

**STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION
BID PACKAGE**

Sealed bids for construction of this project will be received by the Montana Department of Transportation, Construction Contracting Section, Room 101, 2701 Prospect, Helena, Montana until 9:00 a.m. on October 8, 2026. All bids will then be publicly opened, reviewed for correctness, and then publicly read.

Federal Aid Project(s):

STPP 25-2(9)47

Wolf Point – South

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

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

MONTANA DEPARTMENT OF TRANSPORTATION

Loran Frazier, Chairperson
Montana Transportation Commission

Christopher Dorrington
Director of Transportation

Contract No.04R26
KH:ST:10673000ADV

SPECIAL PROVISIONS

CONTRACT NO. 04R26

MONTANA DEPARTMENT OF TRANSPORTATION
SCHEDULE OF ITEMS

CONTRACT ID: 04R26

PROJECT: STPP 25-2(9)47 10673009000 WOLF POINT - SOUTH

SECTION: 0001 - SCRUB SEAL

PROP LINE NO.	ITEM NUMBER	ITEM DESCRIPTION	UNIT OF MEASURE	QUANTITY
0010	104030010	MISCELLANEOUS WORK	UNIT	15,000.00
0020	108000010	STRUCTURE ANALYSIS	LS	1.00
0030	109200005	MOBILIZATION	LS	1.00
0040	208010000	BMP ADMINISTRATION-LS	LS	1.00
0050	208010200	TEMPORARY EROSION CONTROL-FIXED	UNIT	500.00
0060	402020377	SCRUB SEAL EMULSION	TON	196.10
0070	409000000	FINAL SWEEP AND BROOM	CRMI	4.90
0080	409000010	COVER-TYPE 1	SQYD	110,309.00
0090	411011130	CENTERLINE RUMBLE STRIPS-TYPE 3	MILE	4.90
0100	411011135	RUMBLE STRIPS	MILE	9.90
0110	618030015	TRAFFIC CONTROL-FIXED	UNIT	500.00
0120	618030080	TRAFFIC CONTROL-LS	LS	1.00
0130	620011105	WORDS AND SYMBOLS-WHITE PAINT	GAL	2.00
0140	620011260	WORDS AND SYMBOLS-WHITE EPOXY	GAL	3.00
0150	620013000	STRIPING-WHITE PAINT	GAL	182.00
0160	620013960	STRIPING-WHITE EPOXY	GAL	242.00
0170	620014000	STRIPING-YELLOW PAINT	GAL	30.00
0180	620014960	STRIPING-YELLOW EPOXY	GAL	40.00

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SECTION II

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SECTION III

Standard Provisions & Requirements

SPECIAL PROVISIONS
FEDERAL AID PROJECT NO(S). STPP 25-2(9)47
 (REVISED 6-25-26)

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

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

- “Question and Answer Forum”: [Question and Answer Forum](#)
- “Standard Specifications for Road and Bridge construction”:

[Standard Specifications June 2026](#)

- The most recent version of the Detailed Drawings: [Detailed Drawings](#)
- Materials Manual of Test Procedures: [Materials Manual June 25, 2026](#)

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

The Question-and-Answer Forum opens at 5:00 p.m. on the bid letting advertisement date and closes at 8:00 a.m. on the Monday before the bid letting. If Monday is a state holiday, the forum will close on Friday before the bid letting at 3:00 p.m. Answers provided by the Department to the questions, clarifications, and notifications can be posted up to 5:00 p.m. on the day before the letting.

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

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

1. PROJECT DESCRIPTION [102]

The Wolf Point - South project in Roosevelt County on MT 25 begins at the intersection with MT 13 at RP 47.1 and continues to the west of 4th Avenue SE ending at RP 52.1. The project will consist of a seal and cover (chip seal) of the existing asphalt surfacing and new pavement markings.

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

This contract is a completion date contract. The work begins on the effective date stated in the Notice to Proceed (NTP) and all work is to be completed no later than October 1, 2027. Unusually severe weather is not considered as a delay cause. The NTP will be issued with an effective date of December 7, 2026.

3. CONTRACT DOCUMENTS [102] (REVISED 1-15-26)

The following documents are now available within the Contractors Reference Material on the Department's Contracting and Bidding webpage

<https://www.mdt.mt.gov/business/contracting/> :

- 1) [Table of Contractor's Submittals](#). (Revised 1-15-26)
- 2) [Traffic Control Rate Schedule](#) (Revised 3-9-23)
- 3) [Erosion Control Rates](#) (Revised 1-09-25)

4. LABOR AND CIVIL RIGHTS REQUIREMENTS [102] (REVISED 1-15-26)

Executive Orders 13658 and 13706 do not apply to this contract. Pay the minimum wage rates contained elsewhere in the bid package and comply with the required contract provisions contained in the form FHWA 1273 included with this contract. To obtain more information, contact the Department's Construction Engineering Services Bureau at 2701 Prospect, Helena, MT (406)475-2258, (800)335-7592 (TTY) or (406)444-7297 (Fax).

Ensure bulletin board requirements contained in the FHWA Form 1273 are met. Please see the following webpage for required bulletin board materials:

[Bulletin Board Materials & Requirements](#)

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

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

6. DOMESTIC MATERIALS REQUIREMENTS [106] (REVISED 11-13-25)

A. Steel and Iron Materials. Furnish iron and steel materials in accordance with subsection 106.09. A manufactured product consisting primarily of steel and iron as defined in 23 CFR 635.410 is accepted under subsection 106.09.

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

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

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

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

- a) Non-ferrous metals: Initial smelting or melting through final shaping, coating, and assembly.
- b) Plastics: Initial combination of plastic, polymer based, or composite materials until item is in its final form.
- c) Glass: Initial batching and melting, annealing, cooling, and cutting.
- d) Fiber Optic Cable: Initial ribboning, buffering, and fiber stranding and jacketing.
- e) Optical Fiber: Initial preform fabrication through completion of draw.
- f) Lumber: Initial debarking, treatment, and planing.
- g) Drywall: Initial blending of gypsum, cutting, and drying of sandwiched panels.
- h) Engineered Wood: Initial combination of constituents until item is in its final form.

C. Manufactured Products. Furnish manufactured products as defined in 2 CFR 184.3 that meet the requirements of 23 CFR 635.410. Beginning with the letting of November 13, 2025, the final fabrication of all manufactured products must occur in the United States. Beginning with the November 12, 2026 bid letting, the product must be manufactured in the United States and the cost of the components of the manufactured product that are mined, produced or manufactured in the United States must be greater than 55% of the total cost of all components of the manufactured product.

With respect to precast concrete products that are classified as manufactured products, ensure the components of precast concrete products that consist wholly or predominantly of iron or steel or a combination of both meet the requirements of subsection 106.09.

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

Refer to the decision tree in Section 3.5 of MT 601 to aid in appropriately categorizing specific materials.

Submit Form MDT-MAT-407 "Manufacturer's Certificate of Compliance" for every material identified as a construction material or manufactured product. Do not incorporate materials covered by Form MDT-MAT-407 into the project until all required documentation is submitted to the Department. Ensure suppliers and manufacturers understand the domestic material and contract requirements to supply the required materials and associated documentation.

The Department will not accept items installed until all supporting documentation has been reviewed and is found to be in accordance with the contract requirements. Insufficient or unavailable documentation or documentation showing products containing construction materials of foreign origin are grounds for removal and replacement at the contractor's expense. The Department has designated contract materials as either "construction materials" or "manufactured products" by their respective 9-digit material codes in section MT 601 of the Montana Materials Manual. The Department recognizes there will be situations where a product or material may not fit the designation indicated in section MT 601. In these cases, submit documentation demonstrating or justifying the supplier or manufacturer's position that their specific item has been misclassified to the Project Manager at least 10 business days in advance of installation. The Department, in conjunction with FHWA, will review the submitted documentation and decide as to how that specific product or material will be classified. These determinations will be final, and the appropriate documentation as defined above is required.

The Department further recognizes there will be situations when a product or material may not be addressed in MT 601. In these cases, submit certification of the material's domestic origin appropriate for the material classification to the Project Manager prior to installation.

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

The above waiver does not apply to iron and steel, the existing de minimis standard for iron and steel under subsection 106.09 continues to apply.

A project with a total contract value of \$500,000 or less is exempt from all domestic preference regulations including steel and iron.

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

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

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

- 2) Inquire with the designated Tribal official and become familiar with the Tribal requirements, written or not, for work on the Reservation, and submit bid with full knowledge, understanding and acceptance of them. Understand and accept that:
 - a) the Tribal laws, ordinances, regulations, and requirements have been established by the Tribe as a sovereign entity on the Reservation.
 - b) The Department has no authority or ability to affect those requirements, and
 - c) Neither the Tribal government nor any Tribal official or employee is acting in any way as an agent of the Department or the Transportation Commission. The Department and Commission have no control over the actions, inaction, requirements or comments of any Tribal government or employee, and are not bound by them.
- 3) If Tribal requirements will in any way increase the costs of performing the project, consider those and include all increased costs in bid prices.
- 4) Ensure that all proposed subcontractors are also fully aware of the Tribal requirements and accepted them when they gave quotes.
- 5) Understand and agree that employees, and all subcontractors and their employees, are responsible to the Tribe to adhere to and abide by all Tribal laws, ordinances and regulations on work performed on the Reservation, specifically including all Indian hiring and contract fee requirements.
- 6) Dealings with the Tribe and its requirements, other than those related to the Clean Water Act, aquatic resources permitting, and/or cultural resources, are solely between the Contractor and the Tribe, and must be addressed in the appropriate forum between them alone.
- 7) By submitting a bid, agree to defend, protect, indemnify, and save harmless the Department and State from any cost or delay caused or allegedly caused by or due to the failure of bidder or any subcontractor to fully comply with Tribal law, ordinance or regulation, or by claimed interference by the Tribe. Claims from such failure or claimed interference will not be considered extra work or compensable delay, but actual, documented and verified interference by Tribal government may be grounds for a contract time extension. Understand that any requests must fully comply with the Contract's claims procedure.
- 8) By submitting a bid, do so with full understanding and acceptance of all provisions of the Bid Package.
- 9) For bidder inquiries to the Tribe, or for more information about Tribal requirements other than those related to the Clean Water Act, aquatic resources permitting, and/or cultural resources, it is required to contact the Tribe directly. The point of contact designated by the Tribe for bidders to contact is the liaison listed in the attached Memorandum of Understanding, the main tribal phone number is: (406)768-2300
- 10) If a Pre-Bid Conference for the project is provided for in the Contract, a designated, authorized agent of the Bidder attends the Conference.

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

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

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

- A. Description: Requirements associated with the operation of equipment on structures.
- B. Definition. The following definition applies to this special provision:
 - 1) Equipment. Any vehicle or machine weighing more than 5000 pounds.

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

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

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

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

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

a) Equipment weight exceeds 25 tons.

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

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

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

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

f) Equipment outriggers will be used.

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

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

(1) Load Cases.

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Construction Requirements.

1) NPDES Permit Required.

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

Environmental Services Bureau
Attention: Environmental Services Bureau Chief
Montana Department of Transportation
2701 Prospect Ave
PO Box 201001

Helena, MT 59620-1001

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

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

After execution of the SWPPP, submit a certified NOI to EPA at least 14 calendar days prior to commencing earth-disturbing activities and any applicable tribal authorities as specified in the general permit. Submit electronic NOI to EPA through EPA's Electronic NPDES eReporting Tool (NeT) Home Page at: <https://www.epa.gov/npdes/submitting-notice-intent-noi-notice-termination-not-or-low-erosivity-waiver-lew-under>.

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

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

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

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

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

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

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

Complete and document all inspections in accordance with the requirements of the General Permit. Use the Department's most current inspection form or other form that conforms to the requirements of the permit. Provide a copy of all inspection reports to the Project Manager within 7 calendar days of the inspection.

Report potential noncompliance in accordance with applicable regulations, guidance, and permit conditions. Submit to the Project Manager within 7 calendar days of sending or

receiving all correspondence to or from regulatory agencies regarding potential noncompliance or violations.

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

2) NPDES Permit not Required.

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

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

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

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

For project including the BMP-Administration item, include the cost of all erosion control, devices, and inspections in the BMP-Administration bid item. Partial payment for the BMP-Administration will be monthly based on the lump sum contract price in accordance with Table 208-2 in Subsection 208.05.1.

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

12. PUGMILL MIXING [301] (ADDED 1-1-03)

Pugmill mixing of surfacing aggregates called for in Subsection 301.03.5 B is not required for this contract.

13. GREATER SAGE-GROUSE CONSERVATION

A. Description. Greater Sage-Grouse is a species of concern under state management action. On September 8, 2015, Governor Bullock signed Executive Order (E.O.) No. 12-2015 creating the Montana Sage-Grouse Oversight Team and the Montana Sage-Grouse Habitat Conservation Program (MSGHCP), and established guidelines and stipulations for activities in designated general and core Sage-Grouse habitat and connectivity areas.

1) This Project, from M.P. 51.8 to M.P. 52.1 (0.30 mi.), is located within General Sage Grouse habitat as determined by the MSGHCP.

B. Requirements.

1) MDT did not have to consult with the MSGHCP over this Project because it will not require any state permits issued to MDT.

2) This Project's Contractor must consult with the MSGHCP (<https://sagegrouse.mt.gov/>) on all contractor responsible activities that will require a state

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permit, in the designated general Sage-Grouse habitat between M.P. 50.75 and M.P. 58.9, such as a SWPP permit from the Montana Department of Environmental Quality before siting or operating any new borrow pit, crushing or plant location, equipment staging area, man camps, or any other activities located outside the permanent construction limits.

3) Seed any disturbed areas with desirable plant species as soon as practicable after construction to reduce the spread and establishment of noxious weeds and to re-establish permanent vegetation.

4) Weed management is required within designated habitats for Sage-Grouse. Reclamation of disturbed areas must include control of noxious weeds and invasive plant species, including cheatgrass (*Bromus tectorum*) and Japanese brome (*Bromus japonicus*).

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

14. SCRUB SEAL (REVISED 6/22/2020)

A. Description. The work is conducting scrub seal-seal and cover operations using a Polymer Modified Rejuvenating Emulsion (PMRE).

B. Materials.

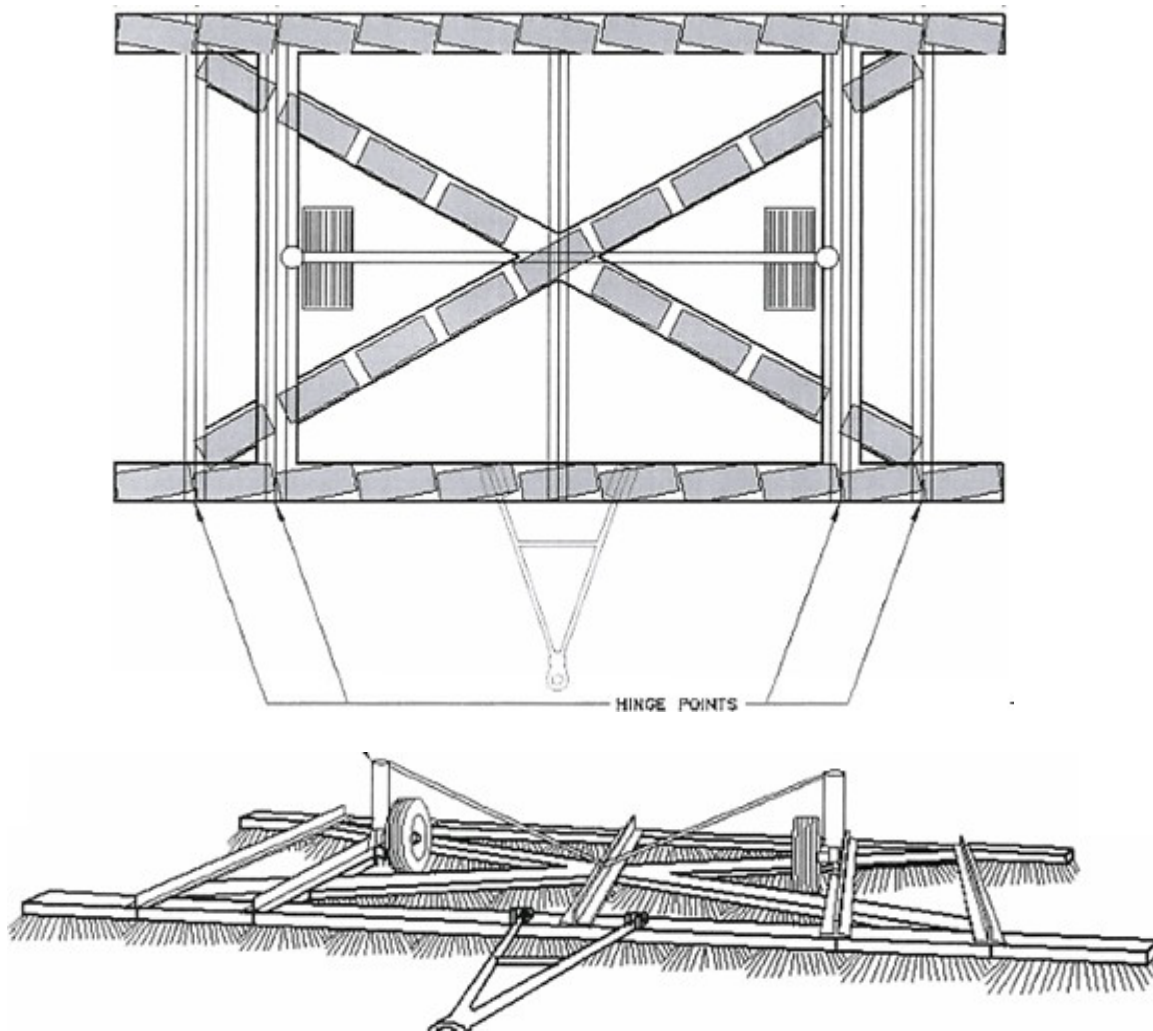
1) Furnish cover aggregate in accordance with Subsection 701.02.8.

2) Furnish PMRE for the seal coat emulsion that includes both polymer modification and a rejuvenator. Ensure the polymer and rejuvenator work as a system to provide rejuvenating effects when applied to aged pavements. Submit a manufacturer's certification that meets the following specifications:

	Method	Specification
Test on Emulsion		
Viscosity @ 50 °C (SFS)	AASHTO T 59	50-400
Residue, % by wt., min.	AASHTO T 59	65
Ph	ASTM E70	2.0-5.0
Sieve, % by wt., max.	AASHTO T 59	0.1
Oil distillate, % by wt., max.	AASHTO T 59	0.5
Test on Residue by Evaporation		
Penetration @ 4 °C, dmm	AASHTO T 49	20-70
Elastic Recovery @ 25 °C, %, min.	AASHTO T 301	65
Toughness, @ 25 °C, in-lbs	ASTM 5801	75
Tenacity, @ 25 °C, in-lbs	ASTM 5801	50
Ductility @ 4 °C, %, min.	AASHTO T 301	30
Test on Rejuvenating Agent		
Viscosity, 60 °C, CST	ASTM D2170	50-175
Flash Point, °F, COC, min.	ASTM D92	380
Saturate, % by wt., max.	ASTM D2007	30
Asphaltenes, %, max.	ASTM D2007	1.0
Tests on Rejuvenating Agent RTFO Residue		
Weight Change, %, max	ASTM D2872	4.0
Viscosity Ratio, max.	ASTM D2170	3

C. Construction.

- 1) Clean cracks out to a minimum depth of $\frac{1}{2}$ inch prior to the scrub seal application. Contractor can use whichever means to accomplish this activity, such as, blowing out with a compressor and nozzle wand.
- 2) Complete seal and cover operations in accordance with Section 409 with the following exception. Following application of the emulsion, use a scrub broom to force the emulsion into the existing surface.
- 3) Furnish a scrub broom to be pulled by the distributor truck.
 - a) Furnish a broom that has means to mechanically raise and lower the broom off the roadway surface, keeping the wheels out of the emulsion when the broom is in use.
 - b) Ensure the broom does not squeegee the emulsion from the roadway surface
 - c) Furnish a broom that can extend to width sprayed in a single pass by the distributor and is appropriately hinged to complete the scrubbing process evenly as the contours and cross section of the roadway vary.
 - d) Mount street brooms on the nearest and farthest members of the broom, parallel to the back of the distributor truck, and diagonal members in both directions.
 - e) Mount the brooms on the leading and trailing members 15° off centerline of member.
 - f) Mount the brooms on the diagonal members parallel with the member. Furnish individual brooms that are $3\frac{1}{2}$ inches wide by 16 inches long. Ensure each broom is equipped with at least 5-inch-long stiff bristles. An informational diagram of the described broom is shown below:



SPECIAL PROVISIONS

CONTRACT NO. 04R26

D. Method of Measurement and Basis of Payment.

1) Cover Aggregate. Cover aggregate will be measured and paid for in accordance with Section 409.

2) Polymer Modified Rejuvenating Emulsion will be measured and paid for in accordance with Subsection 402.04 and 402.05.

3) No separate measurement or payment will be made for the furnishing and use of the scrub broom. Include the cost of scrubbing the emulsion in the cost of the emulsion.

END OF SECTION I

**MDT NONDISCRIMINATION AND
DISABILITY ACCOMMODATION NOTICE**

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

Federal protected classes

Race, color, religion, national origin, sex, age, disability, and genetic information.

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

- (1) Compliance with Regulations:** The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- (2) Non-discrimination:**
 - a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
 - b. The PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. A statement that the PARTY does not discriminate on the grounds of any protected classes.
 - ii. A statement that the PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for the PARTY’s representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
 - iv. Information on how to request information in alternative accessible formats.
- (3) Participation by Disadvantaged Business Enterprises (DBEs):**
 - a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY must comply with applicable federal and state laws regarding the DBEs, including but not limited to 49 CFR Part 26.

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

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

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

- (4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States related to Non-Discrimination.
- (5) Information and Reports:** The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- (6) Sanctions for Noncompliance:** In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:
- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
 - b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.
- (7) Pertinent Non-discrimination Authorities:** During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601 *et seq.*), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Sections 162 and 301(g) of the Federal-Aid Highway Act of 1973, (Public Law No. 93-87, 87 Stat. 250, codified at 23 U.S.C. § 324), (prohibits discrimination on the basis of sex);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Section 520 of the Airport and Airways Improvement Act of 1982, (49 U.S.C. § 47123), (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (Public Law No. 100-259), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, (42 U.S.C. §§ 12131 through 12189), which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities , as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

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

MEMORANDUM OF UNDERSTANDING

between the

ASSINIBOINE AND SIOUX TRIBES
OF THE FORT PECK INDIAN RESERVATION

and the

MONTANA DEPARTMENT OF TRANSPORTATION

This Agreement, entered into by and between the State of Montana, through its Montana Department of Transportation ("MDT") and the Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation, a federally-recognized Indian tribe ("Tribes"), (referred to collectively as the "Parties") is intended to maintain the now well-established cooperation between the Parties with regard to all of MDT's construction and contracted maintenance projects ("Projects") that will be located on the Fort Peck Indian Reservation ("Reservation").

Whereas, the Tribes and MDT recognize the importance of bridge and highway construction and maintenance for the safety of the people and traveling public and for the economic health, employment, and commercial benefit of the Tribes, State and region;

Whereas, MDT recognizes and agrees to honor the unique culture of the Tribes;

Whereas, MDT will recognize the laws of the Tribes to the extent such recognition is not in conflict with Federal or State law. If there are conflicts in the law(s), the Parties shall use their best efforts to identify with specificity the conflicts and work together in resolving the conflicts;

Whereas, the Tribes and the MDT pledge their mutual resolution and positive cooperation for all projects on the Reservation; the Parties agree to the following terms:

I. Construction and Contracted Maintenance Projects.

A. The Tribes will be invited to attend and participate in all planning activities for all Construction Projects on the Reservation.

B. Contracted Pre-Construction Engineering Activity. MDT regularly utilizes consultant term contracts for some preliminary engineering activities on Projects. The following is a list of examples of the general types of activities considered by MDT as a "preliminary engineering activity," though it is not intended to be all encompassing: collection of survey data, geotechnical subsurface investigation (e.g., core drilling samples), environmental resources investigations (e.g., wetland/stream delineations, archeological investigation, historic properties investigation), traffic data collection, subsurface utility engineering (S.U.E.) survey, right-of-way negotiations. In some circumstances, it is necessary for MDT to engage these contractors in a time sensitive manner in order to complete projects. Once MDT is aware of a pre-construction activity using a standard term contract, it will notify the Tribal Chairman in writing of its intent to contract for completion of the activity. This notification will contain a description of the activity, and an estimate of contract cost for the portion that will take place within the boundaries of the Fort Peck Reservation,

1. No PSA will be required for term pre-construction engineering activities.

2. The remaining obligations under this MOU will still be applicable to pre-construction engineering activities, including registering with TERO for a Business License Fee and acquiring any necessary work permits as required by this MOU.

C. Project Specific Agreements. Project Specific Agreements (“PSAs”) will be negotiated and entered into by the Parties to cover the specifics of every individual MDT construction or contracted maintenance Project on the Reservation, provided, that nothing contained in a PSA shall conflict or be inconsistent with this MOU. There will be no PSAs or Tribal requirements on maintenance performed by MDT’s Maintenance Division. MDT Maintenance Division will still notify the Tribal Chairman of any and all maintenance projects occurring on the Reservation prior to execution of the maintenance project.

D. Pre-Bid Conference. Unless mutually waived beforehand in writing, a Pre-Bid Conference will be held on the Reservation for each Project. The Tribes agree to send a representative(s) to the Pre-Bid Conference, which shall include the Tribes’ Transportation Planner or their designated representative, the Tribes’ Cultural Preservation Officer (Tribal Historic Preservation Officer for purposes under 36 CFR Part 800) or their designated representative, and the Tribes’ TERO Director or their designated representative.

The Tribes’ TERO Director or their designated representative will inform, in writing, MDT and its contractor(s) in attendance at the Pre-Bid Conference of terms, conditions, requirements, or other ordinances affecting MDT, its contractor(s), and/or the construction at, and no later than, the Pre-Bid Conference.

E. Pre-Construction Conference. The Tribes will be invited to attend and participate in the Pre-Construction conferences for all Projects on the Reservation.

F. Tribal Gravel. MDT will encourage the use of gravel, borrow, and fill materials for projects covered by this MOU from tribal and/or trust land sources. The specific requirements for use of tribal gravel will be set forth in the applicable PSA(s). The Tribes and MDT will cooperate in identifying gravel sites on the Reservation, particularly those that may have potential for long term use of both Parties.

H. Environmental Damage. In the event that any MDT Project results in impact or damage to physical environmental features, whether intentional or unintentional, within the exterior boundaries of the Reservation, MDT will make every effort to ensure all environmental mitigation will likewise take place within the exterior boundaries of the Reservation and shall be located on trust land(s) when the corresponding impact or damage takes place on trust land(s). MDT pledges to work in cooperation with the Tribes’ Office of Environmental Protection (OEP) on all environmental issues and mitigations. MDT shall copy the Tribes’ TERO Director on all environmental correspondence and documentation related to these Projects.

1. *Wetland Mitigation.* For Projects that will affect a wetland area within the exterior boundaries of the Reservation, MDT will follow the following mitigation sequencing procedure, in order of priority:
 - (1) Avoid the impact altogether;
 - (2) Minimize the impact by limiting the degree or magnitude of the impact;
 - (3) Rectify the impact by repair, rehabilitation, or restoration;

- (4) Reduce or eliminate the impact over time by preservation and maintenance operations during construction; and
- (5) Compensate for the impact by replacing or providing substitute resources or environments, preferably within the same watershed. The following are the acceptable methods:
 - (a) Construction of replacement wetlands;
 - (b) Purchase of wetland credits from a wetland bank or in lieu fee program; and
 - (c) In lieu fee payment directly to the Tribes for their future development of wetland mitigation when the impact is on wetlands that are not under the jurisdiction of the US Army Corps of Engineers.
 - (d) In the event that mitigation cannot be located within the exterior boundaries of the reservation; the parties may agree to mitigation outside the exterior boundaries of the reservation.

MDT agrees that it will strive to achieve "no net loss" of wetlands within the Reservation boundaries as a result of an MDT Project. Mitigation will be on an acre-for-acre basis, unless a functional unit basis is agreed upon by both Parties and/or required by the US Army Corps of Engineers, and will be in the form of new construction, improvement of existing wetlands, preservation of existing wetlands, or agreed to compensation for the wetland impacts. Site locations will be agreed to by both Parties.

MDT will cooperate with the Tribes on the development of a future negotiated agreement that will ensure proper protection, monitoring, management, and maintenance of the wetlands as approved by the US Army Corps of Engineers when the original impacts are within the US Army Corps of Engineer's jurisdiction. MDT will identify and record the ownership of the project site(s) chosen with a legal certificate of survey for MDT records, of which a copy will be provided to the Tribes. Additional specific requirements and/or specifications, will be negotiated and agreed upon by both Parties; and addressed in a separate agreement.

II. Tribal Employment.

Indian preference in employment on all Projects located on the Reservation will be in accordance with the Tribes' TERO Ordinance, 13 C.C.O.J. § 101, *et seq.*, and Federal Civil Rights laws, in effect at the time of execution of that Project's PSA, except as specified herein. All employment for MDT construction and contract maintenance Projects are to be processed through the TERO Office, located in Poplar. When qualified workers are not available, contractors will be allowed to utilize other recruitment sources, as stated in § 403 of the TERO Ordinance.

A. Work Permits. Indian preference in employment will not be enforced upon an MDT contractor's or subcontractor's "core crew." A "core crew" is defined as a regular permanent employee that is either in a supervisory position or another key position such that the employer would risk likely financial damage or loss if the position was filled by a person who had not previously worked for that firm. A "regular permanent employee" is one who was on the

contractor's payroll for the prior construction season, or is presently an owner of the firm, in contrast with a person who is hired on a project-by-project basis. For each "core crew" member, along with any other non-Indian crew members hired, MDT prime and sub-contractors shall acquire a Work Permit.

B. Business License Application and Fee. For on-Reservation Projects covered by this Agreement, all MDT prime and subcontractors shall register with and obtain a Tribal Business License in accordance with existing Tribal law. A TERO Business License Fee of three percent (3%) of the contract amount will be assessed by the Tribes. MDT will collect this Fee for the Tribes by withholding the three percent (3%) from each progress and final payment to its contractors. MDT will then submit payment to the Tribes' TERO Director in the form of a check payable to Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. Except for the Tribes' Tribal Business License and Application Fee and Individual Work Permit Fees, no other Tribal fees, taxes, or permits will be assessed against MDT, its prime contractors, sub-contractors or MDT's contractor employees.

For Projects that are partly on the Reservation, the 3% TERO Business License Fee assessed will be pro-rated, based on a percentage determined from the miles of the project within the Reservation as compared to the Project's total miles. (For example, if a proposed project is 20 miles long, 10 miles of which are on-Reservation, the TERO fee would only be assessed against half of the project's total payments to the contractor.) Such a project's percentage of TERO fees will be stated in the PSA.

C. Indian Employment Preference. The Parties recognize that the Federal Highway Administration has interpreted Title VII of the Civil Rights Act of 1964, as amended, as not permitting an Indian contracting preference in federal highway construction contracting. MDT recognizes that this interpretation has no bearing on the well-settled policy of preferential employment of Indian employees on or near reservations. Therefore, MDT will emphasize Montana's commitment to Indian employment as a means of strengthening tribal communities for these Projects. The Tribes acknowledge that MDT is not subject to TERO prime and subcontractor preferences, if any exist during the term of this MOU.

D. MDT Disadvantaged Business Enterprise (DBE) Program. The MDT Disadvantaged Business Enterprise (DBE) Program encourages and supports the participation of companies owned and controlled by socially and economically disadvantaged individuals in transportation contracts. The TERO Director or designated representative will provide a list of Native-owned firms that may be eligible for the DBE Program. DBE Program staff will help eligible firms obtain DBE Certification. MDT will also collaborate with the TERO Director to identify and provide trainings to businesses on the Reservation that further allow them to participate on transportation contracts. MDT establishes an annual goal for DBE participation and will establish aspirational goals based on certified DBE firms able to perform work for each project on the Reservation.

E. MDT will continue to work with the Tribes to increase the employment opportunities for Native American workers on these Projects.

III. Duration, Termination, and Arbitration.

A. Duration. The MOU is effective upon the execution of the Parties and shall be effective for ten (10) years from the last approval. Any change, addition, or modification affecting this MOU shall only be made in writing with the concurrence of both the Tribes and MDT. The Parties agree

that if any portion of the MOU is declared invalid or is otherwise determined to be unenforceable, the remainder of this MOU will remain in force and effect.

B. Termination. This MOU may be terminated only by mutual agreement or upon just cause, as determined by arbitration procedures outlined in Section III.D. below, except that it will automatically terminate at the end of its ten (10) year Duration.

C. Dispute Resolution. The Parties agree that before a matter may be submitted to arbitration as described in Section III.D. below, the following dispute resolution procedure will be exhausted.

1. If either Party determines that a dispute has arisen with regard to this MOU, that Party will notify the other Party in writing. The Parties shall then schedule a conference, either in person or telephonic, to occur within five (5) business days of receipt of such notification and begin good faith negotiations to resolve the dispute.
2. If after thirty (30) calendar days, beginning with the receipt of notice of a disputed matter, the dispute is not resolved, either Party may request in writing an additional fifteen (15) calendar days of good-faith negotiations. Such request must be received within five (5) business days of the termination of the thirty (30) calendar day period.
3. If after the additional fifteen (15) calendar days, beginning with receipt of the notice described above in subparagraph (2), the dispute is not resolved, either Party may submit the matter to arbitration as described in Section III.D. below.

D. Arbitration. If a disputed matter cannot be settled between the Parties as described in the Section III.C. above, the matter may be submitted by either the Tribes or MDT to arbitration. The arbitration provisions of this MOU will only govern disputes between the Tribes and MDT relating to each Parties' respective rights and obligations under this MOU. In no way shall this arbitration provision be construed to provide a forum for dispute resolution by, against, or concerning any contractor or subcontractors for disputes relating to any MDT contract governed by this MOU.

1. Upon the submission of a matter to arbitration by either Party, the Parties shall appoint an arbitrator to resolve the dispute.
2. If the Parties are unable, within five (5) business days after a dispute has been submitted to arbitration, to agree upon the appointment of a single arbitrator, a panel of three (3) arbitrators shall be appointed within five (5) additional business days as follows:
 - one arbitrator shall be appointed by MDT.
 - one arbitrator shall be appointed by the Tribes, and
 - the third arbitrator shall be selected by agreement of the other two arbitrators.

If the two arbitrators cannot agree upon the third arbitrator within five (5) business days, the third arbitrator shall be chosen by the Dean of the School of Law at the University of Montana.

3. Expenses of an arbitrator or arbitration panel shall be shared equally by MDT and Tribes. The arbitrator(s) may meet in person or, in appropriate circumstances, by

telephone. All decisions of the arbitrator or arbitration panel shall be by majority vote, in writing, and, together with any dissenting opinions, shall be delivered to MDT and to the Tribes.

4. The arbitrator or arbitration panel shall hold hearings to gather evidence needed to resolve the dispute and shall give notice to MDT and the Tribes by registered mail not less than five (5) business days before any hearing. All hearings shall be held at an agreed upon location in Billings, Montana, unless otherwise agreed by the Tribes and MDT. Appearance at a hearing waives such notice.
5. The arbitrator or arbitration panel shall have power to administer oaths to witnesses, to take evidence under oath, and, by majority vote, to issue subpoenas to compel the attendance of employees of MDT or the Tribes or for the production of books, records, documents, and other relevant evidence under the control of MDT or the Tribes.
6. The arbitrator or arbitration panel shall resolve the dispute only upon evidence produced at a hearing. The arbitrator or arbitration panel may determine the controversy notwithstanding the failure of either MDT, or the Tribes duly notified to appear. MDT and the Tribes are each entitled to be heard at a hearing, to present evidence material to the matter in dispute, to cross-examine witnesses appearing at the hearing, and to be represented by counsel at their own expense.
7. The decision of the arbitrator or arbitration panel shall be presumed to be valid and may be vacated only by the United States District Court for the District of Montana on one of the following grounds:
 - a. the decision is not supported by substantial evidence;
 - b. the decision was procured by corruption, fraud, or undue means;
 - c. there was evident partiality or corruption by the arbitrator, arbitration panel, or by any single member of the panel;
 - d. the arbitrator, arbitration panel, or any single member of the panel was guilty of misconduct in refusing to hear evidence pertinent and material to the matter in dispute, or any other clear misbehavior by which the rights of either Party have been substantially prejudiced;
 - e. the arbitrator, arbitration panel, or any single member of the panel exceeded its authority under the terms of this Agreement; or
 - f. the arbitrator or arbitration panel's decision is contrary to law.
8. If the arbitrator or arbitration panel finds that either Party has materially violated any provision of this Agreement, the Party in breach shall take action as directed by the arbitrator or arbitration panel to cure the breach.
9. If the arbitrator or arbitration panel finds that the breach cannot be cured, this MOU shall terminate and the Parties shall have no further obligation to each other with respect to this MOU, except that the arbitrator or arbitration panel may direct the party in breach to take appropriate remedial action.

IV. Sovereign Immunity.

The Tribes hereby agree to a limited waiver of its sovereign immunity only with respect to a claim pursuant to the performance of this MOU for declaratory or injunctive relief. The venue for such an action shall be exclusively the arbitrator or arbitration panel or the United States District Court for the District of Montana as provided in Section III.D., above. In no way shall this limited waiver be construed as consent to an action for money damages nor shall it in any way be construed as consent to the application of state law or the jurisdiction of state courts over the Tribes.

V. Liaisons.

A. MDT Liaison. The Director of MDT or a designated representative will be the Liaison for the MDT. All notices and communications between the Parties with respect to this MOU shall be directed to both the Director and a designated representative, whose name shall be provided to the Tribes.

B. Tribes Liaison. The Tribal Chairman will be the Liaison for the Tribes, and all notices and communications between the Parties with respect to this MOU shall be directed to the Tribal Chairman, with copies to the Tribes' Transportation Planner, Cultural Resources Director, and TERO Director or their designated representatives, whose name shall be provided to MDT.

VI. Negative Declaration.

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

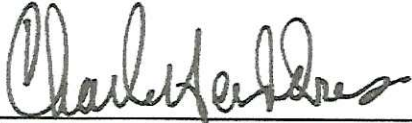
VII. Official Notice.

Official notice as required in this MOU shall be mailed postage prepaid to the following addresses with copies to the Liaison for the parties.

Floyd Azure, Tribal Chairman
Assiniboine & Sioux Tribes of the
Fort Peck Indian Reservation
P.O. Box 1027
Poplar, Montana 59255-1027

Malcolm Long, Director
Montana Department of Transportation
P. O. Box 201001
Helena, Montana 59620-1001

VIII. Signatures.



Floyd Azure, Tribal Chairman
Assiniboine and Sioux Tribes of the
Fort Peck Indian Reservation

Date: August 26, 2021



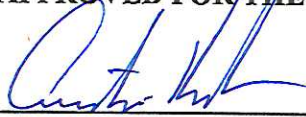
Malcolm Long, Director
Montana Department of Transportation

Date: 8-30, 2021

Approved for Legal Content by MDT:



APPROVED FOR THE STATE OF MONTANA:



Austin Knudsen, Attorney General
State of Montana

Date: September 20, 2021

**Project Specific Agreement
between the
Fort Peck Assiniboine and Sioux Tribes
and the
Montana Department of Transportation**

Project: STPP 25-2(9)47

Name: Wolf Point – South

Uniform Project No. 10673000

Type: Scrub Seal

Letting: Fall 2026

This Project Specific Agreement (PSA) is entered into as specified in the Memorandum of Understanding (MOU) of September 20, 2021 between the Fort Peck Assiniboine and Sioux Tribes (Tribes) and the Montana Department of Transportation (MDT).

The purpose of the PSA is to describe the cooperative efforts the parties will perform and have agreed to in conjunction with this project. Nothing contained in this PSA shall be inconsistent or in conflict with the MOU. If anything herein is inconsistent, the MOU shall control. In accordance with the MOU, the Tribes will assess the contractor a Tribal TERO fee of 3% of the contract amount(s) for that portion of the project wholly within the reservation boundaries. MDT will collect this fee for the Tribes by withholding 3% from each progress, semi-final and final payment to the contractor and paying that amount to the Tribes. In the event this project is not awarded as scheduled, this PSA will remain in full effect until such time as the project is awarded unless changes occur to the project's scope of work that would impact this PSA. Should that occur, this PSA is null and void and a new PSA will be drafted.

1. Specified Issues

A. This project is a pavement preservation scrub seal on MT 25 (P-25) from RP 47.1 to RP 52.1 near Wolf Point. As the project is not major in scope of work, a Pre-bid Conference is waived for the project. A preconstruction conference will be held before commencement of work on the project. The Tribes will be invited to attend and participate in the preconstruction conference. For purposes of this PSA, the entire project is located within the reservation boundaries. Immediately following the preconstruction conference the contractor will be required to meet with the Fort Peck Tribe TERO to discuss cultural awareness issues and other issues related to working within the boundaries of the Reservation. This conference will include the following contractor representatives: management, project

superintendent/foremen, and other key personnel. Principal MDT project personnel will also attend.

B. MDT will assist in prospecting Tribal-owned gravel sources meeting MDT specifications located within a reasonable distance of the project (reasonable distance is defined as twenty (20) miles in one direction from the project limits). This is no guarantee that suitable sources will be located for a bidder; bidders are still required to locate and secure suitable sources. MDT will provide the location of any discovered Tribal-owned gravel source to the contractor and encourage the contractor to use a Tribal-owned prospected source.

1. The contractor will be responsible for securing of all right-of-way and/or easements needed to go to and from the material source.
2. The contractor will be responsible for payment of all gravel royalties to the Tribe, on material secured from a Tribal-owned material source.
3. The contractor will be responsible for the construction of all access roads to the materials source via the nearest acceptable route.

C. MDT agrees that the reclamation of gravel and other materials sources will be consistent with Tribal, Federal and State Laws and regulations. Actual reclamation work and costs will be the responsibility of the contractor.

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

To accomplish these objectives, the contractor will adopt the following practices:

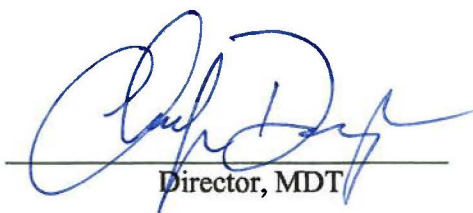
- (1) Seed right-of-way or portions thereof devoid of competing vegetation as soon as practical pursuant to the seeding provisions of Project design and specifications. All seed used for this purpose must be certified noxious weed seed free, and records of sources, lots, or batches, and evidence of certification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

2. Training

As the project is short in duration, it is agreed that there will be no formal training program developed for this laborer.


Tribal Chairman

Date: 3/21/, 2026


Director, MDT

Date: March 31, 2026

Approved for legal content:


Legal Division, MDT

STANDARD PROVISIONS INDEX

<u>FEDERAL AID PROJECTS</u>	<u>CONTAINS</u>
Federal Wage Rates (Rev. 6-04-2026)	8 Pages
Requirements & Acknowledgement for Working on Railroad R/W	1 Page
Required Contract Provisions Federal-Aid Const. Contracts (FORM FHWA-1273) [Rev.06-25-2026]	12 Pages
Supplemental Revisions for Required Contract Provisions Federal-Aid Const. Contracts (FORM FHWA-1273) [Added 2-4-2016]	1 Page
EEO Affirmative Action Req. on Federal-Aid Construction	1 Page

General Decision Number: MT 20260080 06042026

State: Montana

Construction Type: Highway

Counties: Montana Statewide.

HIGHWAY CONSTRUCTION PROJECTS

Modification Number Publication Date

1	01/30/2026
2	05/18/2026
3	06/04/2026

SAMT2025-001 01/11/2025

	Rates	Fringes
CARPENTER		
Carpenter.....	\$ 43.78	17.07
Millwright.....	\$ 49.79	20.79
CEMENT MASON/CONCRETE FINISHER...\$ 44.98 20.50		
DIVER		
Diver Tender.....	\$ 59.66	20.22
Diving.....	\$ 121.53	20.22
Standy-By.....	\$ 60.76	20.22

The Tender shall receive 2 hours at the straight time pay rate per shift for dressing and/or undressing when work is done under hyperbaric conditions.

Depth Pay (Surface Diving):

0-20 ft.: Free zone

>20-100 ft.: \$2.00 per ft.

>100-150 ft.: \$3.00 per ft.

>150-220 ft.: \$4.00 per ft.

>220 ft.: \$5.00 per ft.

Diving in Enclosures (Diver Only):

0-25 ft.: Free zone

>25-300 ft.: \$1.00 per ft.

ELECTRICIAN.....\$ 48.31 22.00

All Areas

IRONWORKER

Reinforcing Iron and Rebar Workers.....\$ 42.70 28.92

Structural Iron and Steel Workers.....\$ 38.31 27.91

LABORER

Group 1.....\$ 30.48 13.60

Group 2.....\$ 33.96 13.60

Group 3.....\$ 34.21 13.60

Group 4.....\$ 35.33 13.60

GROUP 1: Flag Person for Traffic Control

GROUP 2: General Labor; Asbestos Removal; Burning Bar; Bucket Man; Carpenter Tender; Caisson Worker; Cement Mason Tender; Cement Handler (dry); Chuck Tender; Choker Setter; Concrete Worker; Curb Machine-Lay Down; Crusher and Batch Worker; Heater Tender; Fence Erector; Landscape Laborer; Landscaper; Lawn Sprinkler Installer; Pipe Wrapper; Pot Tender; Powderman Tender; Rail and Truck Loaders and Unloaders; Riprapper; Sign Erection; Guardrail and Jersey Rail; Spike Driver; Stake Jumper; Signalman: Tail Hoseman; Tool Checker and Houseman and Traffic Control Worker

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

GROUP 4: Hod Carrier; Water Well Laborer; Blaster; Wagon Driller; Asphalt Raker; Cutting Torch; Grade Setter; High- Scaler; Power Saws (Faller & Concrete); Powderman; Rock & Core Drill; Track or Truck Mounted Wagon Drill and Welder incl. Air Arc

LINE CONSTRUCTION

Equipment Operator.....\$ 55.14 23.37

Groundman.....\$ 37.43 21.85

Lineman.....\$ 62.60 24.46

PAINTER.....	\$ 39.60	14.12
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PILE BUCKS.....	\$ 43.78	17.07
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POWER EQUIPMENT OPERATOR:

Group 1.....	\$ 35.72	14.05
Group 2.....	\$ 38.00	14.05
Group 3.....	\$ 39.27	14.05
Group 4.....	\$ 40.60	14.05
Group 5.....	\$ 41.85	14.05
Group 6.....	\$ 43.20	14.05
Group 7.....	\$ 46.15	14.05

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

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

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

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

GROUP 5: Cranes, 45 Tons up to and incl. 74 Tons

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

GROUP 7: Cranes, 150 Tons up to and incl. 250 Tons; Cranes, over 250 tons-add \$1.00 for every 100 tons over 250 tons; Crane, Tower (All); Crane Stiff-Leg or Derrick; Helicopter Hoist

TRUCK DRIVER

Group 1.....\$ 31.03 13.83

Group 2.....\$ 39.31 13.83

Group 1: Pilot Car

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

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

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

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded.

If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least \$13.65 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract from May 11, 2026, through December 31, 2026. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

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

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

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

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

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010

01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

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

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier. ?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

- 1) Has there been an initial decision in the matter? This can be:
 - a) a survey underlying a wage determination
 - b) an existing published wage determination
 - c) an initial WHD letter setting forth a position on a wage determination matter

d) an initial conformance (additional classification and rate) determination

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

davisbaconinfo@dol.gov or

by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to:

BCWD-Office@dol.gov or

by mail to:

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

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Requests for review and reconsideration can be submitted via email to:

dba.reconsideration@dol.gov or

by mail to:

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

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

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.

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END OF GENERAL DECISION"

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

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

- 1) No change, which has a direct effect on the Railroad, will be made to construction plans without submitting revised plans and receiving approval from the Railroad. Work covered by the plans, that requires flagging, will be covered by the Railroad/Highway Agreement. For work that is a result of the contractor's discretion, flagging protection will be required when equipment crosses or is working within 25 feet (7.62 meters) of center of any live track. When deemed necessary by local Railroad officers, a flagman may be required at all times while working on Railroad right-of-way in high density rail traffic area.
- 2) Crossing of any Railroad tracks must be done at approved locations and must be full depth timber, rubber, etc. Any equipment with steel wheels, lugs or tracks must not cross steel rails without the use of rubber tires or other approved protection. This shall apply specifically to, but not be limited to, access for Contractor furnished gravel, borrow or waste sites. The Contractor will be required to obtain a permit from the Railroad, and comply with any provisions thereof, before using any private Railroad crossings. All track crossing locations must be covered by a Private Roadway and Crossing Agreement. This does not apply to any public crossing.
- 3) Costs of flagging or planking protection of the tracks, which are a direct result of the planned construction, will be paid for by the State. Costs of flagging, planking for protection of the tracks, installation of new crossings or other work caused by the Contractor's discretion, will be paid by the Contractor.
- 4) When work to be performed by the Contractor is not covered in the Railroad/Highway agreement, the Contractor must furnish a plan to the Railroad for approval showing details as to how any work that may affect the Railroad will be accomplished.
- 5) Storing of construction materials or any other material, including dirt, sand, etc., within the Railroad right-of-way, will not be allowed unless covered by an easement, construction permit, or Contractor's permit/lease.
- 6) Construction within 25 feet (7.62 meters) of the center of any track not covered by the Railroad/Highway agreement will require plan approval and authorization by the Railroad Superintendent Maintenance and Engineering. This includes, but is not limited to, any excavation, slope work and driving of sheet piling.
- 7) No vehicles, equipment or machines shall be parked or stored unattended within 25 feet (7.62 meters) of any track, on railroad right-of-way, without specific written approval of the Railroad.
- 8) When any work is to be performed on Railroad property by the Contractor that is not shown in the construction plans, the Contractor must submit a detailed plan of the work to the Railroad for their approval.

CONTRACTOR'S ACKNOWLEDGMENT:

WORK SITE LOCATION:

Company

Town

By: _____
Name

State

Title

Project #

Date

Rev. 01/01/04

FHWA-1273 – Revised June 25, 2026

CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

1. Historically, contracting agencies using Federal-aid highway funds were required to ensure Form FHWA-1273 was physically incorporated into all contracts and subcontracts. Effective June 10, 2026, this requirement was eliminated [91 FR 25492]. Future use of Form FHWA-1273 is now optional on the part of the contracting agency using Federal-aid highway funds. FHWA continues to make Form FHWA-1273 available as a convenience to contracting agencies. Contracting agencies must continue to ensure compliance with the provisions cited in Form FHWA-1273 in accordance with the provisions regardless of the use of Form FHWA-1273. Accordingly, the contracting agency retains the authority to determine whether the contractor must use Form FHWA-1273 to physically incorporate required contract provisions in each subcontract and in lower tier contracts. Where permitted by the contracting agency, the contractor may choose other ways to include required contract provisions in each subcontract, besides incorporating Form FHWA-1273. Contract provisions in Form FHWA-1273 are not required to be physically included in subcontracts for design services on Federal-aid design-build contracts, or in purchase orders, rental agreements and other agreements for supplies or services.

The applicable provisions 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 or design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents.

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. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION

The contractor and all subcontractors must comply with the following policies: 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27, including any amendments thereto.

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

The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract.

1. Assurances Required:

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

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26, including any amendments thereto, in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

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

III. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in

paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

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

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the

classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

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

2. Withholding (29 CFR 5.5)

a. Withholding requirements. The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered

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

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

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

(2) A contracting agency for its repurchase costs;

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

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

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

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

3. Records and certified payrolls (29 CFR 5.5)

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

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

of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with [29 CFR part 30](#), including any amendments thereto.

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

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

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

6. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the

contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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

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

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

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

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

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

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

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

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

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

IV. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the

Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$33 as of January 15, 2025 (See 90 FR 1859) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

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

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

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

(2) A contracting agency for its procurement costs;

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

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

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

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

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

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

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

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

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

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

V. SUBLETTING OR ASSIGNING THE CONTRACT

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

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of

the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

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

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

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

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

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

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

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however,

contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VI. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the

character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

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

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

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the

eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

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

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

* * * * *

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

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

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

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

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

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

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

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

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

* * * * *

3. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

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

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

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

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

* * * * *

X. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

XI. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the

extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS** (40 U.S.C. sections 14501(d) and 14701
and the Appalachian Regional Commission Code as
authorized under 40 U.S.C. section 14302)

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

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.

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 40 U.S.C. 14501 allow the contracting
agency to provide a contractual preference for the use of
mineral resource materials native to the Appalachian region.

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

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

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

Utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

Furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in above paragraph to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

SPECIAL PROVISIONS**EEO AFFIRMATIVE ACTION REQUIREMENTS ON FEDERAL & FEDERAL-AID CONSTRUCTION CONTRACTS**

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

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

1. The Offeror's or Bidder's attention is called to the Equal Opportunity Clause and "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

GOALS FOR FEMALE PARTICIPATION (statewide) 6.9%

GOALS FOR MINORITY PARTICIPATION IN EACH TRADE**Economic Areas:**

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

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

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

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