1

DEPARTMENT OF TRANSPORTATION

NOTICE TO CONTRACTORS,

PROPOSAL, SPECIAL PROVISIONS,

CONTRACT AND CONTRACT BOND

FOR

REMOVE & REPLACE PCC SURFACING, EDGE DRAINS,

INSLOPE FLATTENING, PIPE REPAIR, EXTEND CULVERT

FEDERAL PROJECT NO. IM 0903(101)153
(PCN 03W4)

INTERSTATE 90

IN JACKSON COUNTY

NOTICE TO ALL BIDDERS

TO REPORT BID RIGGING ACTIVITIES, CALL: 1-800-424-9071

THE U.S. DEPARTMENT OF TRANSPORTATION (DOT) OPERATES THE ABOVE TOLL-FREE “HOTLINE” MONDAY THROUGH FRIDAY, 8:00 A.M. TO 5:00 P.M., EASTERN TIME. ANYONE WITH KNOWLEDGE OF POSSIBLE BID RIGGING, BIDDER COLLUSION, OR OTHER FRAUDULENT ACTIVITIES SHOULD USE THE “HOTLINE” TO REPORT SUCH ACTIVITIES.

THE “HOTLINE” IS PART OF THE DOT’S CONTINUING EFFORT TO IDENTIFY AND INVESTIGATE HIGHWAY CONSTRUCTION CONTRACT FRAUD AND ABUSE AND IS OPERATED UNDER THE DIRECTION OF THE DOT INSPECTOR GENERAL.

ALL INFORMATION WILL BE TREATED CONFIDENTIALLY AND CALLER ANONYMITY WILL BE RESPECTED.

*** * * ***

PLANS, PROPOSALS AND ADDENDA

AFTER AWARD OF CONTRACT, THE LOW BIDDER WILL RECEIVE TEN (10) COMPLIMENTARY SETS OF PLANS, PROPOSALS, PROJECT Q & A FORUM, AND ADDENDA FOR FIELD AND OFFICE USE. AN ELECTRONIC COPY WILL ALSO BE PROVIDED. ANY ADDITIONAL COPIES REQUIRED WILL BE THE RESPONSIBILITY OF THE CONTRACTOR.

*** * * ***

Project Number: IM 0903(101)153

Revised 6/24/15
PCN 03W4

NOTICE TO CONTRACTORS

Bid proposals for this project will be received electronically by the South Dakota Department of Transportation (SDDOT) via the SDDOT secure bid submission site at http://apps.sd.gov/hc65bidletting/bidsubmittallogin.aspx until 10 A.M. Central time, on November 4, 2015, at which time the SDDOT will open bids. All bids will be checked for qualifications with results posted on the SDDOT website. The South Dakota Transportation Commission will consider all bids at a scheduled Commission meeting.

The work for which proposals are hereby requested is to be completed within the following requirement(s):

SUBSTANTIAL COMPLETION: **OCTOBER 22, 2016**

FIELD WORK COMPLETION: **NOVEMBER 11, 2016**

CONSTRUCTION SCHEDULE: T**he project category is Category III**
The project type is GRADING
The geographic zone is Zone 4

THE DBE GOAL FOR THIS PROJECT IS: **NOT SPECIFIED.**

WORK TYPE FOR THIS PROJECT IS: **Work Type 3.**

Bidding package for the work may be obtained at: http://apps.sd.gov/hc65bidletting/ebslettings1.aspx

An electronic version of the most recent version of the South Dakota Standard Specifications for Roads and Bridges may be obtained at http://www.sddot.com/business/contractors/specs/2015specbook/Default.aspx

The electronic bid proposal must be submitted by a valid bidder as designated on the Bidding Authorization Form. The Bidder ID and Password, coupled with a previously Department assigned Company ID, will serve as authentication that an individual is a valid bidder and will assure the secure electronic delivery of bid proposals to the Department. This authorization shall remain in full force and effect until written notice of termination of this authorization is sent by an Officer of the company and received by the Department.

PROPOSAL Revised 8/10/11

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION, STATE OF SOUTH DAKOTA:

Ladies / Gentlemen:

The following proposal is made on behalf of the undersigned and no others. It is in all respects fair and is made without collusion on the part of any other person, firm or corporation not appearing in the signature to this proposal.

The undersigned certifies that she / he has carefully examined the plans listed herein, the Specifications hereinbefore referred to, the Special Provisions and the form of contract, both of which are attached hereto. The undersigned further certifies that she / he has personally inspected the actual location of the work, together with the local sources of supply and that she / he understands the conditions under which the work is to be performed, or, that if she / he has not so inspected the actual location of the work, that she / he waives all right to plea any misunderstanding regarding the location of the work or the conditions peculiar to the same.

On the basis of the plans, Specifications, Special Provisions and form of contract proposed for use, the undersigned proposes to furnish all necessary machinery, tools, apparatus and other means of construction, to do all the work and furnish all the materials in the manner specified, to finish the entire project **within the contract time specified** and to accept as full compensation therefore the amount of the summation of the products of the actual quantities, as finally determined, multiplied by the unit prices bid.

The undersigned understands that the quantities as shown in the Bid Schedule are subject to increase or decrease, and hereby proposes to perform all quantities of work, as increased or decreased, in accordance with the provisions of the specifications, and subject to any applicable special provisions, and at the unit prices bid.

The undersigned understands that the "Total or Gross Amount Bid" as immediately hereinbefore set forth is not the final amount which will be paid if this proposal is accepted and the work done, but that such amount is computed for the purpose of comparison of the bids submitted and the determination of the amount of the performance bond.

The undersigned further proposes to perform all extra work that may be required on the basis provided in the specifications, and to give such work personal attention in order to see that it is economically performed.

The undersigned further proposes to both execute the contract agreement and to furnish a satisfactory performance bond, in accordance with the terms of the specifications, within twenty (20) calendar days after the date of Notice of Award from the South Dakota Department of Transportation that this proposal has been accepted.

CERTIFICATION REGARDING LOBBYING

I certify, to the best of my knowledge and belief, that: 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 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 a Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any of the above mentioned parties, the undersigned shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. 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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than $10,000 and not more than $100,000 for each such failure.

REV. 6/24/15

SPECIAL PROVISIONS

PROJECT NUMBER(S): IM 0903(101)153 PCN: 03W4

TYPE OF WORK: REMOVE & REPLACE PCC SURFACING, EDGE DRAINS, INSLOPE FLATTENING, PIPE REPAIR, EXTEND CULVERT

COUNTY: JACKSON

The following clauses have been prepared subsequent to the Standard Specifications for Roads and Bridges and refer only to the above described improvement, for which the following Proposal is made.

The Contractor's attention is directed to the need for securing from the Department of Environment & Natural Resources, Foss Building, Pierre, South Dakota, permission to remove water from public sources (lakes, rivers, streams, etc.). The Contractor should make his request as early as possible after receiving his contract, and insofar as possible at least 30 days prior to the date that the water is to be used.

Penny Kutz is the official in charge of the Rapid City Career Center for Jackson County.

THE FOLLOWING ITEMS ARE INCLUDED IN THIS PROPOSAL FORM:

Special Provision for Contract Time, dated 9/4/15.

Special Provision for On-The-Job Training Program, dated 7/10/12.

Special Provision Regarding Section 404 of the Clean water Act, dated 10/2/15.

Fact Sheet #23.

Special provision for Contractor Staking, dated 9/4/15.

Special Provision for Contractor Furnished Mix Designs for PCC Pavement, dated 6/19/15.

Special Provision for PI PCC Pavement Smoothness with 0.2" Blanking Band, dated, 7/21/15.

Special Provision for IRI PCC Pavement Smoothness, dated 9/8/15.

Special Provision for Contractor Administered Preconstruction Meeting, dated 4/18/13.
Fuel Adjustment Affidavit, DOT form 208 dated 7/15.
Standard Title VI Assurance, dated 7/14/08.
Special Provision For Disadvantaged Business Enterprise, dated 5/20/15.
Special Provision For EEO Affirmative Action Requirements on Federal and Federal-aid Construction Contracts, dated 9/1/97.

Special Provision For Required Contract Provisions Federal-aid Construction Contracts, Form FHWA 1273 (Rev. May/1/12), dated 4/30/13.
Required Contract Provisions Federal-aid Construction Contracts, Form FHWA 1273 (Rev. 5/1/12).
Special Provision Regarding Minimum Wage on Federal-Aid Projects, dated 4/30/13.
Wage and Hour Division US Department of Labor Washington DC.
- US Dept. of Labor Decision Number SD100010, dated 8/30/13.
Special Provision for Price Schedule for Miscellaneous Items, dated 8/3/15.

Special Provision Regarding Storm Water Discharge, dated 5/3/13.
General Permit for Storm Water Discharges Associated with Construction Activities, dated 2/1/10. http://denr.sd.gov/des/sw/IPermits/ConstructionGeneralPermit2010.pdf

*** * * ***

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
CONTRACT TIME

PROJECT IM 0903(101)152, PCN 03W4
JACKSON COUNTY

SEPTMEBER 4, 2015

March 31, 2016 Work Restriction

The Contractor will not switch traffic from the EBL to the WBL in a two lane two-way configuration prior to March 31, 2016.

Substantial Completion

The Contractor will substantially complete the project by the October 22, 2016 substantial completion date.

The Department will consider the work substantially complete when all lanes are opened to unimpeded traffic, traffic can move through the project at the posted speed, and all work is completed except the following:

Seeding, mulching, and all clean-up work.

The Engineer, in his or her sole discretion will determine when the project is substantially complete.

Following the substantial completion of the project, the Department will allow single lane closures for the completion of the remaining items of work (including, but not limited to, seeding, mulching, and all clean-up work). The Department will allow single lane closures during daylight hours only and only when the Contractor is actively performing work. Daylight hours will be defined as sunrise to sunset.

The Department wants to accelerate the project by offering an incentive to the Contractor. The Department will make an incentive payment in the amount of $4,500 per calendar day to the contract for each calendar day the Contractor substantially completes the work prior to the required substantial completion date. The Department will make a disincentive assessment in the amount of $4,500 per calendar day to the contract for each calendar day the work is not completed beyond required substantial completion date. The Department will charge calendar days in accordance with Section 8.6 B.

The maximum incentive for this portion of the project is limited to $135,000. There is no maximum disincentive.

Field Work Completion

The Contractor will complete the project by the November 11, 2016 field work completion date.

Time Extensions

In order to avoid or reduce liquidated damage and disincentive assessments, the Contractor may request a time extension for the substantial completion requirement, and field work completion requirement. The Department will consider these time extension requests using the same considerations that apply when granting an extension of contract time under Section 8.7, except extra work or an increase in quantities will not qualify for an automatic extension of time based on a proportional increase in the contract amount.

Failure to Complete on Time

The Contractor will substantially complete the project prior to the substantial completion requirement or the substantial completion requirement as amended by formally approved time extensions. If the Contractor does not complete the work by the substantial completion requirement or the substantial completion requirement as amended by formally approved time extensions, the Department will assess liquidated damages in accordance with Section 8.8. The Department will assess liquidated damages for each calendar day the work (project) is late until the Contractor substantially completes the work.

In the event the Contractor does not substantially complete the work on time, the Department will charge calendar days in accordance with Section 8.6 B.

The Contractor will complete all work on the project prior to the field work completion requirement or the field work completion requirement as amended by formally approved time extensions. If the Contractor does not complete all work by the field work completion requirement or the field work completion requirement as amended by formally approved time extensions, the Department will assess liquidated damages in accordance with Section 8.8. The Department will assess liquidated damages for each working day the work (project) is late until the Contractor completes all field work.

In the event the Contractor does not complete all field work on time, the Department will charge working days in accordance with Section 8.6 C.

Expected Adverse Weather Days

The Department has provided Attachment 1 for information purposes only as a guide to bidders. This table depicts the typical number of adverse weather days expected for any given month, based on historical records. The Department will consider this project a grading project in Zone 4.

The Department will consider expected adverse weather days cumulative in nature over the time period when the Contractor is actively pursuing completion of the work. The Department will not consider adverse weather days during an extended period of time when the Contractor is not pursuing completion of the work. When considering a time extension for substantial completion, or field work completion of the project, the Engineer will compare the total number of expected adverse weather days against the total number of actual adverse weather days for the time period during which the work was being completed.

* * * * *

ATTACHMENT 1

Figure A - Expected Adverse Weather Days for South Dakota

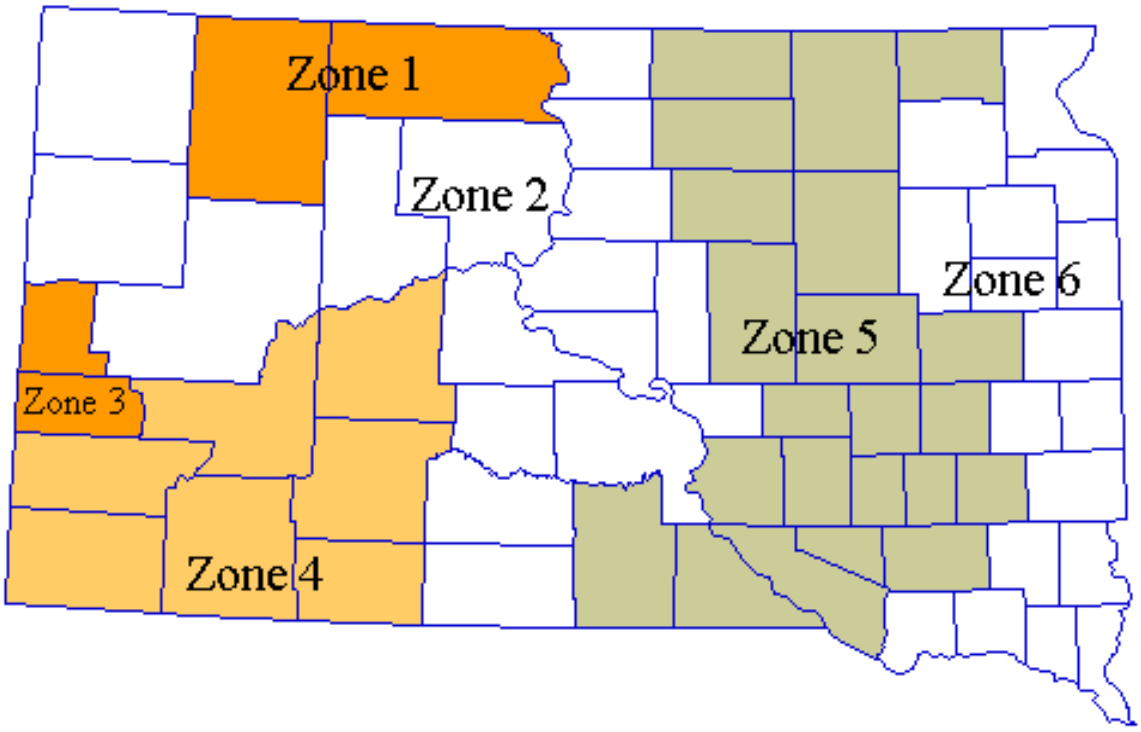


Table 1 - Expected Adverse Weather Days for South Dakota

	Grading Projects						Surfacing and Structural Projects					
	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
Jan	18	18	16	16	22	24	18	18	15	16	21	23
Feb	19	18	12	14	19	21	19	18	12	14	19	21
Mar	12	10	9	8	11	13	12	10	9	8	10	12
Apr	6	5	8	5	6	6	5	4	6	4	4	4
May	6	6	8	6	6	6	5	5	6	4	4	5
Jun	7	6	7	6	7	8	5	5	5	4	5	6
Jul	5	5	6	5	6	7	4	4	5	3	4	5
Aug	4	4	5	4	5	6	3	3	4	3	4	4
Sep	3	3	4	3	4	5	2	2	3	2	3	4
Oct	4	3	5	3	4	4	3	3	4	2	3	3
Nov	11	9	8	7	10	12	11	9	8	7	10	11
Dec	21	19	15	14	20	22	21	19	15	14	20	22

NOTE: Includes Holidays and Weekends.

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION FOR ON-THE-JOB TRAINING PROGRAM

JULY 10, 2012

This Training Special Provision supersedes Part II, Nondiscrimination, Section 6, Training and Promotion, paragraph "b" on Page 2 of the Required Contract Provisions Federal-Aid Construction Contracts (FHWA 1273 – Rev. 5/1/2012).

PURPOSE

The purpose of the On-the-Job Training (OJT) Program is to provide training for minority, female and economically disadvantaged individuals, hereinafter known as the targeted group, in order that they may develop marketable skills and gain journeyworker status in the skilled craft classifications in which they are being trained.

INTRODUCTION

Successful operation of the OJT program requires that contractors follow uniform and basic procedures in training, keeping records of trainee progress toward journeyworker status, and reporting each trainee's successful completion or termination from the program.

The bidder's signature on the proposal sheet indicates the bidder agrees to participate in the OJT Program and to abide by the provisions of this OJT Program Special Provision.

SELECTION OF TRAINING PROGRAM

A. The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by the South Dakota Department of Transportation (Department or SDDOT) and the Federal Highway Administration (FHWA).

B. The Department and FHWA have currently approved one OJT program for use in South Dakota and that is the OJT program designed and implemented by Associated General Contractors (A.G.C.) of South Dakota; Highway, Heavy, Utilities Chapter. The department has assumed the administration functions of the A.G.C. Training program. The OJT Program previously used by the Department of Transportation is no longer available but any trainee who has begun training in 1997 under the Department program will be allowed to complete that program.

C. There may be other training programs which some Contractors might wish to utilize. If the Contractor intends to use such a program to meet the OJT requirements on a federal-aid contract with training requirements, approval or acceptance of such program shall be obtained from the Department and FHWA **prior** to beginning training on any classification covered by that program.

It is the intention of these provisions that training is to be provided in the construction crafts rather than administrative support type positions or lower level management positions. Training for semi-skilled laborer classifications is discouraged but may be permitted provided that significant and meaningful training is provided and prior approval is obtained by the Department Civil Rights Office and the FHWA Division office.

RECRUITMENT AND SELECTION PROCEDURES

A. Prerequisite for Trainees

1. To be qualified for enrollment in the OJT Program, a trainee applicant must be a member of one of the targeted groups (unless an alternate selection is authorized by the Department), must possess basic physical fitness for the work to be performed, should have demonstrated qualities of dependability, willingness to learn, ability to understand and follow instructions and an aptitude to maintain a safe work environment.

2. No person shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyworker status or in which he has been employed as a journeyworker. The Contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records should document the findings in each case.

B. Licenses

Truck driver trainees must possess appropriate driver permits or licenses for the operation of Class A, B, and C trucks. When an instructional permit is used in lieu of a license, the trainee must be accompanied by an operator who:

1. Holds a license corresponding to the vehicle being operated;

2. Has had at least one year of driving experience; and

3. Is occupying the seat next to the driver trainee.

C. Recruitment

1. Notices and posters setting forth the Contractor's Equal Employment Opportunity Policy and the availability of training programs will be placed in areas readily accessible to employees, applicants for employment and potential employees.

2. Training and upgrading of minorities, women, and socially and economically disadvantaged persons toward journeyworker status is the primary objective of this Special Provision. Accordingly, the Contractor shall make every effort to enroll minority trainees, women and disadvantaged persons (e.g. by conducting systematic and direct recruitment through public and private sources likely to yield minority and female applicants) to the extent that such persons are available within a reasonable area of recruitment.

3. Full consideration will be given to upgrading current minority and female employees.

D. Selection

1. The selection and employment of an eligible person by a participating Contractor, in accord with the above Parts A, B, and C, shall qualify the person of the OJT Program.

2. Employment of trainees will be in accordance with the work force requirements of the Contractor. Each Contractor will hire and train the trainees for use in his own organization.

3. Contractors **must** follow the registration procedures as set out for the South Dakota Department of Transportation. An original registration form must be sent to the Department Civil Rights Office for review and approval. In the event that the Department OJT Registration Form(s) are not received by the Civil Rights Office within two weeks of the date the contractor begins significant work on the project, progress payments will be suspended. This suspension will be lifted upon receipt and approval of the form(s).

4. To be acceptable as an economically disadvantaged trainee, the applicant must meet current disadvantaged guidelines (relative to employment and income) as set out by the United States Department of Labor. These guidelines are available from South Dakota One-Stop Career Centers and contractors must provide the necessary documentation, i.e. application information, to support an OJT registration from a disadvantaged candidate. This documentation must be provided to the Civil Rights office with the other required information as a part of the approval process for trainees.

5. The Department expects that Contractors will employ minority, female, and disadvantaged persons for all trainee positions assigned through this OJT Special Provision unless such persons are not available within a reasonable area of recruitment. The Civil Rights office will withhold approval of any trainee who is not a member of one of the targeted groups unless the Contractor can demonstrate that he has made a good faith effort to recruit and select a minority, female, or economically disadvantaged person and, for reasons beyond his control, was unable to do so.

DEPARTMENT RESPONSIBILITES

The Department (Civil Rights office):

A. Will monitor Contractor payrolls and OJT reports for payment of correct wage rates and for evidence of providing a continuing instructional process. The Civil Rights office will maintain records of Contractor participation in the program; names, and training classifications of trainees and other information necessary to assess program participation and results.

B. Will assist contractor's with trainee recruitment, will encourage minority/female recruitment sources to refer suitable applicants, and will monitor Contractor instructional efforts and record keeping.

CONTRACTOR RESPONSIBILITIES

The Contractor:

A. Will furnish the trainee a copy of the training program to be followed in providing the training and will provide each trainee graduate with a certificate showing the type of training satisfactorily completed.

B. Will identify all trainees on the registration forms, training reports and project payroll by proper classification title, (see either Department Contractor's EEO/OJT Manual or A.G.C. program booklets) e.g. *heavy duty mechanic, form builder,* etc. **Do not use** coding letters/numbers from the wage scale. On payrolls, contractors must include the designation "trainee" following the job classification title.

C. Will assign each trainee to a particular person – either a supervisor or an employee proficient in the skill – who shall see that timely, instructional experience is received by the trainee. This person, in cooperation with the Contractor EEO Officer, will ensure that the program is explained and reviewed with the prospective trainee including training outline and the periodic wage adjustments, that required training hours are completed in accordance with the training curriculum, that proper records are kept, and that required reports are filed with the Department.

D. Will provide a monthly training report to the Department Civil Rights office within thirty (30) days of the last full pay period of the month on the form supplied by the Department and will use this same form to promptly notify the Department (within thirty days) whenever a trainee leaves the OJT program (voluntarily or involuntarily) or when a trainee completes the program.

E. Will pay not less than the minimum wage rates as set forth in the specific requirements of the applicable training program and as noted on the copy of the registration form returned to the contractor.

PROVISIONS APPLICABLE TO A.G.C. OJT PROGRAM

A. The minimum number of hours of training to be provided **on this project** are as specified in the bid documents. The Contractor shall select whatever training classification specified in the A.G.C. program best meet his employment needs and training hours and minimum wage shall be in accord with that classification.

B. Registration and reporting requirements shall be as set forth in the program documents and instructions and this provision.

C. Contractors using the A.G.C. program may meet the training obligations by either 1) enrolling a new trainee in one of the classifications, or 2) using a trainee currently enrolled in one of the A.G.C. classifications, provided that person has sufficient training hours remaining to meet the minimum project requirements as specified in bid documents. In either case, prospective trainees must meet the program requirements as set forth in "Recruitment and Selection Procedures" above.

D. Effective March 1, 2002, the department will be responsible for long term maintenance of records regarding trainee registration in various training classifications and for total trainee hours as provided by one or more contractors.

WAGE RATES

A. Minimum wage rates shall be in accord with program requirements for each classification and trainee placement within the training hours requirement. In no case shall the minimum wage be less than the common laborer classification of the applicable wage rate information contained in the bid documents. Where applicable, trainees shall be paid full fringe benefit amounts.

B. At the completion of the OJT program, the trainee shall receive the wages of a skilled journeyworker for that specific classification.

C. For the purpose of the OJT program, a quarter of the program is twenty-five percent (25%) of the training hours credited to the trainee for a particular classification and does not represent three months of the year. Other wage benchmarks are calculated in a similar manner.

METHOD OF MEASUREMENT

A. All hours of onsite and approved offsite training provided in accordance with the approved program and this provision and as shown in trainee reports and on project payrolls will be credited as trainee hours for purpose of contract payment.

BASIS OF PAYMENT

A. All program reimbursements will be made directly to the Contractor at the project conclusion. The Contractor will be paid, as reimbursement for the extra cost involved in providing the training, the amount per training hour bid for the item “Training” for each hour of training provided and reported.

B. No payment will be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyworker, is caused by the Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this Special Provision.

C. Liquidated damages will be assessed the contractor for failure to make a good faith effort to enroll the number of trainees necessary to meet the training requirements of this Special Provision. For each trainee slot left unfilled, damages will be assessed at the rate of 100% of the bid amount for the training item times the minimum number of hours specified in the item quantity. For each trainee for whom contractor training is determined to be inadequate and which evidences a lack of good faith to fulfill the training requirements, damages will be assessed at the rate of 100% of the bid amount for the training item times the minimum number of hours specified in the item quantity.

D. Failure to furnish required documents and reports in the manner and time specified may result in forfeiture of all or a portion of the amounts due the Contractor for reimbursement for training.

*****

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION REGARDING
SECTION 404 OF
THE CLEAN WATER ACT

IM 0903(101)153 PCN 03W4
JACKSON COUNTY

OCTOBER 2, 2015
NATIONWIDE PERMIT NO NOW 2015-1713-PIE

The above referenced project is authorized by the Department of the Army Nationwide Permit Section (23), found in the February 21, 2012 Federal Register (77 FR 10184), Reissuance of Nation Wide Permits.

The following general conditions must be adhered to in order for any authorization by a nationwide permit to be valid:

Please refer to the attached ***Fact Sheet Nationwide Permit __23___ and 2012 Nationwide Permits Regional Conditions***

The above authorization permits placement of fill in the drainage crossings or wetlands noted below:

Drainage Crossing(s) Permanent:

Sta. 597+70	Tributary to Indian Creek
Sta. 597+93	Tributary to Indian Creek
Sta. 658+75	Tributary to Indian Creek
Sta. 680+05	Tributary to Indian Creek
Sta. 700+24	Tributary to Indian Creek
Sta. a803+12	Tributary to Indian Creek
Sta. a822+89	Tributary to Indian Creek
Sta. a870+80	Tributary to Indian Creek
Sta. b35+95	Tributary to Brave Bull Creek
Sta. b58+87	Tributary to Brave Bull Creek
Sta. b127+43	Tributary to Brave Bull Creek
Sta. b211+37	Tributary to Brave Bull Creek
Sta. b226+68	Tributary to Brave Bull Creek

* * * *

Nationwide Permit 23

Approved Categorical Exclusions

Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity. The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters.

(Sections 10 and 404)

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the

permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district

engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking

occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. <u>Discovery of Previously Unknown Remains and Artifacts</u>. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. <u>Designated Critical Resource Waters</u>. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. <u>Mitigation</u>. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal

adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based

on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified

acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____

(Transferee)

_____

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request

additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation,

especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource

agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

2012 NATIONWIDE PERMITS
REGIONAL CONDITIONS
OMAHA DISTRICT
STATE OF SOUTH DAKOTA

The following Nationwide Permit (NWP) regional conditions will be used in the State of South Dakota. Regional conditions are placed on NWPs to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns.

Wetlands Classified as Peatlands – Revoked for Use

All NWPs, with the exception of 3, 5, 20, 27, 30, 32, 38, and 45, are revoked for use in peatlands in South Dakota.

"Peatlands" are saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Peatlands can be primarily classified into ombrotrophic bogs and minerotrophic fens; the latter subdivided into poor, moderate-rich, and extreme-rich fens, each with distinctive indicator species, community physiognomy, acidity, alkalinity, and base cation content.

Wetlands Classified as Peatlands – Pre-construction Notification Requirement

For NWPs 3, 5, 20, 27, 30, 32, 38, and 45 permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity impacting peatlands in South Dakota.

Waters Adjacent to Natural Springs – Pre-construction Notification Requirement – All Nationwide Permits

For all NWPs, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in South Dakota. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

Borrow Site Identification – All Nationwide Permits

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

Minimum Culvert Width – All Nationwide Permits

The permittee shall size culvert stream crossings based on the estimated two-year storm event or the width of the bankfull stream channel. Culverts placed in streams with a discernable bed and bank shall have a maximum width that is at least as wide as the bankfull channel width in the section of stream where the culvert will be placed. In lieu of bankfull width as a reference for minimum culvert size, the permittee may install a culvert that can pass the two-year storm event without causing rise of flood flows upstream of the culvert. Bankfull width shall be defined as the width of the stream at where over-bank flow begins during a flood event. In incised stream channels that do not or infrequently access their floodplains bankfull indicators may include slope changes, vegetation changes, the maximum elevation of deposited bedload, or the top of undercut banks.

Culvert Countersink Depth for Aquatic Organism Depth – All Nationwide Permits

The permittee shall install culverts as so that the culvert invert is set below the natural flowline of the water body according to the below table.

Culvert Type	Drainage Area	Culvert Invert Depression Below Stream Grade Line
All culvert types	$\leq$ 100 acres	Not required
Pipe diameter < 8.0 ft	100 to 640 acres	0.5 ft
Pipe diameter < 8.0 ft	> 640 acres	1.0 ft
Pipe diameter $\geq$ 8.0 ft	All drainage sizes	20 % of pipe diameter
Box culvert	All drainage sizes	1.0 ft

- **The stream grade line shall be defined as the longitudinal average of the low-flow stream channel.**
- **The slope of the culvert should be parallel to the slope of the stream grade line.**
- **The culvert invert depression depth shall be measured at the culvert inlet for culverts installed at a slope less than the slope of the stream grade line.**
- **Riprap inlet and outlet protection shall be placed to match the height of the culvert invert.**

GENERAL CONDITIONS (REGIONAL ADDITIONS)

General Condition 3 - Spawning Areas

In order to further minimize adverse impacts in certain waters of the United States and to comply with General Condition No. 3, projects authorized under all available Section 404 NWPs that would occur in South Dakota's cold water streams must comply with the following regional condition:

In all South Dakota streams classified as cold water streams, when water flow is present, the discharge of dredged or fill material shall not take place without the permittee notifying the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity between October 15 and April 1. The Corps of Engineers, the South Dakota Department of Game, Fish and Parks, or the South Dakota Department of Environment and Natural Resources can be contacted for the location of State classified cold water streams. The cold water fisheries rivers and streams in South Dakota may be found at http://legis.state.sd.us/rules/DisplayRule.aspx?Rule=74:51:03.

General Condition 6 - Suitable Material

Permittees are reminded that General Condition No. 6 prohibits the use of unsuitable material. In addition, the following materials are not suitable for discharge into waters of the United States in the State of South Dakota:

1. Vehicle bodies, farm machinery and metal junk, including appliances and metal containers, are prohibited.

2. The use of old or used asphalt paving material as a fill material and the use of new or used asphalt for bank stabilization or erosion control is prohibited.

3. The use of organic debris as fill material is prohibited. (Properly anchored trees, treetops, root wads, logs, and hay bales may be allowed on a case-by-case basis.)

4. Any material subject to leaching when in an aquatic environment is prohibited (for example, but not limited to, chemically-treated building material, roofing material, and wood debris).

5. Individual or unanchored tires are prohibited. (Tires may be allowed on a case-by-case basis when placed in the form of a mat or grid with multiple anchoring points to reduce the risk of design failure.)

6. Small aggregate (i.e. less than 6 inches in diameter) may not be placed below the ordinary high water mark (OHWM) of a water body for the purpose of bank stabilization or erosion control when such aggregate will be unstable or subject to frequent failure. Small aggregate may, however, be placed below the OHWM if its purpose is to fill the interstices of a well-graded rock riprap revetment or channel lining.

7. Slab material, regardless of source, must be broken before placement so that the dimension of the largest slab will not be more than 3.5 times the dimension of the smallest slab (unless justified by a qualified engineer) and must be free of exposed rebar, wire and wire mesh.

8. The use of clean brick, broken concrete and cinder block for erosion control or bank stabilization will be considered on a case-by-case basis. If allowed, the broken concrete must be free of exposed rebar, wire, wire mesh, asphalt paving material, paint, and other erodible materials. Broken concrete must range in size from 6 to 36 inches (unless justified by a qualified engineer).

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
CONTRACTOR STAKING

PROJECT IM 0903(101)152, PCN 03W4
JACKSON COUNTY

SEPTMEBER 4, 2015

Delete Section 5.8 of the specifications and insert the following:

SECTION 5.8
CONSTRUCTION STAKES, LINES AND GRADES
CONTRACTOR GRADE STAKING

A. DESCRIPTION

The Contractor will perform all Construction staking. The staking work includes, but is not limited to, re-establishing the mainline and intersecting road centerlines; establishing a design centerline profile; establishing control points and benchmarks as needed; setting additional benchmarks as needed; taking original and final cross sections of all Contractor secured borrow sources and State designated borrow sources; taking cross sections of all topsoil stockpiles; and staking right-of-way, easements, and fence.

The Contractor will perform all construction layout and reference staking necessary for the accurate control and completion of all grading, milling, paving, drainage, median crossovers, signing, pavement marking, permanent benchmarks, detours, fence, and all other appurtenances required for the complete construction and acceptance of the work. The layout will include, but is not limited to, staking clearing line, slope staking and slope stake referencing, grade staking (blue tops), paving hub staking, graded centerline staking, and performing the miscellaneous staking as described in the plans and in this specification.

The Department has established horizontal and vertical control as shown on the plans. Each horizontal and vertical control point will be preserved or reset out of the work limits and available during and after construction is complete. Prior to the Department's final acceptance of the project, the Contractor will replace or reset any control that is disturbed during the construction of the project. The Contractor will provide the Department a list of the in-place control points,

including coordinates and elevations relevant to the project control, at the end of the project.

The Contractor will perform the staking work in accordance with the Department's Survey Manual, except as modified by this specification.

B. MATERIALS

The Contractor will furnish all staking materials of adequate quality for the purpose intended including all stakes, stake chasers, paint, field notebooks, and all other materials and equipment necessary to perform the required work.

C. CONSTRUCTION REQUIREMENTS

1. **General:** The Contractor will perform all staking work under the supervision of a qualified surveyor or engineer who is experienced and competent in road and bridge construction surveying and staking. The surveyor or engineer will be available to review work, resolve problems, and make decisions in a timely manner. A crew chief, competent to perform all required surveying duties, will supervise the staking in the absence of the surveyor or engineer from the project. The Contractor will submit the qualifications and work experience history of the surveyor or engineer who will supervise the construction survey work to the Engineer for review at least 14 calendar days prior to beginning the staking work.

   The Contractor will also submit the proposed starting date of the staking and the anticipated surveying work schedule.

   The Contractor will furnish, set, and properly reference all stakes, references, lines, grades, and batter boards required. Minimum reference notations will be for type, location, and alignment (when there are multiple alignments in the same area). The Contractor will perform the survey and staking work in a manner consistent with standard engineering practices and approved by the Engineer.

   The Contractor is solely responsible for the accuracy of the survey and staking work. The Contractor will notify the Engineer of any errors and discrepancies found in previous surveys, plans, specifications, or special provisions prior to proceeding with the survey work.

   The Contractor will be responsible for the supervision of the construction staking personnel. The Contractor will correct any deficient survey or staking work that results in construction errors at no additional cost to the Department.

The Contractor will keep field notes in conventional handwritten notebooks or in a computerized form acceptable to the Engineer in a clear, orderly, and neat manner. The notebooks will become the property of the Department upon completion of the project. The notebooks will provide enough information such that quantity measurements are verifiable by the Department. Field notes are subject to inspection by the Engineer at any time.

The Contractor is required to submit any remaining required quantity calculations and notes to the Engineer no later than 60 calendar days after completion of the survey and staking work.

The Department will set reference control points. The Contractor is responsible for the preservation of ties and references to all control points necessary for the accurate re-establishment of all base lines and centerlines shown in the plans, whether established by the Contractor or found on or adjacent to the project. The Contractor will also establish benchmark elevations. It is the responsibility of the Contractor to verify the accuracy of the benchmark elevations prior to use on the project.

The Contractor will furnish stakes and wooden hubs or steel pins of sufficient length to provide a solid set in the ground. The Contractor will place half-length lath stakes or stake chasers or an alternate, acceptable to the Engineer, adjacent to or on the blue top hubs for guards. The Contractor will place guard stakes or an alternate, acceptable to the Engineer, adjacent to the paving hub with stationing and a grade to the top of slab written on the stake. Stakes set not meeting these requirements will be reset at the Contractors expense. The Contractor will replace stakes and paving hubs damaged, destroyed, or made unusable at no additional expense to the Department.

The Engineer may check the accuracy and control of the Contractor's survey and staking work at any time. The checks performed by the Engineer will not relieve the Contractor of the responsibility for the accuracy of the survey layout or the construction work. If the random checks show the grade is out of tolerance, the Engineer may require the Contractor to set additional grade stakes and paving hub stakes, at the discretion of the Engineer, at no additional cost to the Department. If the Engineer orders additional stakes, the Contractor will perform the additional staking until the Contractor can show the staking operations achieve the specified grade tolerances.

Prior to any project staking, the Contractor will run a level circuit to check the plan benchmarks the full length of the project.

2. **Slope Staking:** The Contractor will set slope stakes at the catch points. The slope stake reference hubs will be offset behind the slope stake. The Contractor will place slope stake reference hubs behind the slope stakes at a

set distance, at the right-of-way line, or at the easement line, as approved by the Engineer.

The slope stakes will be set at 100-foot intervals on tangents and at 50-foot intervals in horizontal curves. The horizontal tolerance is ±0.2 foot and the vertical tolerance is ±0.1 foot. The Contractor will reference the subgrade shoulders with slope stake reference hubs set with a horizontal tolerance of ±0.2 foot and a vertical tolerance of ±0.05 foot.

The Department will provide slope stake notes.

3. **Grade Staking:** The Contractor will set grade finishing stakes (blue tops) for grade elevations and horizontal alignment on the roadway centerline and at each shoulder at the top of the subgrade. Where additional lanes or turnouts are to be constructed, The Contractor will set blue tops at centerline, the normal shoulder distance, and the extended shoulder distance or outside the additional lane edge.

   The transverse distance between blue tops will not exceed 20 feet. The Contractor will be required to set intermediate blue tops when the transverse distance is greater than 20 feet. When intermediate blue tops are required, The Contractor will set the intermediate blue tops at locations approved by the Engineer.

   The blue top grade stakes will be set at 100-foot intervals on tangents and 50-foot intervals on horizontal curves. The horizontal tolerance for blue tops is ±0.2 foot and the vertical tolerance is ±0.02 foot.

   The Contractor will retain the shoulder blue tops and guards through placement of the granular material.

   The Contractor will develop the grade stake (blue top) notes from the approved design centerline profile. The Contractor will make necessary adjustments to the design centerline profile and placement of the grade stakes (blue tops). If adjustments to the new design centerline profile are required subsequent to grade stake placement, the re-staking of the grade stakes (blue tops) will be incidental to the contract unit price for grade staking.

   The Contractor is responsible to provide all grade staking (blue top) notes.

   When paving hub staking is required, the Contractor will set paving hubs at a maximum longitudinal distance of double the transverse joint spacing. The paving contractor may require a closer spacing. The horizontal and vertical tolerance for the paving hubs or grade nails is ± 0.02’.

The Contractor is responsible to provide all paving hub. The Contractor is responsible for generating the paving hub grades from the blue top notes.

4. **Miscellaneous Staking:** Miscellaneous staking includes the following work:

   a. Approach road staking;
   b. Topsoil measurement and computation of quantities;
   c. Special ditch staking;
   d. Staking of signs, delineators, pavement markings, guardrail, curb & gutter, light poles, conduit, junction boxes, and related items (Staking is for all aspects, i.e. detours, temporary, and permanent);
   e. Right-of-way staking including easement lines and fence post panels;
   f. Pipe and storm sewer staking including drop inlets, manholes, cattle passes, and related items. If additional pipe, storm sewer, drop inlets, manholes, or cattle passes are required which are not shown on the plans, the staking will be paid in accordance with the bid item Three Man Survey Crew;
   g. Mark limits of removal items (trees, foundations, curb & gutter, sidewalk, etc.);
   h. Detours, roadway diversions, and crossovers (the Contractor will furnish all notes required);
   i. Existing pipe ends (to mark locations and prevent damage);
   j. Final and original cross sections of Contractor and State furnished borrow pits and computations. The Contractor will perform earthwork computations by the average end area method;
   k. Resetting horizontal and vertical control, if disturbed;
   l. Approach slab and sleeper slab staking; and,
   m. Staking of sidewalks and curb ramps.

   The Contractor will perform the pipe staking so the pipe will fit the field conditions. The plans show only approximate pipe locations and grades. The Contractor will not install pipe prior to gaining the Engineer's approval of minor location and grade adjustments necessary for proper staking of the pipe.

   The Contractor will stake the slope catch points to determine the inlet and outlet locations, set reference stakes for the inlet and outlet locations, and stake ditches and special inlet and outlet grades to ensure proper drainage. The staking of manholes and drop inlets will be included in pipe and storm sewer staking. The Contractor will stake precast cattle passes similar to drainage pipes.

   The horizontal tolerance for the pipe and storm sewer staking is ±0.05 foot and the vertical tolerance is ±0.03 foot.

   The Contractor will keep pipe staking notes on a DOT Form 214.

5. **Three Man Survey Crew:** The use of the three-man survey crew is intended for surveying not included in the plan notes and this special provision. The Contractor may use a three-man survey crew to perform additional survey work caused or required by the Department. The Engineer will use a written order to authorize the hourly three-man survey crew item and describe the staking work required of the Contractor.

6. **Graded Centerline Staking:** The Contractor will take profile elevations along the existing roadway centerline and along each proposed edge of the new concrete pavement for the entire length of the project prior to the removal of the concrete. In addition, the Contractor will take profile elevations on the existing roadway centerline and on each proposed edge of the new pavement 500 feet off each end of the project to provide a smooth transition to the existing pavement. In addition, the Contractor will take profile elevations on the intersecting roads 500 feet back to provide a smooth transition on the intersecting roads. The Contractor will take the profile elevations at 100-foot intervals in tangents and at 50-foot intervals in super elevated curves. The Department will not make separate payment for the profile elevations taken by the Contractor on intersecting roads or approaches. Payment for all profile elevations will be incidental to graded centerline staking. If the Contractor elects to use a GPS system to collect the profile elevations, The Contractor will provide the Engineer the equipment and methods proposed for use for approval by the Engineer.

   The Contractor will plot the profile elevations taken from the existing roadway centerline and each proposed edge of new concrete pavement, select a grade line that corrects all existing dips and bumps and ensures the placement of the required minimum thickness of new concrete pavement, and create the proposed design centerline profile for approval. The Contractor will incorporate the super elevation rates, transition lengths, and locations of super elevation as shown in the plans in the proposed design centerline profile.

   The new concrete pavement in the proposed design centerline profile must smoothly transition into the existing pavement at each end of the project, the existing pavement at the median crossovers, all exit ramps, and at each existing bridge beginning and ending point and provide for a smooth grade line. Additionally, the new concrete pavement in the proposed design centerline profile must allow for the minimum vertical clearance required at all overhead structures. The existing in place crown slope may vary from the typical section shown in the plans. The contractor is responsible to field verify crown slopes when designing the new vertical profile. The Contractor is solely responsible for adjusting the grade line to ensure the granular materials placed beneath the concrete and shoulders do not deviate from the plan shown spread rates by more than 5%. The Department will not make any

additional payment for granular material placed more than 5% over the plan shown spread rates.

The Contractor will submit the proposed design centerline profile to the Engineer for review and approval. Within 7 calendar days of receiving the required information, the Engineer will review and approve the proposed design centerline profile, notify the Contractor of additional information required for approval, or notify the Contractor of the Engineer's decision not to approve the proposed design centerline profile.

The Contractor will not set any horizontal or vertical control on the project prior to the Engineer's approval of the design centerline profile. The Contractor is solely responsible for the accuracy of this profile and any impact the design vertical profile causes to the work being done on the project. Under no circumstances will adjustments to the design centerline profile be allowed without prior approval of the Engineer. The Department's approval of the new design centerline profile or the Department's approval of adjustments to the new design centerline profile will not relieve the Contractor's responsibility of adhering to the smoothness specifications.

Note: The Contractor is responsible for hauling existing material to any portion of the project as required by the proposed profile.

All additional staking required for completion of the graded centerline staking will be incidental to the contract unit price for graded centerline staking.

D. METHOD OF MEASUREMENT

Refer to the Table of Contractor Staking in the plans for more detail on how quantities were calculated.

1. **Slope Staking:** The Department will not measure slope staking. The Department will pay the plan quantity as the final quantity unless the Engineer orders additional slope staking in writing.

   The Department will consider all combinations of roadway widths as one set of slope stakes. On projects with ramps, the Department will consider ramps as roadway and include the ramps in the slope staking quantity. All additional slope staking for intersections will be incidental to the contract unit price for slope staking.

2. **Grade Staking:** The Department will not measure grade staking. The Department will pay the plan quantity as the final quantity unless the Engineer orders additional grade staking in writing.

The Department will consider a two-lane roadway as one set of grade stakes. The Department will proportionately increase the plan quantity for multi-lane roadways in excess to two-lanes as shown in the table of construction staking (lane factor). For example, a three-lane roadway is equivalent to 1.5 times the quantity for a two-lane roadway. On projects requiring grade staking on ramps, the Department will consider ramps as a two-lane roadway for measurement as shown in the table of construction staking. The Department will not consider acceleration lanes, deceleration lanes, turning lanes for intersecting roads, and median crossovers as an additional roadway.

When both blue top and paving hub stakes are required, the Department will base and calculate the plan quantity to include each type of grade staking as a separate set of stakes.

3. **Miscellaneous Staking:** The Department will not measure miscellaneous staking. The Department will pay the plan quantity as the final quantity.

4. **Three-Man Survey Crew:** The Department will measure three man survey crew by the hour with the following restrictions:

   The use of a three-man survey crew will be for the work ordered by the Engineer. The measured quantity will be the actual time the survey crew is working on the project, physically performing the field survey work. The Department will not include travel time for the survey crew in the measurement.

   The Contractor may use a two-man survey crew with the Engineer's prior approval. When a two-man survey crew is used, measurement for payment will be at 75 percent of the hours for a three-man crew. For example: 8 hours of two-man survey crew will result in 6 hours measured for payment as three-man survey crew time.

   The Contractor may use a one-man survey crew with the Engineer's prior approval. When a one-man survey crew is used, measurement for payment will be at 50 percent of the hours for a three-man crew. For example: 8 hours of a one-man survey crew will result in 4 hours measured for payment as three-man survey crew time.

   The Engineer will issue a DOT 75 ticket for the hours authorized for three-man survey crew.

5. **Graded Centerline Staking:** The Department will not measure graded centerline staking. The Department will pay the plan quantity as the final quantity.

E. BASIS OF PAYMENT

Payment for all of the survey items will be considered full compensation for furnishing all necessary personnel, vehicles, surveying equipment, supplies, materials, recording fees, transportation, and incidentals to accurately and satisfactory complete the work.

The Department reserves the right to omit any of these bid items without providing compensation to the contractor if the Department deems the bid prices are unreasonable.

1. **Slope Staking:** The Department will pay slope staking at the contract unit price per mile.

2. **Grade Staking:** The Department will pay grade staking at the contract unit price per mile. All cost for additional grade staking for acceleration lanes, deceleration lanes, turning lanes, intersecting roads, grade adjustments, and median crossovers will be incidental to the contract unit price for grade staking. All additional grade staking for intersections and medians will be incidental to the roadway grade staking. Any additional staking the Contractor feels necessary to complete the grade staking work is the responsibility of the contractor and will be incidental to the contract unit price for grade staking.

3. **Miscellaneous Staking:** The Department will pay miscellaneous staking at the contract unit price per mile.

   The Department will make partial payment as follows:

   a. Upon submission of the name, experience, and qualifications of the surveyor or engineer who will supervise the staking, the proposed starting date, and the staking schedule, the Department will pay the Contractor 25 percent of the plan quantity for the miscellaneous staking.

   b. The Department will make intermediate payments based on the amount of the staking work completed.

   c. The Department will make full payment at the plan quantity for miscellaneous staking upon completion of all surveying and staking and when the Contractor has furnished all field notebooks and records to the Engineer.

   The Department will not adjust the contract unit price or plan quantity for miscellaneous staking due to overruns or under runs in the other contract items.

4. **Three Man Survey Crew:** The Department will pay three man survey crew on an hourly basis as per the Price Schedule for Miscellaneous Items. The value listed in the Price Schedule for Miscellaneous Items includes salaries, travel time, equipment, staking supplies, payroll additive, and all incidental expenses related to providing the survey crew.

5. **Graded Centerline Staking:** The Department will pay graded centerline staking at the contract unit price per mile.

   The Contractor will include all cost for time spent in the office processing and plotting grades, reducing notes, and performing grade adjustments and general calculations for profiles (existing and proposed) in the contract unit price for Graded Centerline Staking.

* * * * *

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
CONTRACTOR FURNISHED MIX DESIGNS
FOR PCC PAVEMENT

JUNE 19, 2015

This work consists of establishing the mix design requirements and acceptance criteria for Portland Cement Concrete Pavement (PCCP).

Make the following changes to the specifications:

Section 380.3 A Delete this section and replace with the following:

A. Concrete Quality, Proportioning, and Acceptance: The Contractor shall design and be responsible for the performance of all concrete mixes used in the PCC pavement.

1. Mix Design Requirements: The mix proportions selected shall produce concrete that is sufficiently workable and finishable for all uses intended and shall conform to the following requirements.

The mix design process shall produce a mix design that will plot within the limits listed in Chart A. The mix design shall also meet the following requirements when plotted on the 0.45 power chart. The best fit line plotted on the 0.45 power chart shall use a top size of 1” aggregate for jointed concrete pavement and 1.5” aggregate for Continuously Reinforced Concrete Pavements (CRCP). The combined gradation when plotted on the 0.45 power chart should fit within the limits as defined in Chart B for jointed concrete pavement or Chart C for CRCP. CRCP mix designs shall retain a minimum of 11.5% of the total aggregate above the 1” sieve.

On small areas, using stationary side formed paving methods; the Engineer may permit the substitution of Class A45 concrete for the concrete paving mix. Class A45 shall meet the requirements of Section 460, except the concrete shall have a slump range of between 1” and 3” and shall contain fly ash. Fly ash shall constitute 20% to 25% of the cementitious material at a 1:1 ratio by weight.

Satisfactory performance of the proposed mix design shall be verified by laboratory tests on trial batches. The trial batches must be performed by an approved testing facility approved by the Department's Concrete Engineer. An on site inspection of mix design procedures and equipment may be required. Trial batches shall be conducted in accordance with the American Concrete Institute Publication 211.1, ASTM C192 and the following:

a. **Cementitious Material Content:** The mix design shall establish a cementitious material content (total of cement, fly ash, and other cementitious additions). The minimum cementitious material content shall be 575 pounds per cubic yard. The maximum cementitious material content shall be 800 pounds per cubic yard.

b. **Fly ash:** Fly ash shall be included in the concrete mixture. Fly ash shall constitute 20% to 25% of the cementitious material at a 1:1 ratio by weight.

c. **Water/Cementitious Material Ratio:** The mix design shall establish a maximum water/cementitious material ratio, which shall not exceed 0.42 pounds/pounds.

d. **Slump:** The slump at 20 minutes after completion of mixing for each trial mix shall be 1.25" to 2.75" for slipformed pavements and 2.25 to 3.75 for formed pavements. The initial slump immediately after completion of mixing shall be tested and reported as well. The concrete for the 20 minute slump shall be exposed to ambient air temps between 68°F to 86°F.

e. **Coarse Aggregate Percentage:** The mix design shall establish the percentage of coarse aggregates to be used. The minimum coarse aggregate content shall be 55% by weight of total aggregates.

f. **Entrained Air content:** The volumetrics of the mix design shall be based on 6.5% air content.

   The air content for all concrete trial mixes shall have an entrained air content of 6.5% - 8.0.

g. **Compressive Strength:** The mix design shall be based upon obtaining an average minimum compressive strength of 4000 psi at 7 days and 5200 psi at 28 days.

h. **Lab Trial Mixes:** A minimum of four trial batches with different proportions shall be required. Of the minimum four trial batches, two each shall be made at different proportions of aggregates. In addition,

each trial batch shall have a minimum of two trial batches at different water/cementitious material ratios or different cement contents. A different proportion of aggregate must be at least a 1% (of total aggregate) sand change or a 2% (of total coarse aggregate) rock change. A different water/cementitious material ratio shall be at least a 0.02 change. A different cement content change shall be an addition or subtraction of at least 20 pounds of cementitious materials.

All mix designs shall be based off of saturated surface dry (SSD) condition & aggregate specific gravity at SSD.

A minimum of 3 cylinders at each age, for each trial shall be tested for compressive strength at 7, 14, and 28 days. All 9 cylinders must be made from the same batch of concrete. The cylinders must be consolidated by the rodding method.

The fresh concrete temperature shall be between 68°F and 86°F immediately after completion of mixing.

The results of the trial mixes including all batched weights, aggregate moisture contents, fresh concrete results (initial and 20 minute slump, initial air content, initial unit weight, and initial temperature), actual water/cementitious material ratio, compressive strengths, aggregate gradations (including production tests) and aggregate quality results shall be furnished by the Contractor to the Engineer at the time the proposed mix design is submitted for verification.

Consideration for expected field temperatures may be made when evaluating laboratory trials. Changes that cause a deviation from the requirements of this provision for expected field temperatures must be submitted and evaluated by the Concrete Engineer prior to performing trial batches.

i. **Laboratory Trial Batch Verification:** The mix design shall be recorded on a DOT-24 and submitted to the Engineer along with all data, test results, and necessary supporting documentation. Approval of mix designs shall not relieve the Contractor from the responsibility for furnishing a concrete mix that meets specification and workability requirements.

   All modifications to the mix designs, including but not limited to, changes of admixtures and aggregate percentage splits shall be submitted to the Department's Concrete Engineer on a DOT-24 form for approval and, if determined necessary, a verification prior to use. Changes in brand name of admixtures and cement may be made by submitting a revised DOT-24 to the Department's Concrete Engineer

for approval; verification will not be necessary provided it is the same type of material. Dosage changes to admixtures may be made without submitting a DOT-24.

Mix design verification by the Department will not commence until the Department has received all of the necessary samples, information from lab trials, aggregate tests, and the Contractor's trial batch results having obtained 4000 psi at 7 days. The Department will require 40 days prior to production to complete mix design verification.

A concrete mix design that previously has been allowed for use under this provision will be considered for approval if: 1) all proportions are unchanged from those previously used, 2) current aggregate samples show the materials to be used are the same as those used for the original mix design, and 3) the previous project's test results were satisfactory for strength, workability, and performance. Aggregate samples for gradation checks shall be submitted along with the request to use a previously approved mix design a minimum of 40 days prior to the anticipated use.

The Department will verify one of the submitted mix design trials. The Department's verification can be no more than 10% less than the Contractor's submitted strength. If the Department's verification does not match the Contractor's submittal the first time, the Department will perform a second verification at the Contractor's request. The costs involved with any further mix design verifications will be at the Contractor's expense.

2. **Field Acceptance Criteria:** The Contractor shall produce a concrete mix in accordance with the approved mix design and the following:

   a. **Slump:** For the stationary side form method, the slump of the concrete shall be between 1 inch and 3 inches at the time of placement. For the slip-form method, the slump of the concrete shall not be more than 2 inches at the time of placement.

   b. **Entrained Air Content:** All concrete shall have a target entrained air content of 6.5%.

      The allowable tolerance from target values shall be +1% and -1.5%.

   c. **Compressive Strength:** Concrete shall exhibit a minimum compressive strength of 4000 psi at 28 days.

   d. **Water/Cementitious Ratio:** The concrete shall have a maximum Water/Cementitious ration "W/C Ratio" as listed on the mix design. The

W/C Ratio will be calculated as per 380.3 B.2 to compare the as-batched concrete against the mix design maximum.

e. **Determination of Field 28 Day Compressive Strength and Acceptance Criteria:** The Engineer will be responsible for the sampling, preparing, curing, and breaking of all concrete cylinders for concrete compressive strength in accordance with the Department's Materials Manual. The 28 day compressive strength shall be determined in accordance with SD 420.

The 28 day compressive strength acceptance criteria shall be as follows:

1) **Concrete Cylinder Testing:** If the 28 day cylinder compressive strength is greater than or equal to the specified 28 day compressive strength, the quantity of concrete represented by the cylinder shall be accepted.

   If the 28 day cylinder compressive strength is less than the specified 28 day compressive strength, the backup cylinder shall be broken as soon as possible after breaking the 28 day cylinder. The compressive strength for the backup cylinder will be the strength at the time that it was broken and will not be corrected back to 28 day strength.

2) **Backup Concrete Cylinder Testing:** If the backup cylinder compressive strength is greater than or equal to the specified 28 day compressive strength, the quantity of concrete represented by the cylinder shall be accepted.

   If the backup cylinder compressive strength is less than the specified 28 day compressive strength by no more than 500 psi, the Department's Concrete Engineer will determine if the concrete pavement represented by the cylinder is structurally adequate at the average compressive strength of the 28 day and the backup cylinder. If structurally adequate, the concrete will be allowed to remain in place and will be subject to price adjustment based on the average compressive strength of the two cylinders. If the analysis shows the average cylinder compressive strength is not structurally adequate, the concrete will be removed and replaced at the Contractor's expense.

   If the average compressive strength of the 28 day and the backup cylinder compressive strength is more than 500 psi, below the specified 28 day compressive strength, the concrete pavement represented by the cylinders shall be removed and replaced.

3) **Department Coring Option:** If there is some reason to suspect that the compressive strength test results are not valid due to a damaged concrete cylinder, malfunction of testing equipment, etc. or that the test results are not representative of the in place concrete, the Department may core the concrete represented by the cylinders. When cores are deemed necessary by the Department and are required at no fault of the Contractor, the Department will arrange for the additional testing and all costs will be borne by the Department. The coring and compressive testing shall be in accordance with the current edition of AASHTO T 24.

   If the average core compressive strength is greater than or equal to the specified 28 day compressive strength, the quantity of concrete pavement represented by the cylinders shall be accepted.

   If the average core compressive strength is less than the specified 28 day compressive strength by no more than 500 psi, the Department's Concrete Engineer will determine if the concrete pavement is structurally adequate at the lower compressive strength. If structurally adequate, the concrete will be allowed to remain in place and will be subject to price adjustment. If the analysis shows the average core compressive strength is not structurally adequate, the concrete will be removed and replaced at the Contractor's expense.

   If the average core compressive strength is more than 500 psi below the specified 28 day compressive strength, the concrete represented by the cylinders shall be removed and replaced.

4) **Contractor Coring Option:** If the Contractor disputes the accuracy of the 28 day cylinder compressive strength, the Contractor has the option to core the concrete represented by the cylinders. Upon notification of a deviation from the specified compressive strength, the Contractor shall provide written notification of the intent to core the represented concrete within 5 calendar days. Coring shall be done in accordance with Section 380.3 A.2.e.5 of this special provision.

   If the average core compressive strength is greater than or equal to the specified 28 day compressive strength, the quantity of concrete represented by the cylinder shall be accepted.

   If the average core compressive strength is less than the specified 28 day compressive strength by no more than 500 psi, the Concrete Engineer will determine if the unit is structurally adequate

at the lower compressive strength. If structurally adequate, the concrete will be allowed to remain in place and will be subject to price adjustment. If the analysis shows the average core compressive strength is not structurally adequate the concrete will be removed and replaced at the Contractor's expense.

If the average core compressive strength is more than 500 psi below the specified 28 day compressive strength, the concrete represented by the cylinders shall be removed and replaced.

5) **Coring & Compressive Testing:** If the Contractor utilizes the option to core as specified in Section 380.3 A.2.e.4 of this special provision, the Contractor shall arrange for an independent testing laboratory to perform the coring and compressive testing within 14 calendar days of notification of the failing compressive strength of the backup cylinder. The independent testing laboratory must be approved by the Department's Concrete Engineer prior to starting the coring and compressive testing. The coring and compressive testing shall be in accordance with the current edition of AASHTO T 24.

   The independent testing laboratory will take 3 cores of the area representing the cylinders in which the compressive strength is in question and test them for compressive strength. The coring and compressive testing shall be witnessed by the Department's Region Materials Engineer.

   The Contractor will be responsible to locate the reinforcing steel prior to coring. It is critical that the coring operation avoids all reinforcing steel. The core holes shall be grouted with a grout that conforms to Section 460.2.

   The average compressive strength of the 3 cores will be used for the determination of the concrete compressive strength. If the average core compressive strength is greater than or equal to the specified 28 day compressive strength, then no single core compressive strength may be more than 15% below the specified strength. ASTM E178 (Standard Practice for Dealing With Outlying Observations) will be used with the 10% significance level to deal with excessively high or low core strengths. If a core compressive strength is an outlier, then the set of cores will be averaged using the 2 remaining cores.

   The average compressive strength of the cores will prevail over all other compressive strength determination methods.

If the Contractor utilizes the option to core as specified in Section 380.3 A.2.e.4 of this special provision, all costs for the coring and compressive strength testing shall be borne by the Contractor. The Department will not reimburse the Contractor for coring and compressive strength testing costs. If it is determined by the additional testing that the 28 day compressive strength is less than that specified, the concrete shall be either accepted or rejected as per Section 380.3 A.2.e.4 of this special provision.

The following information shall be provided for each core taken:

a) Include DOT project number, county, & PCN.
b) Core identification number & location of each core (representing cylinder number, location of cores sketch, date concrete was cast, date cores taken, date cores tested, etc.)
c) Age of the concrete at the time of testing.
d) Length & diameter of each core tested.
e) Unit weight of each core.
f) End preparation (capped or neoprene).
g) Date of last calibration of the compression machine.
h) What, if any, correction factor was used to compute the compressive strength.
i) Actual calculations including load & cross-sectional area.
j) Type of fracture as per ASTM C39. Note if the bond to the coarse aggregate is not adequate due to cement adhesion.
k) Any defects in either the core or the cap.

Mix Design Charts:

Chart A

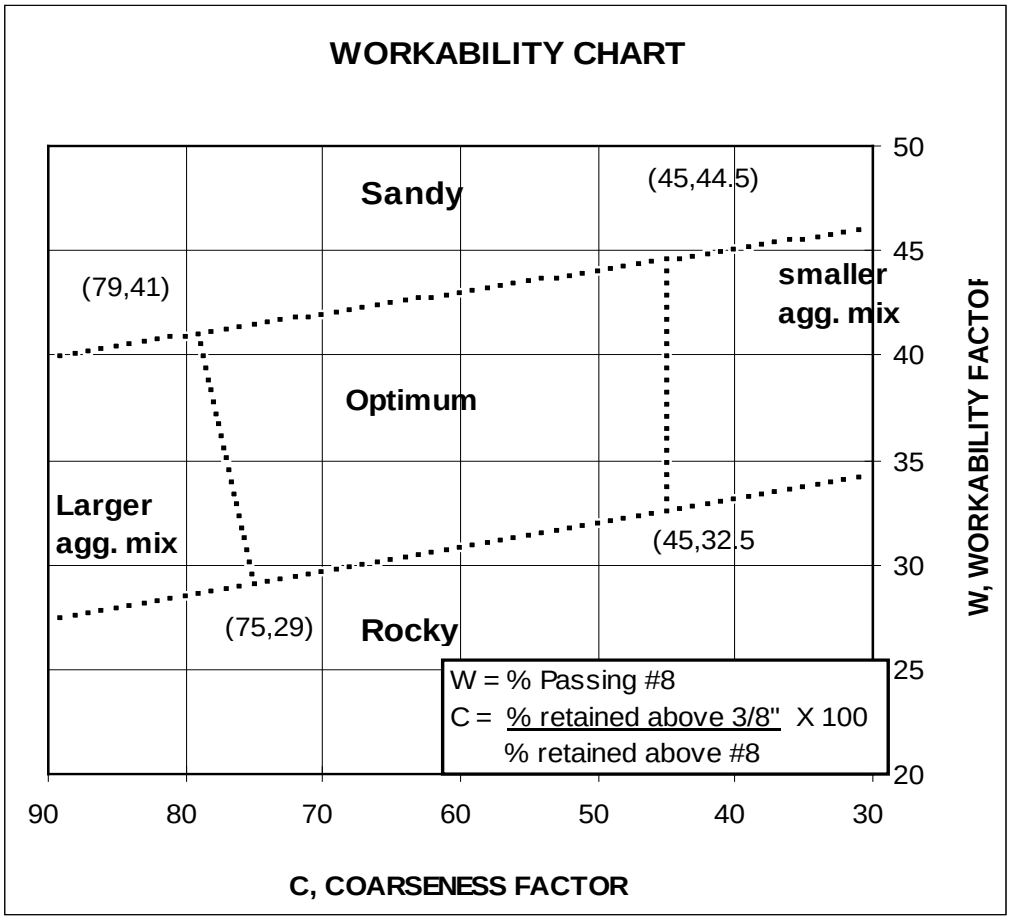


Chart B

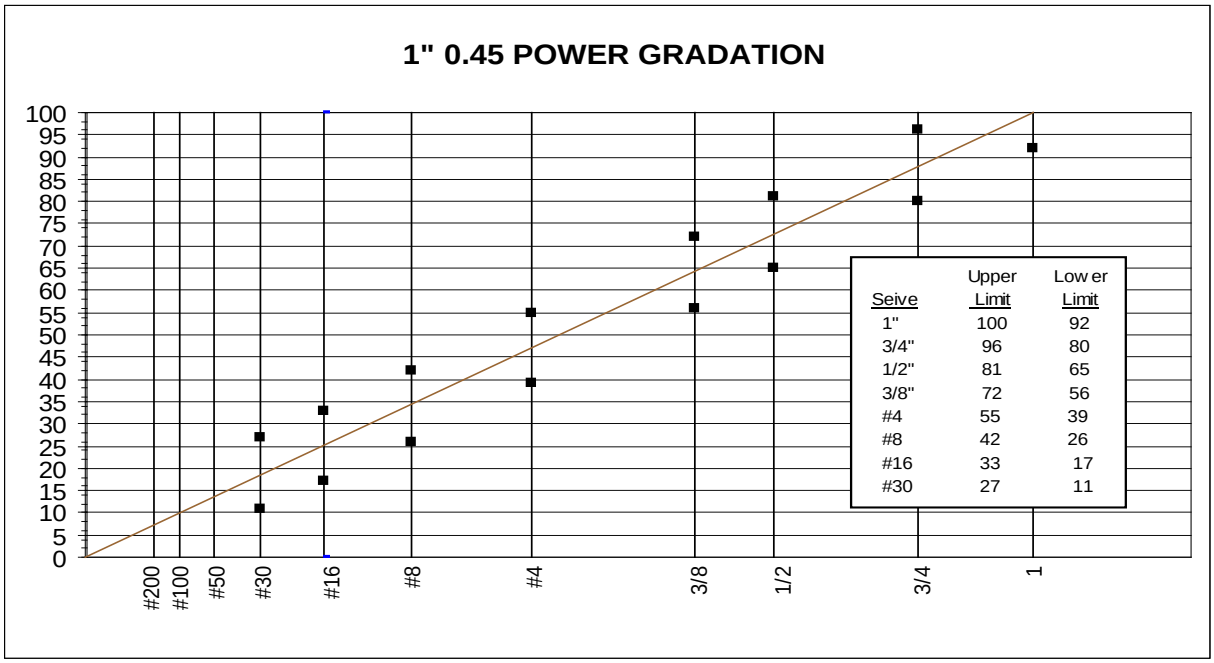
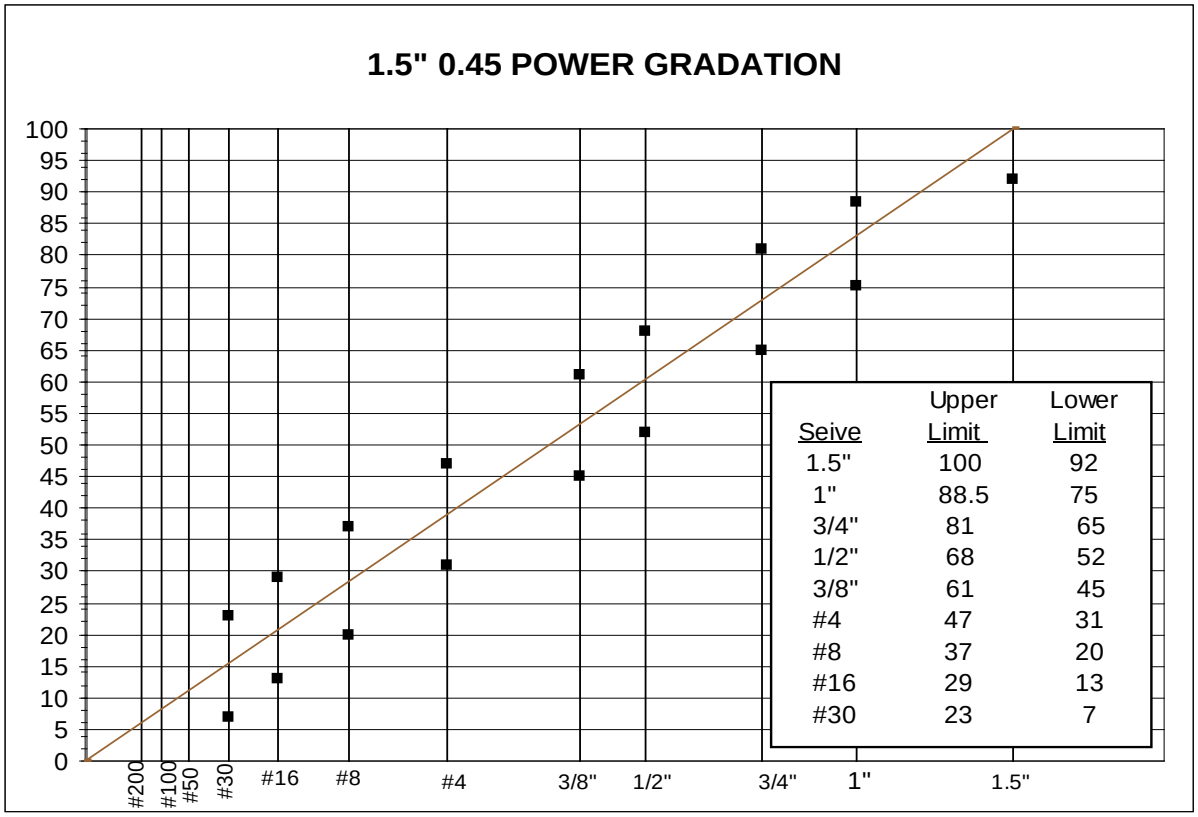


Chart C



* * * * *

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
PI PCC PAVEMENT SMOOTHNESS
WITH 0.2” BLANKING BAND

JULY 21, 2015

At locations designated in the plans, the Contractor will determine the PCC pavement smoothness by profile testing the finished surfaces of the PCC pavement in accordance with the following requirements.

A. Exclusions: Excluded from profile testing are:

1. Shoulders;

2. Lanes less than 10 feet in width;

3. The first or last 50 feet of a pavement where the Contractor is not responsible for the adjoining in place pavement; and,

4. Pavements on horizontal curves with centerline radius of curvature of less than 600 feet and pavements within the super-elevated transitions of such curves.

At locations designated in the plans to be profiled but excluded from profile testing, the Engineer will determine the pavement smoothness according to the 10-foot straightedge test requirements in Section 380.3 O.1 of the specifications.

B. Equipment and Calibration: Equipment and calibration will conform to Section 380.3 B.8 of the specifications except for the following exception:

The Contractor will supply and use a California type profilograph. The computer will smooth the profile using only a third-order Butterworth filter with a cutoff wavelength of 2.0 feet. The computer will generate a profile index using a 0.2 inch blanking band and will use a 0.3 inch bump threshold to identify "must grind" locations.

C. Operation: The Contractor will operate the profilograph at a speed no greater than a normal walk. Make two passes in each driving lane, one in each approximate wheel path. Label each trace to show the project, stationing, lane, wheel path, date paved, date ground (if applicable), date tested, date or re-profiling testing (if applicable), and the name of the operator.

The Contractor will not run the profile test prior to the next working day following concrete placement. Segments less than 1000 linear feet may be grouped with the subsequent day's production. The Contractor will furnish results to the Engineer within 2 business days after concrete placement and furnish re-profiling test results within 2 business days after corrective grinding is completed.

The Contractor will repair or replace curing membrane damaged or protective cover removed during profile testing operations as directed by the Engineer at no cost to the Department.

D. Evaluation: The Contract will furnish the Department with the profilogram and the profilogram will become the property of the Department. The Department will evaluate the profilogram. Evaluation will consist of determining the profile index (PI) to the nearest 0.5 inch per mile by measuring and summing scallops appearing outside a 0.2 inch blanking band. The PI will be determined from the average of the two wheel paths in each driving lane. Individual bumps will be evaluated using a 0.3 inch bump template. PIs will be rounded to the nearest 0.1 inch.

The Department will spot check or retest areas the Department desires with the Department owned and operated profilograph. If a discrepancy between the two traces occurs, the Department and Contractor will determine the cause of the discrepancy and the area will be retested if necessary, as determined by the Engineer.

E. Requirements: Pavements will not exceed a PI of 10.0 inches per mile.

1. Pavements with a PI from 10.1 to 20.0 inches per mile in any 0.1 mile section will be subject to one of the following at the discretion of the Contractor.

a. Satisfactorily correct the deficient area by corrective grinding to a PI of 10.0 or less. The Contractor will accomplish corrective grinding with specially prepared circular diamond blades mounted on a horizontal shaft. The Contractor will day light corrective grinding to the outside edge of the pavement. The Contractor will repair and replace joint sealant damaged by corrective grinding as directed by the Engineer and at no additional cost to the Department. The Contractor will not leave ground areas smooth or polished. The Contractor will ensure ground areas have a uniform texture equal in roughness to the surrounding unground concrete. When limestone is used as the course aggregate in the pavement and the current ADT shown on the plans is greater than 1500, the Contractor will reestablish the tining with a mechanical tining machine in all areas where the corrective grinding exceeds 50 feet measured longitudinally along the centerline of the road. The Contractor will remove and replace all joint sealant within the area where tining is replaced.

The Contractor will replace all permanent pavement markings damaged, destroyed, or removed during corrective grinding at no additional cost to the Department. Following the completion of corrective grinding, the Contractor will re-profile test the deficient area.

b. Accept the deficient area with a price reduction as per the table located in section F of this special provision.

If the Contractor elects to correct the deficient area by corrective grinding, the Department will use the resulting PI after corrective grinding for payment calculations in accordance with the incentive and disincentive payment table in this special provision except the sections corrective ground to a PI less than 10.0 inches per mile (159 mm/km) will not earn more than 100.0% payment.

2. Pavements with a PI exceeding 20.0 inches per mile in any 0.1 mile section will be subject to one of the following at the discretion of the Engineer.

a. Satisfactorily correct the deficient area by corrective grinding as specified in section E.1.a of this special provision.

b. Remove and replace deficient areas.

If the Engineer requires the Contractor to correct the deficient area by corrective grinding, the Contractor will correct the deficient area by corrective grinding to a PI of 20.0 or less. Once the PI is 20.0 or less, any subsequent corrective grinding will be done at the discretion of the Contractor in accordance with section E.1 of this special provision. The Department will use the resulting PI after corrective grinding for payment calculations in accordance with the incentive and disincentive payment table in this special provision except the sections corrective ground to a PI less than 10.0 inches per mile will not earn more than 100.0% payment.

3. Individual bumps in excess of 0.3 inches in 25 feet will be subject to one of the following at the discretion of the Engineer.

a. Satisfactorily correct the deficient area by corrective grinding as specified in section E.1.a of this special provision.

b. Individual bumps less than 0.25 inches in 10 feet may be accepted without correction.

c. Remove and replace deficient areas.

Pavements with a PI exceeding 10.1 inches per mile in any 0.1 mile section with individual bumps in excess of 0.3 inches in 25 feet may be corrected to an

improved PI by corrective grinding in accordance with section E.1 and E.2 of this special provision.

Coring for pavement thickness measurement will be performed after all corrective action has been completed

F. Incentive and Disincentive Payments: The Department will make incentive and disincentive payments based on the following chart:

Profile Index (in/mile)	**Price Adjustment (% of contract unit price)*1**
0 to 2.9	103.5
3 to 3.9	102.4
4 to 4.9	101.2
5 to 10.0	100.0
10.1 to 12.9	98.8
13 to 15.9	97.7
16 to 20	96.5

*1 Incentive payments cannot be improved due to grinding regardless of the average PI.

The adjustment in the contract unit price will apply to the total area of the 0.1 mile long section. The Department will calculate the area using the total lane width (12 feet or less) and the total length of the section (0.1 mile or less if the section is the segment at the end of the project).

When the use of a profilograph is specified, the final surface may also be checked with a 10 foot straightedge, according to Section 380.3 O.1 in locations determined by the Engineer.

* * * * *

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
IRI PCC PAVEMENT SMOOTHNESS

PROJECT IM 0903(101)152, PCN 03W4
JACKSON COUNTY

SEPTEMBER 8, 2015

At locations designated in the plans, the Department will determine the PCC pavement smoothness by International Roughness Index (IRI) acceptance profile testing the finished surfaces of the PCC pavement in accordance with the following requirements.

A. Exclusions: Excluded from the IRI acceptance profile testing under the requirement of this special provision are:

1. Bridge decks, approach slabs, and a distance of 100 feet from the end of the bridge (or approach slab if applicable);

2. Ramps, acceleration lanes, deceleration lanes, and any lane less than 0.3 miles in length;

3. Shoulders and gore areas;

4. Existing curb and gutter sections (curb and gutter to remain in place);

5. The first or last 100 feet of a pavement where the Contractor is not responsible for the adjoining in place pavement; and,

6. Sections with a speed limit of less than 45 mph.

At locations designated in the plans to be profiled but excluded from IRI acceptance profile testing, the Engineer will determine the pavement smoothness according to the 10 foot straightedge test requirements in Section 380.3 O.1 of the specifications.

B. Profiler: The Department will furnish and operate the profiler. The Department will measure and analyze the surface smoothness of the final roadway surface profile using the IRI to the nearest 0.1 inch/mile. The Department will use a profiler meeting ASTM E-950 Class 1 specifications.

C. Operation: The Department will evaluate the surface smoothness on a lot basis. A lot is defined as a single paved lane, 12 feet wide, and 0.10 mile long. Pavement sections less than 0.10 mile long will be tested, the results will be combined with the previous adjacent lot, and the average IRI and price adjustment will be prorated. If the section is less than 0.10 mile long but at least 200 feet long and not adjacent to a previous lot, the average IRI and price adjustment for the section will be evaluated individually and prorated.

The Department will collect the profile data after the Contractor completes all PCC paving required for profiling, once the pavement has reached 4,000 psi, prior to the Contractor opening the roadway to traffic. If the project is constructed in phases, the Department may IRI acceptance profile test a completed phase before the completion of subsequent phases. Phases are defined as plan designated portions of the project at least 0.3 miles in length, or other portions as approved by the Engineer, that will be utilized by the traveling public during completion of subsequent phases of the project. The Contractor's chosen sequence of operations, if applicable, or the Contractor's option to complete a portion of a phase will not require the Department to perform IRI acceptance profile testing prior to the completion of work (phase of project or overall project).

1. IRI Acceptance Profile Testing:

For scheduling purposes, the Contractor is responsible to contact the Materials and Surfacing Office at least 1 week prior to the anticipated completion of work (phase of project or overall project) where IRI acceptance profile testing is required. In addition, the Contractor will contact the Materials and Surfacing office at least 2 business days prior to the anticipated day of IRI acceptance profile testing (phase of project or overall project) to schedule the agreed upon anticipated day of IRI acceptance profile testing.

Prior to the anticipated day of IRI acceptance profile testing, the Contractor will perform all work required prior to the Department performing the IRI acceptance profile testing. The Contractor will be allowed to perform grinding prior to the Department performing the IRI acceptance profile testing. Grinding prior to the IRI acceptance profile testing must be accomplished in accordance with the corrective grinding requirements of this special provision. The Contractor may continue sweeping the roadway any time, as needed, prior to IRI acceptance profile testing.

The Department will perform the IRI acceptance profile testing within 2 business days of the anticipated day of profile testing provided all of the following conditions are met:

- The Contractor has completed all PCC paving in the area to be IRI acceptance profile tested;

- The Contractor has cleaned the surface of debris and other obstructions and has completed necessary sweeping;
- The PCC pavement has reached 4,000 psi;
- The Contractor has placed necessary traffic control devices;
- The ambient air temperature is at least 40°F but not above 90°F; and,
- Rain and other weather conditions determined inclement by the Engineer are not present.

The Department will make one pass in each lane in the direction of traffic flow. One pass will consist of a profile being performed in each wheel path for each lane (one trace approximately 31 inches from centerline of the roadway and the other trace approximately 97 inches from centerline).

The Department will provide the Contractor IRI acceptance profile testing results within 2 business days of completing the IRI acceptance profile testing. The Department will identify and mark areas of localized roughness (ALR).

a. Evaluation: The Department will evaluate the data collected and the data will remain the property of the Department. The Department will determine the average IRI for each lot by averaging the IRI values from the two wheel paths for each pass (lane) to the nearest 0.1 inch/mile. The Incentive and disincentive payment schedule is a fixed dollar amount per lot based on the average IRI for each lot.

b. Requirements: The Department will use the FHWA Profile Viewing and Analysis (ProVAL) software to determine areas of localized roughness (ALR). The Department will evaluate ALR using ProVAL's "Smoothness Assurance" analysis by calculating the mean roughness index (MRI) with a continuous short interval of 25 feet and a 250 mm filter.

The Engineer will assess ALR in accordance with Table 1 "ALR Monetary Deductions and Corrective Work Requirements." The Contractor will grind ALR which require corrective action to a MRI of less than 125 inches per mile in 25 feet.

Table 1. ALR Monetary Deductions and Corrective Grinding Requirements	
25 ft. Continuous MRI (Inches per mile)	**Corrective Grinding or Monetary Deduction**
140.0 or less	Acceptable
140.1 to 190.0	Corrective Grinding or $10.00 per linear foot (12 foot wide), as directed by the Engineer
190.1 or greater	Corrective Grinding as required by the Engineer

In lieu of the $10.00 per linear foot monetary deduction, the Contractor may option to perform corrective grinding to a MRI of less than 125 inches per mile in 25 feet.

Once the Department performs IRI acceptance profile testing, the Department will not make adjustments to the incentive or disincentive payments for lots containing ALR that require corrective grinding, regardless of the average IRI after re-profile testing.

The Contractor will complete the required corrective grinding in ALR within 21 calendar days of notification from the Department of which ALR require corrective grinding. If the project is constructed in phases, the Department may allow the Contractor to complete corrective grinding with the corrective grinding of a subsequent phase.

2. Corrective Grinding:

The Contractor will accomplish corrective grinding with specially prepared circular diamond blades mounted on a horizontal shaft. The Contractor will day light corrective grinding to the outside edge of the pavement. The Contractor will join grind sections if the distance between grind sections is less than 80 feet. The Contractor will repair and replace joint sealant damaged by corrective grinding as directed by the Engineer and at no additional cost to the Department. The Contractor will not leave ground areas smooth or polished. The Contractor will ensure ground areas have a uniform texture equal in roughness to the surrounding unground concrete. When limestone is used as the course aggregate in the pavement and the current ADT shown on the plans is greater than 1500, the Contractor will reestablish the tining with a mechanical tining machine in all areas where the corrective grinding exceeds 50 feet measured longitudinally along the centerline of the road. The Contractor will remove and replace all joint sealant within the area where tining is replaced. Following the completion of corrective grinding, the Department will re-profile test ALR.

3. **Re-Profile Testing:**

For scheduling purposes, the Contractor is responsible to contact the Materials and Surfacing Office at least 7 calendar days prior to the anticipated start of corrective grinding work determined by the Department's IRI acceptance profile testing (phase of project or overall project). In addition, the Contractor will contact the Materials and Surfacing office at least 2 business days prior to the anticipated completion of corrective grinding (phase of project or overall project) to schedule the agreed upon anticipated day of re-profile testing.

Prior to the anticipated day of re-profile testing, the Contractor will perform all work required prior to the Department performing the re-profile testing. The Contractor may continue sweeping the roadway any time, as needed, prior to re-profile testing.

The Department will perform the re-profile testing within 2 business days of the completion of all corrective grinding provided all of the following conditions are met:

- The Contractor has completed all PCC pavement corrective grinding in the area to be re-profile tested;
- The Contractor has cleaned the surface of debris and other obstructions and has completed necessary sweeping;
- The Contractor has placed necessary traffic control devices;
- The ambient air temperature is at least 40°F but not above 90°F; and,
- Rain and other weather conditions determined inclement by the Engineer are not present.

The Department will provide the Contractor re-profile testing results within 2 business days of completing the re-profile testing. The Department will identify and mark ALR requiring additional corrective grinding.

When the use of a profiler is specified, the final surface may also be checked with a 10 foot straightedge, according to Section 380.3 O.1 in locations determined by the Engineer.

D. **Incentive/Disincentive Payment:** The Department will base incentive and disincentive payments on the average IRI determined for each lot and will make incentive and disincentive payments based on Table 2:

Table 2. IRI Pay Scale	
IRI	**Price Adjustment**
Inches per mile	**(Dollars per lot)**
40.0 or less	$900
40.1 to 45.0	$700
45.1 to 50.0	$500
50.1 to 60.0	$300
60.1 to 75.0	$0
75.1 to 85.0	-$300
85.1 to 90.0	-$500
90.1 to 95.0	-$700
95.1 or greater	-$900

E. Miscellaneous: All work required of the Contractor to prepare the roadway for testing including, but not limited to; corrective grinding, sweeping, cleaning, preparing the surface for profiling or reprofiling, moving equipment, and rescheduling of work will not be measured and will be incidental to the contract.

The Contractor will replace all permanent pavement markings damaged, destroyed, or removed during corrective grinding at no additional cost to the Department.

The Department will measure and pay for all traffic control required for conducting the smoothness testing in accordance with Section 634 as part of the overall project.

* * * * *

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
CONTRACTOR ADMINISTERED PRECONSTRUCTION MEETING

APRIL 18, 2013

I. DESCRIPTION

This work consists of the Contractor scheduling and conducting a preconstruction meeting prior to beginning work on this contract. Additionally this work consists of the Contractor providing the Area Engineer a completed list of required submittals.

II. MATERIALS (Not Specified)

III. CONSTRUCTION REQUIREMENTS

For the purposes of this special provision, a business day is any calendar day except Saturdays, holidays, and days designated by the Governor of this State as an administrative leave day for state employees.

The Department will provide the Contractor a list of required submittals and the Authorization Form for Preconstruction Meeting (Form DOT-270) within five (5) business days of the date of the Notice to Proceed.

The Contractor's Required Submittals Form (Form DOT-272) is a document outlining information required prior to the completion of the project. This list will include two types of submittals; 1) information required before scheduling a preconstruction meeting and 2) information required before the Contractor begins related work. The Department reserves the right to request additional information not included in the original list of required submittals. The list of required submittals will include, but is not limited to, proposed sequence changes, shop drawings, permits, certifications, mix designs, labor compliance, equal employment opportunity, and disadvantaged business enterprise documents.

Prior to scheduling the preconstruction meeting, the Contractor will complete and provide the Area Engineer all items on the list of required submittals that are required as described in 1) above. If the Contractor cannot complete and provide a submittal item required prior to scheduling the preconstruction meeting, the Contractor will contact the Area Engineer to establish a mutually agreed upon

date when the required submittal will be completed and provided to the Area office.

The Contractor will not begin work on an item until the Contractor has provided the Area Engineer with all required information for the applicable work item and the appropriate office has approved the information, if necessary. The Contractor will make every reasonable effort to deliver the required submittals at the earliest possible time.

The Contractor's authorized representative as indicated on the Signature Authorization Form (Form DOT-209) will complete, in its entirety, the first page of the Authorization Form for Preconstruction Meeting and will initial each proceeding section. By initialing each section, the Contractor is confirming comprehension of each section.

When the Contractor has provided the Area Engineer all required submittals, unless the Contractor and Department have established an agreement in writing providing future dates of outstanding required submittal items, the Contractor will schedule a preconstruction meeting with the Area Engineer.

Within two (2) business days following the Contractor scheduling the preconstruction meeting, the Area Engineer will prepare and send the Contractor a meeting confirmation and the Preconstruction Meeting Outline (Form DOT-271) of discussion items including specific Department items.

The Contractor will complete the Contractor's portion of the Preconstruction Meeting Outline and will add additional discussion items as needed. The Contractor will send the meeting notice and final Preconstruction Meeting Outline to the Area Engineer, all subcontractors, utility companies, and all suppliers at least five (5) business days prior to the preconstruction meeting.

The Area Engineer will send the notice of the meeting and the final Preconstruction Meeting Outline of discussion items to any other government entities and other principle stakeholders involved in the project at least three (3) business days prior to the preconstruction meeting.

At the discretion of the Area Engineer, the preconstruction meeting may be held in person, videoconference, or over the phone. The Contractor's competent superintendent, as required by Section 5.5, who will be working on this project, is required to attend the preconstruction meeting.

The Contractor will lead the meeting discussion as described in the Preconstruction Meeting Outline. The Area Engineer will prepare the meeting minutes including any unresolved items and distribute them to all attendees and principle stakeholders within five (5) business days following the preconstruction meeting.

IV. METHOD OF MEASUREMENT

The Department will not make a separate measurement for the preconstruction meeting.

V. BASIS OF PAYMENT

The Department will not make a separate payment for the preconstruction meeting. All costs associated with the preconstruction meeting will be incidental to other contract items.

* * * * *

FUEL ADJUSTMENT AFFIDAVIT

Project Number _____
PCN _____
County _____

For project let using the SDEBS) and in accordance with Section 9.12, the bidder is not required to notify the Department at the time of submitting bids whether the Contractor will or will not participate in the fuel cost adjustment program. Prior to execution of the contract, the successful bidder must submit this completed form to the Department for approval. The Fuel Adjustment Affidavit shall include the anticipated fuel cost of subcontractors.

Does your company elect to participate in a fuel adjustment for this contract for the fuels that do not have a fixed price? No adjustments in fuel prices will be made if "No" is checked.

☐ Yes ☐ No

If yes, provide the total dollars for each of the applicable fuels. No adjustments in fuel price will be made for the fuel types that are left blank or completed with a $0.00 value.

Diesel (x) $_____

Unleaded (y) $_____

Burner Fuel (z) $_____ Type of Burner Fuel Used: _____

Sum (x + y + z) = $_____

Note: The sum of the x, y, and z may not exceed 15% of the original contract amount.

The following must be completed regardless of whether the Contractor elects to participate in the fuel adjustment affidavit

Under the penalty of law for perjury or falsification, the undersigned, _____,
(Printed Name)

_____ of _____,
(Title) *(Contractor)*

hereby certifies that the documentation is submitted in good faith, that the information provided is accurate and complete to the best of their knowledge and belief, and that the monetary amount identified accurately reflects the cost for fuel, and that they are duly authorized to certify the above documentation on behalf of the company.

I hereby agree that the Department or its authorized representative shall have the right to examine and copy all Contractor records, documents, work sheets, bid sheets, and other data pertinent to the justification of the fuel costs shown above.

Dated _____ Signature _____

Notarization is required only when the Contractor elects to participate in the fuel adjustment affidavit

Subscribed and sworn before me this _____ day of _____ , 20___.

_____ _____
Notary Public *My Commission Expires*

STATE OF SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
TITLE VI AND NONDISCRIMINATION ASSURANCE
JULY 14, 2008

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

(1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended (hereinafter referred to as the "Regulations"), incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, religion, national origin, sex, age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, national original, sex, age or disability.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the South Dakota Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the South Dakota Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain this information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the South Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

(a) withholding of payments to the contractor under the contract until the contractor complies, and/or
(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as the South Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that, in the event of a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the South Dakota Department of Transportation to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter such litigation to protect the interests of the United States.

****

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
DISADVANTAGED BUSINESS ENTERPRISE

MAY 20, 2015

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 Department-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 Department deems appropriate.

I. Definitions

A. Specified Goal: A DBE participation goal for a contract as indicated by a specific numerical percentage of the total dollar amount of the contract in the bidding documents.

B. Not Specified: No specific DBE participation goal is specified for a contract.

C. Disadvantaged Business Enterprise (DBE): A for-profit small business that is certified by the Department and is listed in the DBE Directory available on the Department's web site.

D. Good Faith Effort (GFE): Efforts to achieve a DBE goal which; by their scope, intensity, and appropriateness to the objective; can reasonably be expected to meet the objective of the Department's DBE program pursuant to 49 CFR 26.1.

E. Positive Contact: Communication between the bidder and the DBE in which the bidder receives an oral or written response from the DBE stating the DBE's intention to quote or not quote a project.

F. Commitment: The dollar amount of work to be subcontracted to DBEs, according to the bidder's bid. The commitment may be compared to the dollar amount of all contract items in the bidder's bid and expressed as a percentage of the total bid amount.

II. Bidding Requirements

A bidder must not discriminate on the basis of race, color, national origin, or sex in the solicitation or award to subcontractors and material suppliers. Bidders who demonstrate a pattern of possible discrimination through consistent and repeated under-utilization of DBEs may be subject to investigation and sanctions allowed by regulation, administrative rule, or law.

The Bidder's failure to carry out the requirements of this special provision will be treated as a non-responsive bid.

On contracts that specify a specific DBE contract participation goal, all bidders must include their DBE commitment for the contract in the bidding files provided by the Department.

If the contract indicates "Not Specified," all bidders are encouraged to include their anticipated DBE utilization for the contract in the bidding files provided by the Department.

Each bidder must submit a list of all subcontractors and suppliers (DBEs and non-DBEs) the bidder received quotes from for that contract with the bid files.

A Contractor must make reasonable efforts to provide opportunities for DBEs to participate on Federal-aid contracts throughout the life of the contract.

On contracts let with a specified DBE contract participation goal, where the low bidder has not met or exceeded that goal, the bidder must provide GFE documentation as indicated in Section III of this special provision.

When the DBE participation is "Not Specified" on a contract, each bidder is encouraged to use DBE Contractors; however no bidder will be required to furnish GFE documentation.

The apparent low bidder must submit GFE documentation, when requested by the Department, within 2 business days from the date the apparent low bidder is contacted by the Department. Section III of this special provision provides information on the types of action bidders should make as part of their GFE to obtain DBE participation. The apparent low bidder may submit documentation with the bidding files provided all pertinent information is included. The apparent low bidder must submit any missing documentation within 2 business days from the date the Department contacts the low bidder.

If the apparent low bidder does not provide documentation showing GFE as required by this special provision, the Department will consider that bid nonresponsive and may either award the contract to the next lowest responsible bidder with a responsive bid, or reject all bids. Subsequent to the DBE

committee's decision that the apparent low bidder's efforts do not establish GFE, the apparent low bidder will be notified that the bid is not responsive. The apparent low bidder will have 2 business days from the date of notification to contact the Bid Letting Engineer to arrange a meeting with the Department Secretary, or the Secretary's designee, to present documentation and argument about why the bid should not be rejected. The Department Secretary or the Secretary's designee will issue a written decision on responsiveness of the bid within 2 business days after the meeting.

If the apparent low bid is rejected for failure to meet the GFE or other requirements, the next apparent low bidder will be notified, unless all bids are rejected. The next apparent low bidder's DBE commitment will also be reviewed, and GFE documentation may be requested. Unless all bids are rejected, award of the contract will be made to the lowest bidder with a responsive bid.

The lowest responsive bidder will be required to complete form DOT-289B, as included in the contract documents, when the contract is sent for signature. This form requires a signature from each DBE identified in the low bidder's DBE commitment. A separate form will be supplied for each DBE and will be included in the contract documents.

Bidders are encouraged to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, materials, or other related services.

III. Good Faith Efforts

If a GFE package is requested on a contract with a specified goal, the apparent low bidder must submit documentation showing compliance with the following requirements:

A. The apparent low bidder will submit a contact log of all solicitation efforts including:

- Name of the DBE firm
- Name and phone number of the individual with whom contact was made
- Date, time, and manner of each and every contact (by phone, in person, fax, mail, e-mail, etc.)
- The DBE's response to the solicitation
- Result of the solicitation effort

An example of a solicitation log is available on the Department's Bid Letting website. When bidding utilizing the South Dakota Department of Transportation Electronic Bid System (SDEBS), SDEBS may be used to document the log of solicitation efforts for the project.

B. The apparent low bidder will also submit documentation that shows GFE in relation to the following requirements:

1. The bidder must select contract work items to encourage DBE participation. This includes breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.

2. The bidder must solicit all certified DBEs that are listed in the appropriate work classifications in the DBE directory and that have indicated in the directory they are willing to work in the project's geographic area. Without exception, all DBEs who are listed on the plan holders list by 10 AM central time 7 calendar days prior to the bid letting must be solicited in accordance with Section III.B.3 of this special provision. If the bidder has not solicited any DBE meeting these requirements, the bidder will provide a detailed written explanation showing why the DBE was not solicited.

3. To provide adequate time for the DBE to respond with a quote in the normal course of business, the bidder must make the initial solicitation at least 6 calendar days by mail or 5 calendar days by phone, fax, or e-mail prior to the letting date. Without exception, all DBEs who are listed on the plan holders list by 10 AM central time 7 calendar days prior to the bid letting must be solicited.

4. If the bidder does not receive a positive contact from a DBE, the bidder must follow up the initial solicitation with a second solicitation by phone, fax, or e-mail to determine whether the DBE is interested in quoting. The bidder must make this second solicitation at least 2 business days prior to the letting.

5. The bidder will provide interested DBEs with adequate and timely information about plans, specifications, and requirements of the contract to assist DBEs in responding to a solicitation.

6. If a bidder rejects a DBE quote because of previous problems with a particular DBE, the bidder must prepare a detailed written explanation of the problem. Additional cost involved in finding and using DBEs is not, in itself, sufficient reason for a bidder to reject a quote. A bidder must not reject a DBE as being unqualified without sound reasons based on a thorough investigation of the DBE's capabilities.

7. Any additional information requested by the Department.

C. The bidder must consider qualified DBEs whose quotes are reasonably competitive. If the bidder rejects any quote because it is considered not to be

"reasonably competitive," the bidder must provide copies of all DBE and non-DBE quotes, and a work item price spreadsheet comparing DBE quotes to non-DBE quotes. The spreadsheet must show which quote was included in the bid for the work items being compared. The ability or desire of a bidder to perform the work with its own forces does not relieve the bidder of the responsibility to make GFE. In the event a bidder elects to use its own forces over a DBE, the bidder must include, on the spreadsheet, documentation of the costs of using the bidder's own forces. This can be shown in a number of ways, which may include submitting portions of the bidder's work sheets used to prepare the bid.

D. The bidder must explain why the specified goal could not be met.

E. The bidder must identify any additional efforts the bidder made to secure DBE participation.

IV. Counting DBE Participation

On projects with a specified goal, the contract commitment, as submitted with the bid, will be documented on form DOT-289R/C as included in the contract documents.

If the project is shown as "Not Specified," the anticipated DBE utilization, as submitted with the bid, will be documented on form DOT-289 R/N – DBE Utilization Form, as included in the contract documents. The DBE utilization shown on this form is not a commitment to use the DBE. This information will be used by the Department to track anticipated DBE usage.

Only the portion of a contract performed by the DBE's own forces will count toward DBE participation. Included is the cost of supplies and materials obtained by the DBE for the contract, including supplies purchased or equipment leased by the DBE. Supplies and equipment the DBE subcontractor purchased or leased from the Contractor or its affiliate is not allowed to be included.

When a DBE performs as a participant in an approved joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will count toward DBE participation.

A bidder may count toward its DBE participation only that percentage of expenditures to DBEs that perform a commercially useful function (CUF) in the performance of a contract. A DBE performs a CUF when the DBE is responsible for execution of the work of a contract and is carrying out the DBE's responsibilities by actually performing, managing and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating prices, determining

quality and quantity, ordering and installing (where applicable) the materials, and paying for the material itself. To determine whether a DBE is performing a CUF, the Department will evaluate the amount of work subcontracted, the industry practice, and whether the amount the DBE is to be paid is commensurate with the work it is actually performing, DBE credit claimed for performance of the work, and other relevant factors.

A DBE is not performing a CUF if the DBE performs less than 30% of the total cost of its contract with its own work force, or if its role is limited to that of an extra participant in a transaction, project, or contract through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is simply an extra participant, the Department will examine similar transactions, particularly those in which DBEs do not participate.

DBE participation will be counted for trucking services as follows:

The bidder/Contractor will receive credit toward DBE participation for the total value of the transportation services the DBE provides on the contract using trucks the DBE owns, insures, and operates and which are driven by drivers the DBE employs.

A DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. When a DBE leases trucks from another DBE, the bidder/Contractor can count the total value of the transportation services the lessee DBE provides on the contract toward DBE participation.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. When a DBE leases trucks from a non-DBE, the bidder/Contractor can count toward DBE participation only the fee or commission the DBE receives as a result of the lease arrangement. The bidder/Contractor does not receive credit toward DBE participation for the total value of the transportation services, since all services are not provided by a DBE.

The bidder may count toward DBE participation expenditures to DBE firms for materials, supplies, or services as follows:

If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE participation. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of general character described by the specifications.

If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE participation. A regular dealer is a firm that owns, operates, or maintains a store, warehouse

or other establishment in which the materials, supplies, articles, or equipment are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

If the materials or supplies are purchased from a DBE which is neither a manufacturer nor a regular dealer, count only the amount of fee or commission charged for assistance in the procurement of the materials or supplies or fee or transportation charges for the delivery of materials or supplies required at the job site toward DBE participation. In order to be counted, the Department must determine the fee to be reasonable and not excessive as compared to fees customarily allowed for similar services. The cost of the materials and supplies themselves will not count toward DBE goals.

The Department will not count toward DBE participation materials or services provided by a DBE who is not currently certified.

No intended or actual subcontracting arrangement which is contrived to artificially inflate DBE participation is allowed. This includes, but is not limited to, DBE middlemen which serve no commercially useful function, or arrangements where a DBE is acting essentially as a broker of goods or services, but has been counted as a manufacturer, regular dealer, or subcontractor.

The Department will review and monitor projects for compliance with the bidder's intended DBE participation. Failure by the Contractor to fulfill the contract commitment constitutes a breach of contract. The Department may also investigate the form and substance of particular business arrangements between and among DBE and Contractors with regard to specific contracts. If, as a result of an investigation, the Department determines a particular business arrangement is not allowable, the dollar amount of the unallowable DBE participation will be subtracted from the Contractor's DBE participation on that project. The Contractor will be notified if the apparent DBE participation is not adequate to meet the DBE participation stated on the form DOT-289R/C. The Contractor will be directed to seek additional participation from other DBEs to meet the unallowable portion on that contract.

All Contractors and DBEs shall cooperate fully and promptly with the Department in compliance reviews, investigations, and other requests for information. If the Department determines a Contractor was a knowing and willing participant in an unallowable business arrangement, or in the event of repeated violations, falsification, or misrepresentation, the Department will impose sanctions. Sanctions may include, but are not limited to one or more of the following:

- Assessment of liquidated damages as stated in Section VII of this special provision
- Suspension of bidding privileges or debarment

- Withholding progress payments
- Securing additional DBE participation on future Federal-aid contracts sufficient to make up for the DBE participation found to be unallowable
- Referral of the matter for criminal prosecution

V. Joint Checks to DBEs

A joint check is a check issued by a prime Contractor to a DBE subcontractor and to a material supplier or another third party for items or services to be incorporated into a project. For a prime Contractor to receive DBE credit, the DBE must perform a commercially useful function and be responsible for negotiating price, determining quality and quantity, ordering materials and installing (where applicable) and paying for materials.

To ensure that the DBE is independent of the prime Contractor and in compliance with the regulation, use of joint checks will be reviewed and allowed only under following conditions:

- Issued for valid reasons only, not simply for the convenience of the prime Contractor
- Used for a specific contract or specific time frame and not long-term or open ended
- Payment is made to the DBE and not directly to the supplier
- Requested and received prior written approval from the DBE Compliance Officer.

The request must include the following:

- Name of the DBE
- The DOT contract number(s)
- The DOT PCN number(s)
- The work the DBE will be performing on each contract
- Name of the supplier(s) used by the DBE
- The specific reason(s) for issuing joint checks

The Department will review the request and verify the circumstances indicated in the request with the DBE. A copy of the request and approval will be provided to the prime Contractor and the DBE.

VI. Certification of DBE Performance and Payments

Within 30 calendar days of the date of the Acceptance of Field Work the Contractor is required to submit form DOT-289 (Certification of DBE Performance and Payments), listing all DBEs that participated in the contract, and the total dollar amount paid (and anticipated to be paid) to each. DBE attainments are compared to commitments on form DOT-289R/C and any payments less than

90% of that commitment, without proper justification and documentation, will have liquidated damages assessed against the contract. The Contractor's final payment is not released until receipt of the form DOT-289.

Contractors are required to maintain a running tally of payments to DBEs. For reports of payments not being made in accordance with the prompt payment provision, alleged discrimination against a DBE or other similar complaint, the tally may be requested for review by the Department. The Department may perform audits of contract payments to DBEs to ensure that the amounts paid were as reported on the form DOT-289. All Contractors participating in Federal-aid contracts are expected cooperate fully and promptly with the Department in compliance reviews, investigations and other requests for information regarding payments to DBEs. Their failure to do so is grounds for appropriate sanctions or action against the Contractor.

The Department will monitor the running tally on a program basis and if reporting issues are identified, additional reporting requirements may be implemented.

The Contractor is required to report payments to DBEs twice a year from the date of the Notice to Proceed until the date of the Acceptance of Field Work. Reporting periods and deadlines for payment reporting submittals will be in accordance with the following:

Reporting Period:	**Reporting Deadline:**
October 1 to March 31	April 30
April 1 to September 30	October 31

For each reporting period, the Contractor is required to submit form DOT-289 listing all DBEs that participated in the contract, the payments to DBEs for that reporting period, and the total dollar amount paid to each DBE. For each reporting period after the Notice to Proceed, the Contractor will mark the form DOT-289 as "On-Going" when reporting payments to DBEs prior to the Date of the Acceptance of Field Work. Within 30 calendar days of the date of the Acceptance of Field Work and all DBE payments have been made, the Contractor is required to submit form DOT-289 and the Contractor will mark the form DOT-289 as "Final".

Each form DOT-289 must be provided to the Engineer by the reporting deadline stated above.

DBE payment are compared to commitment on form DOT-289R/C and any payment less than 90% of that commitment, without proper justification and documentation, will result in the Department assessing liquidated damages against the contract. The Contractor's final payment will not be released until receipt of the form DOT-289 marked "Final".

VII. Liquidated Damages

A. If the Contractor does not meet its contract commitment documented on form DOT-289 R/C, the Department will assess liquidated damages according to the following schedule:

1. For the first $1,000 DBE deficiency, 100% of the deficiency.

2. For the next $9,000 DBE deficiency, 50% of the deficiency.

3. For the next $10,000 DBE deficiency, 25% of the deficiency.

4. For any remaining DBE deficiency in excess of $20,000, 10% of the deficiency.

This liquidated damage provision will not be applicable where actual payment to a DBE is within 90% of the commitment or where there are good and sufficient reasons, properly documented, for the deficiency such as quantity under-runs, project changes, or other unexpected occurrences.

B. If a Contractor finds it impossible, for reasons beyond its control, to meet the contract commitment on form DOT-289R/C, the Contractor may, at any time prior to completion of the project, provide a written request to the DBE Compliance Officer for a complete or partial waiver of liquidated damages. No request for a waiver will be accepted after Acceptance of Field Work has been issued.

VIII. Termination or Substitution of a DBE

The Contractor will not be allowed to terminate or substitute a DBE without the Department's prior verbal consent followed by written approval. This includes, but is not limited to, instances in where the Contractor desires to perform work originally committed to a DBE with its own forces, with an affiliated company, with a non-DBE, or with another DBE. Department approval is required when the contract contains a "specified goal" on form DOT-289R/C and the DBE to be terminated or substituted is listed as a commitment on the form DOT-289R/C.

The Department will provide written consent only if the Department agrees the Contractor has good cause to terminate the DBE listed on the form DOT-289R/C. Good cause includes the following:

- The DBE fails or refuses to execute a written contract
- The DBE fails or refuses to perform the work of the DBE subcontract in a manner consistent with normal industry standards or Department specifications unless the failure or refusal by the DBE is a result of unfair or discriminatory actions by the Contractor

- The DBE fails or refuses to meet the Contractor's reasonable nondiscriminatory bond requirements
- The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
- The DBE in ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1,200 or applicable state law
- The Department has determined that the DBE is not a responsible Contractor
- The DBE voluntarily withdraws from the project and provided the Department with a written notice of withdrawal
- The DBE is found to be ineligible to receive DBE credit for the type of work required
- A DBE owner dies or becomes disabled with the result that the DBE is unable to complete its work on the contract
- Other documented good cause that the Department determines to substantiate the termination of the DBE.

Good cause does not exist if the Contractor seeks to terminate a DBE so the Contractor can self-perform the work for which the DBE was committed, or so the Contractor can substitute another DBE or non-DBE Contractor after the contract award.

Before submitting a request to terminate or substitute a DBE to the Department, the Contractor must first provide written notice to the DBE, with a copy of the notice to the DBE Compliance Officer, of the Contractor's intent to request to terminate or substitute, and the reason for the request.

The Contractor must give the DBE 5 calendar days to respond to the notice and advise the Department and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Department should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g. safety), the Department may provide a response period shorter than 5 calendar days.

When a DBE is terminated or fails to complete its work on the contract for any reason, the Contractor must make good faith efforts to replace the committed DBE with another DBE. The Contractor must make efforts to find another DBE to perform the same amount of work under the contract as the DBE that was terminated. The letter to the Department requesting termination or substitution must include the name of the DBE and dollar amount of the replacement DBE. If the Contractor is unable to find another DBE, the Contractor must provide the names of the DBEs it contacted and reason why they were unable to use those DBEs.

If the Contractor does not utilize or pay DBEs as required, liquidated damages will be assessed as specified in Section VII of this special provision. In addition, if

the Contractor is found to have knowingly and willingly attempted to circumvent the DBE contract provisions, sanctions referred to in Section IV of this special provision may be imposed.

The Contractor does not need Department approval to terminate or substitute a DBE under the following circumstances:

- The DBE is being used on a contact with a “Specified Goal” however the DBE was not listed as a DBE commitment on form DOT-289R/C.
- The DBE was listed as a commitment on a “Not Specified” DBE goal contract on form DOT-289R/N.

* * * * *

SPECIAL PROVISION FOR
EEO AFFIRMATIVE ACTION REQUIREMENTS ON
FEDERAL AND FEDERAL-AID CONSTRUCTION CONTRACTS

SEPTEMBER 1, 1997

APPENDIX A

Notice or 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 the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

GOALS FOR MINORITY PARTICIPATION FOR EACH TRADE

Aurora	0.8%	Fall River	7.9%	Marshall	1.3%
Beadle	0.8%	Faulk	1.3%	Meade	3.4%
Bennett	7.9%	Grant	1.3%	Mellette	7.9%
Bon Homme	1.2%	Gregory	0.8%	Miner	0.8%
Brookings	0.8%	Haakon	7.9%	Minnehaha	1.2%
Brown	1.3%	Hamlin	1.3%	Moody	0.8%
Brule	0.8%	Hand	0.8%	Pennington	3.4%
Buffalo	7.9%	Hanson	0.8%	Perkins	7.9%
Butte	7.9%	Harding	7.9%	Potter	7.9%
Campbell	7.9%	Hughes	7.9%	Roberts	1.3%
Charles Mix	0.8%	Hutchinson	0.8%	Sanborn	0.8%
Clark	1.3%	Hyde	7.9%	Shannon	7.9%
Clay	1.2%	Jackson	7.9%	Spink	1.3%
Codington	1.3%	Jerauld	0.8%	Stanley	7.9%
Corson	7.9%	Jones	7.9%	Sully	7.9%
Custer	7.9%	Kingsbury	0.8%	Todd	7.9%
Davison	0.8%	Lake	0.8%	Tripp	7.9%
Day	1.3%	Lawrence	7.9%	Turner	0.8%
Deuel	1.3%	Lincoln	0.8%	Union	1.2%
Dewey	7.9%	Lyman	7.9%	Walworth	7.9%
Douglas	0.8%	McCook	0.8%	Yankton	1.2%
Edmunds	1.3%	McPherson	1.3%	Ziebach	7.9%

GOALS FOR FEMALE PARTICIPATION IN EACH TRADE

Statewide - - - - - - - - - - 6.9%

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

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make 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 when requesting permission to sublet shall provide written notification to the Department of Transportation as specified in Section 8.1 of the Standard Specifications for Roads and Bridges. When the subcontract is in excess of $10,000, the request for permission to sublet shall list the name, address and telephone number of subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed. The Department of Transportation will then provide written notification to the Director of the Office of Federal Contract Compliance Programs through proper channels.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is as shown by county designation on the Title Sheet of the plans.

APPENDIX B

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

1. As used in these specifications:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   d. "Minority" includes:

      (I) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      (II) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

      (III) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      (IV) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor of Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed

as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office, from Federal procurement contracting officers or from the South Dakota Department of Transportation. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

    a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

    b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.

    c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or if referred, not employed by the Contractor, this shall be documented in the file with the reason thereof, along with whatever additional actions the Contractor may have taken.

    d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

    e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.

    f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy

with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc. such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligation.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group, has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goal and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply,

however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

*** * * ***

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION FOR
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS
FHWA 1273 (MAY 1, 2012)

APRIL 30, 2013

The following are amendments to the above contract provisions.

Section I.4.

Delete this section and replace with the following:

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 Federal-aid construction project unless it is labor performed by convicts who are on parole, supervised release, or probation.

Section IV.

Delete the first paragraph and replace with the following:

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway.

Section IV.3.b.(1)

Delete the first sentence and replace with the following:

The contractor and each related subcontractor must submit weekly, for each week in which any contract work is performed, a copy of a completed certified weekly payroll report to the South Dakota Department of Transportation (SDDOT) Labor Compliance Officer (LCO) within fourteen (14) calendar days of the end of the workweek. The address of the Labor Compliance Officer is: South Dakota Department of Transportation, Labor Compliance Program, 700 E. Broadway Avenue, Pierre, SD 57501-2586.

Section IV.3.b.(2)

Delete the first paragraph and replace with the following:

Each submitted certified weekly payroll report must set out accurately and completely all information required by the Instructions for SDDOT Statement of Compliance & Certified Payroll Report (located on the SDDOT Labor Compliance website). Each certified weekly payroll report must include the most recent SDDOT Statement of Compliance Form, signed by the Contractor or related subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract. The SDDOT will not accept any payroll report which does not include the most recent SDDOT Statement of Compliance Form. This SDDOT Statement of Compliance Form must certify the following:

Section IV.3.b.(3)

Delete this paragraph and replace with the following:

The weekly submission of a properly executed SDDOT Statement of Compliance Form shall satisfy the requirement for submission of the "Statement of Compliance Form" required by paragraph 3.b.(2) of this section.

Section IV.4.a

Delete the first sentence of the third paragraph and replace with the following:

Every apprentice must be paid the higher of the Common Laborer wage rate contained in the bid documents or the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

* * * * *

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

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

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

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

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

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

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

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

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

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

10. Assurance Required by 49 CFR 26.13(b):

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

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

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

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

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

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

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

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

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

2. Withholding

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

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

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

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION REGARDING
MINIMUM WAGE ON FEDERAL-AID PROJECTS

APRIL 30, 2013

This proposal contains a copy of the most recent United States Department of Labor (USDOL) Davis-Bacon Act Wage Decision.

The Contractor and each related subcontractor will pay their respective employees not less than the USDOL minimum wage for each work classification an employee actually performs at the site of the work.

The Contractor and each related subcontractor must submit weekly, for each week in which any contract work is performed, a copy of a completed certified weekly payroll report to the South Dakota Department of Transportation (SDDOT) Labor Compliance Officer (LCO) within fourteen (14) calendar days of the end of the workweek.

Each certified weekly payroll report must include the most recent SDDOT Statement of Compliance Form. The Department will not accept any payroll report which does not include the most recent SDDOT Statement of Compliance Form.

* * * * *

Wage and Hour Division
U.S. Department of Labor (DOL)
200 Constitution Avenue, N.W.
Washington, DC 20210

Davis-Bacon Act Wage Decisions
State: South Dakota
Construction Types: Heavy and Highway
Counties: South Dakota Statewide

Agency: U.S. DOL
Wage Decision Number: **SD150001 SD1**
Counties: SD Statewide
Wage Decision Date: **10/09/2015**

***SUSD2015-001 08-13-2015**

	Rates	Fringes
LABORERS		
GROUP GL1		
Air Tool Operator; Common Laborer; Landscape Worker; Flagger; Pilot Car Driver; Trucks under 26,000 GVW; Blue-top Checker; Materials Checker	15.74	0.00
GROUP GL2		
Mechanic Tender (Helper); Pipe Layer (except culvert); Form Builder Tender; Special Surface Finish Applicator; Striping	17.51	0.00
GROUP GL3		
Asphalt Plant Tender; Pile Driver Leadsman; Form Setter; Oiler/Greaser	18.95	0.00
GROUP GL5		
Carpenter; Form Builder	22.77	0.00
GROUP GL6		
Concrete Finisher; Painter; Grade Checker	21.41	0.00
POWER EQUIPMENT OPERATORS		
GROUP G01		
Concrete Paving Cure Machine; Concrete Paving Joint Sealer; Conveyor; Tractor (farm type with attachments); Self Propelled Broom; Concrete Routing Machine; Paver Feeder; Pugmill; Skid Steer	16.85	0.00
GROUP G02		
Bull Dozer 80 HP or less; Front End Loader 1.25 CY or less; Self Propelled Roller (except Hot Mix); Sheepsfoot/50Ton Pneumatic Roller; Pneumatic Tired Tractor or Crawler (includes Water Wagon and Power Spray units); Wagon Drill; Air Trac; Truck Type Auger; Concrete Paving Saw	18.13	0.00
GROUP G03		
Asphalt Distributor; Bull Dozer over 80 HP; Concrete Paving Finishing Machine; Backhoes/ Excavators 20 tons or less; Crusher (may include internal screening plant); Front End Loader over 1.25 CY; Rough Motor Grader; Self Propelled Hot Mix Roller; Push Tractor; Euclid or Dumpster; Material Spreader; Rumble Strip Machine	19.89	0.00
GROUP G04		
Asphalt Paving Machine Screed; Asphalt Paving Machine; Cranes/Derricks/Draglines/Pile Drivers/Shovels 30 to 50 tons; Backhoes/Excavators 21 to 40 tons; Maintenance Mechanic; Scrapers; Concrete Pump Truck	20.30	0.00
GROUP G05		
Asphalt Plant; Concrete Batch Plant; Backhoes/Excavators over 40 Tons; Cranes/ Derricks/Draglines/Pile Drivers/Shovels over 50 tons; Heavy Duty Mechanic; Finish Motor Grader; Automatic Fine Grader; Milling Machine; Bridge Welder	22.75	0.00
TRUCK DRIVERS		
GROUP GT1		
Tandem Truck without trailer or pup; Single Axle Truck over 26,000 GVW with Trailer	16.57	0.00
GROUP GT2		
Semi-Tractor and Trailer; Tandem Truck with Pup	18.82	0.00
ELECTRICIANS		
GROUP E01		
Electrician	22.79	0.00

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

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award, pursuant to 29 CFR 5.5(a)(1)(ii); contractors are responsible for requesting SDDOT to secure necessary additional work classifications and rates.

*Classifications listed under an "SU" identifier were derived from survey data and the published rate is the weighted average rate of all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates.

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

A COPY OF THIS DOCUMENT, COLORED TURQUOISE, MUST BE CONSPICUOUSLY POSTED AT THE PROJECT SITE

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

Davis-Bacon Act Wage Decisions
State: South Dakota
Construction Types: Heavy and Highway
Counties: South Dakota Statewide

==========

In the listing above, the "SU" identifier indicates the rates were derived from survey data. As these weighted average rates include all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of the survey on which these classifications and rates are based. The next number, 007 in this example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates.

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

For SDDOT Defined Work Classifications, please visit: http://www.sddot.com/business/contractors/labor/wcwr/Default.aspx

---

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

==========

END OF GENERAL DECISION

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
PRICE SCHEDULE FOR MISCELLANEOUS ITEMS

AUGUST 3, 2015

The following unit bid prices have been established by the South Dakota Department of Transportation Commission.

These prices will be pre-entered in the bidding package for each project or will establish a standard price to be used whenever no project contract unit price exists for that item.

Each unit price listed is considered full compensation for the cost of labor, material, and equipment to provide the item of work and/or material, complete in place, including (but not limited to) royalty, waste of unsuitable materials, equipment rental, overhead, profit, and incidentals.

Items specified in this document may be paid for on progressive estimates without the benefit of a prior approved Construction Change Order.

Specification Section Number	Specification Section Name	Item Name	Price per Item
5.8	Construction Stakes, Lines and Grades	Three-Man Survey Crew	$160.00/hour
7.7	Public Convenience and Safety	Water	$15.00/M.Gal
9.3	Payment for extra haul of Materials	Extra Haul	$0.15/ton mile
120.5 A.5.	Roadway and Drainage Exc. & Emb.	Unclassified Excavation Digouts	$8.00/cu.yd.
120.5 H.	Roadway and Drainage Exc. & Emb.	Extra Haul	$0.05/cu.yd. station
120.5 I.	Roadway and Drainage Exc. & Emb.	Water for Embankment	$15.00/M.Gal
421.5	Undercutting Pipe & Plate Pipe	Undercutting Culverts	$12.00/cu.yd.
510.5 D.	Timber, Prestressed, and Steel Piles	Timber Pile Splice	$550.00/each

		Steel Pile Splices (*All Weights)	Splice made after one of the pieces has been driven.
		8 HP*	$220.00/each
		10 HP*	$300.00/each
		12 HP*	$360.00/each
		14 HP*	$420.00/each
			Splice made before either of the pieces has been driven.
		8 HP*	$105.00/each
		10 HP*	$125.00/each
		12 HP*	$140.00/each
		14 HP*	$160.00/each
510.5 E	Timber, Prestressed, and Steel Piles	Pile Shoes (Timber Pile)	$110.00/each
510.5.H	Timber, Prestressed, and Steel Piles	Pile Tip Reinforcement (Steel Pile)	
		10” HP Tip Reinforced	$120.00/each
		12” HP Tip Reinforced	$140.00/each
		14” HP Tip Reinforced	$170.00/each
601.5	Haul Roads	Granular Material	$12.00/ton
601.5	Haul Roads	Asphalt Concrete (including asphalt)	$80.00/ton
601.5	Haul Roads	Cover Aggregate	$25.00/ton
601.5	Haul Roads	Asphalt for Prime	$700.00/ton
601.5	Haul Roads	Asphalt (Tack, Flush & Surface Treatment)	$450.00/ton
601.5	Haul Roads	Water	$15.00/M.Gal
601.5	Haul Roads	Dust Control Chlorides	$0.35/lb
634.5	Temporary Traffic Control	Flagging	$23.55/hour
634.5	Temporary Traffic Control	Pilot Car	$39.62/hour

* * * * *

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
REGARDING
STORM WATER DISCHARGES
TO WATERS OF THE STATE

MAY 3, 2013

In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD) Chapters 74:52:01 through 74:52:11, the State of South Dakota has been issued Permit No. SDR10#### "GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES". This permit authorizes the discharge of storm water in accordance with the conditions and requirements set forth in the permit.

The Contractor, by signing the CONTRACTOR CERTIFICATION FORM and submitting a bid or proposal, certifies the following:

> "I certify under penalty of law that I understand and will comply with the terms and conditions of the Surface Water Discharge General Permit for Storm Water Discharges Associated with Construction Activities for the project identified above."

A copy of the full version of the General Permit for Storm Water Discharges Associated with Construction Activities, dated 02/01/2010 must be posted on the job site. The General Permit for Storm Water Discharges Associated with Construction Activities is available for downloading and printing from the SD DENR website:

http://denr.sd.gov/des/sw/IPermits/ConstructionGeneralPermit2010.pdf

The Contractor may also obtain a printed copy of the permit from the SDDOT Project Development office or from the SDDOT Area Office assigned to this project.

* * * * *