements as set forth by a separate agreement between the corresponding railroad and the contractor. The Department will reimburse the Contractor for railroad flagging and inspection required in accordance with Subsection 107.07. Submit flagging and inspection invoices to the Department's Project Manager for review. Flagging and inspection charges incurred due to the Contractor's failure to provide the necessary notice to the railroad and the Department will be at no cost to the Department.

The agreement can be accessed online at https://bnsf.railpermitting.com. There will be additional fees associated with this process. The Department will pay for the approved processing fee. Begin this process upon receipt of Notice of Award as it may take 8 to 12 weeks to complete the process. The Contractor may choose to pay the Rush Fee; however, the Department will only pay regular processing fees. If you need assistance or have questions, contact Melissa Woodruff at (817) 352-1048 or email melissa.woodruff@am.jll.com.

Railroad Information:	
RR DOT#	N/A
RR Mile Post	23.6 – 30.2
RR Subdivision	10th Sub
RR Line Segment	Desmet to Paradise
Cost of Work on RR RW	$10,000

Attend a mandatory railroad preconstruction meeting at a mutually agreeable date and time at least 30 calendar days in advance of any work within railroad right-of-way. The meeting may involve travel to each location to determine the nature of staging areas, access, or any temporary crossings needed for the project.

Prior to entering or beginning work within railroad right-of-way, the completed railroad Agreement and the associated insurance certificates must be submitted to the Construction Engineering Services Bureau in Helena. Email documents to mdtcontractadminsec@mt.gov. Failure to provide this documentation can result in contractor work operations within railroad right-of-way being shut down until they have been received.

18. 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.

19. ENVIRONMENTAL SPECIFICATIONS [208]

The Contractor is required to review and meet the specifications of the following subsections:

Work in Bear Habitat	Subsection 208.03.4E

20. STORM WATER PERMITTING REQUIREMENTS UNDER THE MT POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES) [208] (REVISED 8-10-23)

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

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

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

C. Construction Requirements.

1) MPDES Permit Required.

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

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

Comply with the requirements of the General Permit and implement the SWPPP. Provide an electronic copy of the NOI Package submitted to DEQ and confirmation for receipt of a complete NOI Package from DEQ to the Project Manager prior to conducting any ground disturbance activities.

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

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

Provide copies of all NOI Packages submitted to DEQ and confirmations for receipt of complete NOI Packages from DEQ to the Project Manager prior to conducting any ground disturbance activities.

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

c) Complete and document all inspections in accordance with the requirements of the General Permit. Use DEQ's most current self-inspection form available online at: https://deq.mt.gov/files/Water/WQInfo/Documents/WPBForms/2023-Attachment-B-MTR100000.pdf. Provide a copy of all inspection reports to the Project Manager within 7 calendar days of the inspection.

Report potential noncompliance in accordance with applicable regulations, guidance, and permit conditions. Submit to the Project Manager within 7 calendar 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 and authorization is received from the Department. The Department may require that certain BMPs be replaced by another type of BMP as a condition of permit transfer.

Upon approval of site conditions, measures, devices and all pertinent records, the Department will notify the Contractor to begin the Permit Transfer Notification in DEQ FACTS. Once completed, provide verification that all fees have been paid and the permit is ready for transfer in DEQ FACTS. The Department is not liable for the completeness or accuracy of Contractor records completed prior to the permit transfer. Ensure permit conditions and responsibilities are met until confirmation of the transfer is received from DEQ. Defend and hold the Department 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.

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

2) MPDES Permit not Required.

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

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

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

E. Basis of Payment. No additional payment will be made for the DEQ MPDES fees and monitoring costs associated with the General Permit. 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 208-2 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.

21. STORM WATER PERMITTING REQUIREMENTS UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) [208] (REVISED 8-31-23)

A. Description. The 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 (General Permit) 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 NOI package includes a Notice of Intent, with a topographic map, a 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 the Department 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 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 the Department provided. Do not modify the SWPPP or the Department’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, the Department’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 the 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/submitting-notice-intent-noi-notice-termination-not-or-low-erosivity-waiver-lew-under.

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 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 the Department.

Furnish and install public signage as required by the EPA Construction General Permit. Payment for sign(s) is included in the Temporary Erosion Control-Lump Sum bid item.

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. 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 within 7 calendar days of the inspection.

Report potential noncompliance in accordance with applicable regulations, guidance, and permit conditions. Submit to the Project Manager within 7 calendar 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 the Department 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 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. 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 208-2 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.

22. PROTECTION OF AQUATIC RESOURCES

A. Description. Aquatic resources are protected under federal, state, and tribal laws and regulations including but not limited to the Clean Water Act and the Stream Protection Act. The following approximate location(s) have been identified as apparent aquatic resources in the project limits:

- R-5: RP 20.52 to 20.63, both sides – wetland
- R-5: RP 21.09 to 21.15, both sides – wetland
- R-5: RP 21.49 to 21.56, both sides – wetland
- R-5: RP 21.68 to 21.78, east side – wetland
- R-5: RP 22.98, both sides- culvert crossing
- R-5: RP 22.99 to RP 23.01, east side – wetland
- R-5: RP 23.20 to RP 23.24, Structure ID 05230, both sides – Spring Creek, wetland
- R-5: RP 23.70, west side – wetland
- R-5: RP 24.22, both sides – culvert crossing
- R-5: RP 24.34 to RP 24.36, both side – wetland
- R-5: RP 24.80 to RP 24.83, west side - wetland
- R-5: RP 25.78 to RP 25.80, MDT Structure ID 05233, both sides – Copper Creek, wetland
- R-5: RP 25.80 to RP 25.93, east side – wetland
- R-5: RP 25.80 to RP 25.95, west side – wetland
- R-5: RP 26.05 to RP 26.25, east side – wetland
- R-5: RP 26.40, both sides – culvert, wetland

Additional aquatic resources may be present within the project limits. Coordinate with the Project Manager to identify these areas in the field.

B. Construction. Materials are prohibited from placement in aquatic resources. Impacts to aquatic resources resulting from project activities have not been permitted or authorized. Impacts to these areas and associated consequences are the responsibility of the Contractor.

1) Conduct work in a manner that avoids impacts to aquatic resources in accordance with Subsection 208.03.2. Prevent all material from entering aquatic resources.

2) Submit an Aquatic Resource Protection Plan to the Project Manager and DEES detailing the BMPs or alternate methods proposed for each location a minimum of 10 business days prior to start of work. Modification(s) to the Contractor’s aquatic resource protection plan or BMPs requires approval from the Project Manager.

3) Implement BMPs to prevent placement of materials in aquatic resources. BMPs may include:

a) A stable physical barrier that prevents 100% of material from entering aquatic resource areas.

b) Modified sweeping and brooming methods.

c) Pickup and dispose of millings and/or chips. Millings must be treated as a solid waste.

4) Remove and dispose of any physical BMPs upon completion of the project work.

C. Method of Measurement and Basis of Payment. Work and materials to protect aquatic resources is measured by the lump sum. Include the costs to install, maintain, and remove BMPs in the unit price for PAR-BMP ADMINISTRATION – LS. Payment for the lump sum item will be in accordance with Table 208-2 of the Standard Specifications.

23. PLANT MIX SURFACING MIX DESIGN TRANSFERS [401] (ADDED 5/15/2025)

Submit a mix design in accordance with Section 401. The following mix design considerations will be made for contracts requiring binder meeting the requirements of AASHTO M 332.

1) For contracts specifying 58V-34 or 58H-34, an unexpired, verified and approved PG 70-28 mix design may be considered for transfer provided it is modified to use the contract specified M 332 MSCR binder.

2) For contracts specifying 58H-34, an unexpired, verified and approved PG 64-28 or 58V-34 mix design may be considered for transfer provided it is modified to use the contract specified M 332 MSCR binder.

3) For contracts specifying 58S-34, an unexpired, verified and approved mix design utilizing the binder grades above will be considered for transfer provided it is modified to use the contract specified M 332 MSCR binder.

The contract specified binder will not be changed and not all mix designs described above may be eligible for transfer. Submit form MDT-MAT-009 to document the original mix design change of binder grade to the contract specified M 332 binder grade.

24. COLD MILLINGS

A. Description. Approximately 50 cubic yards of cold millings will be generated. All excess cold millings will become property of the contractor. All cold millings must be disposed of in a class 2 landfill or other approved location following DEQ regulations.

B. Method of Measurement and Basis of Payment. Include the cost of cold milling, hauling and disposing of cold millings in the unit price bid per square yard of Cold Milling.

25. MICROSURFACING [401] (REVISED 8-13-20)

A. Description. This work is producing, furnishing, and placing microsurfacing on an approved surface.

B. Materials. Provide microsurfacing with the specified asphalt emulsion, mineral filler, and the specified aggregate type meeting the following requirements. Use additives as necessary.

It is recommended that the Contractor use generally recognized Statistical Quality Control methods and tests for quality control. Be responsible for all sampling, testing and control of aggregate and microsurfacing. Furnish the Project Manager quality control tests upon request.

1) Aggregate. Furnish aggregate in accordance with Section 106. Select aggregate gradations for the specified aggregate type within the following gradation bands. Do not include mineral filler within aggregate gradation. Meet the following aggregate gradations as tested by MT 202:

Table Of Gradation – Aggregate For Microsurfacing			
Percentage By Weight Passing Square Mesh Sieves			
Type 2		Type 3	
Sieve Size	Percent Passing	Sieve Size	Percent Passing
⅜-inch (9.5 mm)	100	⅜-inch (9.5 mm)	100
#4 (4.75 mm)	90-100	#4 (4.75 mm)	70-90
#8 (2.36 mm)	65-90	#8 (2.36 mm)	45-70
#16 (1.18 mm)	45-70	#16 (1.18 mm)	28-50
#30 (0.600 mm)	30-50	#30 (0.600 mm)	19-34
#50 (0.300 mm)	18-30	#50 (0.300 mm)	12-25
#100 (0.150 mm)	10-21	#100 (0.150 mm)	7-18
#200 (0.075 mm)	5-15	#200 (0.075 mm)	5-15

Furnish aggregate that is free from dirt, organic matter, clay balls, adherent films of clay, dust, or other detrimental materials.

Meet the following aggregate requirements at the job mix formula combined ratio:

Description	Test Methods	Requirements
Wear	AASHTO T 96	30% max.
Sand Equivalent	AASHTO T 176	60% min.
Fracture	AASHTO T 335	95% min.

2) Asphalt Emulsion. Furnish CQS-1hP asphalt emulsion with the following properties:

Description	Test Methods	Requirements
Test On Emulsion		
Viscosity, Saybolt Furol at 77ºF, sec.	AASHTO T 59	20 - 100
Particle Charge Test	AASHTO T 59	Positive
Storage Stability 24-hr, %	AASHTO T 59	1 max.
Sieve Test, %	AASHTO T 59	0.10
Residue by Distillation, %	AASHTO T 59 (1)	62 min.
Test On Emulsified Asphalt Residue		
Penetration 77° F, mm	AASHTO T 49	40 - 90
Softening Point, ºF	AASHTO T 53	135 min.
Ductility, 77 ºF, 5 cm/min, cm	AASHTO T 51	40

Notes. (1) Hold test temperature at 350 ± 10 °F for 20 minutes.

Polymer modified asphalt emulsion will be sampled and tested in accordance with Section 702.

Mill or blend a minimum of 3% polymer solids, based on asphalt weight, into asphalt or emulsifier solution prior to the emulsification process. If asphalt emulsion type or properties change during the project, a new laboratory mix design is required.

3) Mineral Filler. Furnish non-air-entrained portland cement meeting the requirements of AASHTO M 85 and/or hydrated lime meeting the requirements of Subsection 713.02 as needed to improve mixture consistency, adjust breaking and curing properties, or to meet mix design requirements. Limit mineral fill to a maximum of 3% weight of aggregate.

4) Water. Furnish water in accordance with Subsection 713.01.

5) Additives. Furnish additives to accelerate or retard the break/set properties, improve the resulting finished surface, or increase adhesion. Ensure additives used are compatible with the other components of microsurfacing.

6) Tack Coat. Furnish emulsified asphalt in accordance with Section 407.

7) Microsurfacing Mix Design. Submit a mix design meeting the contract requirements in accordance with Subsection 401.03.1. Perform the mix design using the same materials and aggregate gradation to be used on the project. No material substitutions can be made following mix design approval unless authorized by the Project Manager.

The Project Manager may suspend operations if poor mixing, mix set, or compatibility is observed during production. Perform a new mix design if problems requiring adjustment are not resolved in 2 business days. Perform an additional mix design for microsurfacing with any substitution of aggregate, emulsion or additives. Suspend microsurfacing operations for 10 business days or until mix design approval is granted by the Project Manager. A new test strip section is required for each additional mix design. Additional mix designs are incidental to the microsurfacing bid items.

Determine additive quantities during the laboratory mix design. Provide manufacturer certifications and recommended dosage rates for each additive shipment used on the project. Use of additives not included in the laboratory mix design requires a new laboratory mix design unless determined otherwise by the Project Manager.

Perform the microsurfacing mix design in accordance with ASTM D6372 modified to include the following ISSA Specifications. Restrict the residual asphalt cement to 7.5 ± 2% by total dry weight of aggregate.

Issa Specifications		
Issa Test No.	Description	Specification
ISSA TB-139	Wet Cohesion @ 30 Minutes Minimum (Set) @ 60 Minutes Minimum (Traffic)	12 kg-cm Minimum 20 kg-cm or Near Spin minimum
ISSA TB-109	Excess Asphalt by LWT Sand Abrasion	50 g/ft2 Maximum (538 g/m2 Maximum)
ISSA TB-114	Wet Stripping	Pass (90% Minimum)
ISSA TB-100	Wet-Track Abrasion Loss One-hour Soak Six-day Soak	50 g/ft2 (538 g/m2) Maximum 75 g/ft2 (807 g/m2) Maximum
ISSA TB-147	Lateral Displacement Specific Gravity after 1,000 Cycles of 125 Pounds	5% Maximum 2.10 Maximum
ISSA TB-144	Classification Compatibility	11 Grade Points Minimum (AAA, BAA)
ISSA TB-113	Mix Time @ 77 degrees F	Controllable to 120 Seconds Minimum

C. Construction.

1) Aggregate Production. Be responsible for all sampling and testing to control gradation during aggregate production. Establish a process quality control plan addressing the following:

- Equipment Maintenance;
- Equipment Calibration;
- Stockpiling and materials handling; and

- Sampling and testing of component materials.

2) Aggregate Acceptance Sampling and Acceptance.

a) Quality Assurance Sampling: The Project Manager will randomly select samples taken by the Contractor and witnessed by an inspector for gradation testing. Provide sampling apparatus and sample containers. Submit a sample consisting of well mixed microsurfacing taken from the pugmill chute. Aggregate gradation testing will be performed in accordance with MT 320, and the aggregate tested will be recovered by MT 319. Samples will be dried to a constant weight in oven before beginning MT 319.

Each sample represents approximately 300 tons (mt). The Project Manager may require additional samples.

Five samples representing approximately 1500 tons (mt) constitutes a lot whenever production schedules and material continuity permits. The Project Manager may establish a lot of the quantity represented by 3 to 7 consecutive random samples when there are short production runs, significant material changes, or other unusual characteristics of the work.

(a) Acceptance. Microsurfacing is accepted on a lot by lot basis in accordance with Subsection 105.03.2 using price reduction factors for “Cover Material.”

3) Asphalt Emulsion Sampling and Acceptance.

a) Asphalt Emulsion will be sampled in accordance with 402.03.2.

b) Asphalt Emulsion will be accepted in accordance with 402.03.5.

4) Equipment. Use equipment specifically designed and manufactured to mix and place microsurfacing. Use roadway equipment in accordance with Subsection 401.03.15.

Mix the material with an automatically sequenced, self-propelled microsurfacing machine able to accurately deliver and proportion the aggregate, asphalt emulsion, mineral filler, additives, and water to a revolving multi-blade double shafted mixer capable of distributing the final product. Use a self-propelled continuous paver to spread, shape and finish microsurfacing mix.

Microsurfacing machine must have enough storage capacity for aggregate, asphalt emulsion, mineral filler, additive, and water to maintain an adequate supply to the proportioning controls. Provide support trucks to feed the paver for continuous operation. Use proportioning devices with individual volume or weight controls for proportioning each material added to the mix. Use proportioning devices with controls properly marked that can calibrate and determine material output at any time during production.

Use spreading equipment that agitates and spreads the mixture uniformly by means of a spreader box attached to the paver and mechanically equipped to agitate and spread the material evenly throughout the box. Provide a front seal fabricated with a suitable material such as steel or stiff rubber that allows no loss of mixture at the road contact point. Provide an adjustable rear seal that acts as a final strike-off. Use a spreader box that provides a free flow of uniformly consistent materials to the rear strike-off and employs a suitable means to side shift the box to compensate for variations in the pavement geometry.

Provide a secondary strike-off to improve surface texture. A burlap or cloth drag may be used with approval of the Project Manager.

Use a rut filling spreader box specifically designed to fill ruts when filling ruts with an average depth greater than one-half inch and at locations identified in the contract.

Calibrate each mixing unit in the presence of the Project Manager prior to using on the project, after repairs, or any time directed by the Project manager. Supply the Project Manager with an electronic printout of the calibration process for each material at the time of calibration. During production, provide the Project Manager upon request with material usage reports of micro-surfacing materials for determining yields on aggregate and emulsion, and to check that calibration numbers have not changed. Material quantity printouts are required at the end of each day of production by the Contractor.

5) Surface Conditions and Weather Limitations. Stop microsurfacing placement when the surface or air temperature is below 60 °F (15 ºC), the surface is wet, the roadbed is

unstable, or the Project Manager determines adverse weather conditions prevent the proper handling or finishing of the mix. Do not apply microsurfacing if the temperature is forecasted to be below 33 °F (0ºC) within 24 hours of microsurfacing placement.

6) Surface Preparation. Clean road surface of all dirt, sand, dust, oil, vegetation, and other detrimental materials prior to applying tack coat and microsurfacing material. Allow unsealed cracks to thoroughly dry prior to applying microsurfacing material when water is used to clean the surface.

7) Control of Centerline. Maintain control of the centerline of the road as represented by the established pavement markings. Maintain the paving control line tolerance within 0.25-foot (75 mm) of a true line of existing pavement markings. Failure to maintain centerline as defined will be corrected at the Contractor's expense. The use of raised pavement marking tabs, survey nails, etc. is included in the cost of the Microsurfacing.

8) Cover manholes, valve boxes, drop inlets, and other service utility entrances in a manner that prevents microsurface bonding prior to microsurface placement. Scarify or block off areas with thermoplastic pavement markings and scarify all epoxy pavement markings before placing tack and microsurfacing. Remove all loose and delaminating thermoplastic and epoxy pavement markings. Remove all pavement markings as directed elsewhere in the contract. Fill pot holes, surface raveling, and areas where delaminated markings are removed with approved asphalt patch material prior to microsurfacing. Include this work in the cost of other bid items unless otherwise noted in the contract. The Project Manager may identify pavement markings for complete removal not identified in the contract. Removal of pavement markings not identified in the contract will be measured for payment in accordance with Section 109.04. Do not place microsurfacing on pavement within 30 calendar days of crack sealing operations. Do not apply tack coat and microsurfacing until surface preparation is approved by the Project Manager.

9) Submit a sequence of operations in writing to the Project Manager for approval a minimum of 7 calendar days prior to the placement of microsurfacing. Include a method to establish and maintain centerline and lane-lines for traffic control and pavement markings. Include in the submittal the sequence for placement of tack, areas of fog seal, scratch course, surfacing course and longitudinal joint locations. Tack coat placed on the scratch course may be omitted upon written request and prior written approval from the Project Manager. Tack coat is required on scratch course exposed to construction traffic or the traveling public from more than 7 calendar days. Sweep and reapply tack coat when traffic leaves dust, debris or visible film.

10) Test Strip. Place microsurface material in a test strip of at least 500 feet (150 m) in length prior to full production. The test strip will become part of the microsurfaced roadway and measured for payment once it achieves initial set within 30 minutes and shows no visual signs of distress when exposed to traffic action after curing for 2 hours.

11) Remove and replace the test strip at no expense to the Department if it fails to meet contract requirements. Make necessary adjustments if the test strip fails and obtain Project Manager approval prior to repeating the test strip process. Provide a revised mix design if the test strip failure indicates a mix design or ingredient related problem.

12) Application Rate. Apply microsurfacing, microsurfacing scratch coat, and rut filling at the application rates identified in the contract. Application rates may be changed if directed or approved by the Project Manager.

13) Rut Filling. Furnish a rut filling spreader box specifically designed to fill ruts to the project site prior to placement of microsurfacing. Use the rut filling spreader box to fill ruts with an average depth greater than ½-inch (12.5 mm) and at locations identified in the contract. Fill additional ruts at locations marked by the Project Manager and as directed. Make multiple passes with the rut filling spreader box for ruts greater than ¾-inch (19 mm). Crown the microsurfacing used to fill ruts as necessary to completely fill the rut after volume loss when the microsurfacing has set. Fill ruts prior to the placement of the scratch course.

Apply microsurfacing scratch course as indicated by the plans. Spread the scratch course with a similar type of spreader box used to spread the surface course. For scratch course placement, use an adjustable steel strike-off device in place of the final strike-off device used for the surface course. Terminate scratch course 10 feet (3 m) from structures or project connections. Allow 24 hours cure time after placing scratch course or rut filling before subsequent microsurfacing layer.

Rut data collected by the Department may be available upon request for informational purposes only. The Department does not guarantee the accuracy or precision of the data that may be provided. The Contractor is responsible to field verify rut measurements prior to bidding.

14) Microsurfacing Application. Place microsurfacing meeting the mix design criteria. If disparities between placement and mix design requirements are observed, the Project Manager will request submittal of a new mix design.

Maintain at least one lane open to traffic during all microsurfacing operations. Schedule microsurfacing operations to ensure all lanes are opened to traffic a minimum of 30 minutes prior to sunset of the same working day. Ensure all lanes are open to traffic during non-working hours.

Control ingredient proportions by using the metering or measuring devices on the microsurfacing equipment to ensure mix design compliance.

Limit any increase or decrease in the amount of mineral filler added during production to ±1 percent of the approved mix design.

Pass the mineral aggregate over a scalping screen prior to transfer to the microsurfacing mixing machine to remove oversize material.

Carry enough microsurfacing in all parts of the spreader box to ensure full width and complete coverage with no streaks, narrow spots, or mix segregation. Do not overload the spreader. Do not manually add water to the microsurfacing within the spreader box or on the roadway surface. Submit to the Project Manager for approval water misting systems intended to maintain equipment or paver tires. Submit to Project Manager for approval water misting systems intended to retard the pull out of recently placed crack sealant.

Remove and replace or correct defects in the microsurfacing at no expense to the Department if any of the following occurs:

- Lumping, balling, or unmixed aggregates.
- Course aggregate separates from the emulsion and fines.
- Excessive breaking of emulsion inside the spreader box.
- Excessive streaking. Excessive streaking is defined as longitudinal steaks greater than 0.25 inches (6 mm) in depth when measured by placing a 10 foot (3 m) straight edge over the surface or drag marks greater than ½-inch (12.5 mm) wide and 4 inches (100 mm) long, or 1-inch (25 mm) wide and 3 inches (75 mm) long, in any 30 square yard (25 m2) area.
- Transverse ripples 0.25 inches (6 mm) in depth when measured by placing a 10-foot (3 m) straight edge over the surface.
- Surface profile defects greater than 0.40 inches over 25 feet.
- Flushing or excessively rich areas appearing in microsurfacing after 2 hours from time of placement.
- Any measurable rutting, shoving, or other evidence of premature deformation when exposed to traffic.

15) Compaction. Do not roll or compact microsurfacing material in a manner which damages the microsurfacing or breaks down the microsurfacing aggregate. Do not use modes of vibratory compaction. Compaction used to smooth transitions or improve ride quality may be allowed if approved by the Project Manager. The Project Manager may suspend any and all compaction efforts at his/her sole discretion visual signs of damage are suspected.

16) Joints. Construct longitudinal and transverse joints without any buildups, uncovered areas or unsightly appearance.

17) Place longitudinal joints with less than 3 inches (75 mm) overlap on adjacent passes and no more than ¼-inch (6 mm) difference in elevation between the adjacent passes. Do not allow longitudinal edge lines to vary horizontally by more than ± 2 inches (50 mm) within any 100-foot length (30 m). Place longitudinal joints on lane lines unless directed otherwise by the Project Manager.

18) Place microsurfacing adjacent to concrete pavements or concrete curb and gutter with a straight longitudinal edge. Taper longitudinal joints at approaches and at intersections with a maximum slope of 50:1 unless otherwise directed on the plans.

19) Construct transverse joints with no more than 1/8-inch (3 mm) difference in elevation across the joint. Use construction paper, or comparable product, so all beginning and ending edge lines from each construction pass are straight. Transition transverse joints at connections structures or other terminations by tapering microsurfacing surface course and/or scratch course at a maximum slope of 50:1 unless otherwise directed on the plans.

20) Handwork. Complete all handwork prior to mainline microsurfacing placement. Use hand squeegees to spread microsurfacing in areas that cannot be reached with microsurfacing machine. Provide a complete and uniform coverage. Finish hand worked areas in a manner that provides uniform finish when compared to material placed by the microsurfacing machine.

21) Clean up. Remove microsurfacing from all utility access areas and concrete surfaces. Remove any debris or excess microsurfacing materials associated with work daily.

22) Opening to Traffic. Prior to opening to traffic, allow the microsurfacing to sufficiently cure to ensure it will not deform or be picked up under traffic conditions. Do not allow traffic on microsurfacing less than 45 minutes after placement. Place traffic on microsurfacing within 2 hours after placement unless a longer duration is approved by the Project Manager. Opening of microsurfaced areas to traffic does not constitute Department acceptance of work.

23) Seal Coat. Do not perform Seal Coat within 7 calendar days of microsurfacing placement. Perform seal coat in accordance with Section 409. Schedule work to ensure seal coat is completed within the same calendar year of the microsurfacing.

24) Rumble Strips. Do not install rumble strips within two weeks of microsurfacing placement unless approved by the Project Manager. Meet all requirements of Subsection 401.03.24.

25) Place pavement markings in accordance with Section 620. Locate, mark and place new words, symbols, and stop bars, etc. directly over the existing markings unless otherwise specified in the contract.

D. Method of Measurement. Microsurfacing aggregate is measured by the ton as metered by the mixing unit. Microsurfacing emulsion is measured by the ton in accordance with Section 109. Additives, mineral filler, and water are to be included in the cost of the microsurfacing aggregate and no additional measurements or payments will be made. No additional measurements or payments will be made for the test strip, mix design, or surface preparation. Rut filling is measured by the linear foot of each wheel path.

E. Basis of Payment. Payment for completed and accepted quantities is made under the following:

Pay Item	Pay Unit
Microsurfacing Aggregate	Ton (MT)
Microsurfacing Emulsion	Ton (MT)
Rut Filling	Foot (m)

Tack Coat will be paid for as specified elsewhere in the contract. Microsurfacing aggregate and emulsion used for rut filling and scratch course will be paid for with the respective bid items.

Repair microsurfacing material not meeting contract requirements at no additional cost to the Department. Repair damage to the microsurfacing due to premature opening to traffic at no additional cost to the Department.

Include the costs of polymer in the unit price bid for microsurfacing emulsion.

26. COLD MILLING [411] (ADDED 10-11-12)

After cold milling, do not leave the remaining pavement exposed to traffic more than 24 hours before placing the plant mix surfacing.

27. HIGH FRICTION SURFACE TREATMENT (HFST) – BRIDGE DECK

A. Description. This work is the preparation of bridge decks and approach slabs, the furnishing, and application of a single layer of a two-component polymer high friction surface treatment as shown on the plans.

B. Materials. Furnish materials specifically designed for use as a HFST and on concrete bridge decks and approach slabs. The HFST materials as a system must have been evaluated by the AASHTO Product Evaluation & Audit Solutions. Submit for approval the HFST epoxy resin and aggregate certifications to the Project Manager to forward onto the Traffic Design Section for verification and approval. Contact Tyrel Murfitt, Traffic Design Section at 406-444-6217 or tmurfitt@mt.gov. Do not place materials without approval from the Project Manager.

1) Polymer Primer. Furnish a primer compatible with the Polymer Resin that is 100% solids with the following properties:

Property	Requirements	Test Method
Viscosity [A]	<225 cps	ASTM D2556 (spindle and speed based on ASTM D2556-11)
Tensile Elongation [B]	> 30%	ASTM D638
Tensile Strength [B]	>2000 psi @ 7 days	ASTM D638

[A] Uncured, mixed polymer binder

[B] Cured, mixed polymer binder

2) Polymer Resin. Use a polymer resin base and hardener composed of two-component, 100% solids, 100% reactive, thermosetting compound with the following properties:

Property	Requirements	Test Method
Gel Time [A]	10 - 45 minutes @ 73° to 75° F	ASTM C881
Viscosity [A]	7 - 70 poises	ASTM D2393, Brookfield RVT, Spindle No. 3, 20 rpm
Absorption [B]	1% maximum at 24 hours	ASTM D570
Tensile Elongation [B]	30% - 70% @ 7 days	ASTM D638
Tensile Strength [B]	>2000 psi @ 7 days	ASTM D638
Chloride Permeability [B]	<100 coulombs @ 28 days	AASHTO T277

[A] Uncured, mixed polymer binder

[B] Cured, mixed polymer binder

3) Aggregates. Furnish refractory grade calcined bauxite specifically manufactured for this application. Furnish aggregates that are non-polishing, clean, free of surface moisture, fractured or angular in shape; free from silt, clay, asphalt, or other organic materials; and meet the following properties and gradation requirements:

Aggregate Properties:

Property	Requirement	Test Method
Aluminum Oxide content	85-89%	ASTM E 1621
Moisture Content	≤ 0.2%	AASHTO T255
Hardness	≥ 8.0	Mohs Scale
Fractured Faces	100% with at least 1 fractured face & 80% with at least 2 fractured faces of material retained on No.16	ASTM 5821
Absorption	≤ 1%	ASTM C128
Aggregate Gradation [A]	100% passing No. 4 15-30% passing No. 8 0-5% passing No. 16 0-1% passing No. 30	MT 202

[A] Or recommended gradation per manufacturer of polymer resin and approved by Project Manager.

4) Required Properties of the HFST System. The required properties of the HFST system are listed in the table below:

Property	Requirement [A]	Test Method
Minimum Compressive Strength at 8 Hrs. (psi)	1,000 psi @ 8 hours 5,000 psi @ 24 hours	ASTM C 579 Method B, Modified [B]
Thermal Compatibility	No Delamination	ASTM C 884
Minimum Pull-off Strength	250 psi @ 24 hours	ACI 503R, Appendix A

[A] Based on samples cured or aged and tested at 75°F

[B] Plastic inserts that will provide 2-inch by 2-inch cubes shall be placed in the oversized brass molds.

C. Construction Requirements.

1) Manufacturer's Representative. Provide a resin manufacturer's representative available for the duration of the work, to provide expert assistance on storage, mixing, surface preparation, application, clean-up, and disposal of materials.

2) Submittals. Submit two copies of the following to the Project Manager a minimum of 14 calendar days prior to beginning the HFST application. Do not begin work prior to receiving approval from the Project Manager.

a) Product data sheets and specifications from the manufacturer of the resin and aggregate, and certified test reports. The Project Manager may request samples of the polymer and/or aggregate, prior to application, for the purpose of acceptance testing by the department. Product data sheets and specifications from the manufacturer consists of literature from the manufacturer showing general instructions, application recommendations/methods, product properties, general instructions, or any other applicable information.

b) Product history/reference projects and a certified test report from an independent testing laboratory showing compliance with the requirements of the specification. The product history/reference projects consist of a minimum of 5 locations where the proposed HFST system has been applied in Montana or other locations with a similar climate. Include contact names for the facility owner, current phone number or e-mail address, and a brief description of the project.

3) Material Delivery and Storage. Store resin materials in their original containers in a dry area. Store and handle materials according to the manufacturer's recommendations. Store all aggregates in a dry environment and protect aggregates from contaminants on the job site.

a) Moisture Content. Prior to performing the work, provide an aggregate sample to the Project Manager for a moisture content determination, taken no more than 48 hours prior to placement. An MDT representative must be on site to witness the sampling. Do not proceed with placement if the aggregate moisture is greater than 0.5%. Aggregates may be placed with moisture contents greater than 0.2% however in these cases the contractor must warranty the HFST, through a period ending March 1 following the placement, where the HFST must perform with no visual loss of aggregate or delamination. The Project Manager has sole authority to require warranty repairs for failures identified during the warranty period. Submit a traffic control plan and repair plan for affected areas within 14 days of written notice and perform traffic control and repairs within 120 calendar days of the notice at no cost to MDT. The contractor may reprocess (dry) aggregate to bring it into spec. Reprocessed aggregates must be retested for gradation and moisture. Additional aggregate moisture samples may be taken as determined by the Project Manager.

4) Pre-installation Conference. Conduct a pre-installation conference with the manufacturer's representative prior to construction to establish procedures for maintaining optimum working conditions and coordination of work. Furnish the Project Manager a copy of the recommended procedures and apply the HFST system according to the manufacturer’s instructions. Ensure the manufacturer's representative familiar with the HFST system installation procedures is present at all times during surface preparation and HFST placement to provide quality assurance that the work is being performed properly.

5) Sequence of Operations. The following is the sequence of operations when a HFST is applied to a bridge deck:

a) Deck Repair
b) Surface Preparation
c) Primer Application
d) HFST Application

6) Material Compatibility. Ensure products used for the Deck Repair, Primer, and HFST Application are all compatible with each other.

7) Deck Repair. Perform Class A and B deck repair work as specified elsewhere in the contract. Furnish cementitious-based material for deck repair which is compatible with the Primer and HFTS system. Follow all manufacturer recommendations, including substrate cure times.

8) Surface Preparation. Determine an acceptable shotblasting machine operation (size of shot, flow of shot, forward speed, and/or number of passes) that provides a surface profile meeting CSP 5 according to the International Concrete Repair Institute Technical Guideline No. 03732. If the Project Manager requires additional verification of the surface preparation, test the tensile bond strength according to ACI 503R, Appendix A of the ACI Manual of Concrete Practice.

The surface preparation will be considered acceptable if the tensile bond strength is greater than or equal to 250 psi or the failure area at a depth of ¼ inch (6 mm) or more is greater than 50% of the test area. Continue adjustment of the shotblasting machine and necessary testing until the surface is acceptable to the Project Manager or a passing test result is obtained.

Prepare the entire deck using the final accepted adjustments to the shotblasting machine as determined above. Thoroughly blast-clean with hand-held equipment any areas inaccessible by the shotblasting equipment. Do not perform surface preparation more than 24 hours prior to the application of the HFST system.

Prepare the vertical concrete surfaces adjacent to the deck a minimum of 2 inches (50 mm) above the HFST according to SSPC-SP 13 by sand blasting, using wire wheels, or other approved method.

Just prior to HFST placement, clean all dust, debris, and fines from the prepared surfaces with compressed air. When using compressed air, the air stream must be free of oil.

Completely remove any grease, oil, or other foreign matter that rests on or has absorbed into the asphalt. If any prepared surfaces are exposed to rain or dew, lightly sandblast (breeze blast) the exposed surfaces.

Protect drains, expansion joints, access hatches, or other appurtenances on bridge decks from damage by the shot and sand blasting operations and from materials adhering and entering. Tape or form all construction joints to provide a clean straight edge.

Do not install the HFST on newly placed concrete bridge decks or concrete deck repairs until after a minimum of 28 days.

Do not place the HFST prior to Project Manager approval of the final surface profile and cleanliness.

9) High Friction Surface Treatment Application. Perform the handling and mixing of the polymer resin and hardening agent in a safe manner to achieve the desired results according to the manufacturer's instructions. Do not apply the HFST system if any of the following exists:

a) Ambient air temperature is below 50°F;

b) Surface or Deck temperature is below 50°F;

c) Moisture content in the surface exceeds 4.5% when measured by an electronic moisture meter or shows visible moisture after 2 hours when measured in accordance with ASTM D4263;

d) Rain is forecasted during the minimum curing periods listed under C.8;

e) Materials component temperatures below 50°F or above 99°F;

f) The surface or deck temperature exceeds 100°F.

g) Surface or repair material concrete age is less than 28 days.

h) The gel time is less than 10 minutes at the predicted high air temperature for the day.

After the deck has been prepared and during the HFST curing period, allow on the deck and approach slabs only that equipment which is necessary for surface preparation and HFST application. Begin HFST placement as soon as possible after surface preparation operations.

Use a HFST consisting of a single course application of polymer and aggregate, consisting of a layer of polymer covered with a layer of aggregate in sufficient quantity to completely cover the polymer. Apply the polymer and aggregate according to the manufacturer's requirements. Apply the HFST using equipment designed for this purpose. Use an application machine that features positive displacement volumetric metering and is capable of storing and mixing the polymer resins at the proper mix ratio. Disperse and apply the aggregate using a standard chip spreader or equivalent machine that can provide a uniform, consistent coverage of aggregate. Apply the aggregate to refusal. If the Project manager determines that the course application does not receive enough aggregate before the polymer gels, remove and replace the course.

After completion of the course, cure the HFST according to the manufacturer's instructions. Remove the excess aggregate from the surface treatment by sweeping, blowing, or vacuuming without tearing or damaging the surface; the material may be re-used if approved by the Project Manager and manufacturer. Do not allow traffic on the treated area until directed by the Project Manager.

Prior to opening to traffic, clean surface of all debris and polymer. A minimum of 3 days following opening to traffic, remove loosened aggregates from the pavement.

10) Application Rates. Apply the HFST in accordance with the manufacturer's instructions, but not less than the following rate of application:

Minimum Polymer Coverage Rate	Minimum Aggregate Coverage Rate [A]
1 gallon/32 square feet	12+ pounds/square yards

[A] *Apply aggregate in sufficient quantity to completely cover the polymer.*

11) Minimum Curing Period. As a minimum, cure the coating per the recommendation of the polymer manufacturer and as approved by the Project Manager.

12) Repair of HFST. Repair all areas of unbonded, uncured, or damaged HFST at no cost to the State. Submit repair procedures from the manufacturer to the Project Manager for approval. Absent a manufacturer's repair procedures and with the approval of the Project Manager, complete repairs according to the following: Remove the HFST by scarifying, grinding, or other approved methods; shot blast or sand blast and air blast the surface prior to placement of HFST; and place the HFST according to application procedures in this special provision.

D. Method of Measurement. High friction surface treatment is measured by the square yard of surface area treated. Polymer overlay primer and prepare bridge deck are not measured separately for payment.

E. Basis of Payment. Payment for the completed and accepted quantities is made under the following:

Pay Item	Pay Unit
High Friction Surface Treatment	Square Yard

Payment at the contract unit price is full compensation for all resources necessary to complete the items of work under the contract.

28. HIGH FRICTION SURFACE TREATMENT (HFST) – ASPHALT SURFACES

A. Description. This work is the preparation of asphalt road surfaces and the furnishing and applying a single layer of a two-component polymer high friction surface treatment to the road segments shown on the plans.

B. Materials. Furnish materials specifically designed for use as a HFST and on concrete bridge decks and approach slabs. Submit for approval the HFST epoxy resin and aggregate certifications to the Project Manager to forward onto the Traffic Design Section for verification and approval. Contact Tyrel Murfitt, Traffic Design Section at 406-444-6217 or tmurfitt@mt.gov. Do not place materials without approval from the Project Manager.

1) Polymer Resin. Use a polymer resin base and hardener composed of two-component, 100% solids, 100% reactive, thermosetting compound with the following properties:

Property	Requirements	Test Method
Gel Time [A]	10 - 45 minutes @ 73° to 75° F	ASTM C881
Viscosity [A]	7 - 70 poises	ASTM D2393, Brookfield RVT, Spindle No. 3, 20 rpm
Absorption [B]	1% maximum at 24 hr	ASTM D570
Tensile Elongation [B]	30% - 70% @ 7 days	ASTM D638
Tensile Strength [B]	>2000 psi @ 7 days	ASTM D638
Chloride Permeability [B]	<100 coulombs @ 28 days	AASHTO T277

[A] *Uncured, mixed polymer binder*

[B] *Cured, mixed polymer binder*

2) Aggregates. Furnish refractory grade calcined bauxite specifically manufactured for this application. Furnish aggregates that are non-polishing, clean, free of surface moisture,

fractured or angular in shape; free from silt, clay, asphalt, or other organic materials; and meet the following properties and gradation requirements:

Aggregate Properties:

Property	Requirement	Test Method
Moisture Content [A]	≤ 0.20%	AASHTO T255
Hardness	≥ 8.0	Mohs Scale
Fractured Faces	100% with at least 1 fractured face & 80% with at least 2 fractured faces of material retained on No.16	ASTM 5821
Absorption	≤ 1%	ASTM C128
Aggregate Gradation[B]	100% passing No. 4 15-25% passing No. 8 0-5% passing No. 16 0-1% passing No. 30	CTM 202

[A] Sampled and tested at the time of placement.

[B] Or recommended gradation per manufacturer of polymer resin and approved by Project Manager.

3) Required Properties of Overlay System

The required properties of the overlay system are listed in the table below:

Property	Requirement [A]	Test Method
Minimum Compressive Strength at 8 Hrs. (psi)	1,000 psi @ 8 hrs 5,000 psi @ 24 hrs	ASTM C 579 Method B, Modified [B]
Thermal Compatibility	No Delaminations	ASTM C 884
Minimum Pull-off Strength	250 psi @ 24 hrs	ACI 503R, Appendix A

[A] Based on samples cured or aged and tested at 75°F

[B] Plastic inserts that will provide 2-inch by 2-inch cubes shall be placed in the oversized brass molds.

C. Construction Requirements.

1) Manufacturer's Representative. Provide a resin manufacturer's representative on site for the duration of the work, to provide expert assistance on storage, mixing, surface preparation, application, clean-up and disposal of materials.

2) Submittals. Submit two copies of the following to the Project Manager. Do not begin work prior to receiving approval from the Project Manager.

a) Product data sheets and specifications from the manufacturer of the resin and aggregate, and certified test reports. The Project Manager may request samples of the polymer and/or aggregate, prior to application, for the purpose of acceptance testing by the department. Product data sheets and specifications from the manufacturer consists of literature from the manufacturer showing general instructions, application recommendations/methods, product properties, general instructions, or any other applicable information.

b) Product history/reference projects and a certified test report from an independent testing laboratory showing compliance with the requirements of the specification. The product history/reference projects consist of a minimum of 5 locations where the proposed overlay system has been applied in Montana or other locations with a similar climate. Include contact

names for the facility owner, current phone number or e-mail address, and a brief description of the project.

3) Material Delivery and Storage. Store resin materials in their original containers in a dry area. Store and handle materials according to the manufacturer's recommendations. Store all aggregates in a dry environment and protect aggregates from contaminants on the job site.

4) Pre-installation Conference. Conduct a pre-installation conference with the manufacturer's representative prior to construction to establish procedures for maintaining optimum working conditions and coordination of work. Furnish the Project Manager a copy of the recommended procedures and apply the overlay system according to the manufacturer's instructions. Ensure the manufacturer's representative familiar with the overlay system installation procedures is present at all times during surface preparation and overlay placement to provide quality assurance that the work is being performed properly.

5) Surface Preparation. Lightly shot blast (to point of discoloration) the asphalt surface. Do not damage the integrity of the asphalt. Repair any damage to the integrity of the asphalt prior to installation of the HFS at the contractor's expense. Ensure surface preparation removes any oil, dirt, rubber, debris, or any other potentially detrimental material which may prevent proper bonding to and curing of the material. Walk behind or hand grinders may be needed to remove larger contamination. Pressure washing (as an alternate to shot blasting) may be done 24 hours prior to application of the high friction surface treatment. Do not install the HFS on newly placed asphalt pavement until after a minimum of 30 days.

Prepare the entire surface using the final accepted adjustments to the shotblasting machine as determined above. Thoroughly blast-clean with hand-held equipment any areas inaccessible by the shotblasting equipment. Do not perform surface preparation more than 24 hours prior to the application of the high friction surface treatment.

Just prior to high friction surface treatment placement, clean all dust, debris, and fines from the prepared surfaces with compressed air. When using compressed air, the air stream must be free of oil. Completely remove any grease, oil, or other foreign matter that rests on or has absorbed into the asphalt. If any prepared surfaces (including the first layer of the polymer overlay) are exposed to rain or dew, lightly sandblast (breeze blast) the exposed surfaces.

The Project Manager may consider alternate surface preparation methods per the high friction surface treatment system manufacturer's recommendations. Do not place the high friction surface treatment prior to Project Manager approval of the final surface profile and cleanliness.

6) High Friction Surface Treatment Application. Perform the handling and mixing of the polymer resin and hardening agent in a safe manner to achieve the desired results according to the manufacturer's instructions. Do not apply the overlay system if any of the following exists:

a) Ambient air temperature is below 50°F;

b) Surface temperature is below 50°F;

c) Moisture content in the surface exceeds 4.5% when measured by an electronic moisture meter or shows visible moisture after 2 hours when measured in accordance with ASTM D4263;

d) Rain is forecasted during the minimum curing periods listed under C.8 ;

e) Materials component temperatures below 50°F or above 99°F;

f) The surface temperature exceeds 100°F.

g) If the gel time is less than 10 minutes at the predicted high air temperature for the day.

After the surface has been shotblasted and during the high friction surface treatment curing period, allow on the surface only that equipment which is necessary for surface preparation and high friction surface treatment application. Begin high friction surface treatment placement as soon as possible after surface preparation operations.

Use a polymer overlay consisting of a single course application of polymer and aggregate, consisting of a layer of polymer covered with a layer of aggregate in sufficient quantity to completely cover the polymer. Apply the polymer and aggregate according to the manufacturer's requirements. Apply the overlay using equipment designed for this purpose. Use an application machine that features positive displacement volumetric metering and is capable of storing and mixing the polymer resins at the proper mix ratio. Disperse the aggregate using a standard chip spreader or equivalent machine that can provide a uniform, consistent coverage of aggregate. If the Project manager determines that the course application does not receive enough aggregate before the polymer gels, remove and replace the course.

After completion of the course, cure the overlay according to the manufacturer's instructions. Remove the excess aggregate from the surface treatment by sweeping, blowing, or vacuuming without tearing or damaging the surface; the material may be re-used if approved by the Project Manager and manufacturer. Do not allow traffic on the treated area until directed by the Project Manager.

Prior to opening to traffic, clean surface of all debris and polymer. A minimum of 3 days following opening to traffic, remove loosened aggregates from the pavement.

7) Application Rates. Apply the polymer overlay in accordance with the manufacturer's instructions, but not less than the following rate of application:

Maximum Polymer Coverage Rate (SF/GAL)	Aggregate [A] (LBS/SY)
32	12+

[A] *Apply aggregate in sufficient quantity to completely cover the polymer.*

8) Minimum Curing Period. As a minimum, cure the coating per the recommendation of the polymer manufacturer and as approved by the Project Manager.

9) Repair of Polymer Overlay. Repair all areas of unbonded, uncured, or damaged polymer overlay at no cost to the State. Submit repair procedures from the manufacturer to the Project Manager for approval. Absent a manufacturer's repair procedures and with the approval of the Project Manager, complete repairs according to the following: Remove the overlay by scarifying, grinding, or other approved methods; shot blast or sand blast and air blast the surface prior to placement of polymer overlay; and place the polymer overlay according to application procedures in this special provision.

D. Method of Measurement. High friction surface treatment is measured by the square yard of surface area treated.

E. Basis of Payment. Payment for the completed and accepted quantities is made under the following:

Pay Item	Pay Unit
High Friction Surface Treatment	Square Yard

Payment at the contract unit price is full compensation for all resources necessary to complete the items of work under the contract.

29. ALTERNATIVE WOOD POLE MOUNTED SIGN FOUNDATIONS

A. Description. This work is an alternative sign foundation option for erecting or resetting signs upon request of the Contractor and approval by the Project Manager. This alternative sign foundation option is only for use at the North of Victor site.

B. Material Requirements. Furnish materials in accordance with the Detailed Drawings and Section 619.

C. Construction Requirements.

1) When using this method increase specified foundation depth in the plans by 1-foot and increase the cleat length to a 2”x4”x18”. Do not use this method when wind gusts of 50-mph are projected within the next 5 days. If solid material is encountered that is not easily penetrated by a standard auger contact the Project Manager to determine an adequate depth or new sign location.

2) Backfill foundation holes for timber posts and poles as follows:

- Combine and thoroughly mix the material excavated from the foundation with cement using a mix ratio of 6 parts excavated material to 1 parts cement. If the excavated material does not easily mix with cement, it is allowed to substitute A-1-a material with 100% passing the 3” sieve.
- Do not mix in the hole. Add approximately 0.5 gallons of water for every 2-feet of hole to make the soil-cement mixture.
- Attach the longer cleat 6-inches from the bottom of the post. Use 4 16D galvanized nails to attach the cleat to the post.
- Place the wood pole in the hole with the sign attached. Ensure the sign has not been damaged in transport before placing.
- Backfill the hole with the soil-cement mixture in 8-inch (200 mm) maximum lifts.
- Compact each lift by hand tamping or using mechanical methods.

D. Measurement and Payment. In accordance with Subsection 619.04 and 619.05.

30. PAINTING SIGN BACKS [619] (REVISED 4/25/24)

A. Description. Paint the backs of all aluminum signs. This sign back painting is only at the South of Ravalli site.

B. Materials. Use a polyvinylidene fluoride (PVDF) paint system meeting the requirements of the American Architectural Manufacturers Association (AAMA) Specification AAMA 2605 for painting sheet aluminum with a flat finish to match weathering steel. Provide the Engineering Project Manager with a sample for approval.

C. Method of Measurement and Basis of Payment. No separate measurement and payment will be made for painting of sign backs, include the cost of this work in the cost of the associated sign sheeting bid item.

31. SMART WORKZONE WALKBACK FLAGGER REPLACEMENT OPTION (END OF QUEUE DETECTION AND WARNING) [618] (REVISED 5-16-24)

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

B. General.

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

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

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

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

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

(1) traffic speed at the individual sensors.

(2) battery life.

(3) system connectivity; and

(4) message displayed on the variable message board. The following table lists the approved messages to display for each condition:

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

The system must provide the following:

- A failsafe system if communications go down or a fault is detected in the system for more than 2 minutes.
- A system that will revert to a failsafe mode in which the message board displays the message shown above.
- A network extender if installed in areas with little or no cell network coverage.
- Speed data from sensors at the request of and no cost to the Department.

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

2) Portable variable message signs. Furnish portable variable message signs that can execute the requirements set forth above. Furnish VMS that meet MUTCD requirements including 18” character height.

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

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

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

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

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

32. LONG TERM VARIABLE MESSAGE BOARDS [618]

A. Description. Furnish, install, maintain, and remove 2 portable variable message boards (VMS).

B. General.

1) Install VMS at the following locations.

Location	Description
US 93 NB	Prior to workzone as determined by the EPM
US 93 SB	Prior to workzone as determined by the EPM

2) Install VMS 7 working days prior to the start of initial traffic control setup and construction operations. Provide traffic a warning message as approved by the Project Manager

and shown in the Contractor's Traffic Control Plan. This message will alert traffic to the upcoming project limits and suggest alternate route(s).

3) At the start of construction operations, provide a message warning traffic of the anticipated project delays and suggest alternate route(s) as approved by the Project Manager.

4) Remove VMS as directed by the Project Manager. VMS not removed within 12 hours of notification will be subject to a 15% deduction in the unit bid price for each instance.

5) Furnish VMS that meet MUTCD requirements.

6) VMS must be capable of providing 2 phases with 3 lines and 8 characters per line. Characters must be a minimum of 18 inch in height.

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

C. Method of Measurement. Portable variable message boards will be measured by each.

Construction of pad(s) will be measured and paid for in accordance with Subsection 109.04.

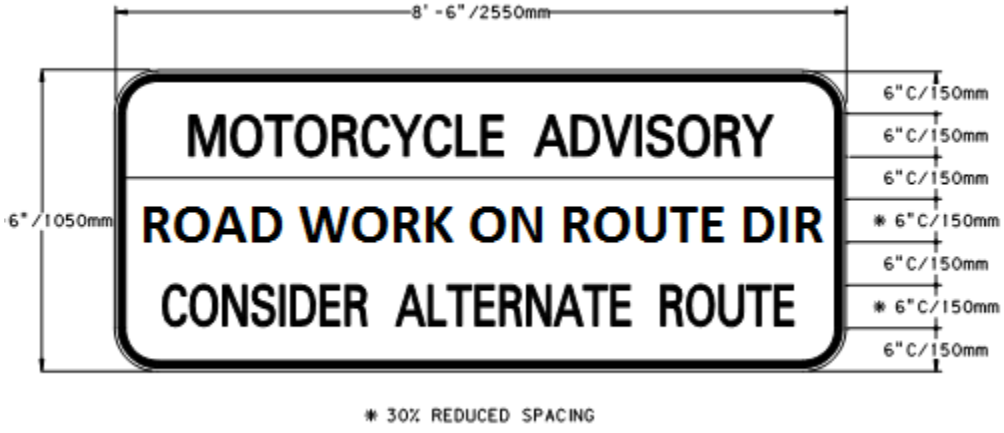
D. Basis of Payment. Portable variable message sign will be paid by each and includes all costs associated with installing, maintaining, and removing the boards. This item will be paid under bid item 618 100 005 Portable Variable Message Sign.

33. MOTORCYCLE ADVISORY SIGNS [619] (REVISED 7-16-20)

A. Description. This work is the furnishing, installing, maintaining, and removal of motorcycle advisory signs.

B. Materials. Furnish materials meeting the requirements of Subsection 618.02. Furnish ASTM D4956 type VI or higher retro-reflective sheeting.

C. Construction Requirements. Furnish and install the signs shown on the following detail to the required typical cross section and profile grade, meeting Detailed Drawing 618-01, two-post installation, at the locations listed in the contract. The ROUTE will specify the route number and the DIR will specify the direction of the construction. The sign must meet the height requirements specified on the Detailed Drawing.



For rural intersections install sign(s) on the right shoulder within 1000 feet to 1500 feet (300 m to 450 m) in advance of the roadway's intersection. For urban intersections install sign(s) within 200 feet (60 m) of the roadway's intersection. Adjust sign within the specified distance to prevent obstruction from existing signs.

Install sign(s) no more than 2 calendar days before construction activities begin that change the roadway surface from a paved surface to an unpaved surface. Remove sign(s) within 2 calendar days after the roadway surface has a paved surface.

Coordinate with the Project Manager the date the sign(s) are to be installed, the verification of the sign locations, and the date of removal.

D. Method of Measurement. Motorcycle advisory signs, including all costs associated with labor, materials, tools and equipment required to provide, install and remove are measured by the Each.

E. Basis of Payment. Payment for the completed and accepted quantities is made under the following:

Pay Item	Pay Unit
Motorcycle Advisory Signs	Each

Payment at the contract unit price is full compensation for all resources necessary to complete the item of work under the contract.

END OF SECTION I.

MDT NONDISCRIMINATION AND
DISABILITY ACCOMMODATION NOTICE

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

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

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

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
b. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
    i. A statement that the PARTY does not discriminate on the grounds of any protected classes.
    ii. A statement that the 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 the PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
    iv. Information on how to request information in alternative accessible formats.

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

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

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

b. By signing this agreement, the PARTY assures MDT 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. The PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

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

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

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

(7) Pertinent Non-Discrimination Authorities: During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

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

State

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

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

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

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

MDT NONDISCRIMINATION AND DISABILITY ACCOMMODATION NOTICE

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Federal protected classes

Race, color, national origin, sex, sexual orientation,
gender identity, age, disability, income-level & 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. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
    i. A statement that the PARTY does not discriminate on the grounds of any protected classes.
    ii. A statement that the 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 the 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 MDT 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. The 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 statutes and authorities; including but not limited to:

- 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.

RECEIVED
MONTANA DEPARTMENT
JUN - 1 2020
OF TRANSPORTATION
LEGAL SERVICES

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE MONTANA DEPARTMENT OF TRANSPORTATION

AND

THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION

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

I. Parties

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

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

II. Statement of Intent

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

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

III. Government to Government Relationship

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

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

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

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

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

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

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

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

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

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

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

IV. Specific Issues

A. Scoping I Project Nomination

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

B. Survey / Data Gathering / Environmental / Design

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

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

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

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

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

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

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

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

C. Permitting

1. Construction Water Use

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

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

i. whether water is available;

ii. whether there is access to the withdrawal site;

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

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

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

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

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

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

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

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

2. Cultural/Historic Resource Protection

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

mutually acceptable to the Parties.

E. Construction and Maintenance Projects

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

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

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

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

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

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

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

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

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

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

and ongoing construction related projects and issues.

6. Construction Borrow Materials:

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

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

i. available in a quantity sufficient for the project;

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

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

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

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

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

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

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

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

F. Indian Preference Employment

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

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

2. TERO Fee:

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

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

ii. applicable Federal regulations and policy.

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

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

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

a. establish and administer an Indian Preference Hiring Hall;

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

c. monitor employer compliance;

d. recruit, identify and select trainee candidates; and

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

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

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

demonstrably qualified employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the Compliance Plan.

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

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

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

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

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

e. trainee reports for Indian trainees on the Project

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

8. Non-compliance:

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

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

G. Indian Training

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

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

H. Indian Contracting

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

I. Access Management

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

a. meet as necessary;

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

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

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

J. Tribal Law & Order / Accident Reports

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

V. Duration / Termination / Renewal

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

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

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

VI. Amendments / Severability

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

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

VII. Party Contacts

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

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

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

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

VIII. Negative Declaration

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

IX. Signatures

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

For MDT:

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

For the Tribes:

Shelly R. Fyant, Chairwoman Date 18 May 2020

Approved for Legal Content:

Tim Fox, Montana Attorney General Date

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

Project Name: US 93 – N Victor & S Ravalli; NH 7-1(179)60; UPN 10374000

Project Type: Asphalt Resurfacing (Rut Fill), Signing, Delineation, Rumble Strips

Project Route: US 93; Reference Post (RP) 20.14 – RP 26.68
(Refer to Attachment A)

Letting Date: Summer 2025

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

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

Specific Issues:

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

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

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

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

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

E. Indian Hiring Requirements

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

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

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

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

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

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

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

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Michael Dolson, Chairman
Confederated Salish & Kootenai Tribes

Date: 1/14/25

Signed by:
B4BEC52766F74BE...
Christopher Dorrington, Director
Montana Department of Transportation

Date: 1/14/2025

Approved for Legal Content

Legal Services,
Confederated Salish & Kootenai Tribes

Date: 1/2/2025

Approved for Legal Content

DocuSigned by:
Eli Clarkson
49CA684D765B4DA...
Legal Services,
Montana Department of Transportation

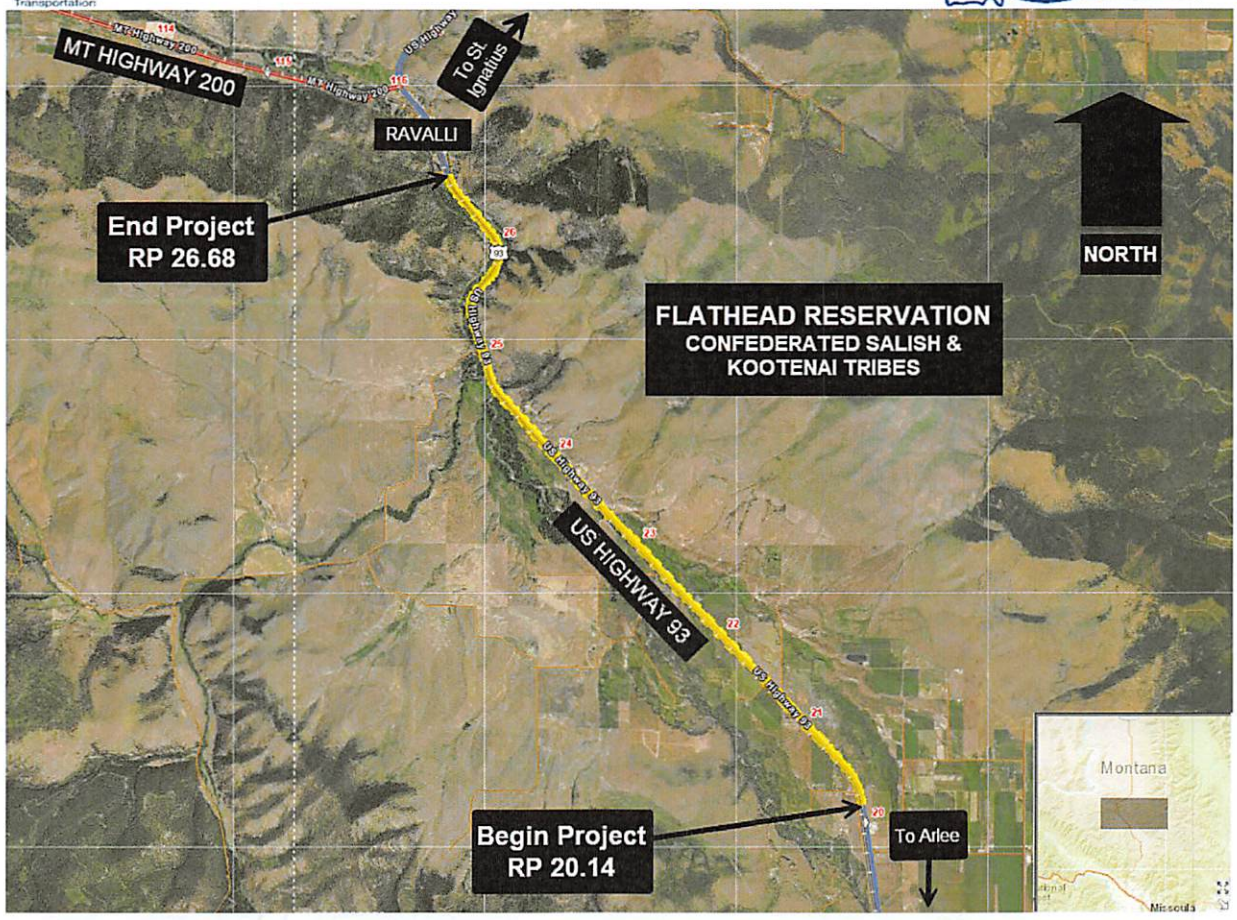
Date: 1/14/2025

Attachment A

PROJECT LOCATION MAP
US 93 - N VICTOR & S RAVALLI
NH 7-1(179)60 | UPN 10374000

MONTANA Department of Transportation

VISION ZERO



STANDARD PROVISIONS INDEX

FEDERAL AID PROJECTS **CONTAINS**

Federal Wage Rates (Rev. 1-03-2025)..... 5 Pages

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

Required Contract Provisions Federal-Aid Const. Contracts (FORM FHWA-1273) [Rev.10-23-2023] ..... 14 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: MT20250079 01/03/2025

Superseded General Decision Number: MT20240079

State: Montana

Construction Type: Highway

Counties: Montana Statewide

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30,2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022.	Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least $17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022.	Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours performing on that contract in 2025.

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

Additional information on contractor requirements and worker protections under the Executive Orders is available at https://www.dol.gov/agencies/whd/government-contracts

Modification Number	Publication Date
0	01/03/2025

SUMT2023-001 04/01/2022

	Rates	Fringes
CARPENTER		
Carpenter/Piledriverman	$ 36.05	14.23
Millwright	$ 40.87	14.70
CEMENT MASON/CONCRETE FINISHER	$ 33.41	16.51
DIVER		
Diver Tender	$ 45.30	18.38
Diving	$ 92.66	18.38
Stand-By	$ 46.33	18.38

The tender shall receive 2 hours at the straight time pay rate per shift for dressing and/or undressing 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.

ELECTRICIAN (LINE CONSTRUCTION)		
Equipment Operator	$ 38.38	18.60
Groundman	$ 29.96	17.64
Lineman	$ 50.11	19.88
ELECTRICIAN		
All Areas	$ 39.08	20.00
IRONWORKER	$ 30.43	25.22
LABORER		
Group 1	$ 27.71	12.36
Group 2	$ 30.87	12.36
Group 3	$ 31.10	12.36
Group 4	$ 32.12	12.36

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 Hoseman; Tool Checker and Houseman; Traffic Control Worker

GROUP 3: Concrete Vibrator; Dumpman (Grademan); 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

PAINTER	$ 36.00	12.84

POWER EQUIPMENT OPERATOR:		
Group 1	$ 32.47	12.77
Group 2	$ 34.55	12.77
Group 3	$ 35.70	12.77
Group 4	$ 36.67	12.77
Group 5	$ 38.05	12.77
Group 6	$ 39.27	12.77
Group 7	$ 41.95	12.77

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)

TRUCK DRIVER

Group 1	$ 28.21	12.57
Group 2	$ 35.74	12.57

GROUP 1: Pilot Car

GROUP 2: Combination Truck and Concrete Mixer and Transit Mixer; Dry Batch Trucks; Distributor Driver; Dumpman; Dump Trucks and Similar Equipment; Dumpster; Flat Trucks; Lumber Carriers; Lowboys; Pickup; Powder Truck Driver; Power Boom; Serviceman; Service Truck/Fuel Truck/ Tireperson; Truck Mechanic; Trucks With Power Equipment; Warehouseman, Partsman, Cardex and Warehouse Expeditor; Water Trucks

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

https://www.dol.gov/agencies/whd/government-contracts

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) (iii)).

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

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", “”SA””, or “”SC”” denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate 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. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the 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. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

“”SU”” wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA

reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the “”SA”” identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

Has there been an initial decision in the matter? This can be:

*a survey underlying a wage determination
*an existing published wage determination
*an initial WHD letter setting forth a position on a wage determination matter
*an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

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

If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail 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 any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

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.

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END OF GENERAL DECISION

"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 October 23, 2023

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

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

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

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

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

10. Assurances Required:

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

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible.

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH–1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to *DBAconformance@dol.gov*. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to *DBAconformance@dol.gov*, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.,* the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH–347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 will satisfy the requirement for submission of the “Statement of Compliance” required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

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

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* $31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

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

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

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

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

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

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

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

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

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

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

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

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

* * * * *

3. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

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

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

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

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XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

XII. USE OF UNITED STATES-FLAG VESSELS:

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

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

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

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

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

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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

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

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

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

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

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

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

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

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

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

EEO AFFIRMATIVE ACTION REQUIREMENTS ON FEDERAL & FEDERAL-AID CONSTRUCTION CONTRACTS

Federal-aid contractors are hereby notified they are subject to the OFCCP goals and economic areas 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.

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 (statewide) 6.9%

GOALS FOR MINORITY PARTICIPATION IN EACH TRADE
Economic Areas:

152
Non-SMSA (Standard Metropolitan Statistical Area) Counties 4.4%
Daniels, Richland, Roosevelt, Sheridan

153 Great Falls, MT
SMSA Counties
3040 Great Falls, MT 3.2%
Cascade

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, Lake, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, Silver Bow

155 Billings, MT
SMSA Counties
0880 Billings, MT 3.3%
Yellowstone

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

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 non-federally 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.